

**FEDERAL ENERGY REGULATORY
COMMISSION
WASHINGTON, DC 20426**

OFFICE OF THE CHAIRMAN

December 30, 2020

The Honorable Tom Cole
U.S. House of Representatives
2424 Springer Drive, Suite 201
Norman, Oklahoma 73069

Dear Rep. Cole:

Thank you for your October 6, 2020, letter regarding Midship Pipeline Company, LLC's (Midship) Midcontinent Supply Header Interstate Pipeline Project (Docket No. CP17-458-000). In your letter you ask us to review concerns raised by your constituents, Chris and Cody McComas, regarding Midship's pipeline construction on their property. I have placed your letter in the Commission's official record.

Both Chris and Cody McComas, and Central Land Consulting, LLC (representing the McComas family), filed letters in the Commission's public record that were also included as attachments to your letter.¹ Their concerns include unapproved water use, inadequate terrace repairs and inadequate grade contours, subsidence over the pipeline, soil erosion, damage to drain tiles, topsoil saturation and flooding, crop damage, limited revegetation due to soil compaction, construction debris remaining on the right-of-way, timber mats remaining off right-of-way, the inability to access crop fields, removal of about 600 cubic yards of topsoil from the McComas' property, inadequate waterbody bank stabilization at the Buggy Creek pipeline crossing, and compensation for damages.

As noted below, each of the items raised in the McComas' letters were reviewed by the Commission's compliance monitor throughout the construction period and documented within the weekly compliance inspection reports. The monitor directed Midship to restore areas out of compliance with the Commission's authorization. Since the project commenced service, the compliance monitors also have investigated restoration issues that often appear after companies restore the right-of-way contours (e.g., trench subsidence, regrading that results in unanticipated ponding, erosion and lack of

¹ Central Land Consulting, LLC filed an additional letter with the Commission regarding the McComas' property concerns on November 30, 2020.

revegetation). Commission staff have and will continue to monitor, document and direct Midship's compliance throughout the restoration process that often takes several growing seasons to permanently rectify a restored right-of-way.

Regarding the McComas' unapproved water use concern, the Commission's compliance monitor documented a communication with the Midship Environmental Inspector (EI) on December 3, 2019, and confirmed that Midship had obtained the appropriate water withdrawal and water discharge permits for Buggy Creek at the right-of-way crossing on the McComas' property.^{2,3} More recently, and in response to letters dated August 24 and 25, 2020, that were included as attachments to your letter, the compliance monitor inspected the McComas' property on September 1 and 2, 2020. All portions of the property inspected during the compliance monitor's September 1, 2020, inspection were in compliance with the Commission's authorization and the monitor did not find any evidence of off right-of-way construction debris.⁴ Further, the monitor did not note any ponding to indicate a broken drain tile, and Midship's environmental inspector clarified with the compliance monitor that the company had not encountered drain tiles during construction across the McComas' property.

On September 2, 2020, the Commission's compliance monitor continued inspecting the McComas' property, and documented that erosion and subsidence was present upstream (northwest) of Midship's Mainline Valve 1100-2 on the rangeland portion of the right-of-way. The compliance monitor also found that three terraces were retaining stormwater and needed repairs. During the inspection, the compliance monitor also determined that some areas of limited revegetation were also present. The compliance monitor directed Midship to correct these issues, and Midship confirmed that the outstanding issues were added to its list of remaining mitigation activities on the McComas' property. Additionally, the compliance monitor documented that topsoil was removed from the McComas' property at the Mainline Valve as the site required leveling, and excess soil had to be hauled offsite; leaving it onsite would not allow the surrounding area to be restored to the appropriate grade.⁵

² The Commission staff's weekly status report for December 1-December 7, 2019 can be found on eLibrary under FERC accession # 20200122-3045.

³ The monitor's review of the state permit showed that Midship must return any water withdrawn from Buggy Creek back to the creek, which Midship's environmental inspector confirmed in Midship's weekly status reports. The Commission does not review individual easement agreements to know if there were additional requirements by the landowner as this is outside the Commission's jurisdiction.

⁴ The Commission staff's weekly status report for August 30-September 5, 2020 can be found on eLibrary under FERC accession # 20200917-3082.

