



FINDING OF NO SIGNIFICANT IMPACT

**NEW DESIGN RAW WATER MAIN
AND
McKINNEY TREATED EFFLUENT OUTFALL**

CHESAPEAKE & OHIO CANAL NATIONAL HISTORICAL PARK

The National Park Service (NPS) is proposing to authorize the construction of the New Design Raw Water Main and the McKinney Treated Effluent Outfall by the Frederick County Division of Utilities and Solid Waste Management (County) within the boundaries of the Chesapeake and Ohio Canal National Historical Park (C&O Canal NHP) at Nolands Ferry, Frederick County, Maryland. The existing County water distribution system is insufficient to provide adequate water to meet predicted future demands. Frederick County must expand the existing water distribution system to meet predicted demands.

The purpose of the New Design Raw Water Main improvements project is to increase raw water conveyance capacity from the existing raw water intake pumping station, at Nolands Ferry, to the existing New Design Water Treatment Plant (WTP). The proposed New Design raw water main will increase the production capacity of the expanded New Design WTP (proposed expansion). The New Design WTP currently draws water from the Potomac River through an existing 24-inch main. Due to the greater flow volumes and upstream reservoir, the Potomac River provides the most reliable source of water to the County. The project proposes to install a 42-inch raw water main parallel to the existing main. In addition to the water conduit upgrade, an electrical and communication duct bank will also be installed. The proposed underground electrical and communications duct bank more or less parallels an existing underground duct bank and provides the power and communications infrastructure required for increasing capacity at the pumping station.

The purpose of the McKinney Wastewater Treatment Plant (WWTP) Treated Effluent Outfall improvements project is to provide a means to transport a greater capacity of treated effluent from the programmed McKinney WWTP. When complete, the project may also facilitate improvements to water quality of the Monocacy River by redirecting treated effluent from the Ballenger Creek WWTP (currently discharged into the Monocacy) into the Potomac River. Frederick County is planning to build the McKinney WWTP to accommodate the forecasted wastewater flows of future County growth, and to meet the National Pollutant Discharge Elimination System (NPDES) requirements for discharges. The larger volumes of the Potomac River provide greater dilution for effluent than the Monocacy River. An existing 18-inch outfall is currently in place within the existing right-of-way for the New Design/Nolands Ferry corridor. The proposed project will install a 42-inch outfall pipe, parallel to the existing pipe. The new pipe will join the existing pipe prior to the diffuser.

The new outfall pipe project does not include upgrades to the river diffuser, thus the need to join the two outfall pipes. By the year 2040, the Ballenger Creek WWTP and the proposed McKinney WWTP will have projected combined average daily design flows of 24.0 MGD (45.0 MGD peak flow). Due to the lower flow of the Monocacy River, it is unlikely that the Maryland Department of the Environment (MDE) will increase the effluent discharge limits into the Monocacy River. MDE has ruled that future discharges must release into the Potomac River, due to the Potomac's larger assimilation capacity. The McKinney WWTP Treated Effluent Outfall project will allow the McKinney WWTP to serve the future

Frederick County wastewater requirement of 45.0 MGD (Year 2040 build-out). Within the boundaries of the C&O Canal NHP, the treated effluent outfall pipe will be designed to provide an increased capacity between the existing 18-inch outfall pipe and the diffuser.

The New Design raw water main will allow the New Design WTP to supply potable water to the Frederick County and City of Frederick service areas from the existing Potomac River raw water source to satisfy Year 2020, 31 MGD average daily volume projections. Completion of the raw water main will provide a connection between the existing Intake Pumping Station and the New Design WTP, parallel to the existing 24-inch piping through the boundaries of the C&O Canal NHP.

The second electric feed will provide an additional electric feed duct bank to the intake pumping station; allow the intake pumping station to operate more reliably and at a sufficient capacity to serve the New Design WTP. The new communications duct bank will facilitate the integration of the intake pumping station control system with the New Design Road WTP system.

Pursuant with Department of the Interior (DOI) NEPA regulations, as Part 516 of its departmental manual (DM), and the NPS DO-12 Handbook, an Environmental Assessment (EA) was conducted in compliance with the requirements and procedures of DOI and NPS NEPA evaluations. As part of this analysis, NPS staff considered a range of alternatives. The EA study documents the necessary information for NPS to render a determination that this proposed action will not result in significant adverse impacts to the environment.

