UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Connector Gas Pipeline, L.P.
Docket No. CP17-494-000
Jordan Cove Energy Project, L.P.
Docket No CP17-495-000
PF17-4-000

THE NISKANEN CENTER, BILL GOW, SHARON GOW, NEAL C. BROWN FAMILY LLC, WILFRED E. BROWN, ELIZAETH A. HYDE, BARBARA L. BROWN, PAMELA BROWN ORDWAY, CHET N. BROWN, EVANS SCHAAF FAMILY LLC, DEB EVANS, RON SCHAAF, STACEY MCLAUGHLIN, CRAIG MCLAUGHLIN, RICHARD BROWN, TWYLA BROWN, CLARENCE ADAMS, STEPHANY ADAMS, LORI LESTER, WILL MCKINLEY, WENDY MCKINLEY, FRANK ADAMS, LORRAINE SPURLOCK, TONI WOOLSEY, ALISA ACOSTA, GERRIT BOSHUIZEN, CORNELIS BOSHUIZEN, AND JOHN CLARKE.

COMMENTS ON THE FEDERAL ENERGY REGULATORY COMMISSION'S DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE JORDAN COVE ENERGY PROJECT

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INTRODUCTION

The Federal Energy Regulatory Commission's (FERC) Draft Environmental Impact Statement (DEIS) is an opportunity for the Commission to truly assess the potential effects and impacts of the construction of the Pacific Connector Pipeline (the "Pipeline") and the Jordan Cove LNG facility (the "LNG Facility) (together, the "Project"). Unfortunately, FERC has failed to provide a meaningful analysis of either the Project's alleged purpose and need, or of the adverse impacts of the Pipeline on landowners. This is the third time that a company has applied to FERC for the required Certificate of Public Convenience and Necessity (the "Certificate") for the Project (or variant of it) and FERC should deny the Certificate Application once again, but this time *with* prejudice. Enough is enough.

Affected Landowners:

The individual landowners on these comments are: Bill Gow; Sharon Gow; Neal C. Brown Family LLC; Wilfred E. Brown; Elizabeth A. Hyde; Barbara L. Brown; Pamela Brown Ordway; Chet N. Brown; Evans Schaaf Family LLC; Deb Evans; Ron Schaaf; Stacey McLaughlin; Craig McLaughlin; Richard Brown; Twyla Brown; Clarence Adams; Stephany Adams; Lori Lester; Will McKinley; Wendy McKinley; Frank Adams; Lorraine Spurlock; Toni Woolsey; Alisa Acosta; Gerrit Boshuizen; Cornelis Boshuizen; and John Clarke (the "Landowners"). All of these individual Landowners are intervenors in the FERC process, and own property that will be crossed by the Pipeline and thus will be taken via eminent domain under Section 717f(h) of the Natural Gas Act if FERC grants the Pipeline a Certificate. As outlined further below by each individual landowner, the Pipeline will harm the Landowners' land, surrounding environment, safety, physical and mental health, and will decimate their property values, and impede economic growth in their affected areas.

The DEIS offers little or no insight as to how the Pipeline plans to address serious issues that may completely destroy landowners' capability of remaining in their homes and on their land,

including: destruction of access to potable groundwater; destruction of access to irrigation water; destruction of or adverse impacts on agriculture; destruction of or adverse impacts on timber or forest; adverse impacts on the landowners' overall health and well-being; impacts on cattle and ranchland; and impacts on landowners' income and sources of revenue from their land. The DEIS fails to sufficiently address the significant, adverse impacts on landowners and their properties.

i. Frank Adams:

Frank Adams is a Vietnam Veteran and 72-year-old landowner. Mr. Adams did 3 tours in Vietnam, from November, 1966 to March of 1969, where he was exposed to Agent Orange. He and his family have owned the land at 1731 Ireland Road, Ten Mile, Winston, OR 97496 for over 38 years. He originally purchased the land to raise his family, raise livestock, and garden with his wife and children. He is divorced, and now has frequent visits from his sons and grandchildren.

The Pipeline would cut straight through his land in an east-west direction, and it would take approximately an acre of his land. *See* attached *Exhibit* 1, Pipeline's planned route through Mr. Adams' property. It will be about 200 feet from his home with a 50-foot permanent easement. He also uses 8 acres of his affected neighbor's (Rebeca Edwards) land, to graze cattle and for fire suppression. The proposed route cuts through the middle of Ms. Edwards' land as well. The grazing of cattle on his and his neighbor's land provides from half to one full beef (approximately 600 lbs.) a year for him, his sons, and his sons' families. The cattle grazing area will be completely unusable during construction, and grass for cattle will not exist for at least 2 years during the construction period, and for some time after.

Mr. Adams has grape vines and an orchard that will be adversely impacted or destroyed by the Pipeline. His grapes, including Thompson seedless and Concord, provide at least 25 gallons of juice a year. Assuming they survive the construction of the Pipeline, the grape vines and orchard will be in continuous danger from herbicide spraying by the Pipeline, which is planned for several times

a year. Mr. Adams has a well on the property that produces his water. In the 38 years that he has lived there, he has never run out of water. Any digging, blasting, or trenching activities will severely jeopardize his water supply for his home and cattle. The proposed route will also channel water away from his well source. The runoff from the Pipeline will silt up the seasonal creek, and empty into Tenmile Creek, which is a Steelhead and Coho salmon creek. It is clear that the Pipeline will negatively impact the value of his land.

Being that this is now the 3rd time this project has been proposed over a 15-year period, he has felt hostage to the impending threat of eminent domain for that length of time, and the continuous threat of a foreign company seizing his land has taken a toll on his mental and physical health. The fact that he served his country, gave this country his all, only to have the government consider giving his land to a foreign corporation, is a great source of stress and anger for him.

ii. Lorraine Spurlock:

Lorraine Spurlock is a widow who lives alone in her home, and has owned her land for 44 years, at 1127 Kirkendall Road, Camas Valley, OR 99416. Her property is 31.23 acres in total, with about 5-6 acres developed with homes (including hers) on it, and the remainder with forest, which includes old fir trees. She bought the land for its sheer beauty. She worked very hard to make her land resemble a park, which will be destroyed by the Pipeline cutting right across her property for approximately .22 miles. The Pipeline would remove a 95' swath of timber from the middle of the forested section of her property, with a permanent 50' clear cut over the Pipeline right-of-way. *See* attached *Exhibit* 2, the Pipeline's planned route through Ms. Spurlock's property. Ms. Spurlock is concerned that the reduction in timber coverage would affect the classification for tax purposes of a wood lot, as well as remove her valuable timber, which will deplete her income. It will also reduce the value of her property.

Ms. Spurlock does not have internet or access to a computer, and only was made aware of

the opportunity to intervene in the FERC proceedings, as well as file comments on the DEIS, after being contacted by third parties who are representing and assisting landowners with this process.

The land will be handed down to her daughter, and she very much wants the land to remain as pristine as it currently is. The potential for the Pipeline to take her land over the years has taken a toll on Ms. Spurlock, and inflicted her with much unneeded stress.

iii. Gerrit and Cornelis Boshuizen:

Gerrit Boshuizen and his brother Cornelis have owned the land at 18191 Highway 39 in Klamath Falls, OR, 97603 since May of 1981. The land includes over 35 acres of pastureland. They bought their home and land because of their love of farming and to move out of town for a nice quiet, rural setting. Gerritt still lives on the property in his home, and Cornelis lives nearby.

The proposed Pipeline would take their land out of the business of grazing cattle for 3-5 years. *See* attached *Exhibit* 3, the Pipeline's planned route through the Boshuizens' property. They will not be able to run cattle on the land due to the Pipeline construction. They flood-irrigate their land, and the Pipeline would destroy this irrigation system, and the grass for the cattle will die. It will also destroy their hay crop. They also have to pay nearly $3,000 a year to Klamath Irrigation District for the water needed to irrigate the land and, even if they can't irrigate or use the water, they will still have to pay Klamath Irrigation District for the water in order to maintain their rights to it. During construction of the Pipeline, it will be noisy and dusty, which will ruin the Boshuizen's well-earned peace and quiet, and will significantly interfere with their quiet enjoyment of their home. The Pipeline will also be within 300 feet of their well and drinking water source, and they have no idea as of yet how the right-of-way would impact their access to potable water.

Once construction is complete, the Pipeline will block them from accessing their barn, where they process and store the hay they grow for sale. They will be unable to drive the required heavy-duty equipment in and out of the barn and over the Pipeline's right-of-way, effectively making

the barn useless. This will be a huge financial hit to their family. The Pipeline will impact the irrigation and water movement of their fields, which will adversely impact the growth of their pasture. It could also impact their fence line. The Pipeline will certainly make their property less valuable.

The Pipeline has put undue stress on the Boshuizens for over 15 years. They have had to deal with several land agents and Pipeline representatives trying to bully them into signing an easement. They tried to persuade the Boshuizen that all other landowners in the area 'had already signed.' Pipeline representatives have not respected the Boshuizens' wishes for them to stay off the property, and they keep coming back despite these requests to stay off the land. A Pipeline land agent has told them several times that they would bring their supervisor by the house, but he never has. There also is the possibility of a Pipeline explosion, and the Pipeline goes right in front of their home.

iv. Toni Woolsey:

Ms. Woolsey and her family have owned the property at 213 Ragsdale Road, Trail, OR 97541 for 69 years. Her parents purchased the property and lived on it until they died. Ms. Woolsey moved onto the property 15 years ago to take care of her ailing mother, and built her dream home on the property. She took care of her mother until she passed away. Ms. Woolsey barely had time to get settled in when Pembina came knocking and told her that they wanted to take significant parts of her land to build the Pipeline. The Pipeline would be less than 135 feet from her home, and instead of a beautiful view, she will have to look at a 100 ft. scar up the side of a mountain. *See* attached *Exhibit* 4, the Pipeline's planned route through Ms. Woolsey's property. It very well may affect her only source of water, as the private well on her property is within approximately 180 yards of the proposed route, down by the Rogue River, where the Pipeline wants to do Horizontal Directional Drilling ("HDD").

The Pipeline has been hanging over her head for over 15 years, and it is never very far from her thoughts. She has spent a significant amount of time and money trying to stop the Pipeline for good, but now it is on its third round of seeking approval for the same route. The money that she has spent is nothing compared with the significant emotional toll that this ordeal has taken on her.

v. Clarence and Stephany Adams:

Clarence Adams and Stephany Adams[1] have owned their property at 2039 Ireland Rd, Winston, OR 97496 for 28 years. Mr. Adams bought the land because it was in a quiet, rural setting, and with 8.5 acres, it was enough to raise some livestock, and for privacy for him and his family. Mr. Adams and his wife Stephany raised two children on their property. Currently, their daughter and son-in-law live on the property as well.

The Pipeline will split the Adams' property in half, cutting directly through pastureland for their horses, and limiting their access to their land. *See* attached *Exhibit* 5, the Pipeline's planned route through the Adams' property. The Pipeline will climb a hill through the pastureland at 30-45% slopes, with fractured basalt lying very close to the surface. If the Pipeline is built, their land will never be restored to its original condition, mostly due to the depth of the Pipeline trench, and the Pipeline workers leveling a significant portion of their land for an approximate ¾ acre "temporary" working area to store Pipeline construction equipment for years.

The Pipeline will kill a stand of mixed hardwood and conifer trees, which along with providing firewood for the Adams and shade for the horses, also provides a privacy shield and noise barrier from the traffic on the County Road that goes past their house and leads up to a popular reservoir.

The Adams family have 3 wells on their property. One is below the proposed right-of-way, which they hoped to develop to use for irrigation. They obviously cannot do this until they know

[1] Clarence and Stephany Adams are not related to their neighbor Frank Adams.

with certainty that the Pipeline will not be built. The other is their only source of water and is currently used for household consumption, as well as irrigation for the yard, garden, and their orchard. This well will be within 400 feet of the Pipeline, and their water holding tank is within 130 feet of the Pipeline. The third is not currently in use, as it had very limited water when it was drilled. There is a real possibility that the digging and blasting for Pipeline construction will permanently and adversely affect the water that is available.

The proposed Pipeline easement would run approximately 136 feet from the Adams' home. Based on similar Pipeline construction activity close to dwellings, there is a real concern that it will cause damage to the foundation of their home. As noted above, the concrete holding tank for the house water supply is even closer to the proposed Pipeline corridor, and it would cost thousands of dollars to replace it. They also have a horse barn within 50 feet of the temporary work area, which is highly likely to be damaged. Even if it remains intact, at best, the horse barn will probably be unusable during construction.

The Pipeline will cross the seasonal creek running through the property via the 'open trench' method. The creek bed is not composed of round cobbles and gravel over a bed rock base like many other creeks in the area. Instead, their creek bed is composed of about 6 inches of very angular, fractured basalt rock on top of a clay base, which Mr. Adams has measured down to a depth of approximately 5 feet. The angular gravel is more prone to washing out then the round cobbles, so when the existing trees are removed for the 95-foot construction easement, it is a distinct possibility that the disturbed gravel will wash out; this greatly increases the chances of the erosion of the creek bed to below its current depth, which will bring the Pipeline closer and closer to the surface.

The Pipeline's maintenance of the proposed right-of-way could also have detrimental effects on the Adams, their animals, and their lifestyle. Mr. Adams has honey bee apiaries within 100 feet of the proposed right-of-way. The oldest hive has been established for over 9 years. The construction

and placement of the Pipeline will surely destroy the bees' delicate environment. If the bees somehow survive the construction, the Adams will have no control or say on how vegetation will be controlled over the easement, or what herbicides they will use over the right of way that could negatively impact their bees. The herbicide may also have a negative impact on their horses, and increase the cost of feeding them. The spray could also kill the parakeets and finches that they have in a small aviary, as small birds are especially susceptible to toxins. The herbicides could also have an effect on the Adams family's health, especially when one takes long-term exposure into consideration. Further, the Adams' property – their largest investment- will obviously be devalued as a result of the Pipeline running through it, which will affect their financial stability for years to come.

The emotional cost of having this project hanging over the Adams' heads for over 15 years is incalculable. Their home and property are their refuge, and a source of great pride. The constant worry that a foreign corporation could come in and take their land has been horrible. The Pipeline will be using the lowest possible construction and safety standards, which increases the risk of a leak and possible explosion. With the Pipeline being so close to their home, the Adams face the very real possibility of being caught in a gas leak, fire, or explosion.

vi. John Clarke:

John Clarke is a Korean Conflict Marine War veteran and has owned his land at 1102 and 1363 Twin Oaks Lane, Winston, OR 97496 since 1984. Mr. Clarke is now Trustee of the John Clarke Family Trust and John Clarke Oregon Trust, which are the owners of the affected properties that he plans to pass down to his children. His land consists of 140 acres and developed structures. He bought the land for a quiet place to live. It consists of two parcels, a family home for himself, and a home for his son and daughter. His property includes mature conifer, oak, and madrone trees.

