



Oregon Natural Desert Association

VIA EMAIL and U.S. MAIL

November 28, 2005

Julia Souder
 U.S. Department of Energy
 Office of Electricity Delivery and Energy Reliability
 1000 Independence Ave. SW
 Washington, DC 20585
 Fax (202) 586-1472

Re: Preparation of Programmatic Environmental Impact Statement entitled
 "Designation of Energy Corridors on Federal Land in the 11 Western States."

Dear Ms. Souder:

The following comments on the Programmatic Environmental Impact Statement to designate energy corridors on federal land in the 11 western states are submitted on behalf of the Oregon Natural Desert Association ("ONDA"). ONDA is a non-profit public interest organization dedicated to preserving and protecting the public lands of eastern Oregon. ONDA has a long history of interest and involvement in eastern Oregon's public land management. ONDA's mission is to protect, defend, and restore forever the health of Oregon's native deserts. The members and staff of ONDA use and enjoy the public lands, waters, and natural resources within the proposed corridor pathway for recreational, scientific, spiritual, educational, aesthetic, and other purposes. ONDA and its members also participate in information gathering and dissemination, education and public outreach, commenting upon proposed agency actions, and other activities relating to the federal government's management and administration of the public lands of eastern Oregon.

I. Procedural matters

A. Range of alternatives

NEPA requires that federal agencies analyze a reasonable range of alternatives. 42 U.S.C. §§ 4332(2)(C)(iii), 4332(2)(E). An agency must in an EIS "[r]igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. § 1502.14.

Alternatives may include solutions outside the scope of the duties of the agency preparing the EIS. We request that you consider alternatives that would:

- Reduce or eliminate the need for these energy corridors through the aggressive adoption of renewable alternative energy sources such as solar power, wind power, and hybrid and hydrogen vehicles;
- Avoid all sensitive areas such as Wilderness, Wilderness Study Areas, ACECs, threatened and endangered species critical habitat, and roadless areas; and
- Designate corridors only along federal highways and other major roads, which are already highly disturbed areas.

B. Scope of analysis

The EIS must consider both the impacts of corridor designation and any pipeline/power line construction. The Federal Register notice states that “[t]his PEIS is for corridor designation only,” and that “[a]ny new proposed project activities, such as construction of a new pipeline or electric transmission line . . . would be analyzed in subsequent NEPA analyses . . .” 70 Fed. Reg. 56648. This segmentation is unacceptable and contrary to NEPA.

The CEQ regulations state that “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a). The regulations also require agencies to consider connected actions in the same EIS. Actions are connected if they:

- (i) Automatically trigger other actions which may require environmental impact statements.
- (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
- (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

Id. at § 1508.25(a)(1). The Ninth Circuit uses an “independent utility test” to determine whether a single analysis is required—that is, the court asks whether “each of two projects would have taken place with or without the other and thus had ‘independent utility.’” Wetlands Action Network v. U.S. Army Corps of Engrs., 222 F.3d 1105, 1118 (9th Cir. 2000) (quoting Morongo Band of Mission Indians v. FAA, 16 F.3d 569, 580 (9th Cir. 1998)).

Here, it is not even a close call as to whether corridor designation and construction are connected actions. The designation of a corridor obviously is an interdependent part of a larger proposal (eventual pipeline/ power line construction) and depends on the larger action for its justification. 40 C.F.R. at § 1508.25(a)(1). Construction would not proceed unless the corridor designation had taken place. Id. Designation of a corridor alone has no “independent utility” separate from the

construction. Wetlands Action Network, 22 F.3d at 1118. The corridor would not be designated but for the construction proposal. The EIS clearly must assess the impacts of both the corridor designation and pipeline/ power line construction.

C. Cumulative effects

The EIS should ensure that the analysis adequately assesses and discusses the cumulative effects of corridor designation and pipeline/ power line construction in conjunction with the current management of the public land. The analysis should include quantify impacts when possible. Cumulative impact is:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Ocean Advocates v. U.S. Army Corps of Engrs., 361 F.3d 1108, 1128 (9th Cir. 2004) (internal quotation omitted). Past and future projects in the area that should be analyzed include grazing, timber sales, and their associated projects such as fence and road construction and maintenance. The EIS also should consider the cumulative impacts of the project on wilderness characteristics and resources, both in designated wilderness study areas ("WSAs") and in non-WSA roadless areas containing such characteristics and resources.

The EIS should consider whether the corridor and pipeline/ power line would lead to more energy development. The EIS should also analyze any past, ongoing, or planned national projects such as the Programmatic Vegetation Treatments EIS currently under consideration.

II. Environmental impacts

When considering the environmental impacts of the project, please include discussions of the following.