PREFERRED ALTERNATIVE

The Preferred Alternative presents the NPS's proposed action and defines the rationale for the action in terms of resource protection and management, visitor and operational use, costs, and other applicable factors. Under the Preferred Alternative, the NPS would authorize Frederick County Division of Utilities and Solid Waste Management to construct the New Design Raw Water Main and the McKinney Treated Effluent Outfall.

The Preferred Alternative provides infrastructure to support proposed expansions in the Frederick County water and wastewater infrastructure [e.g., expansion of New Design WTP and construction of the McKinney WWTP]. The Preferred Alternative study area is approximately 11,900 linear feet (LF) and involves approximately 17,240 LF of underground utility construction. Included in the alignment is a crossing of Tuscarora Creek, B&O/CSX Railroad, the C&O Canal NHP's canal and the canal towpath. The area of NPS parkland that would be affected is approximately 1,210 LF.

The Preferred Alternative involves the construction of a 42-inch raw water main, a 42-inch outfall, and a power and communications duct bank. The proposed raw water main and electrical/communications duct bank will parallel the existing 24-inch main. The proposed 42-inch outfall pipe will parallel the existing 18-inch outfall and stops before crossing the canal. At approximately 200 feet south of the CSX railroad crossing, both 42" mains will diverge from New Design Road and extend on parallel alignments to perpendicular crossings of the CSX rail line. This divergence of the mains is a response to potential concerns of CSX railroad regarding proximity to the existing railroad crossing abutments

Of the 11,900 linear feet of the New Design Raw Water Main/McKinney Treated Effluent Outfall Alternative 2, approximately 1,210 LF occur within the C&O Canal NHP. The C&O Canal NHP parallels the Potomac River. The New Design Raw Water Transmission Main and McKinney Treated Effluent Outfall directly link to the existing Frederick County Potomac River Raw Water Intake and the existing Eastalco Potomac River effluent diffuser. These structures are water dependent and accessing them requires encroaching upon C&O Canal NHP. Upon completion of the project, the existing 24" raw water main will be unchanged, a new 42" raw water main will be installed, a new 42" effluent main will be

installed to a new junction box (prior to crossing the canal), and the existing 18" effluent line will be converted to a raw water line, above the 42" junction box. Below the 42" junction box, the 18" effluent line will remain unchanged. The Preferred Alignment does not require modifications to the existing diffuser, nor in-stream work within the Potomac River.

ALTERNATIVES CONSIDERED

The Environmental Assessment prepared for this project analyzed the No-Build Alternative, the Preferred Alternative (described above) and one other alternative:

- **No-Build Alternative**

Under the No-Build Alternative, NPS would not issue a permit to Frederick County Division of Utilities and Solid Waste Management for construction of the New Design Raw Water Main and McKinney Treated Effluent Outfall. Failure to construct the project will not satisfy the demonstrated need for water/wastewater system improvements. Alternative 1, the No Build Alternative, is not a feasible alternative.

- **New Design Raw Water Main and McKinney Treated Effluent Outfall Alternative**

This alternative is functionally identical to the CSX Alternative except the proposed mains would not diverge from New Design Road. CSX had concerns with this alignment, primarily regarding proximity to the existing railroad crossing abutments. Due to CSX concerns, this alignment is not a feasible alternative.

- **CSX Alternative (Preferred Alternative)**

The Preferred Alternative provides infrastructure to support proposed expansions in the Frederick County water and wastewater infrastructure [e.g., expansion of New Design WTP and construction of the McKinney WWTP]. The Preferred Alternative study area is approximately 11,900 linear feet (LF) and involves approximately 17,240 LF of underground utility construction. Included in the alignment is a crossing of Tuscarora Creek, B&O/CSX Railroad, the C&O Canal NHP's canal and the canal towpath. The area of NPS parkland that would be affected is approximately 1,210 LF.

The Preferred Alternative involves the construction of a 42-inch raw water main, a 42-inch outfall, and a power and communications duct bank. The proposed raw water main and electrical/communications duct bank will parallel the existing 24-inch main. The proposed 42-inch outfall pipe will parallel the existing 18-inch outfall and stops before crossing the canal. At approximately 200 feet south of the CSX railroad crossing, both 42" mains will diverge from New Design Road and extend on parallel alignments to perpendicular crossings of the CSX rail line. This divergence of the mains is a response to potential concerns of CSX railroad regarding proximity to the existing railroad crossing abutments.