The Pipeline will lessen the value of his property, and have severely negative impacts on the quality of his land. The current proposed route of the Pipeline cuts diagonally across 140 of his

timbered acres. *See* attached *Exhibit* 6, the Pipeline's planned route through Mr. Clarke's properties. The only source of water on his property is a well on the property. The Pipeline could adversely affect and permanently disrupt his family's only source of water on the property. This over 15-year battle with the Pipeline has also exacerbated Mr. Clarke's health problems.

vii. Bill and Sharon Gow:

Bill Gow and his wife Sharon Gow have owned their property for 29 years. They started with 1,365 acres in 1990, and they've incrementally added more land, which now amounts to approximately 2,400 acres. The Gows have one of the very few large, family-owned cattle ranches in the southern Oregon region. They have worked incredibly hard to create and maintain their ranch.

The Gows bought the land to develop a legacy cattle ranching business that would give their family a stable, long-term home, and a place for their children and grandchildren to be raised in the country. This ranch has always been the Gows' dream. Their whole family lives on the property: Bill and Sharon Gow; their daughter, her husband and their 2 children; their son, his wife, and their 2 children. The fact that they have a ranch to live and work together, as well as the ability to raise their families together with shared values is invaluable.

The Pipeline will interrupt and potentially destroy all that they've built. The proposed route will bisect a 3-parcel section of the ranch. *See* attached *Exhibit* 7, the Pipeline's planned route through the Gows' property. The Gows considered their ranch a refuge, which has now been under threat of foreign invasion for over 15 years. They value the quiet, remote, and rural lifestyle immensely. Having a scar across their properties from the proposed right-of-way, having to deal with continuous, inevitable problems that arise from the Pipeline's placement, and dealing with Pipeline's maintenance crews are not at all what they wanted for their ranch or for their descendants. The Pipeline defeats their dream.

On the 2017 proposed alignment, the Gows had planned to build a small venue to host

weddings. However, because the planned site was 350 feet from where the Pipeline may potentially be built (and the route keeps changing), they have abandoned these plans indefinitely. Additionally, the Pipeline route would force the Gows to change the long-term timber cut plan that they've developed over the course of many years.[2]

The Pipeline will cross the Gow's property at a slope. This is a concern due to potential landslides and changes in the area's drainage with the introduction of differentials in soil compaction. Since the riparian buffers are clear-cut permanently, the agency should seriously consider whether there will be long-term introductions of sediments into the waterways as a result.

The clear cuts planned along the right-of-way will have an especially strong impact in drought season. First, clear-cuts are going to be an eyesore, especially in riparian areas on their property and around the region. Second, and more importantly, in the intense drought season the trees at the edge of the forest are suffering due to exposure to the hot sun and drier soils. By logging the right-of-way strip, the Pipeline will create more forest 'edges' that will threaten the health of the forests and riparian areas. The clear-cuts along the right of way could also have a significant impact on the water retention of soils along waterways and on the rest of the property. When the soil can't hold as much water, the Gows have to pipe it in from the springs. As discussed further below, the Gows ability to lay pipe becomes severely restricted, or at the very least much more complicated, if the Pipeline is built.

The Pipeline will also have severely negative impacts on water retention, quality, and use. There are 5-6 creeks whose headwaters start on various locations on their property, including

[2] The Gows also use the property on the 2015 proposed route for a private hunting and recreation business, where people come from all over the world to hunt deer, turkey, and elk. During construction, this business would not be able to function at all because of the noise and construction disturbance. After construction is complete, there are serious liability concerns about maintenance workers walking through the hunting grounds.

Roberts Creek, the Richardson Road Creek that feeds into to South Umpqua, and a number of others. Any adverse impact because of the Pipeline to theses headwaters, whether warming, sedimentation, turbidity, introduction of herbicides or chemicals, or geological changes to the flow structure would have dramatic impacts downstream. This significant problem also exists in the Pipeline's crossing of any creek, including the tribute to the South Umpqua, which the Pipeline is proposed to cross in the current 2017 route, very close to its intersection point with the South Umpqua River.

A major concern is the Pipeline may destroy the method by which the Gows currently irrigate drinking water to the cattle and water to the grazing areas. The Gows currently irrigate water directly across the proposed Pipeline right-of-way. This problem will be severely exacerbated because of the increasing frequency of severe drought conditions in southern Oregon. As a result, the Gows will need to move the water pipes more frequently to ensure that the cattle and their fields are watered. This could prove impossible with the Pipeline right-of-way cutting through the property.

There is a big spring located just below the ridge of the 2015 route, which provides water to an indoor horse area and 2 of the family homes on the ranch. Any impact on this source of water because of Pipeline construction on the ridge would have devastating impacts on their family's wellbeing. There is no evidence in the DEIS that the Pipeline is taking proper precautions to ensure that this spring and other waters will be protected from fissures in the bedrock from construction or other potential damage.

There are also wetlands on the Gows' property, including a large marsh, where a creek feeds from below a trout pond spreading out to an area between 0.5 and 2 acres, depending on the flow. The marsh is partially sub-irrigated, and it is a critical spot for retaining moisture into the dry months.

The hydrostatic testing proposed is also a concern, as it remains uncertain where the discharge location is in the area. The Gows have deep concerns about the water from the Klamath Basin being discharged into the South Umpqua and the adverse impact that this would have on the ecology of the region.

Over the course of 15 years, this proposed Pipeline taken up countless hours of Mr. Gow's time and resources. Mr. Gow is on the phone every day about the Pipeline, as he is not computer literate and he works extra hard to keep up with what Jordan Cove is planning.[3] The project has put significant stress on Mr. Gow's family and their relationships. Mr. Gow worked from nothing to earn and build their ranch, and the thought that the United States government will give a foreign corporation the power to take what he's built from scratch can be (understandably) all-consuming. There also is the great uncertainty of how their family will cope with the devastation to the land and their way of life if construction should ever start.

Plans for the ranch are currently on hold, as they are not sure whether or not to make any improvements on their land with the Pipeline continuing to hang over their heads.

viii. Pamela Brown Ordway, Wilfred E. Brown, Elizabeth A. Hyde, Barbara L. Brown, Chet N. Brown, and Neal C. Brown LLC:

The Brown family property has been in the family since 1937, when the six Brown siblings' father purchased it from an insurance company who had repossessed the land during the Great Depression from one of their relatives. Their father was a tank commander in WWII who earned a Bronze Star and the Purple Heart. The Brown siblings grew up in the farmhouse on the property, where their sibling Richard Brown and his wife Twyla Brown now reside. When their father passed away, Twyla Brown and her husband bought the 100 acres in the front to live and work from the farmhouse, and back 153 acres went to the other above 5 Brown siblings, or Parcel #s: R10266;

[3] It's of note that the Gows never received formal notice about the 2017 realignment going over their land. They also have never received a purchase offer.

R11298; R11338, all in Douglas County. *See* attached *Exhibit* 8, the Pipeline's planned route through the Browns' property.

Their land is made up of roughly 80 acres of farmland, 65 acres of second-growth timber, and approximately 10 acres of timber that they excluded from harvesting when they logged in 2005. The 10 acres of unharvested timber is predominately a mix of Douglas Fir and White Fir, and is well over 100 years old. They left that particular stand because it provided a visual barrier from their neighbor's logging, and it was one of the areas where the Fairy Slipper Orchid[4] thrived. The purpose of the current unharvested timber is for it to continue to grow, and it is the only stand of timber they could harvest if they needed the revenue.

The current route of the Pipeline, as well as the temporary easement Pembina states it needs for construction, will cut through the trees they excluded in the 2005 harvest. The Pipeline would severely and negatively impact their farming and logging practices. As the proposed Pipeline route cuts diagonally across their property, access to almost every part of the land is affected. If they wanted to log a portion of their timberland, they would be unable to bring in log trucks or the necessary heavy equipment over the Pipeline right-of-way. The cut area through the right-of-way would be kept free of tree and vegetation by Pembina, and the adjacent timber would thus grow inward towards the clear space, making it grow less straight, and consequently less valuable.

The portion of the Pipeline that goes through their farmland would adversely impact their farming practices as they could not bring in tractors and farm equipment over the Pipeline to harvest hay. It would limit their options for future crops, and they would not be able to grow wine grapes, fruit trees, or Christmas trees in the Pipeline easement areas. They also have the additional risk of unknown persons accessing their property via the Pipeline easement. The Browns have also

[4] The Fairy Slipper Orchid is a wildflower that they were taught as children to take special care of. While it is considered 'threatened' or 'endangered' in other states, it currently is not in Oregon.

kept their farm free from herbicides for over 10 years. Pembina's use of herbicides over their easement would obviously directly conflict with how they manage their crops.

The Browns have put their family legacy plans for the land on hold, pending a final decision on the Pipeline. For example, they would like to plant a cash crop that would allow the next generation to continue to be able to keep the land in the family. All of the best options, from planting wine grapes, to Christmas trees, to nut trees, all require a substantial financial investment (upwards of approximately $10,000 to $15,000 per acre).The Browns are 100% willing to make this investment, but with the possibility of a Canadian company coming through and ripping open a 95-foot swath through what they just planted, they can't make a commitment to this. They also want to drill a well on their portion of the land for irrigation use, but if the Pipeline were built, it would limit their options on where they can drill.

ix. Richard and Twyla Brown:

When the Brown siblings' father passed away, Richard and Twyla Brown bought the front 100 acres of farm to live and work from the farmhouse, at 2381 Upper Camas Road, Camas Valley, OR 97416.

They purchased the land to honor Mr. Brown's father's legacy, farm the land, and to pass it onto their descendants. Their grandsons currently live on the farm and are heavily involved in the day-to-day operations. They raise beef cattle, sheep, and process hay each summer. They irrigate their fields and are the only farm in the Valley that has consistently done so since 1953. Their land has also been used to grow other crops including oats, barley, and grass seed. This type of farming uses heavy equipment.

The Browns have always been good stewards of their land. For example, they worked with the Coquille watershed office early in their ownership to protect the river by fencing it off from their livestock, and to plant trees along it to preserve the river banks and provide shade and habitat for

the wildlife in and around the river. The Pipeline will cut a 75-foot swath through those trees and disrupt what they've been building now for generations.

The effects of the proposed Pipeline of their land and the river running through it would be devastating. The Pipeline would restrict access to some of their fields and take away part of the land from farming. *See* attached *Exh.* 8, the Pipeline's planned route through the Browns' property.

The Pipeline would detrimentally affect the Brown's water use. For irrigation, the Browns still rely on the drainage tile in that Mr. Brown's father put in the fields. The Pipeline would cut right through their drainage tiles, destroying their ability to irrigate water, and any investment in those affected fields would be worthless. The Pipeline will also cut through grazing/pasture fields, which they also cut hay on. The Pipeline would prevent them from using those fields. The Pipeline is also cutting close to their well, their only source of potable water for their home on the land.

It is also of note that archeologists from the state of Oregon also visited the Brown's property in approximately 2010. They found numerous Native American sites on their land with relics, which is yet another reason not to permit a huge ditch to cut through their land.

Richard and Twyla are retired, and too old to sell and find another place to start all over. Their property was supposed to be their security in old age. If this Pipeline is approved, they will lose one of their central retirement incomes, and this will be an almost impossible financial blow to surmount. The Browns have wanted to plant nut trees on their land, and put money into a new irrigation system, but they realized they can't do this until it's a guarantee that the U.S. government will not permit a Canadian company to come and take their land. They can't develop anything until this is over, as anything they do could be a complete waste of their hard-earned money and resources.

x. Deb Evans, Ron Schaaf, and Evans Schaaf Family LLC:

Deb Evans and Ron Schaaf purchased their property on Parcel Number: R71040 Tract: KH-

569.000 in Klamath County on June 2, 2005. They purchased the 157-acre property to build a home, drill a well, and to enjoy being within one mile of mountains, lakes, and the wilderness. They specifically chose the property for a number of reasons, including the viewshed, the location between two beautiful stands of Winema National Forest old growth, being within hiking distance of the Mountain Lakes Wilderness, and having direct access on Clover Creek Road which has been designated a 'utility free corridor'. They also purchased it as an investment to manage and sell timber, and to have about 5 acres of organic food production. Deb and Ron have long been gardeners, hikers, and enjoy managing forest property. They wanted to invest in the timber as an asset to use in the future for other projects and productions.

Within two months of purchasing the property, there suddenly was survey flagging across the portion of the property that they had intended to build their home on. They shortly found out that the survey markers were for a proposed 36" import natural gas pipeline from Coos Bay to Malin, which would bring regasified LNG to the California market. They never would have bought their property had they known a pipeline was trying to build right through it. They have now put off their planned development of the property for over 15 years.

Clover Creek Road bisects their 157 acres on the southern part of the property leaving approximately 9 acres located on the south side of the road, and around 144 acres of timber to the north of the road. The proposed route of the Pipeline is located north of Clover Creek Road, but does not follow the road Right-of-Way. *See* attached *Exhibit* 9, the Pipeline's planned route through Deb and Ron's property. Instead, it intersects their property about 400 feet northeast of Clover Creek Road on the southern boundary of the property, and then comes up at an angle to within 75 feet of the Clover Creek Road, and finally turns back at a northwest angle and crosses off of their property 500 feet along their west property line, north of Clover Creek Road. This route results in far greater impacts to the property. They are restricted from crossing the proposed Pipeline right of

way using the normal heavy logging equipment, thus making the management and harvesting of timber far more expensive and time-consuming. Additionally, access to the bulk of their property would require crossing the Pipeline's right-of way.

Five acres of their timber would be permanently taken out of production. Deb and Ron use organic growing methods, and they are opposed to the use of harmful, synthetic sprays and fertilizers. However, such harmful herbicide sprays are exactly what the company is proposing to use to maintain the right-of-way. The proposed right-of-way is within the flatter, more fertile soils of their property, where they planned to grow their own food, which they obviously will not be able to do if the Pipeline is built.

The increased risk of fire is also a concern. As a timber producer, they are seeing more drought and insect infestation with the increasingly hotter, drier summers in Oregon, and a shrinking snowpack, and with that, more and more forest fires. The construction and operation of a high-pressure 36" natural gas pipeline will introduce significant additional risks of fire and devastation of their land.

The viewshed will also be significantly affected and scarred. A part of the inherent value of the land is the surrounding viewshed and accessibility to pristine areas of Oregon. The compromising of the viewshed through construction a 95-foot swath through their property and the neighboring Winema National Forest properties (an area that is currently utility-free and protected) will have a significant impact on their property's value and very reason they purchased the property in the first place.

