

December 17, 2019

BLM Director (210)
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ADMINISTRATIVE PROTEST CONCERNING:

BLM Proposed Resource Management Plan Amendments to the Northwest and Coastal Oregon Record of Decision and Resource Management Plan (2016) and the Southwest Oregon Record of Decision and Resource Management Plan (2016) In Response to An Application for Right-Of-Way Submitted by Pacific Connector Gas Pipeline, LP.

The proposed Pacific Connector Gas Pipeline would cross 46.9 miles of federal land managed by the BLM.¹ BLM has multiple sources of authority and obligations requiring it to carefully scrutinize this proposal. Construction and operation of the pipeline across BLM-administered land requires a right-of-way and associated permit from BLM.² More broadly, all activities on BLM lands must conform to the applicable resource management plan—here, the Southwestern Oregon RMP and the Northwestern and Coastal RMP.³

BLM has appropriately acknowledged that the proposed Pacific Connector Gas Pipeline would violate existing RMPs, and that BLM cannot issue a right of way or approve the pipeline in the face of such violations. However, BLM proposes the wrong remedy: rather than rejecting the pipeline because of its clear violation of BLM’s carefully-crafted and recently-revised resource management plans, BLM proposes wholesale waiver of those plan provisions that BLM believes stand in the pipeline’s way. Specifically, BLM proposes to redesignate all lands within the proposed construction and operational pipeline right-of-way create “District Managed Reserves” along the proposed pipeline route to be managed solely for the benefit of the project proponent.⁴

Pursuant to 43 CFR §1610.5-2 our organizations stridently protest the approval of the amendments. This proposal is unlawful, because:

- BLM hasn’t actually defined the proposal. Most broadly, BLM has provided inconsistent information about the amount or location of acres impacted. The public cannot comment on, and BLM cannot adopt, an amendment that is not defined.
- The proposed amendments violate the statutory and regulatory requirements for resource management plans. Enabling a Canadian company to export Canadian gas to Asian buyers is not a use of public lands consistent with Federal Land Management Planning Act’s mandate to use federal lands for the benefit of the American public. The project would

¹ FEIS 2-23, 2-48, *but see* FEIS 2-26.

² FEIS 1-22; 30 U.S.C. § 185.

³ FEIS 2-23.

⁴ FEIS 2-24.

violate BLM's obligation to prevent unnecessary and undue degradation of public lands. 43 U.S.C. § 1732(b).

- BLM concluded revisions of the RMPs in 2016, and could foresee the Pacific Connector Pipeline at the time, but did not determine that allocation of land for the pipeline was appropriate. BLM has not provided a basis for revisiting that decision.
- BLM has not complied with numerous other substantive and procedural obligations, including NEPA and the Endangered Species Act.
- BLM cannot issue the proposed right-of-way and special use permit notwithstanding these amendments. BLM's conclusion that the pipeline can be constructed and operated consistent with all other plan provisions is incorrect. Nor has BLM satisfied the other legal requirements for designation of a gas pipeline right-of-way.

The names of the organizations that are party to this administrative protest, their phone numbers, mailing addresses and representative contact information may be found at the conclusion of this document. ***Please ensure that a hard copy response to this administrative protest is sent to each of our organizations.*** These American non-profit conservation organizations have a long-standing specific interest in the management of public forests and watersheds governed by the BLM Resource Management Plans (RMPs) at issue. Unlike the project proponent, our organizations are located in the United States and we represent individuals, communities and families that rely upon the BLM public lands at-issue for their recreational, hydrological, scenic, and wildlife values.

Our organizations previously submitted comments in June and July of 2019 during the Draft Environmental Impact Statement (DEIS) commenting period alerting FERC and the BLM of our concerns and of deficiencies in this National Environmental Policy Act (NEPA) planning process.⁵

STATEMENT OF REASONS

I. BLM Has Not Defined the Amendments

BLM cannot amend its RMPs to reallocate—that is, remove protection from—late stage reserve lands without clearly stating how many and which lands BLM intends to impact. The FEIS fails to clear even this minimal threshold. The FEIS fails to clearly disclose which alternative BLM proposes to adopt, or what the consequences of that alternative will be.

Page 2-26 of the FEIS states that the BLM's preferred alternative for the pipeline is the Blue Ridge Variation, instead of the alternative through Coos Bay BLM lands on the Blue Ridge:

“... the BLM identifies its Preferred Alternative as required by 43 CFR 1610.4-7. Specifically, the BLM would adopt the following route variation identified in the final EIS: 1) Blue Ridge Variation.”

