

ATLANTIC COAST PIPELINE (WV) PROJECT

First Amendment
To
Memorandum of Understanding
Developed by
Atlantic Coast Pipeline, LLC
and
West Virginia Division of Natural Resources

THIS FIRST AMENDMENT TO ATLANTIC COAST PIPELINE (WV) PROJECT MEMORANDUM OF UNDERSTANDING (this "Amendment"), developed by Atlantic Coast Pipeline, LLC ("Atlantic") and the West Virginia Division of Natural Resources ("WVDNR" or the "Agency"), is effective as of May 2, 2018.

RECITALS

- A. Atlantic and WVDNR entered into a Memorandum of Understanding dated May 2, 2018 ("ACP MOU") that established conservation measures for habitat loss to be provided by Atlantic in connection with the construction of the Atlantic Coast Pipeline ("ACP") and maintenance of the permanent ROW for the ACP.
- B. The conservation measures described in the ACP MOU include the payment by Atlantic of \$13,238,545 to adequately replace lost value for interior forest wildlife habitat in West Virginia, a Fiduciary Management Fee (\$794,312) equivalent to 6% of the payment for the conservation measures, and a Land Management Fee (\$1,059,084) equivalent to 8% of the payment for the conservation measures.
- C. ACP's payment obligations under the ACP MOU were conditioned upon issuance by the Federal Energy Regulatory Commission of a final Notice to Proceed for construction of the entirety of the ACP project; however, despite this condition not having been satisfied, on May 24, 2018 ACP began making payments under the ACP MOU based on the work completed in West Virginia and the parties' common desire to commence appropriate mitigation efforts to protect uniquely sensitive habitats.
- D. Atlantic and WVDNR would like to amend the ACP MOU to reflect the parties' course of conduct, and to provide for two (2) or more installment payments by Atlantic which will more closely reflect the intent of the parties.

NOW THEREFORE, in consideration of the mutual entry into this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

- 1. Defined Terms. Capitalized terms used but not defined in this Amendment shall have the meanings set forth in the ACP MOU.
- 2. Amendments to the ACP MOU.

2.1 Sections II.A.2 through II.A.6 of the ACP MOU are hereby deleted in their entirety and replaced with the following:

2. WVDNR has determined that a payment totaling \$13,238,545 ("Conservation Payment") would be needed to adequately replace lost value for interior forest wildlife habitat in West Virginia (Attachment 2 and Attachment 3). Atlantic will also pay a Fiduciary Management Fee (\$792,312) equivalent to 6% of the Conservation Payment to the fiduciary as compensation for its services ("Fiduciary Management Fee"). The Conservation Fund, a Maryland non-profit corporation, will serve as fiduciary ("Fiduciary"). Atlantic will transfer \$14,032,857 (sum of the Conservation Payment and the Fiduciary Management Fee) to the Fiduciary in installments as described below to support the WVDNR in performing habitat restoration in West Virginia. Habitat restoration may include, but is not limited to: forest habitat enhancement and restoration projects, acquisition of public lands (including conservation easements) for protection of habitat for interior forest wildlife species, including migratory birds, forest dwelling bats and species of conservation concern in West Virginia. Such lands shall be managed by the West Virginia Division of Natural Resources, Wildlife Resources Section, under the authority granted to the WVDNR Director in W.Va. Code §20-1-7 or by other statewide conservation-based entities in which the projects have been approved by the WVDNR. In addition, a Land Management Fee (\$1,059,084), equivalent to 8% of the Conservation Payment will be deposited in the West Virginia Wildlife Endowment Fund and specifically designated per W.Va. Code §20-2B-6 for the operation and management of wildlife management areas to benefit interior forest wildlife species ("Land Management Fee"). Payments shall occur to each fund as Atlantic clears timber in West Virginia in connection with the ACP, as set forth in sections II.A.3 through II.A.5 below.
3. Upon execution of this ACP MOU, WVDNR shall notify Atlantic in writing that it is required to deliver to the Fiduciary the sum of \$6,455,314.22 and to the West Virginia Wildlife Endowment Fund the sum of \$487,178.64. The amounts delivered to the Fiduciary and the West Virginia Wildlife Endowment Fund represent the portion of the pipeline right-of-way that was cleared by Atlantic prior to April 1, 2018, which amounts to forty-six percent (46%) of the total acreage to be cleared by Atlantic. This assessment is equal to forty-six percent (46%) of the Conservation Payment (\$6,089,730.70); approximately forty-six percent (46%) of the Fiduciary Management Fee (\$365,583.52); and forty-six percent (46%) of the Land Management Fee (\$487,178.64). WVDNR shall provide to the Fiduciary a copy of WVDNR's notification to Atlantic.
4. Atlantic will transmit via email to the Fiduciary and the WVDNR a written notice ("Impact Notice") at the end of each clearing season indicating the amount of clearing that has been completed. The WVDNR will review each Impact Notice and if it concurs, shall confirm the proportion of habitat clearing that has occurred and determine the corresponding proportion of the Conservation Payment, Fiduciary Management Fee and Land Management Fee required to be paid by Atlantic. WVDNR shall, after such review and confirmation, notify Atlantic in writing ("Payment Notice") that it is required to deliver to the Fiduciary the corresponding portions of the Conservation Payment and the Fiduciary Management Fee and to deliver to the West Virginia Wildlife Endowment Fund the corresponding portion of the Land Management Fee, with a copy of such notice to the Fiduciary. Atlantic will continue to provide Impact Notices to the WVDNR and the Fiduciary and the WVDNR will continue to provide Payment Notices to Atlantic and the Fiduciary until clearing has been completed and the remaining portions, totaling approximately fifty-four percent