The fight to keep the Pipeline from being built across southern Oregon for over 15 years has taken a toll on Deb and Ron, mentally and financially. The proximity to the Pipeline and the continuous uncertainty of whether the project will ever be built has put their development plans since they bought the property on permanent hold. When the first bought the property in 2005, they

were 45 and 50 years old respectively. They are now 59 and 64 years old, and physically less able to implement the development plans that they had for the property themselves. Further, the money that they saved to improve the land has been spent in part on trying to protect their asset from the ongoing risk of a taking by the Pipeline. When they first bought their property, it was never disclosed to them that a company was proposing to build a Pipeline. Over $5,000 and an attorney later, they had intervened in the first round of proceedings at FERC on this project, but with little idea as to what was happening and how to protect their property. They also had no idea that this Pipeline would continue to haunt them for over 15 years.

Deb and Ron firmly believe that no one should be forced to give or sell an easement for a project that has no public benefit or use. This is especially true when that the benefit goes to Canada, with this project uniquely utilizing primarily or solely Canadian gas, and with none of the gas benefiting U.S. consumers. They have long believed, and pointed out in earlier testimony in Round 2 (the 2012-2016 proposed project), and previously in the current Round 3, that there is a clear difference between this LNG project and every other proposal before FERC. FERC in 2016 heard and understood the landowners' arguments and denied the Section 7 and Section 3 applications. They believe the Commissioners should do the same this time.

xi. Stacey and Craig McLaughlin:

Stacey and Craig McLaughlin purchased their property at 727 Glory Lane, Myrtle Creek, Oregon in 2000. The property consists of 357 acres of farm and forest. They have merchantable timber and a developing woodland on the property. The property is also notable as an oak woodland, with old growth madrone areas. The vegetation is diverse and offers habitat for numerous species of insects and animals. There is also un-surveyed wetland on the property.

The McLaughlins bought the property to fulfill a lifelong dream of owning a ranch to grow their own organic food, and to live a sustainable and rural lifestyle. Their ultimate goal was to create

a sanctuary for themselves and their family. They wanted the solitude of an isolated area, but also to be relatively close to airports for work-related travel, and to have easy access to medical care for themselves and their aging parents. Their property met all of these criteria, and included two dwelling units that met their plan to move aging family members into one of the homes for caregiving. Stacey and Craig currently live on the property, with Craig's elder cousin living in the second residence.

The Pipeline will cut diagonally across two major parcels of their land. *See* attached *Exhibit* 10, the Pipeline's planned route through the McLaughlins' property. The proposed route would essentially divide the property in half, making the second or rear parcel inaccessible for heavy equipment, including for any future residential construction or fire suppression activities.

The Pipeline construction will also adversely impact and potentially eliminate old growth madrone and oak trees, home to many species of animals. The planned route will plough through an expensive logging restoration project, wherein they planted thousands of Douglas Fir trees to rehabilitate the land and serve as a future income source. The proposed route will require the removal of much of that newly-forested land. Removal will also increase the chances of a landslide, as many of the older trees that would be removed now stabilize the land.

There are numerous water sources throughout the property, including springs, seasonal creeks, and wetlands, which are likely to be adversely impacted by the Pipeline's construction. The greatest threat is to the McLaughlin's domestic water supply. Any disruption by the construction or permanent installation of the Pipeline would significantly reduce or eradicate their water supply, which is already threatened by drought. They also are wary of the significantly increased risk of wildfires due to Pipeline-related incidents.

The McLaughlins do not use herbicides or pesticides on their land for health and safety reasons. The Pipeline's potential construction is a grave concern, as both will be used indefinitely by

the company to maintain their easement as desired.

The construction of the Pipeline will destroy the very reasons why the McLaughlins purchased this property, including solitude. If Pembina gets permission from FERC to build the Pipeline, it will have 24/7 access to the McLaughlin land both during and after construction.

The proposed Pipeline has resulted in significant emotional and financial stress on the McLaughlin family. They have spent thousands of dollars both directly and in-kind, and countless hours of their time in trying to protect their home from a Canadian corporation.

xii. Alisa Acosta, as Trustee of Acosta Living Trust:

Alisa Acosta, is Trustee of the Acosta Living Trust, which is the owner of the affected property at 536 Ragsdale Road, Trail, OR 97541. The current proposed route and access road would run directly through the property, severely impacting the use and value of the property, which includes a licensed airport, a hanger building, a home with a pool, a smaller cottage and garage/utility building, a pole bar, fruit tree orchard, 80+ walnut trees, irrigation, and two pump houses. *See* attached *Ex.* 4, the Pipeline's planned route through the Acosta Living Trust's property.

The property was acquired in part for its value as a potential "fly-in" gateway to surrounding outdoor recreation for private guests, and currently serves as the base of operations for Outdoors in Oregon, LLC dba Rouge Recreation, a company that provides outdoor recreation opportunities, including concession services to the USDA Forest Service. The current proposed route will bisect and destroy the airport landing strip. The company is a significant contributor to the local economy, employing a seasonal work force of 15 people and support services from 9 local businesses. The property has served as a landing area for law enforcement and first responders, and based on its size, location, and airstrip, has public resource value as a potential staging area for emergency services, including fire suppression and search and rescue. The simple fact is that it does not make sense to bury a highly pressurized natural gas pipeline a few feet below an airport runway that is likely to be

the location of take-offs and landings by a variety of private and public aircraft.

The proposed Pipeline work areas, which include an extended staging area that at some points is over a thousand feet from the proposed easement, will destroy two mature orchards. The Pipeline also seeks to appropriate the property's only current access road and provide the owner with a temporary access across land owned by neighbors to the south.

The effect of the current proposed route would be at the very least the temporary relocation of the business currently operated on the property, and the Pipeline's staging activities will be substituted for those of the owner's business. By some estimates, the period of occupation for construction activities may extend 7-10 years, and that the work area as currently defined will run the length of the property and effectively prevent any reasonable access to the airstrip, the hanger, and to the bulk of the property to the north. There will be substantial damage to, if not total destruction of, existing orchards and old growth trees. There is no public benefit to this Pipeline, and the project should be denied with prejudice.

xiii. Will and Wendy McKinley:

Will and Wendy McKinley purchased their property at 2579 Old Ferry Road from Wendy's mother in 2016. The property had been in their family since 2004. It consists of 19 acres with 600 feet of river frontage on the Rogue River. They purchased the property from Wendy's mother so that she no longer had to live with the burden of the potential Pipeline destroying her land. Her mother originally purchased the property for retirement, but once the Pipeline was announced, she no longer wanted to live there.

The Pipeline will destroy any value that the land currently has. *See* attached *Ex.* 4, the Pipeline's planned route through the McKinleys' property. The McKinleys have been using the property as a vacation rental or income property, since they have not been able to sell it since the Pipeline project was first announced in 2005. If construction starts, they will no longer be able even

to rent the house on the property.

The Niskanen Center:

Niskanen is a 501(c)(3) libertarian think tank with strong interests in free markets and in protecting Americans' property rights. It is a fundamental matter of justice – and a foundational belief among libertarians – that government should forcibly take private property only as a measure of last resort, when truly for public use, and must compensate the property owners sufficient to render them indifferent to the taking.[5] The Niskanen Center sees no public use in the proposed Pipeline project, and notes that FERC failed to establish the required Purpose and Need of the project in the DEIS. The Project should be denied with prejudice.

I. THE DEIS FAILS TO ADDRESS THE PIPELINE'S SEVERELY NEGATIVE IMPACTS ON OWNERS' LAND USE AND WAY OF LIFE.

This Pipeline would have a severely negative impact on the land and on the Landowners' use of their land. The DEIS fails to analyze or capture many of these adverse impacts on landowners, and offers no discernable mitigation plan or solution. Several of these analytical voids are discussed in further detail below.

A. The DEIS Fails to Evaluate the Negative Impact on Valuation of Land.

Private landowners with a 36-inch, 1600 PSI to 1950 PSI natural gas pipeline running through their property can be sure that the potential re-sale value of their property will be drastically reduced. Just ask the McKinleys, who have been trying to sell their land since 2005. *See supra* at 21.

In the DEIS, FERC cites to four studies, all cherry-picked by the Pipeline, in support of its conclusion that "the likelihood of the pipeline resulting in a long-term decline in property values and

[5] Niskanen notes in passing that the Commission's Policy Statement appears to acknowledge that court-determined "just compensation" is insufficient to make landowners indifferent to the taking of their property: "Even though the compensation received in such a proceeding is deemed legally adequate, the dollar amount received as a result of eminent domain may not provide a satisfactory result to the landowner and this is a valid factor to consider in balancing the adverse effects of a project against the public benefits." 90 FERC ¶ 61,128, p. 19.

a related decrease in property tax revenues is low." DEIS at 4-608. The cited studies included two case studies by the Interstate Natural Gas Association of America ("INGAA") (Allen, Williford & Seale, Inc. 2001; Integra Reality Resources 2016) and two case studies that "evaluated the effects of the South Mist Pipeline Extension in Clackamas and Washington Counties, Oregon (Fruits 2008; Palmer 2008); and studies from Arizona and Nevada (Diskin et a. 2011; Wilde et al. 2014)." DEIS at 4-607.

None of the cited studies are informative in analyzing whether or not there will be an adverse impact on the Landowners' land. The studies have been relied on by pipeline companies in the past and have been previously discounted. The natural gas industry-sponsored[6] studies "are similar in that they fail to take into account two factors that could completely invalidate their conclusions":

> First, the studies do not consider that the property price data employed in the studies do not reflect buyers' true willingness to pay for properties closer to or farther from natural gas pipelines. For prices to reflect willingness to pay (and therefore true economic value), buyers would need full information about the subject properties, including whether the properties are near a pipeline. Second, and for the most part, the studies finding no difference in prices for properties closer to or farther away from pipelines are not actually comparing prices for properties that are "nearer" or "farther" by any meaningful measure. The studies compare similar properties and, not surprisingly, find that they have similar prices. **Their conclusions are neither interesting nor relevant to the important question of how large an economic effect the project would have.**
>
> *See Exhibit* 11*,* at 33-38, *Atlantic Sunrise Project: FERC's Approval Based on an Incomplete Picture of Economic Impacts,* Spencer Phillips, PhD (March 2017) (emphasis added); *See Exhibit* 12, at 32-35, *Economic Costs of the Atlantic Coast Pipeline: Effects of Property Value, Ecosystem Services, and Economic Development in Western and Central Virginia,* Spencer Phillips, PHD (February 2016); *Exhibit* 13*, Economic Costs of the Mountain Valley Pipeline,* at 26-28, Spencer Phillips, PhD (May 2016). Each study is attached and incorporated by reference.

[6] These studies were bought and paid for by the natural gas industry, which dramatically impact their credibility. For example, the INGAA "is a trade organization that advocates regulatory and legislative positions of importance to the natural gas pipeline industry in North America. INGAA is comprised of 25 members, representing the vast majority of the interstate natural gas transmission pipeline companies in the U.S. and comparable companies in Canada." INGAA's 'About Us', *Available at: https://commongroundalliance.com/about-us/sponsors/interstate-natural-gas-association-america* (Last visited July 1, 2019).

In addition, the DEIS conducts no examination of other effects of the devaluation of landowners' properties, such as a potential buyer's inability or increased difficulty to obtain a mortgage on land that is in close proximity to a pipeline. There are also was a complete failure to consider the effect on homeowner's insurance of a high-pressure gas pipeline going through a landowners' property. The DEIS does not take into consideration at all how a home buyer's perception of associated risks could detract from home values, something that happens all the time.[7] The exposed corridor also will encourage off-road vehicle traffic and year-round public entry onto private lands. The Forensic Appraisal Group LTD, a Wisconsin firm that specializes in issues with the potential for litigation related to pipelines, conducted a number of "impact" studies, which found that the presence of a gas transmission pipeline decreased home values by about 12 to 14 percent on average in Ohio and about 16 percent on average in Wisconsin.[8]

All of the named landowners are concerned about the adverse effect that the Pipeline will have on their property values, and everything else that is tied into such a devaluation, and with good reason. The DEIS fails to address this adverse impact.

B. The DEIS Fails to Evaluate the Negative Impact on Visual Resources.

It is a simple fact that a beautiful view increases property value. It follows that an unwanted intrusion on that view by a permanent, 50-foot wide gas pipeline corridor would decrease property value. *See, e.g. Exh.* 13, *Economic Costs of the MVP*, at 29 ("utility corridors from which power lines can be seen decrease property values (by 6.3% in one study)(Bolton & Sick, 1999)." The decrease in value could be simply because the corridor is ugly. *See id.*

Here, the DEIS notes that there is a pipeline viewshed of 5 miles on either side of the

[7] This is especially true in this case given that pipelines have received a lot of negative media coverage in recent years with pipeline explosions, sink holes, and leaks.
[8] *See* https://www.gazettenet.com/Archives/2015/10/PIPELINEVALUES-HG-101415 (Last visited July 1, 2019).

pipeline. DEIS 4-567. While the DEIS shares the mechanisms used to define this 5-mile viewshed, including photography and computer modeling, it fails to share the numbers and the methodology of calculation of how it arrived at the 5-mile viewshed as the appropriate metric.[9] Intuitively, the effect on the viewshed will obviously be more than 5 miles in numerous places, including on properties overlooking mountains or slopes.

It is safe to say that in some areas, the Pipeline corridor will be visible for dozens of miles, if not more. For example, landowner Toni Woolsey's main view from her home will be completely ruined by the permanent scarring of the Pipeline corridor creeping up a mountain across from her home. The view of the river from her porch will also be adversely impacted. In fact, all of the named Landowners will have their viewsheds ruined to varying extremes because of the Pipeline corridor. These properties' values will suffer as a result of the lost aesthetic value, a big reason why many people moved southern Oregon. The DEIS' conclusion that "construction and operation of the pipeline would not significantly affect visual resources" (DEIS 5-7) is simply incorrect, and the fact that this is a rural, visually beautiful area supports the contention that the corridor will indeed have a significant impact on the surrounding landscape, views, and landowners' property values.

C. The DEIS Fails to Address the Detrimental Impact to Landowners' Water Sources, Agricultural Drainage, and Irrigation.

It would be difficult to understate the detrimental impact (or complete destruction) that the Pipeline will have on landowners' water sources, yet the DEIS does exactly so. The DEIS fails to evaluate or even identify where landowners' water sources are or how they will be affected. In southern, rural Oregon, many landowners rely on wells drilled on their land for all of their household needs, as well as irrigation for water for their animals and crops. According to the DEIS,

[9] If each viewpoint represented a mile of the project, the DEIS only did approximately 4% representative viewpoints of a 229-mile project (it only did 10 such viewpoints). DEIS 4-566-4-572.0.

there are numerous unidentified wells, but only 7 were identified along the entire 229-mile pipeline. DEIS at 4-79. The DEIS places the burden on identifying sources of water on the landowners for the Pipeline's project, which is completely unacceptable. DEIS at 4-79. Thus, the conclusion that the Pipeline will not affect groundwater resources has no foundation, as the Pipeline hasn't even put the work in to identify almost all of the groundwater resources. *See* DEIS at 4-82 ("[W]e conclude that constructing and operating the Project would not significantly affect groundwater resources."); *See* 5-2.