⁵ *Id.*

In response to the September 24, 2020 letter, also included as an attachment to your letter, the compliance monitor conducted two more recent inspections on the McComas' parcels. On October 7, 2020, the compliance monitor inspected McComas' Tract GR-0132.010 and the Buggy Creek crossing. Although Midship previously sought to use a restoration technique involving articulated concrete mats, those actions would require construction activity in the off right-of-way areas they did not have landowner permission to access. Midship restored the north and south banks of Buggy Creek to a stable angle of repose for the sandy soil conditions at the pipeline crossing. The compliance monitor did determine that this approach was appropriate, but also observed that a 15-foot-wide area overlying the pipeline had settled into the waterbody, which could result in bank erosion during high stream flow events. This was reported to Midship's EI.⁶ Because the banks currently appear stable with no erosion, the Commission's staff and its compliance monitor did not direct any corrective action at this time; however, Commission staff will continue to inspect this location to determine if any additional stabilization efforts are warranted during the spring of 2021.

On October 10, 2020, the compliance monitor conducted a follow-up inspection of the McComas property and verified that the previously identified issues of erosion, subsidence, ponding and limited revegetation remained the same since the compliance monitor's September 2, 2020, inspection. The compliance monitor and Commission staff directed Midship to mitigate all outstanding issues on the McComas property without delay. During an inspection on November 17, 2020, the compliance monitor confirmed that Midship had completed regrading of terraces and rangeland on one of the McComas tracts, including seeding and mulching.⁷ On December 3 and 8, 2020, the compliance monitor inspected the remaining McComas tracts and found a 10 foot area of trench subsidence and eroded creek banks along waterbody SGR-108 and Buggy Creek crossing.⁸ During the December 8 inspection, the monitor confirmed that Midship attempted to restore the trench subsidence by importing topsoil; however, the McComas directed Midship to wait until after the McComas completed test digs in search of any remaining buried construction debris. The monitor also confirmed that Midship restored the banks of waterbody SGR-108 and stabilized the banks with erosion control fabric (and seeded it with winter wheat). The compliance monitor determined that Buggy Creek was currently stable and no mitigation was necessary at this time. Based on the recent inspections on the McComas property, Commission staff has determined that Midship's

⁶ Restoration progress on the McComas' property is documented in the Commission staff's weekly status report for October 4-10, 2020, found on eLibrary under FERC accession # 20201015-3049.

⁷ The Commission staff's weekly construction status report for November 15-21, 2020 can be found on eLibrary under FERC accession # 20201203-3003.

⁸ The Commission staff's weekly construction status report for November 29-December 5 and December 6-12, 2020 can be found on eLibrary under FERC accession # 20201218-303023 and 20201221-3022, respectively.

recent activities were correcting the areas out of compliance with the Commission's authorization at this time.

Commission staff, through its compliance monitor, will continue to oversee the ongoing restoration and revegetation of Midship's project right-of-way on the McComas parcels, will ensure that Midship completes the remaining restoration activities, and will also ensure that Midship continues to monitor and correct any restoration issues on the affected McComas properties until revegetation is complete, which may take at least two years.

Finally, while the McComases state that Midship has failed to compensate them for damages on their property, including compensation where the McComases had no access to harvest alfalfa fields due to Midship's right-of-way conditions, it should be noted that easement agreement settlements are outside the Commission's statutory authority. Commission staff has authority under the Natural Gas Act to direct the company to undertake restoration activities on the area approved for construction, but does not have authority to direct the payment of compensation⁹ or authorize off right-of-way activity without the landowner's consent.

I appreciate you reaching out on this important matter and we will continue to monitor the issues raised by your constituents. If I can be of any further assistance with this or any other Commission matter, please let me know.

Sincerely,



James P. Danly
Chairman

⁹ See *South Carolina Public Service Authority v. FERC*, 850 F.2d 788, 789 (D.C. Cir. 1988) (“licensing authority granted to the Commission under the [FPA] does not include the power to displace existing state tort law with its own rules of liability for damages caused by licensees.”) The courts have held that the NGA and FPA should be interpreted consistently. See [Environmental Action v. FERC](#), 996 F.2d 401, 410 (D.C. Cir. 1993); [Tennessee Gas Pipeline Co. v. FERC](#), 860 F.2d 446, 454 (D.C. Cir. 1988); see also [Arkansas La. Gas Co. v. Hall](#), 453 U.S. 571, 577 n. 7.