However, throughout the rest of the FEIS, it is assumed the Blue Ridge Variation is not the Preferred Alternative. For instance, FEIS page 4-572 says the pipeline would continue on the Blue

⁵ See, e.g., Comments of Western Environmental Law Center *et al.*, July 2, 2019, available at https://elibrary.ferc.gov/IDMWS/search/intermediate.asp?link_file=yes&doclist=14783146

Ridge and through the Blue Ridge Recreation Management Area (ERMA):

“The pipeline would cross this ERMA from MP 19.92 to MP 22.11 (approximately 2.19 miles) and cross three of the Blue Ridge trails. In addition, Pacific Connector would utilize several existing roads in this ERMA for construction access. Similar to when logging activities have occurred in the area, these trail segments would need to be closed during pipeline construction. Construction would also result in increased traffic volumes on existing roads and other users may experience traffic congestion and delays, with access to some trails temporarily affected. Potential construction traffic-related impacts are discussed in Pacific Connector’s TMP (Appendix Y of the POD). Recreational users may also be exposed to noise during pipeline construction.”

There is no Appendix Y of the POD. While it is shown in the POD’s Table of Contents, the POD itself jumps from Appendix E to Appendix Z, bypassing Appendix Y.

If the Blue Ridge Variation is the BLM’s preferred alternative, the BLM should have incorporated and analyzed this route into the rest of the FEIS. Additionally, the BLM references the Blue Ridge Communication tower several times. It is unclear if this communication tower would still be used under the Blue Ridge Variation route.

Thus, it is unclear whether BLM is proposing to require selection of the Blue Ridge Variation, whether BLM is stating that it would approve either the Blue Ridge Variation or the applicants’ preferred route, or something else. We emphasize that BLM has the authority to conclude that either route and associated plan amendments would be inappropriate: neither FERC nor any other agency has authority to compel BLM to allow the pipeline to cross BLM-administered lands. Plainly, however, BLM cannot reallocate lands without clearly specifying which lands it is actually reallocating.

A further problem is that BLM has provided inconsistent and incomplete information about the amount of acres affected by either alternative. In describing the applicants’ preferred route, Page 2-24 states that “[a]pproximately 879 acres would be re-allocated,” whereas page 2-26 instead states that “approximately 885 acres . . . would be re-allocated under the proposed action as analyzed in the final EIS,” with no explanation for the disparity. Page 4-465 tells the reader it would be 868 acres, again with no explanation as to why this figure is different from the others. In describing the Blue Ridge Alternative, BLM states that this “would result in approximately 777 acres” being re-allocated, without explaining how this total can be reconciled with BLM’s statement that this alternative “would cross approximately 95 fewer acres of LSR and remove 16.4 fewer acres of NSO nesting-roosting habitat and remove 10.4 fewer acres of overlapping MAMU nesting habitat.”⁶

Not only is it unclear how many acres are impacted, but BLM has provided an incomplete description of the character of those lands, especially for the Blue Ridge Alternative. The majority of the FEIS addresses the applicants’ preferred alternative, and the FEIS provides much less detail regarding the Blue Ridge Variation. Compare FEIS 4-448, 4-455 with FEIS 3-28. For example, the FEIS does not address how many, if any, lands in this variation are Oregon and California Act lands. There is no map of the proposed new reserve. All other land allocations in the BLM RMPs

⁶ FEIS 2-26.

have a corresponding map of their locations available to the general public.

BLM has also failed to explain whether, when, and how the public will be allowed to use the new reserves. FEIS Table 4.7.3.1-3 provides some discussion of activities within the reserve, but leaves many questions unanswered. Can the public drive across the reserve? Can the public linger in it? Can the public continue to hunt, hike, bird watch, target practice, or recreationally drive ATVs across or within the new reserve? Which of the public uses that are currently allowed now on these acres will not be allowed in the new DDR?

The BLM failed to analyze the impacts on public use and recreation within, and adjacent to, the new reserve. Appendix R says: “Other uses that do not conflict with objectives of the reserve may be authorized on a case-by-case basis.”⁷ Does this mean that every time the public wants to access public lands in the area of the new reserve, the BLM will have to review their case? How will the different “cases” be determined? How will the public know that their use, allowed last year, is an issue next year? How is the public expected to reasonably comment on the BLM’s forthcoming “case by case authorization” of their use of these public lands? These details must be disclosed and analyzed for impacts before the RMP can be changed and should have been addressed in the FEIS (or DEIS).

FEIS page 4-465 has a slightly different take on continued public use. There the BLM indicates that other uses “that are compatible with the purpose of the DDR may be authorized on a case-by-case basis following completion of environmental analysis.” Perhaps this means that existing uses will now each have to have an EA to continue, such as the recreational driving, hunting, hiking or birdwatching. These are foreseeable activities and the BLM’s decision to inhibit them qualifies as a “cumulative impact” of the project. When will this environmental review occur? These details must be disclosed and analyzed for impacts before the RMP can be changed.