The mere seven wells identified in the DEIS are identified as irrigation wells within 200 feet of construction "for which location information was available." DEIS at 4-79. The assertion that the Pipeline could only locate seven private wells along a 229-mile pipeline that has been pending for over 15 years is absurd. For example, there is a *public* database available on the State of Oregon Water Resource page that identifies the location and purpose of wells.[10]

The Pipeline should clearly be required to find each and every potentially affected well along the pipeline route, and the DEIS should address the impacts on each of them. The wells can be located by simply putting in the landowners' name, or by inserting other information, such as the tax lot information into the database referred to above. In some cases, the database has the exact latitude and longitude of the well. In order to demonstrate the absurdity of this lack of analysis, especially in a region that so heavily relies on well water, a quick search was conducted for the named landowners using only their names:

[10] *Available at:* https://apps.wrd.state.or.us/apps/gw/well_log/

Landowner	Well Log	Primary Use	Location of Well (Township, Range, Section)
Bill Gow	DOUG 54922	Domestic	T: 29S R: 5W S: 7
Neal Brown	DOUG 52970	Domestic	T: 29S R: 8W S: 7
Deb Evans & Ron Schaaf	JACK 63503	Domestic	T: 39S R: 3E S: 32
Frank Adams	DOUG 2772	Domestic	T: 22S R: 9W S: 8
Gerrit Boshuizen	KLAM 52869	Irrigation	T: 40S R: 10E S: 28
John Clarke	DOUG 1751	Domestic	T: 29S R: 7W S: 1
Richard Brown	DOUG 54407	Domestic	T: 29S R: 8W S: 7

Almost all of the named landowners' water supplies will be negatively impacted by the Pipeline. For the McLaughlins, any disruption of their water by the construction or permanent installation of the Pipeline would significantly reduce or eradicate their water supply, which is already threatened by drought. Frank Adams has a well on the property that produces his water, and any digging, blasting, or trenching activities will severely jeopardize his water supply for his home and cattle. The proposed route will also channel water away from his well source. The Boshuizens flood irrigate their land, and the Pipeline would destroy this irrigation system, and their grass for their cattle will die, along with their hay crop. The Pipeline will also be within 300 feet of their well and drinking water source, and they have no idea as of yet how the right-of-way would impact their only access to potable water. Toni Woolsey has a private well on her property that's approximately within 180 yards of the proposed route, down by the Rogue River. There is no understanding of how the HDD under the river, and the drilling being so close to her well, will affect her only water source. Clarence and Stephany Adams' only source of water for themselves, their garden, and their orchard is within 400 feet of the Pipeline, and their water holding tank is within 130 feet. The Clarke family's only source of water on their property is a well, and the Pipeline could adversely affect and

permanently disrupt their only source of water. For the Gows, who are ranchers, their very way of life is threatened by the Pipeline. Their ability to irrigate water to their cattle and fields could prove impossible if the Pipeline is built. Richard and Twyla Brown rely on the drainage tile for irrigation, which the Pipeline would cut right through, destroying their ability to irrigate water, and any investment in those affected fields would be worthless.[11]

The Pipeline will also divert water all along the route. The following landowners are directly affected, or more than likely to be affected, by the Pipeline diverting water:

No.	Landowner	Pipeline Milepost #	Pipeline's Point(s) of Water Diversion (Nearest Milepost)	Diversion Source(s)	County
1	Richard and Twyla Brown	50	49.53	Lang Creek	Douglas
2	Stacey & Craig McLaughlin	68	67.12; 67.19.	Unnamed Stream; and South Umpqua River	Douglas
3	Bill & Sharon Gow	71.6	71.31	South Umpqua River	Douglas
4	Toni Woolsey	122.5	122.67	Rogue River	Jackson
5	Will & Wendy McKinley	123	122.67	Rogue River	Jackson

DEIS at 4-97-99.

The DEIS fails to conduct an even surface-level analysis of the impact of the Pipeline on many landowners' water source in rural Oregon. The above descriptions are just a snapshot of how this Pipeline will adversely impact landowners' access to water, which will affect their ability to live on their land, to raise cattle, to grow food, and to generally maintain their way of life. The Pipeline will affect the environment in a significant way that is currently not considered in the DEIS.

1. **Pacific Connector's Proposed Groundwater Supply Monitoring and Mitigation Program is Inadequate.**

[11] The DEIS states on 2-56 that the Pipeline will check and repair drain tiles before backfilling, with no explanation as to how.

Jordan Cove's proposed Groundwater Supply Monitoring and Mitigation Program ("the Plan") – all of 3 ½ pages -- is flawed in several different ways, as follows:

1. In section 1.1.1, the Plan notes that single-family homes do not have to get permits and thus are not found in any state database. This is not correct. As noted above in section I. C., many such wells can be found via the State of Oregon Water Resource database. Jordan Cove should be required to search all available databases for wells on all properties that it has identified as "affected properties" under 18 CFR 157.6.

Jordan Cove says that it will "attempt to identify any unregistered wells in the vicinity of the construction right-of-way". Aside from the problem with not knowing what "in the vicinity of" means, Jordan Cove should be required to locate all wells on all properties that Jordan Cove wants easements – whether for construction, access, storage, or for any other purpose.

2. In section 1.2.1, the Plan states that landowners will be advised to allow pre-construction monitoring of groundwater supply sources for water quality and yield, "if applicable". It is completely unclear what "if applicable" means in this context.

This section also says that pubic groundwater supplies within 400 feet of the construction disturbance will be considered "potentially susceptible to impacts", but "all other groundwater wells, springs and seeps" will be so considered if they are within 200 feet of the construction disturbance. No rationale is given to explain why non-public water supplies within 200-400 feet of the disturbance are not considered equally "susceptible to impacts". The Plan then says that "during construction", landowners with water supplies located beyond 200 feet "may request pre- or post-construction water sampling." The Plan does not explain how "pre-construction" monitoring can be accomplished "during construction". Moreover, all such monitoring should include pre-construction, during construction, and post-construction monitoring. By the time a problem is detected via post-construction monitoring, it may (a) be too late to do anything about it, or (b) have

already exposed people who have used that groundwater during construction to unsafe drinking water.

3. Section 1.3.1(a) provides that under the proposed "monitoring agreements" with landowners, the burden of proof to establish damage to the well is on the landowner. This places the landowner at a distinct disadvantage; in situations where construction or post-construction monitoring reveals a material change in water quality or yield, the burden of proof should shift to Jordan Cove to show that it was not responsible for that damage.

The Plan states that well owners will be asked to provide "preliminary well performance data", without specifying what data that would be. The Plan also limits testing to temperature, pH, turbidity, specific conductance, TPH, fecal coliform and nitrate. Monitoring for the presence of all fuels, solvents, and lubricants (which Jordan Cove acknowledges in section 2.1 will be used in construction) is also necessary to ensure that they have not leaked into drinking water.

4. Section 1.3.1(b) addresses monitoring of springs and seeps, and the same protocols should be applied to those as to groundwater supply wells.

5. Section 1.3.3.3 establishes a completely inadequate monitoring schedule, consisting of one pre-construction sampling, no sampling during construction, and a post-construction sampling "only if requested by landowner or in disputed situations". There should be at least two pre-construction samples taken, and at times far enough part to account for any seasonal variation in water quality or yield; there should be periodic (at least every three months) sampling during construction, and there should be two post-construction samplings, one immediately upon the end of construction, and one at some point later to detect contaminants that did not immediately migrate into the groundwater supply. The time between the end of construction and the second post-construction sampling should be determined by the amount and composition of soil between the construction site and the groundwater supply to account for migration time. There should also be a requirement that all

sampling results be provided to the landowner within 48 hours of Jordan Cove's receipt of those results, that Jordan Cove should maintain a publicly-available database of all such results, and that Jordan Cove report any violation of state or federal drinking water standards to the landowner and the Oregon Department of Water Resources within 24 hours.

6. Section 2.1 states that Jordan Cove has "prepared a Spill Prevention, Containment, and Countermeasures Plan", but gives no details as to what it contains or where it can be found. This section also does not say if and when landowners will be notified of spills on their land (or adjacent land), which should be mandatory within 24 hours of any spill.

7. Section 3.1 states that "Should it be determined after construction that there has been an impact on groundwater supply (either yield or quality), PCGP will work with the landowner to ensure a temporary supply of water, and if determined necessary, PCGP will replace a permanent water supply." This contemplates that such impacts will only be determined some unknown time "after construction", which could be years later, and potentially years after such an impact is detected by monitoring that takes place during construction.

Moreover, this section deliberately uses the passive voice in referring to the determinations of impact and the need for a permanent replacement water supply. It should be made clear who makes that determination, when it will be made, what information it will be based on, etc.

2. The DEIS does not properly address the adverse effects of HDD.

The Pipeline proposes to use the HDD method to cross under the Rogue River. As stated in the DEIS, "HDD requires the use of drilling mud (bentonite) as a lubricant which may leak (also referred to as a frac-out). This fluid is under pressure and there is a possibility of an inadvertent release of drilling mud through a substrata fracture, allowing it to rise to the surface." DEIS at 4-284. Landowners Toni Woolsey, the McKinleys, and Alisa Acosta all own land on or around the Rogue River, and the potential effects on their drinking and irrigation water because of the use of

HDD have not been addressed in the DEIS.

It is a fact that HDD crossings, even when successful, have impacts in neighboring areas where staging and construction occur. HDD also requires the disposal of materials extracted from the drill hole. Many HDD attempts fail, resulting in "frac-outs," situations in which large amounts of sediment and bentonite clay (used as a drilling lubricant) get released into the water.

D. The DEIS Fails to Adequately Address the Adverse Impacts of the Pipeline Using Herbicides or Toxic Chemicals to help maintain its Right-of-Way.

Many of the named landowners do not utilize herbicides or pesticides on their land, and with good reason. Stacey and Craig McLaughlin do not use herbicides or pesticides on their land for health and safety reasons. The use of harmful chemicals could kill Clarence & Stephany Adams' bees. Toxic spray would also have a negative impact on the Adams' horses, and increase the cost of feeding them, and could kill their birds that they keep in their aviary. The herbicides could also have an effect on the Adams family's health, especially when one takes long-term exposure into consideration.

The Browns have kept their farm free from herbicides for over 10 years. Deb and Ron use organic growing methods, and they are opposed to the use of harmful, synthetic sprays and fertilizers. Frank Adams' grape vines and orchard will be in continuous danger from spraying by the Pipeline, which they plan to do several times a year.

However, the harmful insecticides and herbicides that the landowners have been actively avoiding for years are exactly what the company is proposing to use to maintain the right-of-way, and both herbicides and insecticides will be used indefinitely by the company to maintain their easement as desired. *See* DEIS 4-167-170; and the Pipeline's *Integrated Pest Management Plan* ("IPMP"), Appendix N of the Pipeline's POD submitted to FERC January 23, 2018. The Pipeline's use of herbicides over their easement would obviously directly conflict with how many landowners manage their land, animals, and family's health.

In addition, the Pipeline plans on having very minimal monitoring standards for invasive species and noxious weeds, with monitoring "will occur for a period of 3 to 5 years on federal lands", and no specific monitoring plan for private lands where people actually live and work. In southern Oregon, there is quality growing capacity, and the Pipeline corridor will quickly become full of invasive species, which inevitably will spread beyond the corridor.[12] The Pipeline has no plan for this, other than if this occurs, it "*may* also fund local county weed control boards, soil and water conservation districts, Cooperative Weed Management Area, or watershed associations that are authorized to control weeds in the specific count". IPMP at 7-8 (emphasis added). In other words, the Pipeline has no plan for the spread of invasive species on private land, and may chose, *if* it so desires, to give some money towards local organizations that may or may not be able to help landowners. In other words, the landowners are left to their own devices to figure out how to deal with the inevitable invasive species that will grow, and the poisonous spray that the Pipeline will drop on their land and its effects. This is not a "plan" in any sense of the word.

E. The DEIS Fails to Measure the Negative Impact on Landowners' Timber.

The Pipeline will cut a 95-foot temporary right-of-way, as well as associated temporary work areas for an approximate 2-year period, and maintain a permanent 50-foot easement. The old growth forest that the Pipeline will be destroying is irreplaceable. Many of the Landowners will lose significant income, and irreplaceable sentimental value, if the Pipeline is permitted to cut the trees on their land.[13] The DEIS also fails to outline a proper plan for timber, timber removal, and the

[12] This will also increase the chances of forest fire during the dry season.

[13] If the Pipeline is permitted to be built, the DEIS should also make it abundantly clear that no tree felling activities are to begin until all required permits are obtained by the Pipeline company. Further, the DEIS should include a timeline where once the Pipeline commences tree felling on a piece of property, the Pipeline should be required to remove felled trees from private land within a certain period of time, so they don't remain there indefinitely or lose their value rotting on the ground. The DEIS should also specify that the Pipeline is responsible for any cleanup of an area where the Pipeline has felled trees, so landowners are not left paying for the Pipeline's mess.

effects on landowners' abilities to remove timber on their land in the future. *See* DEIS 4-422-428.

Even if landowners are properly compensated for their timber, the DEIS fails to address how the landowners are to continue logging and forest maintenance after the Pipeline is in the ground. As noted in Seneca Jones Timber Company's July 2017 letter to FERC, "Actual experience in requesting bids on a harvest area dissected by a gas pipeline, resulted in bids from independent contractors in excess of 300% higher than a typical logging bid for similar equipment and topography. Even in a good lumber market, the profit margin on this area of timber was significantly and detrimentally impacted as a result of a placement of a gas pipeline." *Exhibit* 14, at 3. If a big timber company like Seneca Jones can't figure out how to properly log and turn a profit after the pipeline is in the ground after over a decade of working with pipeline companies trying to figure it out, how could FERC possibly expect private landowners to do so? The DEIS must require the Pipeline company to complete an evaluation and draft a comprehensive plan on how all private landowners with timber will be able to continue logging and maintaining their forest after the Pipeline is in the ground. The Pipeline should obviously have to pay for any needed infrastructure or roads for each landowner to continue their logging activities.

F. There is Insufficient Analysis of the Effects on Landowners' Planned Property Improvements.

The DEIS is largely dismissive of the effects that the Pipeline will have on Landowners' plans for their land and for their future. The DEIS states: "Comments received from affected landowners and other interested parties during scoping expressed concern that the pipeline would affect the ability of landowners to undertake small-scale developments, such as adding a home site, bar, or other structure, or subdividing a lot into two parcels for development. *In some cases,* Pacific Connector modified the route of the pipeline to avoid improvements on private parcels […]." DEIS at 4-421. None of the above-named landowners were accorded any such leniency by the Pipeline in its plans for their land.