A. Wilderness, ACEC, and Proposed National Conservation Area impacts

The proposed routes cross through two WSAs: Basque Hills and Alvord. These areas are proposed wilderness areas. ONDA has prepared a GIS map showing the proposed corridor location in conjunction with these WSAs. The map is posted on our website at: <<http://www.onda.org/library/comments/EnergyCorridorMap.html>>. Impacts to wilderness characteristics and the wilderness resource must be considered in the EIS, as they are part of the "human environment." 40 C.F.R. § 1508.14. Please assess the impact that a large pipeline/ power line would have on the wilderness resources of these two WSAs, including naturalness, solitude, primitive and unconfined recreation, and special features. Would a road be built to construct the pipeline? If so, what type of

road? Would the road be maintained for pipeline maintenance? This would have a serious effect on the wilderness character. Please explain any road impacts.

The EIS should also assess any impacts on current or proposed Areas of Critical Environmental Concern (ACECs) and National Conservation Areas (NCAs). ONDA petitioned the BLM to designate a pronghorn ACEC to connect the Hart Mountain and Sheldon Wildlife Refuges. Please see the petition at: <http://www.onda.org/projects/hartmountain/hartacecjust.html>. The proposed Western Utility Group Corridor would bisect it.

ONDA has also proposed an NCA in southeast Oregon to connect crucial sage grouse habitat in southeastern Oregon and northern Nevada. Please see the proposed NCA's borders at: <http://www.onda.org/library/comments/EnergyCorridorMap.html>. The proposed would bisect this NCA, with potentially serious impacts on sage grouse and other wildlife.

B. Noxious weeds

Disturbed soil and road traffic are two major causes of weed infestations in the west. The proposed corridor would likely create both. The EIS should examine the likely effects of the project on weeds, the extent of current weed infestations, how fast they are now spreading, what weeds are problematic, and the major causes of their spread. Please discuss all planned mitigation measures. Will re-seeding be done? If so, will native species be used? Please discuss the degree of infestations likely to result from this project, and the resulting effects on native plants, soils, biological crusts, wildlife, and ecosystems.

C. Soils and biological crusts

Please identify where in the area biological crusts are present. Where biological crusts are present in the project area, discuss their importance and include an inventory and evaluation of their current status over the entire planning area, the causes of their degradation, concomitant losses of ecosystem function, and how they will be recovered throughout the planning area. Even where crusts are not present, please discuss soil impacts and all mitigation measures planned.

D. Wildlife

Please assess all effects of the proposed pipeline/ power line on wildlife. Sagebrush dependent wildlife species are known to be rapidly declining or jeopardized (Dobkin and Sauder 2004), so disruptive projects like this one must be avoided and minimized if at all possible. Please thoroughly assess the effects the project would have on sage grouse and other sage-steppe species. Vast acreages (across hundreds of square miles) may be used by sage grouse in particular in the course of a year. The EIS must fully consider the vast acreages needed by sage grouse for leks, nesting, brood rearing, and winter habitats. The EIS should also evaluate the impacts of any proposed elevated

structures such as electrical poles on special status species and their habitats. For example, poles located in important sage grouse or pygmy rabbit habitat may affect the populations by providing unnatural perches for predators.

E. Aquatic life

Please assess all effects of the proposed pipeline/ power line on aquatic life. For example, how much sediment will construction add to local creeks? What is the risk of the pipelines leaking and spilling fuel into the local creeks, and what impact would that have? Note that there are several threatened and sensitive fish species in eastern Oregon, including Middle Columbia River steelhead, bull trout, and redband trout. Note too that streams bearing native fish are governed by PACFISH and INFISH, which place several substantive standards on the governing agencies. Please explain how the project will be consistent with PACFISH and INFISH standards. We urge you to complete a Biological Assessment and consult with the Fish and Wildlife Service and NOAA Fisheries on this project pursuant to the Endangered Species Act. Please discuss impacts on other aquatic life including Columbia spotted frog, dace, and mollusks. Please discuss all aspects of riparian conditions, including the presence of water quality-limited streams and how pipeline/ power line construction would contribute to non-complying water parameters such as temperature, turbidity, and bank stability.

F. Wild and Scenic Rivers

It appears that the proposed route will transect one or more wild and scenic rivers. Wild and scenic rivers near the project area in eastern Oregon include the Owyhee, the North Fork John Day, and the North Fork Crooked. Please assess all effects to the rivers' outstandingly remarkable values (ORVs) and how the project will be in compliance with the Wild and Scenic Rivers Act requirement that each river designated under the Act "shall be administered in such manner as to protect and enhance the values which caused it to be included in said system." 16 U.S.C. § 1281(a). The project must also be assessed for consistency with these rivers' comprehensive river management plans.

G. Cultural values

Please assess the impact of construction of the pipeline/ power line on cultural and paleontological resources. New roads often increase looting, digging, and damage. All alternatives analyzed must prevent this damage.

Please keep us informed on this project. Thank you.

Sincerely,


s/ Kristin Ruether
Staff Attorney
Oregon Natural Desert Association
917 SW Oak St. Ste. 409
Portland, OR 97205

cc: Bill Marlett, Executive Director
Oregon Natural Desert Association

Literature cited:

Dobkin, David S. and Sauder, Joel D. 2004. Shrubsteppe Landscapes in Jeopardy:
Distributions, Abundances, and the Uncertain Future of Birds and Small
Mammals in the Intermountain West. High Desert Ecological Research Institute.