Of the 11,900 linear feet of the New Design Raw Water Main/McKinney Treated Effluent Outfall Alternative 2, approximately 1,210 feet occur within the C&O Canal NHP. The C&O Canal NHP parallels the Potomac River. The New Design Raw Water Transmission Main and McKinney Treated Effluent Outfall directly link to the existing Frederick County Potomac River Raw Water Intake and the existing Eastalco Potomac River effluent diffuser. These structures are water dependent and accessing them requires encroaching upon C&O Canal NHP. Upon completion of the project, the existing 24" raw water main will be unchanged, a new 42" raw water main will be installed, a new 42" effluent main will be installed to a new junction box (prior to crossing the canal), and the existing 18" effluent line will be converted to a raw water line, above the 42" junction box. Below the 42" junction box, the 18" effluent line will remain unchanged. The

Preferred Alignment does not require modifications to the existing diffuser, nor in-stream work within the Potomac River.

ENVIRONMENTALLY PREFERRED ALTERNATIVE

In accordance with *Director's Order #12*, the National Park Service is required to identify the "environmentally preferred alternative" in all environmental documents, including environmental assessments. The environmentally preferred alternative is determined by applying the criteria suggested in the National Environmental Policy Act of 1969, as amended, which is guided by the Council on Environmental Quality. The Council on Environmental Quality provides direction that "[t]he environmentally preferable alternative is the alternative that would promote the national environmental policy as expressed in Section 101 of National Environmental Policy Act, which considers:

- Fulfilling the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assuring for all generations safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- Attaining the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences;
- Preserving important historic, cultural and natural aspects of our national heritage and maintaining, wherever possible, an environment that supports diversity and variety of individual choice;
- Achieving a balance between population and resource use that would permit high standards of living and a wide sharing of life's amenities; and
- Enhancing the quality of renewable resources and approaching the maximum attainable recycling of depletable resources (National Environmental Policy Act, section 101)."

The existing County water distribution system is insufficient to provide adequate water to meet predicted future demands. Frederick County must expand the existing water distribution system to meet predicted demands. The No-Build Alternative does not meet the criteria for the environmentally preferred alternative because it will not satisfy the demonstrated need for water/wastewater system improvements. The CSX Alternative provides a more beneficial environmental and cultural approach than the other alternatives, because the alignment would:

- avoid existing CSX railroad abutments;
- be contained almost entirely within the existing right-of-way;
- pose little to no impacts to park resources

WHY THE PREFERRED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT

As defined in 40 CFR §1508.27, significance is determined by examining the following criteria:

Impacts that may be beneficial and adverse

The Preferred Alternative will either have no, or negligible, adverse impacts on wetlands, rare, threatened and endangered species, forests, historic structures, archeological resources, Indian trust resources, ethnographic resources, air quality, socioeconomic environment, land use, community facilities and services, environmental justice, agricultural land, cumulative impacts, and green infrastructure.

The Preferred Alternative will have minor adverse impacts on floodplains, right-of-ways, cultural landscapes, soils, geology and topography, and visitor use and experience (minor short-term and no long-term impacts); wildlife/habitat and park operations (minor short-term and negligible long-term impacts).

The Preferred Alternative will have moderate adverse impacts on aesthetics and visual resources (moderate short-term and no long-term impacts) and waterways (moderate short-term and negligible long-term impacts).

The Preferred Alternative will have no major adverse impacts upon studied environmental resources.

Degree of effect on public health or safety

The Preferred Alternative will have a long-term beneficial impact on health and safety. The purpose of the project is to improve the regional water distribution system capacity and operations to Frederick County and the City of Frederick

Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetland, wild and scenic rivers, or ecologically critical areas

In accordance with Section 106 of the National Historic Preservation Act, implementation of the Preferred Alternative would have *no adverse effect* on historic properties. A complete cultural/archeological resource study was performed and approved by the Maryland Historical Trust and C&O Canal NHP staff.

The Preferred Alternative will cross the C & O Canal NHP within the existing New Design Road. Crossing of the park's canal feature (dewatered in this area) is currently planned to be constructed by open cut and the proposed pipe will be installed approximately three (3) feet below the bottom elevation of the canal. The canal in this location is specifically protected under Section 10 of the Rivers and Harbors Act as a "navigable waters" regardless of the existing waterway conditions at this location. Because New Design Road does not include a culvert at the canal, the proposed pipe at this location requires only a Section 10 Rivers and Harbors Act permit from the USACOE. The Preferred Alternative will result in no permanent or temporary impacts to wetlands or streams within the C&O Canal NHP.