For example, the current proposed route goes straight through where Deb and Ron planned on building their home, and the very reason why they bought their property in the first place. The Pipeline route through the Gows' land will destroy their irrigation system for their ranch. The route currently cuts directly through the Acosta Trust's orchard and airstrip, where there had plans to continue growing their outdoor recreation business, and will destroy a valuable public resource of a potential staging area for emergency services, including fire suppression and search and rescue. The Browns will lose their future investment in old growth timber. The Pipeline cuts Clarence Adams' property in half, goes right by his home, and cuts directly over where they planned to drill another well for irrigation purposes. The Browns have put their family legacy plans of investing in cash crops for the land completely on hold because of the possibility of a Canadian company coming through and ripping open a 95-foot swath through what they just planted. Mrs. McKinley's mother originally purchased the land for retirement, and the Pipeline completely destroyed that dream.

For the DEIS to brush off the future plans of landowners as insignificant is an insult to southern Oregonians and all of the blood, sweat, and tears that they have put into their land. The DEIS and the Pipeline should take a serious look at how the Pipeline is not only destroying the fruits of many years of labor of already existing development on people's properties, but also destroying future plans as well.

G. The DEIS Fails to Analyze the Negative Psychological Effects on Landowners, especially the Elderly, with Physical Manifestations, for a Project that has been Pending for over 15 Years.

Affected landowners along the Pipeline route have been distraught over this project for nearly 15 years. Rumors of an LNG import project began circulating around 2004, and concern grew among landowners about their health, safety, effect on their environment, and adverse impacts on their way of life and land. This concern and worry have grown exponentially ever since.

As captured by psychiatrist Landy Sparr, M.D., "The significantly protracted nature of the

potential pipeline project going through their land hanging over their heads, and in combination with their advanced age, makes the landowners more vulnerable and subject to the adverse mental and emotional impacts of having an unwanted intrusion on their property. Further, most individuals become less flexible and adaptable as they age. This combined with an expected increase in medical problems, and now over 15-years of uncertainty about their property erodes each landowner's resilience, resulting in a climate of fear and powerlessness. […] [T]he pipeline has significantly contributed in a negative way to each landowner's sense of a secure future." *Exhibit* 15*,* Landy F. Sparr, M.D. F.A.P.A., *The Psychological Effects of the proposed Pacific Connector Pipeline on Affected Individual Landowners,"* June 2019, incorporated by reference. The DEIS fails to take into consideration the adverse effects of the protracted nature of this proposed Pipeline on landowners, their families, and their communities.

H. DEIS Reaches an Incorrect Conclusion on Resumption of Land Use.

The DEIS incorrectly concludes "that constructing and operating the Project would not significantly affect land use." DEIS at 5-6. There is little or no basis for this conclusion. For example, neither FERC nor the Pipeline company have given any indication to private companies or landowners on how to resume normal activities such as timber harvesting. As noted in Seneca Jones' Letter to FERC:

> Gas pipeline installers are extremely reluctant to allow forest yarding operations, the hauling of heavy equipment, excavation, blasting, or use of vibratory equipment near or across underground gas lines. These are normal forest operations necessary for harvesting and road maintenance activities. PCP requests that landowners identify alternatives or determine in advance potential crossing locations in order to bolster these areas. In a search for alternative solutions, out timberland and access routes are significantly affected which come at an increased cost. Identifying advance potential crossing locations does not adequately address our needs, based on field meetings with PCP representatives, who agree these areas are difficult. Additionally, we have concerns that utilizing heavier walled pipe in areas where intensive forestry occurs may not be a viable solution, as FERC standards do not require this type of construction in less populated areas.
>
> *Ex.* 14*,* Seneca Jones Timber Company Letter to FERC.

If a large company such as Seneca Jones has not been able to solve this significant land use issue with regards to timber, it is a mystery as to how FERC or the Pipeline expect private landowners to solve such complex issues on their own. This includes the Pipeline's interference or destruction of landowners' water sources, ability to irrigate water for animals and agriculture, invasive species on the pipeline route, insecticide and pesticide spraying (almost certainly to be done aerially, with resultant (and unwelcome) drift onto Landowners' property, fire mitigation and prevention, unwanted intrusions by 3rd parties via the open Pipeline corridor, and so on. Land uses will clearly be significantly impacted by the Pipeline, and the DEIS should offer analysis on such impacts. The Pipeline clearly has no public benefit for Oregonian people, and the Certificate Application should be denied with prejudice, so landowners like those named above can finally live out their days in peace.

II. THE DEIS DOES NOT SATISFY THE REQUIRMENTS OF NEPA.

A. The DEIS violated NEPA Because it Explicitly States That the Stated Purpose and Need for the LNG Facility and the Pipeline Are Outside the Scope of the DEIS.

The DEIS states:

> The purpose and need of the Jordan Cove LNG Project is to export natural gas supplies derived from existing interstate natural gas transmission systems to overseas markets. The purpose and need of the Pacific Connector Gas Pipeline Project is to connect the existing interstate natural gas transmission systems of Gas Transmission Northwest, LLC and Ruby Pipeline, LLC with the proposed LNG export terminal. DEIS ES-1.

Elsewhere, the DEIS states that Jordan Cove has explained more specifically that the purpose of the LNG Facility is to export gas from the "Rocky Mountain region and Western Canada" to overseas markets, "particularly in Asia." Moreover, this is "a market-driven response" to the increasing natural gas supplies those regions and the growth of Asian demand. DEIS 1-6. But the purpose of the Pipeline is somewhat more specific: "In its application, Pacific Connector states that the purpose of its project is to connect the existing interstate natural gas transmission systems of GTN and Ruby with proposed Jordan Cove LNG terminal."

Thus, while the purpose of the LNG Facility is to export Canadian and U.S. gas to Asia, the purpose of the Pipeline is to supply those exports from two particular pipelines at one specific location. This intention is then repeated:

> As described previously, the purpose and need of the Jordan Cove Project is to export natural gas supplies derived from existing interstate natural gas transmission systems to overseas markets; and the purpose and need of the Pacific Connector Project is to connect the existing interstate natural gas transmission systems of GTN and Ruby with the proposed Jordan Cove LNG terminal. DEIS 3-2.

The issue of the ultimate purpose of the Project being to export natural gas supplied from a single specific location is discussed further in section B, below. Relevant here is despite the fact that section 3 of the Natural Gas Act ("NGA") requires FERC to decide whether the Facility is "consistent with the public interest", and NGA § 7 requires it to decide whether the Pipeline is required "by the public convenience and necessity", FERC states that comments about "the public benefit or need to export LNG" are "outside the scope of this EIS", and that "[t]hese issues are not addressed in this EIS." DEIS 1-18.

This can mean one of two things, *i.e.*, FERC means only that comments about a *generalized* "public benefit or need to export LNG" are outside the scope of the DEIS, or FERC means that comments about "the public benefit or need to export LNG" *from the LNG Facility* are outside the scope of the DEIS. The DEIS is deficient because it does not explain which of these two meanings applies. And, in any event, by saying that the DEIS will not discuss the purpose or need to export natural gas[14] – which is what FERC itself has said is the LNG Facility's purpose – FERC has violated NEPA's requirement that "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 CFR 1502.13. While FERC may have stated the "underlying purpose and need", certainly NEPA

[14] The fact that the ultimate form of the natural gas being exported is in the form of LNG is irrelevant to this analysis.

could not be interpreted to mean that the agency is allowed to state what the ostensible purpose and need is and then simply refuse to discuss it any further.

B. The Alternatives Analysis in the DEIS is Fundamentally Flawed Because It is Based on the Unsupported Premise that there is a Market Demand for the Project.

In addition to being flawed from the outset by FERC's position that the DEIS will not discuss what FERC says is the very purpose of the Facility, the alternatives analysis is then made completely useless by presenting absolutely no support for the primary justification for the Project and each of the alternatives, *viz.*:

> Given that the Project is market-driven, it is reasonable to expect that if the Jordan Cove LNG Project is not constructed (the No Action Alternative), export of LNG from one or more other LNG export facilities could also be authorized by the DOE and eventually be constructed. Thus, although the environmental impacts associated with constructing and operating the Project would not occur under the No Action Alternative, equal or greater impacts could occur at other location(s) in the region as a result of another LNG export project seeking to meet the demand identified by Jordan Cove. DEIS 3-4.

There is absolutely no discussion or evidence of any kind anywhere in the DEIS supporting Jordan Cove's claim that the Project is "market driven". Nevertheless, FERC has accepted this claim – the foundation of the entire Project and each of the alternatives discussed – at face value, and then parrots it throughout. Because each of the alternatives FERC presents is expressly based on the completely unsubstantiated claim that there is a "market demand" for the project, FERC's entire alternatives analysis fails.

Nor should FERC be surprised at this. Only 3 years ago, FERC denied authorization for the previous iteration of the Project on the basis that there was no market demand for LNG from the LNG Facility. Order Denying Applications for Certificate and Section 3 Authorization, March 11, 2016 154 FERC ¶ 61,190. It then reaffirmed this conclusion in its decision in its Order Denying Rehearing, December 9, 2016, 157 FERC ¶ 61,194, p. 2 (citation footnote omitted):

> The [original] order found that Pacific Connector presented little or no evidence of need for the Pacific Connector Pipeline. Pacific Connector had neither entered into any precedent

> agreements for its project, nor had it conducted an open season, which might have resulted in "expressions of interest" the company could have claimed as indicia of demand. . . . The order found that the generalized allegations of need proffered by Pacific Connector did not outweigh the potential for adverse impact on landowners and communities.

In denying rehearing, FERC then reiterated its conclusion that, "Here, the Applicants failed to make any significant showing of demand." *Id.* p. 10. And the reason, of course, why there was no demand for gas to be transported on the Pacific Connector was that there was no demand for LNG from the LNG Facility.

FERC acknowledges that under the permits issued by the Department of Energy ("DOE") for the project, "Jordan Cove must also file with the DOE/FE copies of executed long-term contracts for both natural gas supply and the export of LNG." DEIS 1-11. This is correct; DOE/FE ORDER No. 3413, *Exhibit* 16, p. 154, requires that Jordan Cove must report to DOE "all executed long-term contracts associated with the long-term export of LNG on its own behalf or as agent for other entities from the Jordan Cove Terminal" and "all executed long-term contracts associated with the long-term supply of natural gas to the Jordan Cove Terminal." More specifically, *id.* p. 156 (emphasis added):

> M. Jordan Cove shall file with the Office of Oil and Gas Global Security and Supply, on a semi-annual basis, written reports describing the progress of the proposed liquefaction and pipeline project. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the progress of the liquefaction and pipeline project, the date the liquefaction facility is expected to be operational, *and the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts.*

All Jordan Cove has reported as of April 1 of this year is that, "JCEP has also continued its negotiations with prospective customers for liquefaction services." *Exhibit* 17, p. 1. In other words, *there is still no evidence of any demand for the Project's LNG,* and, consequently, *no evidence of any demand for gas to be transported on the Pipeline which will provide 100% of its gas to the LNG Facility.*

None of this is surprising. As described in the report *Natural Gas Supplies for the Proposed Jordan Cove LNG Terminal* (McCullough Research, July 3, 2019, p. 5; footnotes omitted; attached as

Exhibit 18):

> On July 2, 2019, the JKM index [price of landed LNG in Japan] was $4.625/MMBtu. The breakeven price (the price at which the project would earn zero profits and merely recover its costs) for Jordan Cove is $4.27/MMBtu. The natural gas price at the Malin hub is $1.99/MMBtu. When the cost of transportation to Japan is added in, the cost of Jordan Cove LNG is $7.13/MMBtu. If today's prices would prevail into the future, Jordan Cove would lose $2.50 for every MMBtu shipped.[15]

In short, there is no evidence that there is any market demand for LNG from the LNG Facility, and much evidence – including from Jordan Cove's own reporting –that there is no such demand.

C. The Alternatives Analysis is Artificially Narrow Because it is Limited to Projects Exporting Natural Gas from the Malin Terminal.

If the "purpose" of the Project is to "is to export natural gas supplies derived from existing interstate natural gas transmission systems to overseas markets", or even more specifically export natural gas from the "Rocky Mountain region and Western Canada" through those systems, then the alternatives analysis should have considered any one of the myriad ways that could have been accomplished. But the DEIS then artificially narrows the purpose from exporting Canadian or Rocky Mountain natural gas "from existing interstate natural gas transmission systems" to exporting that natural gas *specifically from the Malin hub*. The DEIS does this by artificially breaking the Project into two components (the Facility and the Pipeline), and then letting the Malin hub pipeline tail wag the LNG Facility export dog. Every one of the alternatives was based on the gas being supplied from that one point in the entire interstate pipeline system which, according to the Bureau of Transportation statistics, in 2017 consisted of over 300,000 miles of pipelines (https://www.bts.gov/content/us-oil-and-gas-pipeline-mileage; last visited July 2, 2019). And nowhere does the DEIS ever explain *why* the gas that is to be exported has to come from the Malin

[15] For the sake of argument, this analysis uses the price of natural gas at Malin hub. As the report explains, Jordan Cove will almost certainly be using gas purchased upstream in Canada (id., pp. 1-3, 8-15); even using the lower AECO hub price ($0.58/MMBtu cheaper than Malin Hub; p. 5), it still means that Jordan Cove would be losing $1.92 for every MMBtu shipped.

Hub, as opposed to anywhere else on those 300,00 miles of pipe that is accessible to gas from Canada and the Rocky Mountain Region. By defining the purpose of the project as "piping gas from Malin Hub to Jordan Cove", FERC has made the DEIS alternatives analysis artificially narrow in order to arrive at a preordained conclusion.

A useful analogy might be a proposed project whose purpose was to build a road to allow people in cities A and B to travel directly between them. Presumably there would be some consideration in the alternatives analysis for that road of whether people in A and B actually had any need or interest in going back and forth, whether they already had an adequate road between them, whether a train might not be a better way to accomplish this, etc. But no alternatives analysis would say, "Well, the project is a road from A to B, and we're not going to examine if there is actually any demand for it (the 'market need' for the Project's LNG), or whether there is any better way to go between A and B (any other way of exporting Canadian and Rocky Mountain gas) than a new road between them" (the Pipeline). But that is *exactly* the scenario that FERC has laid out in the DEIS. By not examining whether it would be more feasible to meet the alleged need to export Canadian and Rocky Mountain gas *from any other pipeline or pipeline hub in Canada or the U.S.*, the DEIS has artificially constrained the chosen alternatives so as to predetermine its conclusion.