FEIS Page 2-24 says yet something different, that other uses “may be authorized”, or, maybe they won’t be authorized. A NEPA document cannot exclude public access to public lands including current and ongoing recreational uses by merely stating that those uses might, or might not be able to continue at the whim of BLM decision makers. Such a restriction would also violate the O&C Act, which requires that the BLM manage O&C lands for permanent forest production which includes recreational use by the public.

Other impacts to the RMPs were not considered when adding hundreds of acres of a new DDR. For instance, new timber yield projections under the changed Harvest Land Base were not analyzed or disclosed.

II. The Proposed Amendments Violate the Substantive Statutory Requirements for Resource Management Plans

A. The Proposed Amendments Violate FLPMA’s Multiple Use Mandate

BLM manages public lands under, *inter alia*, the Federal Land Policy and Management Act (“FLPMA”). Public lands are managed “on the basis of multiple use and sustained yield,” which

⁷ FEIS Appendix R, PDF page 815.

means “the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.” 43 U.S.C. 1701(7), 1702(c) (emphasis added).

The existing RMPs, and the designations of riparian and late successional reserves (LSRs) specifically, serve these purposes by protecting rare and endangered wildlife and aquatic resources; BLM’s very recent revision of the RMPs affirmed the appropriateness of these allocations and protections. BLM now abruptly proposes to give away these protections without securing a meaningful benefit for “the American people” in return. The proposed pipeline will not be used to meet the energy needs of American consumers. Nor is the pipeline likely to provide a meaningful outlet for American-produced gas. In response to a direct inquiry from BLM, the project applicants provided no evidence indicating that the project would in fact be likely to draw on U.S. gas supplies.⁸ On the other hand, the applicants—part of a vertically integrated Canadian company—have sought and received authorization to import gas from Canada sufficient to meet the entire supply needs for the pipeline.⁹ Facilitating a Canadian company’s efforts to sell gas to Asian buyers is not a reason to degrade American public lands. *See City of Oberlin, Ohio v. FERC*, 937 F.3d 599, 607 (D.C. Cir. 2019) (holding that FERC had failed to show that supplying gas for export was, *inter alia*, a “public use” for purposes of the takings clause).

Here, the proposed amendments violate FLPMA because they waive protections of values important to the American public for a project that will not serve American markets or benefit the American public.

B. The Proposed Amendments Will Unlawfully Allow “Unnecessary or Undue Degradation” of Public lands

FLPMA further requires that “[i]n managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b); *see also* 43 C.F.R. § 2881.2(b). As we explained in comments on the draft EIS, and further summarize below, the proposed pipeline will have extensive adverse consequences on BLM lands, impairing habitat value, increasing the risk of damaging fire, and causing other degradation. This degradation is unnecessary and undue both because the entire pipeline is unwarranted and because, even if BLM were to approve the pipeline, BLM could and should consider additional protections that would reduce these impacts, such as reducing fire danger by requiring the pipeline to be buried at a greater depth in areas with a “class 1” Department of Transportation designation.

C. Oregon and California Act

The applicants’ proposed route would cross 25.33 miles of BLM land acquired under the Oregon and California Lands Act of 1937.¹⁰ (The FEIS does not say how many O&C lands are crossed by the Blue Ridge Variation). These lands:

...shall be managed...for permanent forest production, and the

⁸ Resource Report 5, responses to BLM comments 1, 4.

⁹ https://fossil.energy.gov/ng_regulation/sites/default/files/programs/gasregulation/authorizations/2014/orders/ord3412.pdf

¹⁰ FEIS 4-455.

timber thereon shall be sold, cut, and removed in conformity with the principal [principle] of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities: 43 U.S.C. § 2601.¹¹

BLM has offered no explanation as to how the proposed pipeline or amendments will comply with this obligation. The reserves and associated pipeline operational right of way will be managed to be free of vegetation over 15 feet in height, which will preclude reforestation and thus forest production and management for aggregation of timber resources.

III. BLM Has Not Justified Revisiting Its Just-Revised RMPs or Changing Decisions Made in That Process.

Construction and maintenance of the Pacific Connector pipeline was proposed prior to the NEPA planning process that resulted in the Record of Decision for the 2016 BLM RMPs, hence pipeline construction was “foreseeable” by the BLM when it established the land use allocations and RMPs that it now seeks to amend. The BLM has provided no convincing rationale for its abrupt change in management from a decision that it reached in 2016. Indeed, in 2014, two years prior to the signing of the current BLM Resource Management Plans, a previous pipeline DEIS was available detailing many aspects of the PCGP project.