Degree to which effects on the quality of the human environment are likely to be highly controversial:

There were no highly controversial effects identified during either preparation of the environmental assessment or during the public review period.

Degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks: There were no highly uncertain, unique, or unknown risks identified during either preparation of the environmental assessment or during the public review period.

Degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration: The preferred alternative neither establishes a National Park Service precedent for future actions with significant effects nor represents a decision in principle about a future consideration.

Whether the action is related to other actions with individually insignificant but cumulatively significant impacts: The proposed actions under the Preferred Alternative are expected to have very localized, and minor adverse impacts as well as beneficial impacts. When added to other past, present,

and reasonably foreseeable projects, the Preferred Alternative would not have a significant cumulative impact.

Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed on the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources: As described in the environmental assessment, proposed undertakings would not adversely affect historic properties or cultural or historical resources. Implementation of the Preferred Alternative would have *no adverse effect* on historic properties or cultural or historical resources.

Degree to which the action may adversely affect an endangered or threatened species or its critical habitat: There are no known threatened, endangered, or candidate species of special concern in the vicinity of the project areas proposed in the Preferred Alternative.

Whether the action threatens a violation of federal, state, or local environmental protection law: The Preferred Alternative does not violate federal, state, or local environmental protection laws.

IMPAIRMENT OF PARK RESOURCES OR VALUES

In addition to reviewing the list of significance criteria, I, as Superintendent of the C&O Canal NHP, have determined that implementation of the Preferred Alternative will not constitute an impairment of the park's resources or values. This conclusion is based on a thorough analysis of the impacts described in the Environmental Assessment, the agency and public comments received, and the professional judgment of the decision-makers in accordance with the National Park Service's *Management Policies, 2006* (August, 2006). Implementation of the Preferred Alternative will not result in major, adverse impacts to a resource or value whose conservation is (1) necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the C&O Canal NHP (2) key to the natural or cultural integrity of the parks; or (3) identified as a goal in the park's general management plan or other relevant National Park Service planning document.

PUBLIC INVOLVEMENT

In accordance with Director's Order 12, Conservation Planning, Environmental Impact Analysis, and Decision-making, the environmental assessment was made available for public review and comment from November 1 through November 30, 2006. An electronic copy of the Environmental Assessment was placed on the website <http://parkplanning.nps.gov/choh>. The document was made available for public review at the NPS C&O Canal NHP Headquarters and Brunswick Visitor Center, Brunswick Branch of the Frederick County Library, Frederick County Division of Utilities and Solid Waste Management Offices, and United States Post Offices at Brunswick, Point of Rocks, Adamstown, Buckeystown, and Tuscorora.

A public information meeting was held on November 15, 2006 at the offices of the Utilities and Solid Waste Management, located at 4520 Metropolitan Court, Room 108, Frederick, Maryland, 21904. Citizens were given the opportunity to discuss their thoughts and concerns with representatives from the NPS, and Frederick County.

No comments were received during the aforementioned review period.

AGENCY COORDINATION

Consultation and coordination have occurred with numerous agencies for the development of the alternatives and preparation of the EA. The following people, organizations, and agencies were contacted

for information, which assisted in identifying important issues, developing alternatives, and analyzing impacts:

U.S. Fish and Wildlife Service

Maryland Department of the Environment

Maryland Department of Natural Resources

Maryland State Historic Preservation Officer

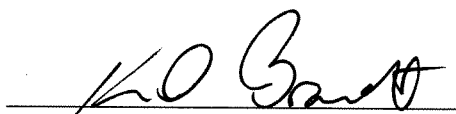
U.S. Army Corps of Engineers

CONCLUSION

The Preferred Alternative does not constitute an action that normally requires preparation of an Environmental Impact Statement. The Preferred Alternative will not have a major significant effect on the human environment. Adverse environmental impacts that could occur are negligible or minor in intensity. There are no significant adverse impacts on public health, public safety, threatened or endangered species, historic properties either listed in or eligible for listing in the National Register of Historic Places, or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the action will not violate any federal, state, or local environmental protection law.

Based on the foregoing, it has been determined that an Environmental Impact Statement is not required for this project and thus will not be prepared.

