



FEDERAL ENERGY REGULATORY COMMISSION

Office of the Chairman

May 24, 2021

The Honorable Frank D. Lucas
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lucas:

Thank you for your February 17, 2021 letter regarding concerns raised by your constituents, Terry and Diana Luber, resulting from construction on their property in connection with Midship Pipeline Company, LLC's (Midship) Midcontinent Supply Header Interstate Pipeline Project (Docket No. CP17-458-000). I take these concerns very seriously and appreciate you reaching out on their behalf. You ask us to review the issues the Lubers raise and to ensure that Midship follows through with proper restoration on their property. I have placed your letter in the Commission's official record.

The Lubers expressed concerns regarding the Commission's compliance monitoring program and identified issues with an incorrect pipeline marker positioning outside the approved workspace, as well as damage to fencing and unrestored corner posts, soil erosion, damage to waterbody banks, soil compaction, loss of topsoil and topsoil mixing with subsoil, soil subsidence and stormwater ponding, inadequate revegetation (Bermuda Grass). The Lubers' also note inadequate opportunities to effectively participate in the project process, crop loss damages, and unreasonable construction timeline and Midship's threat of eminent domain.

Although pipeline companies are required to pay the compliance monitors, the monitors work exclusively for, and report directly to, Commission staff. Their role as impartial monitors is to audit Midship's required environmental inspection program. Due to the nature of this project, Commission staff selected specific monitors that have decades of experience and proven knowledge of the enforcement requirements in the Commission's Certificate. The compliance standards that the compliance monitors enforce are the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures*, which were developed by the Commission in consultation with many federal and state agencies. Pipeline companies and compliance monitors were not involved in the development process.



In addition, Commission staff and the compliance monitors ensure compliance with all other environmental conditions of the Commission's Certificate Order. They timely document any issues in weekly compliance inspection reports. These reports are available through the Commission's e-Library service and can be found under the appropriate docket number to allow for accessibility for all who are interested. Commission staff, through compliance monitors, then continue to oversee the ongoing restoration and revegetation of Midship's project rights-of-way, ensure that Midship completes the remaining restoration activities, and ensure that Midship continues to monitor and correct any restoration issues until revegetation is complete. These projects may take several years after Midship's initial restoration activities are complete.

Compliance monitors have repeatedly inspected the Lubers' property to identify needed corrections. In April 2020,¹ the compliance monitor documented that the line-of-sight pipeline markers at Waterbody SKI-015 were offset approximately 20 feet from the pipe centerline location, yet within the approved right-of-way. The monitor directed Midship's environmental inspector to relocate the markers directly over the pipe centerline. The compliance monitor also investigated the Lubers' claim that Midship cut timbers on the right-of-way, which were then moved by floodwaters and damaged a fence, as well as a claim that Midship failed to reinstall fencing corner posts. The monitor noted that the timber debris was not present at the time of the inspection. Further, because the monitor had no knowledge of the preconstruction condition of the corner posts or fencing, the monitor was unable to corroborate if construction impacted the fencing. Lastly, the compliance monitor documented that Midship had not returned portions of the property to preconstruction contours (potentially caused by compaction, subsidence over the trenchline, subsoil loss), but found no evidence that topsoil was lost on this property as claimed by the Lubers. Following this inspection, and during a subsequent compliance conference call with Midship, Commission staff clarified that Midship must correct the remaining unresolved restoration repairs on the Lubers' property. After investigating the Lubers' topsoil loss and damaged fencing claims, Commission staff determined that there is no clear evidence of either topsoil loss or fencing damage on this property that is associated with Midship's construction.

On April 15, 2020, the compliance monitor continued his inspection of the Lubers' property to investigate their erosion and waterbody bank concerns on the property, including Waterbody SKI-015. The compliance monitor noted that the waterbody itself was horizontally directionally drilled (HDD), but that Midship cleared some vegetation to

¹ See Commission staff's weekly status report for April 12-18, 2020, found on eLibrary under FERC accession # 20200908-3011.



the water's edge (as the waterbody was originally approved as an open-cut crossing). The monitor did confirm that erosion had occurred beneath a cluster of trees on the east waterbody bank, but also concluded that the waterbody bank erosion continued upstream of the crossing location and was a natural occurrence and not a result of Midship's construction. Consequently, Commission staff and the compliance monitor did not document that any corrective action was required at the waterbody crossing.

The compliance monitor conducted an additional inspection on the Lubers' property on July 7, 2020,² and confirmed that in early June 2020 Midship regraded portions of the right-of-way to facilitate cultivated agricultural land drainage to the pre-existing drainage ditch, including regrade of the terraces to channel stormwater to the drainage ditch. The compliance monitor did document, however, a small area of ponding was present in the drainage ditch where Midship's applied mulch was displaced during recent rainfall events. The compliance monitor also documented that revegetation on the Lubers' property was limited in some areas and directed Midship to reseed when possible and to continue to monitor revegetation growth on this property. Further, the compliance monitor documented that from milepost 16.2 to milepost 16.4 on the property, a non-Commission regulated oil and gas production pipeline was recently installed within the Chisholm Lateral construction right-of-way. Those areas where Midship had previously stabilized the right-of-way were re-disturbed by the construction. The compliance monitor also documented that Midship had restored the overall preconstruction contours, found no evidence of topsoil loss and topsoil mixing with subsoil, and confirmed that Midship's environmental inspector completed soil compaction tests on this property that indicated no further decompaction was necessary.