Throughout the 2016 RMP NEPA planning process our organizations repeatedly submitted comments indicating concern over the proposed pipeline route and the significant cumulative environmental impacts that would flow from pipeline construction and maintenance. Notice was provided to the BLM that it should address the location and impacts of the pipeline in its 2016 RMP RODs.

The proposed route of the pipeline was known to the BLM prior to the decision of the BLM to issue RODs establishing the 2016 RMPs and their land use allocations. The BLM could have established “District Managed Reserves” to facilitate pipeline construction at that time. Instead the agency elected to implement RMPs that contained Riparian Reserve and Late Successional Reserve land use allocations as part of a comprehensive land management strategy. Now, inexplicably, the BLM is attempting to unravel the land use allocations it committed to in the 2016 RMPs. The agency has failed to establish and document a change in circumstances that justifies or explains the dramatic shift in management policy evidenced in the decision to significantly amend the RMPs after a mere three years of their implementation in order to facilitate pipeline construction that has been proposed in SW Oregon for over a decade.

The BLM has failed to articulate a coherent or consistent policy regarding pipeline construction and maintenance across BLM managed lands. The BLM is precluded from now substantially altering the management of Late Successional Reserves and Riparian Reserves by creating a new land use allocation to facilitate pipeline construction across lands that were dedicated for wildlife protection, aquatic health or timber production by the BLM during while the PCGP planning process was well underway. Such an approach renders prior forest planning meaningless and is

¹¹ Formerly 43 U.S.C. 1181a

both arbitrary and capricious.

As acknowledged at 2-23 of the FEIS “projects or activities that occur on BLM lands must be consistent with the respective RMP where the project or activity occurs. The proposed right-of-way for the Project on BLM-managed lands would not conform to the Southwestern Oregon RMP and the Northwestern and Coastal RMP...” Hence the proposed right-of-way is unlawful. The BLM’s attempt to belated create a new land use allocation at the whim of the project proponent is arbitrary and capricious and renders the 2016 RMP planning process meaningless. To put it another way, either the ROD for the 2016 BLM RMPs and its NEPA planning process was arbitrary and capricious or this 2019 FERC FEIS and BLM plan amendment is arbitrary and capricious. The location of the proposed pipeline construction was largely known to the BLM when it issued the ROD governing the 2016 RMPs, and yet the BLM elected not to establish District Designated Reserves to facilitate pipeline construction when developing those comprehensive land management plans. The belated attempt to walk away from the recent RMPs is unlawful. The BLM should abide by and implement its 2016 Resource Management Plans.

IV. BLM Cannot Amend the RMPs Without Satisfying Other Outstanding Obligations

BLM has failed to comply with many of the other requirements for amendment of an RMP or for agency action in general. The FEIS did not adequately disclose compliance with substantive requirements of the RMP, CWA, ESA, O&C Act, and FLPMA. See in ONRC Action v. U.S. Forest Service, CV. 03-613-KI (“The underlying EAs for the timber sales at issue did not properly frame the Forest Service’s survey and manage duties, they did not analyze a range of alternatives based upon these duties, they did not evaluate completed surveys, they did not demonstrate that the Forest Service had all of the proper information before it before allowing logging, and they did not provide for public influence over the decisions. For all of these reasons, the underlying EAs are legally deficient.”.) Also see: Klamath Siskiyou Wildlands Center v. Boody (D. Or. #03-3124-CO. May 18, 2004) which held “plaintiffs have raised a serious question as to whether BLM violated NEPA in failing to disclose sufficient information in the EA to confirm compliance with ... the RMP.” (Order at page 18).

A. Clean Water Act

As acknowledged on page 1 of Appendix F.12 of the FEIS “[r]oad-related sediment has negatively impacts on the EF Coquille. The effects of the PCGP are similar to a road, including possible impacts to flow and sediment regimes.” Page 3 of the same document further indicates that “[w]hile BMPs will be implemented, construction of the PCPG will likely cause sediment to enter stream channels and may affect aquatic habitat.” Sediment additions and other aquatic harm to CWA 303(d) listed waterbodies is unlawful.

Page 2 of Appendix F.12 indicates that “[i]mplementation of the PCGP project would result in the removal of large woody debris from the Riparian Reserves associated with intermittent and perennial streams.” Such a result is unlawful in numerous CWA 303(d) listed stream segments.

Page 6 of Appendix F.12 acknowledges that “[s]ediment has been identified by the LBC Watershed Council as a limiting factor for aquatic habitat in Little Butte Creek. The PCGP has approximately 6 miles of corridor and 7 stream crossings on BLM lands in the LBC 5th field watershed. The effects of the PCGP are similar to a road, including possible impacts to flow and

sediment regimes.” The intentional and knowing production of additional sediment in the LBC Watershed (and many others) is prohibited by the CWA.