Recommended:

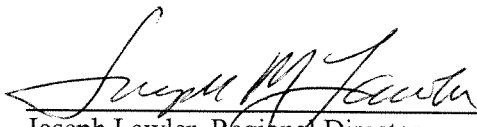


Kevin D. Brandt, Superintendent
Chesapeake & Ohio Canal National Historical Park

8/21/07

Date

Approved:



Joseph Lawler, Regional Director
National Capital Region
National Park Service

8/27/07

Date

REC'D FOR RECORD May 24 19 73 AT 10:27 CLK 9 M. SAME DAY RECORDED & EX'D PER ELLIS C. WACHTER, CLK.

THIS GRANT OF EASEMENT OF RIGHT-OF-WAY, made this 17th day of April, 1973, by and between the UNITED STATES OF AMERICA, by the Director of the National Park Service, Grantor and the FREDERICK COUNTY METROPOLITAN COMMISSION, a body corporate established by the General Assembly of Maryland, Grantee.

WHEREAS, the Frederick County Metropolitan Commission has requested a grant of easement of right-of-way over certain lands vested in the United States, wherefore these presents are executed;

I. Jurisdiction and control of the Chesapeake and Ohio Canal National Historical Park are vested in the National Park Service of the Department of the Interior, under the Act of January 8, 1971 (Public Law 91-664) and the Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. Sec. 1, 2-3).

II. Under section 1 of the Act of August 1, 1953, 67 Stat. 359, the Secretary of the Interior is authorized and directed to grant perpetual easements, subject to such reasonable conditions as are necessary for the protection of the federal interests, for rights-of-way through, over, or under the park lands along the line of the Chesapeake and Ohio Canal for the purpose of electric, telephone, and telegraph lines or conduits, gas, oil, and water pipelines, tunnels, and water conduits, or for other utility purposes incident to industrial, commercial, or agricultural use, or to the supply of water for domestic, public, or any other beneficial use, where it is intended to use such rights-of-way for any one or more of the purposes hereinabove named, and is further directed to cause an appraisal to be made of the value of the said easements, including the resulting damage, if any, to the residue of the park lands, which appraisal, after approval by the Secretary of the Interior shall be paid in cash by the Grantees requesting the easement as the consideration for said easements when granted by the United States.

III. The Frederick County Metropolitan Commission, Frederick, Maryland, a body corporate established by the General Assembly of Maryland by Act of May 7, 1968 (Art. 11 of the Code of Public Laws of Maryland) has applied for a perpetual easement of right-of-way under the Act of August 1, 1953, for the use of the following described land in the Chesapeake and Ohio Canal National Historical Park:

Receipt No. 2772768

A parcel of land located in the vicinity of Nolands Ferry lying between the Chesapeake and Ohio Canal and the Potomac River and being more particularly described as follows: Beginning at a point on the berm property line, said point being approximately 3200 feet upstream of Tuscarora Creek Culvert (No. 71) at Mile 44.0; thence S. 60° W. crossing the canal and towpath 250'± to the Potomac River; thence up the Potomac River 30'± to a point; thence leaving the Potomac River N. 60° E. 100'± to a point; thence N. 30° W. 240'± to a point; thence S. 60° W. 100'± to the Potomac River; thence up the Potomac River 110'± to a point; thence leaving said River N. 60° E. 115' to a point; thence S. 30° E. 350'± along the southeast edge of the towpath; thence crossing said towpath and canal N. 60° E. 120' to a point on the berm property line, thence with said property line S. 30° E. 30' to the point of beginning; containing 0.7 acres more or less and as shown on Sheets 1 through 6 of Job No. 2206 (J.B. Ferguson & Co., Inc.) attached hereto bearing NCR file numbers 110.12-162-1 through 110.12-162-6.

being a portion of the land acquired by the United States from the Receivers of the C. & O. Canal Co., by deed recorded October 20, 1938 in Liber 414 Folio 245, Frederick County, Maryland, for the purpose of installing and maintaining a 24 inch raw water supply line to obtain water from the Potomac River, constructing and operating a water intake structure, installing an underground electric service line, installing an 18 inch waste water line and providing vehicular access to the water intake structure, as outlined on the above referenced Job No. 2206 (J.B. Ferguson & Co., Inc.). The purpose of said lines is to create a water and sewer system from the Potomac up New Design Road to the Eastalco plant in the area of Buckeystown and to service additional areas as customers are developed, as set forth in the resolution adopted at a special meeting of the Commission on November 11, 1968.