III. EXPORTING DOMESTICALLY-PRODUCED NATURAL GAS IS NOT A VALID PURPOSE UNDER § 7 OF THE NGA.

A. The Purpose of the Natural Gas Act.

When Congress passed the Natural Gas Act ("NGA") in 1938, its express goal was to protect U.S. gas consumers from predatory pricing that had resulted from a concentration of pipeline capacity into a small number of companies, and the inability of state regulators to reach interstate natural gas transactions. As the Supreme Court observed in *Federal Power Com. v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944):

> Moreover, the investigations of the Federal Trade Commission had disclosed that the majority of the pipe-line mileage in the country used to transport natural gas, together with an increasing percentage of the natural gas supply for pipe-line transportation, had been acquired by a handful of holding companies… State commissions, independent producers, and communities having or seeking the service were growing quite helpless against these combinations. These were the types of problems with which those participating in the hearings were pre-occupied. Congress addressed itself to those specific evils.

"As the industry developed, ownership of the pipelines came to be concentrated in the hands of a few companies, and state utility commissions, which had regulated intrastate pipeline sales to local distributors, found themselves unable, because of a combination of factors, to regulate the prices of the new interstate giants." *Texas Gulf Coast Area Natural Gas Rate Cases v. FPC,* 487 F.2d 1043, 1091 (D.C. Cir. 1973).

Congress responded with the Natural Gas Act, whose provisions "were plainly designed to protect the consumer interests against exploitation at the hands of private natural gas companies." *Federal Power Com. v. Hope Natural Gas Co.*, 320 U.S. 591, 612 (1944). "The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." *Atlantic Ref. Co. v. PSC of New York*, 360 U.S. 378, 388 (1959).

In short, the entire purpose of the NGA was to protect U.S. natural gas consumers. This was reflected in section 1(a) of the Act, which noted "that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest". Thus while the NGA contemplated the regulation of the import and export of natural gas in § 3, that section must be read in light of Congress's goal of protecting U.S. consumers.

B. Historically, FERC has failed to describe any benefit to U.S. consumers in almost all of its section 7 determinations for pipelines serving LNG export facilities.

FERC has historically sidestepped the issue of what benefits accrue to U.S. consumers from exports of LNG. FERC has issued section 3 authorization and accompanying section 7 certificates

to 12 LNG facilities in the U.S.[16] Of these 12 facilities, three needed them only for minor modifications of existing pipeline infrastructure: Cove Point (CP13-113; 9/29/2014; 148 FERC ¶ 61,244), Freeport (CP12-509-000; 7/30/14; 148 FERC ¶ 61,076)[17], and Magnolia (CP14-347; 4/15/16; 155 FERC ¶ 61,033), and nine needed them for new pipeline construction. In seven of those nine facilities that needed § 7 certificates, FERC either simply said there are benefits that outweigh the other Certificate Policy Statement criteria without listing or describing those benefits in any way (five facilities), or cited the unquantified economic benefits DOE found in its decisions granting authority for the facility to export to non-Free Trade Agreement ("non-FTA") countries (two facilities). One of the remaining two (Corpus Christi; CP12-507; 12/30/14; 149 FERC ¶ 61,283), is also an import facility, which FERC did not say would benefit U.S. natural gas consumers, but it is possible that could have come to pass. Thus in only one of these decisions did FERC describe tangible benefits that might accrue to U.S. consumers from the pipeline's construction.

No benefits/export itself is the benefit. In five of the section 7 certificates, FERC cites no benefits whatsoever, or that the benefits are simply the export of natural gas:

Driftwood (CP17-117; 4/18/19; 167 FERC ¶ 61,054 para. 35): "Driftwood Pipeline's proposed project will enable it to transport natural gas to the Driftwood LNG Project, where the gas will be liquefied for export." In other words, the mere export of natural gas is the benefit.

Golden Pass (CP14-518-000; 12/21/2016; 157 FERC ¶ 61,222 para. 32): "Based on the benefits the proposed project will provide and the minimal adverse effect on existing customers, other pipelines and their captive customers, landowners, and surrounding communities, we find . . . ." But FERC referred to "the benefits the proposed project will provide" *without ever stating what those*

[16] One other authorized facility (Delfin) is located offshore and is not permitted by FERC.
[17] In 2005, FERC granted Freeport permission to export a specific amount of LNG that it had previously imported for its facility that it no longer needed, and gave Freeport 24 months to so.

benefits would be.

Port Arthur (CP17-20; 4/18/19; 167 FERC ¶ 61,052 para. 36): Again, FERC's conclusory determination: "In view of the considerations above, we find that Port Arthur Pipeline has demonstrated a need for the Louisiana Connector and Texas Connector projects**,** and that the benefits each project would provide outweigh their adverse effects on existing customers, other pipelines and their captive customers, landowners, and surrounding communities." Once again, nowhere in the document does FERC ever describe the alleged "benefits each project would provide".

Sabine Pass (CP13-552; 4/6/2015; 151 FERC ¶ 61,012 para. 37): "Creole Trail's proposal will enable it to transport increased quantities of domestically-sourced gas to Sabine Pass's LNG terminal where the gas will be liquefied for export." Like Driftwood, the benefit is apparently nothing more than the export of natural gas.

Venture Global (CP15-550; 2/21/2019; 166 FERC ¶ 61,144 para. 25): "TransCameron's proposed pipeline will enable it to transport domestically-sourced gas to the Calcasieu Pass LNG terminal, where the gas will be liquefied for export." This is the same approach as Driftwood and Sabine Pass- exporting natural gas is the "benefit."

Unquantified economic benefits

In two of the section 7 certificates, FERC cites only to DOE's statements in its NFTA decisions to the effect that exports would result in increased production that could inure to the benefit of U.S. consumers, followed by recitation of the vague and unquantified economic benefits that DOE found:

Cameron (CP13-25-000; 6/19/2014; 147 FERC ¶ 61,230 para. 29; footnotes omitted) cites DOE's NFTA decision:

> Among other things, DOE found that exports from Cameron LNG's facility would result in increased production that could be used for domestic requirements if market conditions

warrant such use, which would tend to enhance U.S. domestic energy security. DOE also found several other tangible economic and public benefits that are likely to follow from the requested authorization, including increased economic activity and job creation, support for continued natural gas exploration, and increased tax revenues.

Lake Charles (CP14-119; 12/17/2015; 153 FERC ¶ 61,300 para. 37) cites DOE's NFTA findings:

> In conditionally granting LCE long-term authorization to export LNG from the terminal, DOE recognized substantial evidence of economic and other public benefits, concluding that the authorization was not inconsistent with the public interest. We recognize DOE's public interest findings in issuing our order. Among other things, DOE found that exporting natural gas will lead to net benefits to the U.S. economy and can counteract concentration within global LNG markets, thereby diversifying international supply options and improving energy security for U.S. allies and trading partners. On balance, DOE found that the likely net economic benefits and other non-economic or indirect benefits outweighed the potential negative impacts of the proposed exports.

Tangible benefits to U.S. consumers from the section 7 decision:

In only one of these section 7 decisions did FERC give any detail beyond vague allusions to "energy security" and "economic benefits" as to what actual benefits the section 7 activities might provide to U.S. consumers:

Southern (CP14-103; 6/1/16; 155 FERC ¶ 61,219 paras. 35, 37):

> Further, by facilitating the transportation of natural gas to the terminal for liquefaction and export, as well as to multiple markets in the southeastern U.S., the Elba Express Modification Project will provide a critical transportation link and will increase the supply options available for shippers connected to Elba Express's system. . . . 37. The Elba Express Modification Project is fully subscribed and the shippers will have access to new markets and supplies. Further, the project will facilitate the bi-directional flow of natural gas on the Elba Express Pipeline and thus enhance flexibility and reliability for new and existing customers.

C. Exporting Domestically-Produced Natural Gas That Does Not Benefit U.S. Consumers is not a Valid Purpose Under the NGA.

Citing the Commission's "Certificate Policy Statement"[18], the DEIS describes FERC's role in deciding the applications before it in this proceeding:

[18] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), clarified in 90 FERC ¶ 61,128, and further clarified in 92 ¶ 61,094 (2000).

> Specifically, regarding whether to authorize the siting of an LNG terminal under NGA Section 3, the Commission would approve the proposal unless it finds the proposed facilities would not be consistent with the public interest. In considering whether or not to issue a Certificate to a natural gas pipeline under NGA Section 7, the Commission would balance public benefits against potential adverse consequences, as documented in the Order. The Commission bases its decision on technical competence, financing, rates, market demand, gas supply, environmental effects, long-term feasibility, and other issues concerning a proposed project.

DEIS 1-7 (footnote omitted). As FERC described it in its previous rejection of this project:

> The purpose of the Certificate Policy Statement is to establish criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to consider other interests, including environmental impacts. 157 FERC ¶ 61,194 at ¶ 29.

One remarkable thing about Jordan Cove is that the only public benefits that the DEIS identifies are a handful of purely economic ones: jobs (almost all temporary) and taxes (mostly unquantified). And because almost all of those are merely the temporary benefits that come from building the Project, those are not even a useful "benefit" metric for purposes of either the Natural Gas Act nor the Takings Clause, since the same will always be true for any and all infrastructure projects. The DEIS does not describe any benefits to U.S. gas consumers (or anyone else, aside from the local economic ones) from the Project. This is not surprising, given FERC's historical difficulty in finding any such benefits from LNG export facilities.

Assuming, *arguendo*, that permanent jobs and permanent tax revenue would properly qualify as "benefits" for purposes of either NGA section 3 or section 7, or the Takings Clause, the Facility itself will provide at most (according to Jordan Cove's almost certainly inflated numbers) 200 permanent jobs (DEIS 4-594), another 1,602 jobs supported by Project spending (*id.*) and some undetermined amount of tax revenue. In fact, the entire discussion of the Facility's post-construction impact on tax revenue is contained in less than a single sentence: "operation of the Jordan Cove LNG Project would also generate state and local tax revenues, including revenues from payroll taxes." *Id.*

In addition to the Facility, the Pipeline is expected to create 15 permanent jobs (DEIS 4-604), and the discussion of the Pipeline's post-construction impact on taxes is at least somewhat more specific than the discussion of the Facility's: "Over the initial 20 years of operations, the pipeline is expected to generate approximately $4.7 million in average annual property taxes in Coos and Douglas Counties and approximately $5.3 million in average annual property taxes in Jackson and Klamath Counties". DEIS 4-611. And while the DEIS admits that, "Property tax payments would vary over time due to pipeline depreciation and changing tax rates" (*id.*), Landowners note that the 20-year timeframe is illusory since the Pipeline would certainly be fully depreciated long before that.

In short, the DEIS identifies *no* "public" benefits beyond those purely economic ones. And while FERC interprets the CPS to mean it only has to weigh those economic benefits against adverse economic impacts, the DEIS nowhere quantifies what those adverse economic impacts might be. In fact, the DEIS does such a good job of not quantifying any "adverse effects on economic interests" it is difficult to discover if the DEIS has described any such impacts at all. Thus the DEIS allows FERC to compare (somewhat) defined quantitative "benefits" against undefined and unquantified adverse effects, and no one reading the DEIS would have any doubt as to how that comparison would turn out.

More importantly, the DEIS does not even attempt to identify *any* public benefit from the Project concerning natural gas: not natural gas production, natural gas distribution, natural gas prices for consumers, etc. Nothing. Since the entire purpose of the NGA was to protect U.S. consumers, it is impossible to see how any benefit described in the DEIS achieves – or even tries to achieve – that objective.

D. FERC cannot use section 7 to authorize a pipeline carrying 100% of its gas for export; FERC may only authorize such a pipeline under section 3.

When Congress enacted the Natural Gas Act in 1938 (June 21, 1938, ch. 556, §3, 52 Stat.

822), it created two different regimes for pipelines, one in section 3, and one in section 7. Section 3 granted the Commission[19] authority to permit import and export of natural gas, and section 7 granted the Commission, the authority to permit interstate natural gas pipelines. At that time, Congress did not provide for the use of eminent domain for either import/export pipelines under section 3, or interstate pipelines in section 7.

When Congress amended section 7 in 1947 to provide eminent domain authority for interstate pipelines (July 25, 1947, ch. 333, 61 Stat. 459), it did so in order to fill the gap created by state court decisions holding that such interstate pipelines were not entitled to use state eminent domain procedures:

> In many of the States, such as Missouri, Illinois, Indiana, West Virginia, and others, the constitutions and statutes of such States,' which confer the right of eminent domain; provide that property may be taken for public use. The term "public use" has been construed by the courts to mean for the use of the public of the particular State conferring the right of eminent domain.

S. Rep. 429 (July 3, 1947), p. 2. Thus interstate pipelines which "[do] not distribute natural gas in each of the States crossed, would not have the right of eminent domain under the constitutions and statutes of such States authorizing the taking of property for a public use." *Id.* And so Congress remedied this situation by adding federal eminent domain authority in section 7(h).

But even though export pipelines would also run into the exact same "public use" limitations under state law as interstate pipelines, Congress did not grant eminent domain authority to those pipelines. The legislative history of the 1947 amendment (H. Rep. 695, June 25, 1947, and S. Rep. 429, July 3, 1947) makes no mention of section 3, and there was no floor debate on the bill (1947 Cong. Record 8351).

Congress did amend section 3 in 1992, adding subsections (b) and (c), and redesignating the

[19] The statute granted these authorities to the Federal Power Commission; section 3 authority was subsequently delegated to the Department of Energy, which in turn re-delegated certain duties to FERC. Section 7 authority was subsequently delegated to FERC.

original section 3 as section 3(a) (Pub. Law 102-486, Title II § 201, October 24, 1992), but leaving the text unchanged. It reads:

> After six months from June 21, 1938, no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

In 2005, Congress amended section 3 to add subsections (d)-(f), and in subsection (e) gave FERC "the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal." Congress did not give eminent domain authority to LNG terminals, and in adding the definition of "LNG terminal" to section 2, specifically carved out of that definition, "any pipeline or storage facility subject to the jurisdiction of the Commission under section 7."

Thus, when Congress amended section 3 to address LNG facilities, export pipelines did not have eminent domain authority, and presumably Congress wanted things to stay that way. And there is nothing in what Congress did in 2005 to indicate that it was intending to convert export pipelines into interstate pipelines merely because the same pipeline would now be supplying an export facility, as opposed to directly crossing a border itself. In fact, by carving out section 7 pipelines from the "LNG terminal", Congress was making it clear that it did not want to change how section 7 pipelines were treated should any of those now also connect to an LNG export facility.

In fact, Congress clearly intended section 3 pipelines to continue to be treated as such even if they now connected to an LNG export facility. When Congress amended the NGA, not only did it do so against the backdrop of a prominent D.C. Circuit decision holding that a gas pipeline

providing gas to a third party within the United States, and who then transferred the gas across the border to Mexico, was subject to section 3 and *not* section 7, but it was a case that Congress had been repeatedly asked to legislatively overrule and had consistently declined to do so.

In *Border Pipe Line Co. v. Federal Power Commission*, 171 F.2d 149, 150 (D.C. Cir. 1948) the petitioner owned and operated a pipeline that "sells its gas at its terminus near the Rio Grande River to an industrial consumer which transports the gas into Mexico". The Petitioner was operating under a section 3 permit (*id.* at 150, n. 1), but subsequently the Commission decided that the pipeline was subject to section 7.