B. Endangered Species Act

1) Consultation Should Have Preceded Development of the EIS

The proposed pipeline has the potential to adversely affect numerous species listed as endangered and threatened under the Endangered Species Act. FEIS 4-318 to 4-320. FERC has requested formal consultation with the Fish and Wildlife Service and National Marine Fisheries Service, but neither service has yet completed a Biological Opinion. This process should have been initiated earlier, and development of the EIS and solicitation of public comments should have come after the Services had had a chance to weigh in.

Specifically, consultation with the Services should have been completed before finalization of the EIS or issuance of the Record of Decision. The Services, through consultation, both offer expert opinion as to the expected impacts on protected species *and* identify reasonable and prudent measures and alternatives that can lessen these impacts. 16 U.S.C. § 1536(b)(3)(A), (b)(4). “[A]ction agencies must give great weight to the Services’ biological opinion *before* deciding on a proposed action.” U.S. Fish & Wildlife Serv. & Nat’l Marine Fisheries Serv., Endangered Species Consultation Handbook at 2-11 (March 1998) (emphasis added). To ensure that this is done, and that these measures can be incorporated into the action, the Fish and Wildlife Service has explained: “At the time the Final EIS is issued section 7 consultation should be completed. The Record of Decision should address the results of section 7 consultation.” *Id.* at 4-11.¹²

2) The Resource Plan Amendments will Facilitate Violations of the Endangered Species Act.

The BLM RMP Amendments appear specifically designed to facilitate unlawful impacts to SONC Coho Critical Habitat through sediment production, streamside vegetations removal and alteration of aquatic habitat and function.

Please note that page 7 of Appendix F.12 reveals that “[l]ack of large wood and recruitment of LWD is a consistent factor limiting aquatic habitat in *all watersheds* crossed by the Pacific Connector pipeline. Implementation of the PCGP project would result in the removal of large woody debris from the Riparian Reserves associated with intermittent and perennial streams.” (emphasis added).

3) The Resource Plan Amendments may Facilitate Harm to ESA-listed Plant Species.

As stated on page 4 of Appendix F.12 “[t]he PCGP may impact habitat of *Fritillaria gentneri*.” The FEIS fails to provide data or meaningful analysis regarding foreseeable harm to this listed species. Unanalyzed harm to *Fritillaria gentneri* runs afoul of NEPA, the ESA and FLPMA.

¹² *Accord* <https://www.fws.gov/endangered/what-we-do/faq.html>, attached as Exhibit 1.

4) The Resource Plan Amendments may Lead to the ESA listing of Special Status Plant Species.

Page 12 of the Appendix F.12 indicates that “[t]he PCGP will impact a large population of Cox mariposa lily. The PCGP will disturb approximately 11 acres of occupied habitat for the species and these acres are unlikely to be restored. Methods proposed to minimize impact (bulb salvage and reseeded) are unproven.” FLPMA strictly prohibits the BLM from approving actions and plan amendments that will contribute to the need to list special status species under the ESA.

C. BLM has Failed to Adequately Consider Impact of Reallocation and Conversion from LSR on Risk of Fire, in Violation of NEPA, the O&C Act, and other laws.

1) Knowingly Increasing Fire Suppression Complexity is Unlawful.

Page 1 of Appendix F.12 of the FEIS acknowledges that “[c]onstruction of the pipeline and associated activities removes both mature and developing stands and will increase fire suppression complexity.” Such a result undermines the objectives of the BLM RMPs at issue by frustrating BLM O&C timber production and wildlife and watershed management via increased fire suppression complexity and decreased fire management efficacy. Plan amendments that result in increased fire hazard run counter to the requirements of the O&C Act¹³ concerning sustained timber production on BLM lands. Additionally, “[h]igh intensity fire has been identified as the single factor most impact late successional and old growth forest habitats on federal lands in the area of the NWFP.” (Appendix F.12 pg 6) Increasing the fire hazard and risk while decreasing the efficacy of fire suppression on federal forest lands through the BLM Plan Amendments may inhibit sustained yield timber production on BLM lands in violation of the O&C Act.

At no point in the FEIS does the BLM detail how the agency will adjust its fire suppression strategies and tactics to accommodate the increased risks and dangers associated with fire management in the vicinity of the pipeline.

2) Class 1 Areas Designated on BLM Lands Threaten Public Safety.