IV. The Secretary of the Interior has found that the granting of this easement as described above will not substantially injure the property of the United States and will not be incompatible with the public interest.

V. Therefore, in consideration of the acceptance by the Frederick County Metropolitan Commission of the conditions set forth below, and in consideration of the payment by the Frederick County Metropolitan Commission to the United States of America of TEN AND NO/100----- dollars (\$10.00-----), the fair market value of the subject easement, as appraised

in accordance with the above referenced Act of August 1, 1953, the Director of the National Park Service, under the authority vested in him by virtue of having jurisdiction and control over the Chesapeake and Ohio Canal National Historical Park lands and by virtue of the delegation to him by the Secretary of the Interior authority vested in the Secretary by the Act of August 1, 1953, to issue easements for rights-of-way in the Chesapeake and Ohio Canal National Historical Park lands administered by the National Park Service (43 C.F.R. 2234.1-2(a)(1) and 2234.1-3(e)(2), (3)), hereby grants to the Frederick County Metropolitan Commission, its successors and assigns, hereinafter sometimes referred to as "Grantee", the easement for a right-of-way described in paragraph III above, subject to reversion to the United States, in whole or in part only as herein-after provided.

VI. This easement is granted upon and is subject to the following conditions, to which Grantee hereby agrees. The term "Director" as used herein means the Director of the National Park Service or his authorized representative.

1. Water and Electric Lines. The raw water and effluent lines and the electric service line shall be laid and installed according to plans and specifications which have received the prior approval of the Director.

2. Construction. No building or other structure, permanent or temporary, shall be erected under this easement except upon prior approval of plans and specifications by the Director, National Park Service, and the premises and all appurtenances thereto shall be kept in a safe, sanitary, and sightly condition. Necessary planting and landscaping of the areas included in this easement shall be carried out under the direction and to the satisfaction of the Director in order to protect the canal and neighboring areas against unpleasing visual impact.

3. Vehicular Access. Access to and egress from the above described right-of-way shall be by means of an existing road which parallels the route of the 24 inch raw water line. It is understood and agreed that the towpath shall not be used for vehicular access.

All roads and trails which Grantee shall require for the projects covered by this easement shall be confined to locations approved by the Director.

All temporary roads shall be abandoned immediately upon completion of the work and the natural surface disturbed by their construction shall be restored as nearly as possible to the original condition at the expense of the Grantee. Should the carrying out of this work for future repairs necessitate the location on park lands of construction camp buildings, equipment, storage, and stock piles of material, the area to be occupied by said activities shall be approved by the Director. Upon completion of the work all equipment, materials, and resultant debris shall be removed from said park lands by Grantee and said lands shall be thoroughly cleaned up and restored by it to a condition as nearly natural as possible in a manner satisfactory to the Director.

4. Canal and Area Protection; Water Quality Standards.

(a) In the event conditions should arise which would necessitate lowering or removing the water from any part of the canal, the Director shall be notified in advance of the work, and adequate provisions shall be made by Grantee for salvaging fish in this section of the canal in a manner satisfactory to the Maryland Game and Inland Fish Commission.

(b) The operation of all locks or other controls affecting the water levels and flow in the canal shall at all times be undertaken by employees of the National Park Service.

(c) Every effort shall be made to avoid damage to federal land and to prevent soil erosion. Any damage caused to the property of the United States, or its assigns, incident to the installation, operation, and maintenance of the projects authorized by this easement shall be promptly repaired by Grantee at its expense or, in the event such damage is not repairable, Grantee shall reimburse the United States therefor. The canal works shall be restored in accordance with the best practices of canal and dyke construction. Any such repair work to be performed by Grantee shall be accomplished subject to the general supervision of the Superintendent, Chesapeake and Ohio Canal National Historical Park, or his authorized representative.

All disturbed areas will be treated in compliance with the requirements of the Superintendent, Chesapeake and Ohio Canal National Historical Park, and all changes or disturbances of the existing conditions of the area,

including the landscape during construction, future repair or maintenance are to be repaired or replaced by Grantee as nearly as possible in the original condition in a manner acceptable to the Superintendent.

(d) Grantee shall, in all its operations, perform in such a manner that all activities carried out by it shall be in compliance with applicable federal and state water quality standards, pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1151, et seq.