The Court disagreed, holding that this was an export pipeline subject to section 3, and not section 7, on the grounds that section 7 only applied to pipelines in interstate commerce, and – despite the fact that the pipeline delivered its gas to a third party who then shipped it over the border – this was an export pipeline.

Congress was well aware of the *Border Pipe Line* decision; in fact, when the Commission asked the D.C. Circuit to overrule it 26 years later in *Distrigas Corp. Federal Power Commission*, 495 F.2d 1057, 1063 (1974) (footnotes omitted and added), it declined to do so, noting that:

> Since *Border*, the Commission has asked Congress, on fourteen separate occasions, to enact legislation overruling it; each time, Congress has refused. Indeed, in 1953, Congress amended the Federal Power Act to include the equivalent of the *Border* interpretation, thus implicitly approving it.[20]

Thus in 2005 Congress legislated while knowing full well that a pipeline exclusively supplying an LNG export facility would be treated as a section 3 pipeline, and that section 3 facilities do not have eminent domain authority.

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[20] The Federal Power Act amendment that the Court cited is 16 U.S.C. § 824a(f), which provides: "The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from the State across an international boundary and not thereafter transmitted into any other State . . . shall not make a person a public utility subject to regulation as such under other provisions of this subchapter."

The distinction between sections 3 and 7 runs even deeper in the context of eminent domain. Under section 3, the Commission shall grant the application, unless "it finds that the proposed exportation or importation will not be consistent with the public interest." That is a far different test than what Congress used in section 7, where the Commission shall issue approve the application if it finds both that the applicant "is able and willing properly to do the acts and to perform the service proposed", and that the proposed action "is or will be required by the present or future public convenience and necessity."

Thus section 7 has two criteria that section 3 does not, and Congress was aware of both when it added eminent domain authority in 1947. The first is that under section 7, the Commission must affirmatively find that the applicant will be able to do what it proposes to do, while no such finding is required under section 3. This makes perfect sense if the consequence of the Commission granting a Certificate means that the applicant then gets to forcibly take people's property; Congress certainly didn't want property taken if the project were not going to actually get built. As discussed below, this has become a serious issue in connection with the Commission's practice of granting conditioned certificates, which can (and has) resulted in the taking and destruction of private property for projects that are never built.

The second significant difference is between a finding that something is "not consistent with the public interest" and a finding that something is "required by the present or future public convenience and necessity." In 1938, and in 1947 when Congress added section 7's eminent domain provision, "public interest" was not a legal term of art used in conjunction with the exercise of eminent domain, while "public convenience and necessity" most certainly was, and had been for decades. See, e.g., *Brown v. Preston*, 38 Conn. 219, 224 (Sup. Ct. 1871) ("Although the statute contains no express authority, yet we think it may be clearly implied in cases where public convenience and necessity demand a highway across a navigable stream of water. Towns in the

construction of highways exercise the right of eminent domain, which right is delegated to them by the legislature."); *Stearns v. Hinsdale*, 61 N.H. 433, 435 (Sup. Ct. 1881) ("The effect of these provisions is to apply an essentially different principle in the case of proposed highways between this state and Vermont than obtains in the case of highways generally, which can legally be established only when required by the public convenience and necessity and through the exercise of the right of eminent domain . . ."); *Hayden v. Skillings*, 78 Me. 413, 416 (Sup. Ct. 1886) ("It is common learning that railroads are of public convenience and necessity, and that when the corporations can not purchase the land for their location and use, they may take it by right of eminent domain on payment of the damages legally assessed therefor . . ."); *Plattsmouth v. Nebraska Tel. Co.*, 80 Neb. 460, 465 (Sup. Ct. 1908) ("The use of the telegraph and telephone is so far a public convenience and necessity that in some states property may be condemned therefore under the power of eminent domain."); *Hudson & M. R. Co. v. Wendel*, 193 N.Y. 166, 176 (Ct. of Appeals 1908) ("In all cases where private property is taken for public convenience the extent and quality of the interest in the property taken should be measured by public convenience and necessity. In construing statutes relating to taking private property for public use the reason for the exercise of the power of eminent domain must be kept in mind . . .")

It is axiomatic that different words same statute same time must have different meanings. "A presumption that a single word means the same thing throughout a statute goes together with a presumption that different words mean different things." *Medical College of Wis. Affiliated Hosps., Inc. v. United States*, 854 F.3d 930, 933 (7th Cir. 2017). Congress created two entirely distinct approval criteria in sections 3 and 7, with the section 7 criteria – a finding that the applicant can do what it is proposing to do, and a finding that the project is necessary for public convenience and necessity -- fitting perfectly with the subsequent addition of eminent domain authority for certificate holders.

IV. EXPORTING FOREIGN NATURAL GAS IS NOT A VALID PURPOSE UNDER THE NGA.

A. Jordan Cove will export primarily or exclusively Canadian gas.

The DEIS is inadequate because it does not include any reference to or information about Jordan Cove's license from the Canadian government to import natural gas to the U.S. for the express purpose of supplying all of the Project's natural gas. Instead, there is nothing more than intentionally ambiguous statements such as "Jordan Cove states the purpose of its project is to export natural gas supplies derived from existing interstate natural gas transmission systems (linked to the Rocky Mountain region and Western Canada) to overseas markets . . ." DEIS 1-6; 3-4. Throughout, the DEIS mentions the US and Canada as the two sources for Jordan Cove's gas, with no further details.

This is affirmatively misleading, because the DEIS does not contain, or make any mention of, either Jordan Cove's Canadian natural gas export permit for up to 1.55 bcf/d (the Project's maximum requirement) nor its counterpart DOE import permit for the same quantity of gas. Jordan Cove expressly applied for both for the purpose of importing Canadian gas to meet *all* of the Project's feedstock needs.

On September 9, 2013, Jordan Cove LNG L.P. applied to Canada's National Energy Board ("NEB") "for a licence authorizing the export of up to 565.75 billion cubic feet ("Bcf") of gas per year (approximately 16,026,458 10^3m^3 per year) for a term of 25 years." *Exhibit* 19, p. 1. Jordan Cove was explicit in its reasons for wanting to export Canadian gas to the U.S.: "The quantity of gas requested for export under the Licence is necessary to support a liquefied natural gas ("LNG") facility (the "LNG Facility") to be located at the Port of Coos Bay, Oregon (the "Project") which has been proposed by Jordan Cove Energy Project L.P. ("JCEP")." *Id.*, p. 2. Jordan Cove was equally explicit about the purpose of the Pacific Connector pipeline:

7. Pipeline ("PCGP") proposed by Pacific Connector Gas Pipeline L.P. ("Pacific

> Connector"), also more fully described in Appendix A – Project Description. The PCGP will deliver feed gas to the Project from Malin, Oregon, after it has been gathered there from supply in the Western Canadian Sedimentary Basin ("WCSB"), the United States Rockies, and potentially other supply-basins in North America.

Despite the reference to gas from the U.S. Rockies, the very next paragraph clarified that, in fact, all of Jordan Cove's gas would be coming from Canada:

> Given the gas needs of the various components of the Project (such as power generation), and accounting for fuel consumption by the pipelines that will deliver natural gas to the Project, the annual volume of gas requested for export from Canada under the authority of the Licence (565.75 Bcf/year) exceeds the annual volume of gas to be exported from the outlet of the LNG Facility in the United States (502.81 Bcf/year). Appendix B –Export Volumes provides detailed export information taking into account these needs, losses and phasing of the Project.

In the section of the application labeled "Gas Supply", Jordan Cove stated:

> 14. At full build-out, the Project will be capable of producing 9 MMt/y of LNG for export. In order to produce that amount of LNG, the Applicant, through its customers, will be required to export no less than 565.75 Bcf/y or 1.55 Bcd/d through the Export Points.
>
> 15. The Applicant, as agent on behalf of its customers, will be exporting gas that is produced from the WCSB. As noted above, customers may have varying means of acquiring gas for exportation such as production from existing reserves, contingent reserves, prospective resources, and/or future net acquisitions and open market purchases or swaps made at WCSB market hubs.
>
> 18. The points of export for the gas will be at Kingsgate/Eastport and Huntingdon/Sumas. Subject to fuel consumption associated with transport by the pipelines delivering natural gas to the Project, it is anticipated that all of the requested quantity of gas for export under the Licence will be devoted to Project needs (including operations other than LNG development, such as power generation).
>
> *Ex.* 19.

Jordan Cove also submitted a report prepared for it by Navigant Consulting to support its statement that these exports would not result in exporting gas which Canada needed for its domestic consumption. Navigant Consulting. September 2013. *Supply and Demand Market Assessment and Surplus Evaluation Report*, *Exhibit* 20, Appendix C. In that report, Navigant confirmed that Jordan Cove applied for Canadian export authority for gas sufficient to cover the entirety of potential LNG shipments from the project and "anticipates sourcing much, if not all, of its exports from Canadian natural gas supplies." *Id.* p. 1.

On November 14, 2013 , the NEB asked Jordan Cove why it was requesting an annual "variance" in annual export volume of up to 15%, noting that Jordan Cove's application had mentioned U.S. gas as a possible source of supply, and asking if Jordan Cove intended to use that 15% variance in order to reduce exports of Canadian gas in favor of buying U.S. gas instead. Jordan Cove assured the NEB that nothing was further from its mind:

> In this regard, Jordan Cove LNG confirms that the mention of the U.S. Rocky Mountain region in Reference iii) simply relates to a potential option for obtaining gas resources for the LNG facility. Like other Canadian LNG export applicants, *Jordan Cove LNG seeks to preserve the flexibility to source all of its project requirements from Canada* even if those requirements may vary within its requested tolerance levels from year to year.

Inquiry Response, *Exhibit* 21, p. 2 (emphasis added). Furthermore (*id.*)(emphasis added):

> Jordan Cove LNG is in the same position as LNG Canada and other applicants who have requested an LNG export licence from the NEB and *who seek the ability to supply 100 per cent of their project requirements from Canada.* The requested tolerance *would allow Jordan Cove LNG to maximize its use of Canadian gas* despite variations in plant requirements from year to year.

Following receipt of this Response, on February 20, 2014 the NEB issued the required license to Jordan Cove, expressly for the purpose of supplying the Project: "The quantity of gas requested for export under the Licence is necessary to support a liquefied natural gas (LNG) export facility to be located at the Port of Coos Bay, Oregon." NEB Export License, *Exhibit* 22, p. 2.

However, Jordan Cove also needed corresponding import permission from the U.S. Department of Energy ("DOE"), and on October 21, 2013, it applied to DOE for permission to import 565.75 billion cubic feet per year (Bcf/yr)/ 1.55 Bcf per day (Bcf/d), for a 25-year term. Jordan Cove sought this authorization "to import the natural gas from Canada by pipeline, at points near Kingsgate and Huntingdon, British Columbia, to a proposed liquefied natural gas (LNG) export facility to be located at the Port of Coos Bay, Oregon." *See Exhibit* 23, p. 2, DOE Order. DOE granted the request; in fact, the title of DOE's order was "Order Granting Long-Term Multi-Contract Authorization to Import Natural Gas from Canada to the Proposed Jordan Cove LNG Terminal in the Port of Coos Bay, Oregon." *Exhibit* 23, p. 1. DOE was aware of Jordan Cove's

application to the NEB, noting that "[t]ogether, the two applications request the necessary export and import authorizations for the maximum volume that would be needed at the Project's maximum expanded capacity—565.75 Bcf/yr of natural gas." *Id.*, p. 6.

Nor is that all. As documented in the attached reports from Synapse Economics and McCullough Research, Jordan Cove has two compelling reasons to source all of its gas from Canada: Canadian gas is materially cheaper than U.S. gas, and Pembina, Jordan Cove's parent,[21] owns extensive natural gas gathering, processing, and transportation infrastructure in Alberta and British Columbia. In fact, as described below, Pembina has trumpeted the Project as a means of utilizing its Canadian resources and exporting Canadian gas.[22]

(i) Canadian natural gas is cheaper than U.S. natural gas.

As the Synapse report (*Foreign or Domestic? The source of the natural gas that will be processed at the proposed Jordan Cove LNG facility*, July 2, 2019, attached as *Exhibit* 24)("*Foreign or Domestic?*") points out, since 2015 Canadian natural gas (at the AECO and BC-ST 2 hubs) has been consistently cheaper than U.S. Rocky Mountain gas (at the Opal and NWP-Rocky Mountain hubs). *Foreign or Domestic?* Figure 2 (comparing AECO and BC-ST 2 with NWP-Rocky Mountain), and Figure 4 (comparing, *inter alia*, AECO with Opal).[23] Moreover, Canadian gas is expected to remain that way

[21] "Jordan Cove and Pacific Connector are both subsidiaries of Pembina Pipeline Corporation (Pembina) of Calgary, Alberta, Canada." DEIS 1-1, n. 1.

[22] While Pembina also has an interest in the Ruby pipeline, which could be used to transport U.S. natural gas to the Malin hub, the DEIS erroneously states that, "Ruby is owned by Pembina". DEIS 1-1, n.5. This is incorrect. Ruby is currently 100% owned by Kinder Morgan, with Pembina holding nothing more than convertible fixed-rate preferred stock: "Pembina Pipeline Corporation owns the remaining interest in Ruby in the form of a convertible preferred interest. If Pembina converted its preferred interest into common interest, Kinder Morgan and Pembina would each own a 50 percent common interest in Ruby." https://www.kindermorgan.com/business/gas_pipelines/west/Ruby/ (last accessed July 2, 2019).

[23] The Opal hub is where the Ruby pipeline originates. DEIS 3-8. Ruby and the GTN pipeline, which originates at the Kingsgate, BC hub on the Canada-U.S. border (*id.*), meet at the Malin hub. *Id.* at 3-2.

for decades. *Foreign or Domestic?* Figure 4. While Canadian gas made up "only" about 50% of Northwestern U.S. gas consumption, the share of Canadian gas has been increasing steadily since then, and now makes up more than 2/3 of supply in the Northwest, which is actually down from the 75% and 74% levels it reached in 2017 and 2018. *Id.* Figure 3. Worth noting is that Pembina itself has identified cheaper Canadian gas as a factor in its own economic success; its 2018 Annual Report states at least three times that "a wide Chicago-AECO natural gas differential" has benefitted Pembina's Canadian pipeline and processing operations. *Ex.* 24, pp. 5, 10, 17

Nor does the hub price tell the whole picture. As *Foreign or Domestic?* documents, the tariff transportation costs from the Kingsgate hub on the Canadian-U.S. border to Malin hub are only about 25% of the tariff transportation costs from Opal to the Malin hub, $0.30 per dekatherm per day v. $1.19 per dekatherm per day. *Foreign or Domestic?* Tables 1 and 2. Combining the hub and transport prices (*id.*, Table 3), and converting those prices to cubic feet, the total for 1.1 bcf/day (Jordan Cove's anticipated capacity) is $2.2 million for Canadian gas v. $3.2 million for U.S. gas. In other words, for Jordan Cove U.S. gas is about 45% more expensive than Canadian gas. *Id.*, Table 3. Not surprisingly, Synapse concludes that "[w]hen the natural gas hub price and transportation price are taken together, it becomes clear that it is much cheaper for Jordan Cove LNG to obtain natural gas from Canadian suppliers for export overseas." *Id.*, p. 5.