Class 1 locations occur on almost all of BLM’s 41 or 47 miles of pipeline right-of-way. These areas have reduced safety standards. The BLM failed to consider the impacts of these reduced safety standards on BLM ecosystems, watersheds, timber production and fire management, especially in areas that are at high risk for fire and landslides. Resources at risk due to the reduced safety standards including habitat for threatened species, irreplaceable old growth forests, irreplaceable carbon stores, drinking water supplies, rural residents lives, millions (if not billions) of dollars of timber value. The FEIS did not adequately disclose the trade-offs associated with reduced pipeline safety versus these important public values.

NEPA requires the BLM to consider all significant “actions regardless of what agency undertakes

¹³ <https://www.blm.gov/sites/blm.gov/files/PubLawNo405.pdf>

such other actions.”¹⁴ USDOT determined the Class system. If USDOT puts rules into place deeming BLM lands less worthy of safety measures, the BLM must consider the environmental impacts of the USDOT actions.

Safety is reduced in Class 1 areas by allowing the pipe to be buried higher, (as little as 18” deep), having fewer block valves, using thinner pipes, having fewer inspections and testing of welds, and fewer pipeline patrols and leak surveys.¹⁵ The BLM should have analyzed the reduced safety and increased hazards of Class 1 areas and potential impacts to the ecosystems the BLM is charged with protecting.

3) The BLM Failed to Consider the Impacts of Mainline Block Valves on BLM Lands.

There are 17 locations along the 230-mile long pipeline right-of-way that will have pipes and gas *above* ground. Two of these are on BLM land, one at MP 80 and another at MP 150.7.¹⁶ The BLM failed to analyze and disclose how a fire would impact these above-ground infrastructure of the pipe, and how easy or difficult it would be for personnel to travel to these valves, on logging roads through a forest fire, especially if a fire starts near one. The BLM failed to consider an alternative to require automatic shut-off valves on BLM lands. The BLM failed to consider the impacts of a fire that blows up the natural gas in the above-ground pipes at the block valves, or if a fire were to prevent access to a block valve.

The BLM also failed to consider the impacts of public-land users that target practice on public lands. It is common to see things such as signs and remote facilities shot up with bullet holes. The BLM failed to describe how this would be prevented on the above-ground gas pipes at BLM block valves, or if not prevented, what the results would be of bullets shot at the pipe. Please note that Douglas County has required that the above-ground block valve on private property must be able to withstand predictable and foreseeable small arms fire. See Condition of Approval 8: The Applicant must assess in writing, and present to the County, the possibility of fire or explosion if the block valve assembly (located at MP 48.58) is struck multiple times with small arms fire...The BLM’s refusal to address target shooting of block valves is arbitrary and capricious.

4) The Pipeline is Through BLM Forests that Burn Naturally and Burn Often.

Southern Oregon forest fires are common, inevitable and natural. Fires are occurring more often in the last few years, reflecting the reality of climate change. Further, fire season is extending. The BLM failed to fully consider the impacts of the pipeline on wildland fire, fire suppression or of wildland fire on the pipeline and associated infrastructure.

The FEIS claims that the ground will insulate the pipe from wild fire¹⁷. But the pipeline in Class 1 areas (where fire hazard is high), may be buried only 18” deep¹⁸. The BLM should have

¹⁴ 40 CFR 1508.7

¹⁵ FEIS page 4-810.

¹⁶ FEIS 4-440. Table 4.7.2.2-3.

¹⁷ FEIS 4-815.

¹⁸ FEIS page 4-810.

considered the insulating properties of only 18” of soil over the pipe, instead of merely considering the 36” of soil that is typical in more populated areas of the pipeline.

Additionally, the Army Corps of Engineers submitted a comment¹⁹ stating that even 36” of soil would not be a sufficient insulator if sustained fire were to occur over the pipe, such a burning tree falling into the right-of-way, or a slash pile were to burn over the buried pipe. Many slash piles are being left to deter OHV use of the right-of-way²⁰. Since professional engineers disagree with FERC about the effectiveness of ground insulation, the BLM should have analyzed and disclosed these impacts of wildland fire on the pipeline.

D. BLM Violates NEPA and other Law by Relying on Incomplete and Unproven Mitigation

It is unlawful for the BLM to change land use allocations and amend its RMP prior to disclosing and analyzing the Final Plan of Development submitted by the project applicant.

The NEPA process designed to facilitate pipeline construction and maintenance across BLM public lands through the establishment of District Managed Reserves failed to fully disclose or analyze the Plan of Development from the project proponent. A completed Final Plan of Development is necessary for the BLM to make an informed decision and for the public to provide meaningful comments regarding RMP plan amendments.