5. Safety and Liability.

(a) Those works permitted and performed on federal lands will be constructed and maintained in such a manner as to be safe and free of hazards to the public who visit or use the Chesapeake and Ohio Canal National Historical Park. During construction and subsequent maintenance, Grantee shall conduct its operation so as to prevent accidents and injuries and damages and shall furnish and employ such additional safeguards, safety devices, protective equipment and measures, and fire preventive and suppressive measures and equipment as the Superintendent may determine to be necessary for the protection of federal park property and for the safety of visitors to the Chesapeake and Ohio Canal National Historical Park.

(b) The United States shall not be responsible for any injury to persons or damage to property resulting from the development, use, and occupancy of said National Park Service lands by Grantee and Grantee shall hold the United States harmless from any and all such claims.

6. Provisions Concerning Future Parkway.

(a) The Act of September 22, 1950 (64 Stat. 905), authorizes a parkway along the line of the Chesapeake and Ohio Canal between Great Falls and Cumberland, Maryland. In the event funds are appropriated for the construction of a parkway in the location of this easement, it is understood that the easement hereby granted shall be subject to the right of the United States to build and maintain the parkway and additional structures related thereto.

(b) If, in the event of the construction of such parkway, the water and electric lines as located shall at any point or points not conform to the grade, or grades, established for the parkway to be located thereon, or shall in

any respect interfere with the construction of the parkway, Grantee shall, upon written request of the Director, and at the expense of Grantee, lower the portion of the line or lines affected to such established grade, or grades, in those cases where the line or lines as located will not conform thereto, or in the case of other interference, relocate the portion of the line or lines affected to another suitable location on said park lands.

7. Reversion to United States.

(a) No part of this easement shall be used for any purpose other than the purposes for which granted, and in the event of any breach of this restriction, or in the event of any failure to observe the conditions in said easement, either of which shall continue for a period of ninety (90) days after notice thereof in writing, by Director to Grantee, or in the event the said easement is abandoned for the purposes granted, the entire interest herein authorized to be granted shall, upon a declaration to that effect by the Director, revert to the United States.

(b) In the event of such reversion, the United States shall have the option, upon reasonable notice to the Grantee, to require Grantee, at its expense and within such time as the Director may direct, to remove the installations from the said lands, and restore the same to a condition satisfactory to the Director. In the event the Grantee shall fail, neglect, or refuse to remove the installations and restore the premises as directed, the United States shall have the option either to take over the installations as the property of the United States, without additional compensation or consideration therefor, or of causing the installations to be removed and the lands to be so restored at the expense of Grantee, and in no event shall Grantee have any claim for damages against the United States, its officers or agents, on account of taking over the installations or on account of their removal.

8. Nature of Interest Granted.

(a) This easement hereby granted to the Grantee shall vest in Grantee no fee title or fee interest in or to the above mentioned lands.

(b) This easement does not grant exclusive use of the right-of-way to Grantee. Normal park management, including visitor use, will continue within the limits of the right-of-way.

(c) Use by the Grantee of the land covered by this easement grant is subject to the right of the Director to establish trails, roads, and other improvements and betterments over, upon, or through said premises, and further to the use by travelers and others of such roads and trails as well as of those already existing. If it is necessary to exercise such right, every effort will be made by the National Park Service to refrain from unduly interfering with or preventing use of the land by the Grantee for the purpose intended under this easement.

9. Applicable Regulations. Grantee shall use this easement subject to the supervision of the Superintendent, Chesapeake and Ohio Canal National Historical Park, and shall comply with all regulations applicable to the area. This grant is specifically subject to the terms and conditions contained in 43 C.F.R. 2234.1-3(c) and to the provisions contained in Attachment A attached hereto which are hereby incorporated into and made a part of this easement grant.

10. Coordination. Grantee shall keep the National Park Service through the Superintendent, informed of any and all work, both construction and maintenance, other than routine maintenance of the pumping facility related to this easement within the Chesapeake and Ohio Canal National Historical Park. The Superintendent or his authorized representative will monitor work activities and reject those activities which do not meet the requirements of this easement. Failure of Grantee to inform the Superintendent in advance of any work to be accomplished will be grounds for reversion of the interest granted by this easement to the United States.