On August 25, 2020,³ the Commission's compliance monitor conducted an additional follow-up inspection of the Lubers' property, during which Mr. Luber was present. The compliance monitor documented that erosion of the drainage ditch resulted from Midship's failure to restore the appropriate contours of this feature and directed Midship to reconstruct the drainage ditch contours. During the inspection, Mr. Luber indicated that trees near Waterbody SKI-015, which were felled prior to the HDD crossing, were dislodged in the pre-existing eroded creek bank, thereby exacerbating bank erosion. The compliance monitor could not confirm this. The monitor did, however, observe that an area of subsidence over the Midship Project pipeline was present west of Waterbody SKI-015 crossing between milepost 16 and milepost 16.2.

² See Commission staff's weekly status report for July 5-11, 2020, found on eLibrary under FERC accession # 20200723-3001.

³ See Commission staff's weekly status report for August 23-29, 2020, found on eLibrary under FERC accession # 20200908-3011.



The monitor communicated the subsidence issue to the Midship environmental inspector and directed Midship to mitigate the subsidence as soon as possible. The compliance monitor did not observe any excess rock or soil compaction on the Lubers' property.

In response to additional comments raised by the Lubers, the compliance monitor inspected their property on September 30, 2020,⁴ and documented that the agricultural field drainage ditch remained unrepaired and that various pieces of partially buried wood construction debris were present in the ditch. The monitor also documented erosion on the west slope leading towards Waterbody SKI-015; however, the erosion was not impacting the waterbody. The monitor again documented that erosion associated with the non-FERC-regulated pipeline right-of-way was also evident, including separate erosion areas on the Midship right-of-way, and noted limited revegetation. The monitor directed Midship to correct these erosion issues, repair the drainage ditch contours, and remove the construction debris within the drainage ditch.

On November 27, 2020,⁵ the compliance monitor conducted a further follow-up inspection of the Lubers' property and documented that while Midship initiated erosion and contour mitigation grading on November 25, 2020, the landowner requested that Midship halt any grading until after his property was harvested. The monitor documented that the partially completed erosion mitigation activities had adequately restored the flat bottom drainage feature west of Waterbody SKI-015. Thus, allowing cultivated agricultural field terrace stormwater to flow to the road bar ditch as intended, but full recontouring restoration was not yet complete.⁶ The Midship environmental inspector confirmed that Midship will complete the remaining grade mitigation and any remaining revegetation reseeding after the Lubers complete their harvest activities.

During a more recent inspection of the Lubers' property on February 22, 2021,⁷ the compliance monitor documented that the drainage ditch was continuing to function as

⁴ See Commission staff's weekly status report for September 22-28, 2020, found on eLibrary under FERC accession # 20201013-3000.

⁵ See Commission staff's weekly status report for November 22-28, 2020, found on eLibrary under FERC accession # 20201211-3002.

⁶ Conditions were dry at the time of the inspection.

⁷ See Commission staff's monthly status report for February 2021, found on eLibrary under FERC accession # 20210305-5025.



intended,⁸ noting that full restoration was not yet complete. The monitor did not identify any new issues on the Lubers' property that required further restoration repairs beyond the outstanding grading and revegetation mitigation.

The Lubers question whether the U.S. Army Corps of Engineers, Oklahoma Water Resources Board, Oklahoma Department of Environmental Quality, the local Natural Resources Conservation Service office, the Environmental Protection Agency, the Oklahoma Corporation Commission, and County Commissioners were consulted during the Commission's project environmental review process.. As noted in the final Environmental Impact Statement prepared for the Midship Project, the appropriate federal, state, and local agencies were involved in the permitting process for this project.⁹

On March 18, 2021, the Commission issued an Order on Environmental Compliance,¹⁰ which directed Midship to take immediate action to remedy unresolved restoration issues on certain landowner tracts, including the Lubers' property. Midship was required to implement additional mitigation on the Lubers' property, identified in Appendix A of that order, which includes restoring preconstruction contours and mitigating drainage erosion. Midship was required to complete the remaining restoration on the Lubers' property as soon as possible but no later than 60 days from the date of the March 2021 order unless Midship provides documentation of a landowner request for delayed restoration. Midship was also required to complete the required restoration in consultation with the Lubers.

The Lubers include a list of damage and expense related items for which they believe Midship should provide financial compensation.. While the Commission has the authority under the Natural Gas Act to require Midship to remedy unrestored issues on the Lubers' property, and is requiring Midship to do so, the Commission does not have authority to direct the payment of compensation. But the Commission strongly encourages Midship to engage with landowners through the Commission's Alternative Dispute Resolution program on these compensation issues. The Commission staff and its compliance monitor will continue to review the entire project restoration (including on the Lubers' property) and to place the results of these inspections and reviews in the public record.

⁸ The compliance monitor noted that there was an approximately 500-foot-long gully within the drainage feature that remained to be repaired after winter wheat was harvested, but that no sensitive environmental features were being impacted.

⁹ See table 1.4-1 in the final Environmental Impact Statement, Accession #20180621-3006.

¹⁰ FERC e-library accession number 20210318-3047.



They will also document the status of Midship's compliance with remaining restoration activities. Additionally, Commission staff will also ensure that Midship continues to monitor restoration of the Lubers' affected properties throughout the restoration process.

I appreciate you taking the time to reach out on this important matter. We will continue to monitor the issues raised by your constituents. If I can be of any further assistance in this or any other Commission matter, please let me know.

Sincerely,

A handwritten signature in blue ink, which appears to read "Dick Glick", is written over the typed name.

Richard Glick
Chairman