As stated at page 2-34 of the FEIS “[t]he proposed compensatory mitigation was filed September 3, 2019...They have not been considered in the analysis of the proposed action or variations. These compensatory mitigation actions would require additional analysis and survey to comply with NEPA prior to implementation.” The BLM cannot lawfully issue a decision to amend its Resource Management plans prior to analyzing and disclosing the efficacy and impacts of proposed project mitigation. NEPA does not permit such a result. Indeed, NEPA requires that the agency analyze and disclose this information in the DEIS (and the FEIS) so that public commenting can meaningfully inform agency decision making. Secret, tardy, hypothetical and unanalyzed mitigation measures cannot be relied upon to mitigate certain and significant environmental impacts associated with the decision to amend the BLM’s recent land management plans for public lands that belong to all Americans at the behest of an international energy company.

A primary focus of the 2016 RMPs that the BLM seeks to amend is preventing the extinction of ESA-listed Northern spotted owl populations. The proposed plan amendments directly undermine that primary goal of the RMPs. In particular the pipeline will fragment owl habitat and exacerbate adverse competitive interactions between spotted owls and barred owls. See: Wiens, J.D., Anthony, R.G., and E.D. Forsman. 2014: Competitive Interactions and Resource Partitioning Between Northern Spotted Owls and Barred Owls in Western Oregon. Wildlife Monographs 185:1–50; 2014.

¹⁹ Letter from Dept of the Army Corps of Engineers, North Bend Office. 4-6-15. Enclosure 1. PDF page 56.

²⁰ FEIS 4-230.

E. Cumulative and Site-Specific Impacts to Federal Lands Resulting from BLM Plan Amendments were not Fully Considered in the DEIS or FEIS

Both the DEIS and the FEIS are devoid of sufficient information and analysis regarding site-specific impacts of pipeline construction and maintenance on BLM lands. This omission not only precludes meaningful analysis of the pipeline's effects on BLM lands, but also renders any cumulative impact assessment concerning impacts to Forest Service (and private) lands impossible. Though the Forest Service provides some analysis of the pipeline on a broader scale, the BLM has failed to disclose the significant impacts that will occur in forest lands to be designated as District Designated Reserves (DDRs) for the benefit of the project proponent. Please note that the Forest Service and BLM manage lands within the same watersheds, utilize the same access roads, manage wildlife that travel between BLM and Forest Service lands and have overlapping land designations. Without meaningful information regarding the pipeline's impacts to BLM managed resources the NEPA documents are insufficient and the agency fails to meet its burden under NEPA to disclose and analyze the site specific and cumulative impacts of its actions.

Rather than providing a detailed analysis of the environmental impacts of the proposed pipeline, including both site-specific and cumulative considerations, the BLM attempts to reverse the temporal requirements of NEPA by approving a plan amendment to facilitate pipeline construction and changing land use allocations prior to analyzing the effects of pipeline construction, maintenance and the efficacy of applicant proposed compensatory mitigation measures. Indeed the DEIS contained no information from the BLM whatsoever and the FEIS is little better. Such an approach puts the cart before the horse. The purpose of NEPA is to allow for meaningful public commenting and informed agency decision making. Meaningful public commenting and informed agency decision making is precluded in this instance by the decision of the BLM to forego site-specific and cumulative analysis and disclosure of the environmental consequences of pipeline construction, maintenance and mitigation measures.

1) The FEIS fails to Adequately Disclose and Analyze the Site-Specific and Cumulative Impacts of the Plan Amendments and the PCGP Project on the BLM Road Network.

Page 3 of Appendix F.12 indicates “[i]mplementation of the PCGP project would have road-like impacts on wildlife and require use of a large number of permanent and temporary roads and other access routes.” The BLM has failed to analyze and disclose the significant cumulative impacts of these “road-like impacts” and the utilization of a “large number of permanent and temporary roads” on terrestrial and aquatic resources. Additionally, the FEIS fails to fully analyze and disclose the foreseeable increase in Off Road Vehicle use (allowed or not) that is likely to occur on the “road like” Right of Way clearcut that comprises the DDR.

F. BLM Has Not Provided the Public Notification NEPA Requires

The BLM did not notify most public lands visitors and users about the proposed RMP amendment or other components of the Jordan Cove Project. There are thousands of American users of BLM public lands that have no idea the BLM is planning a new reserve to take their public lands for the benefit of an international gas export company. Only the relatively small number of people

engaged in the NEPA process through their own diligence could be aware of these BLM proposals.