In the event of a bonafide emergency whereupon it is imperative for Grantee to enter the right-of-way for purpose of inspection or to perform emergency work and the Superintendent cannot be contacted in advance, Grantee may proceed with such inspection or emergency work. Grantee will establish to the satisfaction of the Superintendent that an emergency existed and that all work accomplished has been performed in accordance with the above conditions and with previous instructions by the Superintendent.

11. Assignment. This easement may not be transferred or assigned without the consent of the Director in writing.

12. Benefit. Neither members of, nor Delegates to Congress, or Resident Commissioners shall be admitted to any share or part of this easement or derive, either directly or indirectly, any pecuniary benefit to arise therefrom: Provided, however, that nothing herein shall be construed to extend to any incorporated company, if the easement be for the benefit of such corporation.

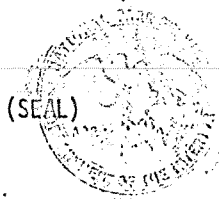
IN WITNESS WHEREOF, the UNITED STATES OF AMERICA has caused this Grant of Easement for Right-of-Way to be executed and the seal of the National Park Service to be hereunto affixed on the day and year first above written.

WITNESS:

UNITED STATES OF AMERICA

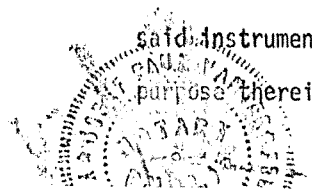
[Signature]

By *Russell E. Dickenson*
Director, National Capital Parks
National Park Service
Department of the Interior



City of Washington }
District of Columbia } ss

I hereby certify that on this 17th day of April, 1973, before me, the subscriber, a Notary Public in and for the District of Columbia personally appeared Russell E. Dickenson to me known and by me duly sworn, did depose and say that he is the Director, National Capital Parks, National Park Service, Department of the Interior, of the United States of America, the grantor in the foregoing Grant of Easement for Right-of-Way; that he knows the seal of the National Park Service of the Department of the Interior of the United States of America, and that the seal affixed to the said instrument is the official seal of the National Park Service and was affixed thereto by his order; that said instrument was signed and sealed on behalf of the United States of America by virtue of the authority vested in him and that he acknowledged the said instrument to be the act and deed of the United States of America for the purpose therein expressed.



[Signature]

ATTACHMENT AUnited States Department of the Interior
National Park Service

The following provisions are in accordance with Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967.

Nondiscrimination. Grantee agrees as follows:

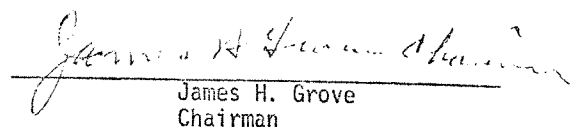
- (1) Grantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Superintendent setting forth the provisions of this nondiscrimination clause.
- (2) Grantee will, in all solicitations or advertisements for employees placed by or on behalf of Grantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) Grantee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Superintendent, advising the labor union or workers' representative of Grantee's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Grantee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) Grantee will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Superintendent and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of Grantee's noncompliance with the nondiscrimination clauses of this permit or with any of such rules, regulations or orders, this permit may be cancelled, terminated or suspended in whole or in part and the Grantee may be declared ineligible for further Government contracts or permits in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- (7) Grantee will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontract or purchase order as the Superintendent may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Grantee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Superintendent, Grantee may request the United States to enter into such litigation to protect the interests of the United States.

IN WITNESS WHEREOF, the FREDERICK COUNTY METROPOLITAN COMMISSION has caused its corporate signature to be hereunto subscribed, and its corporate seal to be hereunto affixed.

WITNESS:

FREDERICK COUNTY METROPOLITAN COMMISSION


Secretary
J. J. Cook



James H. Grove
Chairman

STATE OF MARYLAND

COUNTY OF FREDERICK

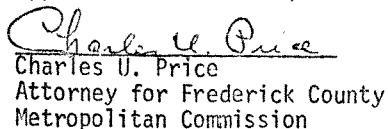
I hereby certify that on this 10 day of May, 1973, before me, a Notary Public for the State and County aforesaid personally appeared James H. Grove who acknowledged himself to be Chairman of the Frederick County Metropolitan Commission a corporation, and that he as such Chairman, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Chairman.

WITNESS my hand and notarial seal.


Francis J. Cook
Notary Public

My commission expires 7-1-74

Approved as to form:


Charles U. Price
Attorney for Frederick County
Metropolitan Commission