(54%), of the Conservation Payment (\$7,148,814.30), Fiduciary Management Fee (\$428,728.48), and Land Management Fee (\$571,905.36) are paid by Atlantic.

5. Payment of funds by Atlantic to the Fiduciary and to the West Virginia Wildlife Endowment Fund shall be final. No portion of the Conservation Payment, the Fiduciary Management Fee or the Land Management Fee shall be returned to Atlantic under any circumstances, even if the ACP is terminated or abandoned.

6. Intentionally Omitted.

2.2 Section II.B.1(b) of the ACP MOU is hereby deleted in its entirety and replaced with the following:

(b) As appropriate, the WVDNR will issue Payment Notices and otherwise act as intermediary for communication between Atlantic and the Fiduciary, as discussed in sections II.A.3 and II.A.4 of this ACP MOU.

3 Miscellaneous Provisions.

1. Recitals and Exhibits. The recitals set forth above are incorporated by reference in and made a part of this Amendment.

2. Ratification. All other terms and conditions in the ACP MOU are hereby ratified and affirmed.

3. Counterparts. This Amendment may be executed in one or more counterparts by facsimile and the signature pages of such counterparts shall be combined to form and constitute one instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their respective authorized representative intending to be bound legally.

West Virginia Division of Natural Resources

By: _____
Stephen S. McDaniel, Director

Date: _____

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-wit:

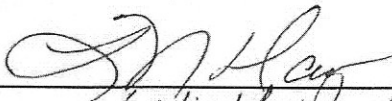
I, _____, a Notary Public in and for the county and state aforesaid, do hereby certify that Stephen S. McDaniel, who signed the writing hereto annexed, for the State of West Virginia, Department of Commerce, Division of Natural Resources, bearing date the _____ day of February, 2019, has this day in my said County and State, before me, acknowledged the said writing to be the act and deed of said Division.

Given under my hand this _____ day of February, 2019.
My commission expires _____.

[Seal]

Notary Public

Atlantic Coast Pipeline, LLC

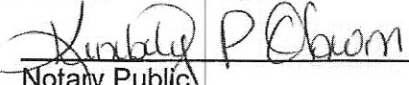
By: 
Leslie Hartz, Authorized Representative Date: 2/6/19

STATE OF Virginia
COUNTY OF Cheslerfield, To-wit:

I, Kimberly P. O'Chum, a Notary Public in and for said County and State, do hereby certify that Leslie Hartz, the Authorized Representative of Atlantic Coast Pipeline, LLC, who signed the foregoing and hereto annexed writing bearing date the 6th day of February, 2019, for Atlantic Coast Pipeline, LLC, has this day in my said County, before me, acknowledged the said writing to be the act and deed of said Company.

Given under my hand this 6th day of February, 2019.
My commission expires December 31, 2021.

[Seal]


Notary Public