When the BLM recently modified their RMPs in 2016 the agency attempted to engage the public through the use of notices in numerous local newspapers, notices through NEPA emails lists, through direct notification of adjacent landowners and via notices in the BLM Quarterly Planning Update. But these methods of NEPA notifications were not utilized for this RMP amendment. There was no notice in the Roseburg or Coos Bay newspapers of records. There were no notices sent out to the Medford, Roseburg and Coos Bay District BLM NEPA email list serves, and there was not a mention in the Quarterly Planning Updates. In the previous RMP update, the BLM received thousands of public comments. Yet the result of that previous planning process is now being thrown under the bus. Those people should have been notified the BLM is planning yet another RMP change immediately on the heels of the prior RMP decision in order to once again change BLM management of public lands to serve corporate interests.

It is a violation of NEPA and FLMPA to not provide notice of such a significant BLM decision and RMP amendment to Americans who have expressed interest in BLM land management by joining the email list-serves, commenting on RMP development, and seeking out the Quarterly Planning Updates. For instance, none of the BLM quarterly planning updates in 2017, 2018 and 2019 mentioned this project, a DEIS comment period, an FEIS or any related BLM decisions. In contrast, the Umpqua National Forest, the Rogue River-Siskiyou National Forest and the Fremont-Winema National Forest informed the interested public about the progress and opportunities to be involved in the Jordan Cove Project through each of their SOPAs. But nothing came from the BLM.

The BLM only published this opportunity to protest in one newspaper, even though most of the people affected by this decision, in Roseburg and Coos Bay, do not have ready access to that newspaper. Even people who directly asked the BLM representative for notification when there was opportunity for a Protest, were not notified. Moreover, the response from the BLM regarding the requisite procedures for the BLM's RMP amendments and administrative review procedures has been unclear and inconsistent.

This violates the spirit and law of NEPA. "NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken."²¹ The BLM also failed to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment."²²

G. Climate Change

The BLM failed to consider cumulative impacts and connected actions, such as the relationship between climate change and gas extraction methods like fracking. The gas traveling through the pipeline is the end result of fracking. Fracking and increased global warming through the use of fossil fuels is inextricably linked to the proposed pipeline. The BLM failed to consider these connected actions. Significant amounts of methane leaks into the atmosphere through the process

²¹ 40 CFR 1500.1 (b)

²² 40 CFR 1500.2 (d)

of fracking, transporting, liquefying and shipping²³. These connected actions make this project contribute significantly to climate change, especially since methane is 86 times more potent as a greenhouse gas than carbon dioxide²⁴ when it escapes unburned into the atmosphere. The BLM failed to consider these impacts.

V. BLM Cannot Issue the Right of Way and Special Use Permit Notwithstanding These Amendments

For the reasons stated above, the proposed reallocation violated FLPMA, the O&C Act, and other law. The undersigned further note that other actions BLM proposes to take in order to authorize the Pacific Connector Gas Pipeline, separate from the RMP amendments at issue in this protest solicitation, are also unlawful and unsupported. We disagree with BLM's implicit conclusion that the proposed right of way, pipeline construction, and operation would comply with the other RMP provisions not directly addressed by these proposed amendments. BLM has not taken the hard look NEPA requires at the full scope of environmental impacts that would result from pipeline construction and operation (not simply removal of trees associated with the reallocation), including sedimentation and erosion; if BLM had taken the requisite hard look, BLM would agree that excavating and filling a pipeline trench across the steep terrain at issue here is likely to cause sedimentation, landslides, and erosion that would constitute unnecessary and undue degradation.

Conclusion

The BLM has Resource Management Plans for a reason: namely to direct the agency's management of public lands and resources. The RMPs that the BLM seeks to alter here are relatively new and were the product of years of public and agency planning. The desire of the project proponent to build a pipeline across these public lands was known to the BLM when it adopted the RMPs at issue. The Resource Management Plans at issue become meaningless if they simply do not apply to corporate interests and can be changed at the whim of project proponents. The BLM should implement its existing Resource Management Plans and forego the proposed plan amendments.

Sincerely,



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²³ www.nature.com/news/methane-leaks-erode-green-credentials-of-natural-gas-1.12123

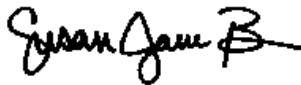
²⁴ www.epa.gov/outreach/qanda.html "86 times more potent" is based on a 20-year period.



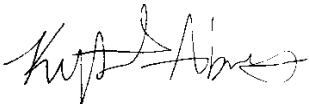
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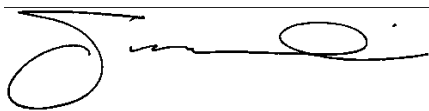
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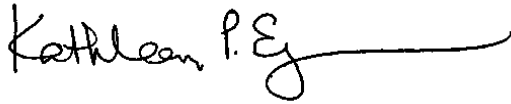


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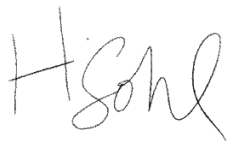
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