The attached report from McCullough Research *(Natural Gas Supplies for the Proposed Jordan Cove LNG Terminal*, July 3, 2019, attached at *Exhibit* 18)("*Natural Gas Supplies"*) confirms that Canadian natural gas will be cheaper for Jordan Cove than U.S. natural gas. While the Pipeline will connect to Malin Hub, that is not where Jordan Cove will be buying gas, since Malin Hub has no forward market. That means that Jordan Cove (or Jordan Cove's customers)[24] will be buying gas

[24] Canadian gas will be cheaper regardless of whether the gas is purchased by Jordan Cove, by a Jordan Cove customer in a "tolling" arrangement (where Jordan Cove provides only liquefaction services, and the customer arranges purchase and transportation of the gas to the Facility, and for

directly from a counterparty in an over-the-counter transaction. *Natural Gas Supplies*, p. 7. And logically, that counterparty will be in Canada, as the lower prices at both the AECO and Kingsgate hubs in Canada compared to Opal reflect the lower price of Canadian gas. *Id.* Table 1.

Jordan Cove made some sense when it was first planned as an import facility, because "when Pacific natural gas prices were lower than those in the United States, importing LNG at Coos Bay and selling the natural gas into the lucrative California market made economic sense." *Natural Gas Supplies*, p. 5. And it even made economic sense when first proposed as an export terminal in 2013, as the 2011 Fukushima nuclear disaster led to closure of Japan's nuclear power plants and drove Pacific LNG prices (known as the "JKM" price) up to $19/mmbtu (*id.* p. 6), while at the same time the North American fracking boom drove down U.S. and Canadian prices. This led to proposals for more than 20 North American export terminals. *Id.* p. 6.

But the restarting of the Japanese nuclear fleet and ramped-up LNG exports from other countries has resulted in the JKM price crashing (*id.* p. 6), and for the first six months of 2019, it has averaged $5.90/mmbtu. *Id.* p. 10. And, according to the Japanese Ministry of the Economy, the average May price for landed LNG was $5.40/mmbtu. *Exhibit* 25. It is difficult to see how the cost of purchasing and transporting even cheaper Canadian gas, plus liquefaction and transportation costs makes economic sense with a landed price of 5.40/mmbtu. Natural gas Supplies, p. 8. Thus, even with cheap fracked gas, "[a]t today's JKM price, none of the West Coast LNG export terminals are attractive investments." *Id.*, p. 7[25]

(ii) Canadian natural gas will allow Pembina to utilize its existing Canadian infrastructure.

Pembina owns extensive natural gas gathering, processing, and transportation (pipeline)

shipping after liquefaction), or some combination (including where Jordan Cove acts as agent for a tolling customer).

[25] *See also The Questionable Economics of Jordan Cove LNG Terminal,* McCullough Research (June 2019), attached as *Exhibit* 26.

infrastructure in Canada, and it makes economic sense for Pembina to take advantage of this in supplying gas to Jordan Cove. As noted in *Natural Gas Supplies*, in June 2019 Pembina's Corporate Update highlighted those assets in connection with Jordan Cove, noting that the "Pembina Store" had "Gathering, Processing, and Field Extraction" (all of which facilities are in Canada), its Alliance Pipeline (which carries Canadian gas into the U.S.), and "Mainline Extraction and Fractionation" at its Younger, Empress and Aux Sable facilities (two of the three in Canada), all upstream of Jordan Cove. *Ex.* 18, p. 3.[26] Pembina's website "About Us" page states:[27]

> Pembina owns an integrated system of pipelines that transports various hydrocarbon liquids and natural gas products produced primarily in western Canada. The Company also owns gas gathering and processing facilities and an oil and natural gas liquids infrastructure and logistics business. Pembina's integrated assets and commercial operations along the majority of the hydrocarbon value chain allow it to offer a full spectrum of midstream and marketing services to the energy sector. Pembina is committed to identifying additional opportunities to connect hydrocarbon production to new demand locations throughout the development of infrastructure that would extend Pembina's service offering even further along the hydrocarbon value chain. These new developments will contribute to ensuring that hydrocarbons produced in the Western Canadian Sedimentary Basin and the other basins where Pembina operates, can reach the highest value markets throughout the world.

Given the substantially lower cost of Canadian gas compared to U.S. gas, the fact that Pembina's natural gas assets and infrastructure are in Canada and will profit from the use of Canadian gas at Jordan Cove, and Jordan Cove's own statements to Canada's National Energy Board and the DOE, it is clear thatthe gas for Jordan Cove will come from Canada.

V. THE USE OF EMINENT DOMAIN TO BUILD THE PIPELINE VIOLATES THE TAKINGS CLAUSE BECAUSE THERE IS NO PUBLIC BENEFIT IDENITIFED.

Regardless of the source of the gas being exported, using eminent domain to build the Pipeline violates the Fifth Amendment's Takings Clause, because the DEIS does not identify *any* public benefit beyond purely economic ones – jobs and taxes. In *Kelo v. New London*, 545 U.S. 469

[26] Locations of all Pembina assets are from its 2018 Annual Report, attached as *Exhibit* 27.
[27] http://www.pembina.com/about-us/ (last visited July 2, 2019)

(2005), the Supreme Court held that such economic benefits could justify using eminent domain in the context of a carefully considered plan seeking to comprehensively redevelop an area of New London, those benefits were only one of the goals of the taking. The Court emphasized the need to defer to legislative judgments as to the best means of achieving such complex ends, which specifically included benefits beyond the merely economic:

> Those who govern the City were not confronted with the need to remove blight in the Fort Trumbull area, but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference. The City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, *including--but by no means limited to--new jobs and increased tax revenue.* As with other exercises in urban planning and development, the City is *endeavoring to coordinate a variety of commercial, residential, and recreational uses of land, with the hope that they will form a whole greater than the sum of its parts*. *Id.* at 483; emphasis added, footnote omitted.

In fact, the Court rejected a second time the claim that there would only be economic benefits from the project: "To avoid this result, petitioners urge us to adopt a new bright-line rule that economic development does not qualify as a public use. *Putting aside the unpersuasive suggestion that the City's plan will provide only purely economic benefits,* neither precedent nor logic supports petitioners' proposal." *Id.* at 484 (emphasis added).

In contrast, the Project has no other suggested public benefits aside from the employment and tax issue discussed above. And not only are these economic benefits the only identified public benefits, they are entirely incidental to the purpose of the project, which ostensibly to export Canadian and US gas to Asia. Those incidental economic benefits are not -- and cannot be -- the purpose of the project, as the Natural Gas Act does not authorize the Commission to grant permission to build LNG export facilities and pipelines for the purpose of creating local tax and employment benefits.

Nor would the Takings Clause allow for eminent domain even if the DEIS identified the export of US natural gas as the purpose of the Project, because there are no identifiable public

benefits from such an action beyond additional economic ones, and in such a case economic benefits accruing entirely to private actors acting entirely in their own self-interest. There is not even evidence that the Project would stimulate additional development of U.S. gas production; given that the U.S. could be said to be drowning in natural gas – and will be for years or decades to come—it is not evident how developing additional supplies would benefit anyone at all.[28]

There can be no way to justify under the Takings Clause the taking of the Landowners' property in order to ship Canadian gas to Asia. Even if the DEIS had identified some additional benefit from the Project related to U.S. natural gas supply, production, distribution, or any other possible public good, there can be absolutely no such benefit from assisting the sale of Canadian natural gas to Asia.

VI. FERC ALLOWING THE TAKING OF PROPERTY UNDER A "CONDITIONED" CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ("CERTIFICATE") VIOLATES THE FIFTH AMENDMENT.

Conditioned certificates violate the Pubic Use Clause because there simply cannot be a "public benefit" or "public purpose" to taking property *unless, at a minimum, the project can legally be built.* If *any* of the other authorizations necessary to build the pipeline are not granted, then the Pipeline will have taken the property of hundreds of landowners for no purpose whatsoever, and courts have refused to allow exercise of eminent domain in similar situations where there was no legal certainty that the project for which property was taken could actually be built.

In the DEIS, FERC lists over 137 conditions with hundreds of 'sub' conditions for granting of the Certificate. DEIS at 5-12 – 5-34. FERC uses various, undefined qualifying language with each condition, including: 'Prior to construction of the final design' (*See, e.g.* 5-23 – 5-30; and 'Prior to construction' (*See, e.g.* 5-17 – 5-18). This language is meaningless, and all of the conditions named throughout the DEIS set the stage for egregious violations of landowners' Fifth Amendment rights.

[28] *See* attached *Exhibit* 28, Summaries of U.S. Natural Gas Supply Demand and Price Forecasts.

By allowing eminent domain based on a conditioned certificate, FERC has not only assumed that each of the numerous state and federal agency proceedings will grant the necessary permits, but also that each agency will grant permission to construct the Pipeline exactly where the Certificate authorizes. While FERC (presumably) would agree that it could not presume the outcome of its own administrative process, it apparently has no qualms about presuming the outcome of multiple other state and federal administrative processes. Because the DEIS was issued in March, 2019, it does not acknowledge that on May 6, 2019, the State of Oregon denied Jordan Cove's application for a Clean Water Act section 401 permit, which Jordan Cove *must* have in order to build the Project, on the grounds that the Oregon Department of Environmental Quality "does not have a reasonable assurance that the construction and operation of the Project will comply with applicable Oregon water quality standards." While that denial was "without prejudice", it was the culmination of a year-long administrative process, and FERC certainly now has absolutely no basis for assuming that, even if Jordan Cove chooses to reapply for the 401 permit, that the outcome would be any different.

Finally, even though FERC claims it has the authority to condition construction and operation of the pipeline on obtaining all those other permits, it nevertheless claims that it cannot so condition the exercise of eminent domain. As explained further below (pp. 62-68), this makes no sense, and FERC refuses to even acknowledge that it has *previously done exactly that,* as described in *Mid-Atlantic Express, LLC v. Baltimore County*, 410 Fed. Appx. 653, 657 (4th Cir. 2011). In that case, Environmental Condition 55 of FERC's § 7 Certificate stated that "Mid-Atlantic shall not exercise eminent domain authority granted under [the Natural Gas Act] section 7(h) to acquire permanent rights-of-way on [residential] properties until the required site specific residential construction plans have been reviewed and approved in writing by the Director of [the Office of Energy Projects ("OEP")]. Nor can FERC claim that this was an oversight; when the certificate holder in *Mid-*

Atlantic sought clarification of this condition, FERC's rehearing order affirmed that it had this authority. *Order on Rehearing and Clarification and Denying Stay,* 129 FERC ¶ 61,245 at ¶ 24 (Dec. 17, 2009).

Alternatively, just as FERC conditions actual construction of a pipeline on it obtaining all necessary permits, FERC could impose the exact same condition on other "pre-construction" activities on site, such as tree-cutting, cutting drainage channels, or otherwise disturbing vegetation, while allowing access for limited activities such surveying, soil boring, and other environmental assessments.

FERC should recognize the landowners' right to possession until such time as Pacific Connector has obtained all necessary authorizations and can legally proceed with the project. FERC's failure to offer any explanation for its current position is even more damning in light of its previous practice of doing exactly what it now says it has no authority to do.

In sum, if FERC decides to move forward with granting this Certificate with the current DEIS, it will create a situation where hundreds of landowners will lose their property in order to either build a project with only incidental public benefit or, bizarrely, to not build that project at all (or build it in completely different locations), FERC will have repeatedly violated the Takings Clause.

A. Allowing Eminent Domain Based on Conditioned Certificates Violates the Takings Clause by Authorizing Takings that are not Necessarily for a Public Use.

The Supreme Court has long distinguished between laws that authorize government officials to exercise "the sovereign's power of eminent domain on behalf of the sovereign itself" and "statutes which grant to others, such as public utilities, a right to exercise the power of eminent domain on behalf of themselves." *United States v. Carmack*, 329 U.S. 230, 243 n.13 (1946). The first type of law "carries with it the sovereign's full powers except such as are excluded expressly or by implication." *Id.* But the second kind of law is more strictly construed; these laws "do not include

sovereign powers greater than those expressed or necessarily implied." *Id.* Such strict construction is more than justified in dealing with conditioned certificates.

To put this in a familiar context, just imagine a court being asked to order condemnation of land for a project, when the land would not only need to be re-zoned to accommodate the intended use, but the developer has not even applied for the re-zoning.

Even though there will be no "public convenience and necessity" under the Natural Gas Act allowing construction and operation until such time as Pacific Connector obtains all of these other authorizations, there is apparently enough "pubic benefit" in the mere possibility that the pipeline will be built to satisfy the Takings Clause. Landowners note that the Commission's Policy Statement provides that, "Landowners should not be subject to eminent domain for projects that are not financially viable and therefore may not be viable in the marketplace." 88 FERC ¶ 61,227, p. 20. If landowners should not be subject to eminent domain for projects that are not "financially viable", it makes no sense why they should be subject to eminent domain for projects that are not yet legally viable. If the Project fails to obtain *any* of those necessary permits, FERC will have allowed it to take (and destroy) property for no purpose (and certainly no public benefit) whatsoever, an obvious violation of the Takings Clause.

This is not a theoretical problem. The most dramatic recent example of it came in connection with the Constitution pipeline, when New York State denied the necessary § 401 water quality certification for the project. That decision was then upheld by the Second Circuit in *Constitution Pipeline Co., LLC v. New York State Dep't of Envtl. Conservation*, 868 F.3d 87 (2d. Cir. 2017), *cert. denied* 138 S. Ct. 1697 (2018)). Unfortunately, acting on the basis of its conditioned certificate, Constitution had already seized part of the Holleran family property in New Milford, PA, and cut down more than 500 mature trees. Declaration of Catherine Holleran, *Exhibit* 29, ¶ 25. The Constitution pipeline will never be built, but the Holleran family was left with the rotting mess of

hundreds of dead trees where a thriving forest had once stood.

It gets worse. After failing in its litigation against New York State, Constitution petitioned FERC to declare that New York had waived its right to deny the § 401 certification. Even though FERC denied that petition and the subsequent request for rehearing (*Constitution Pipeline LLC,* 162 FERC ¶61,014 (2018); *rehearing denied*, 164 FERC ¶61,029 (2018), FERC not only refused to rescind Constitution's Certificate, but has extended its life to December 2020 and is thus continuing to deny the Hollerans enjoyment of their own property. FERC justified this extension on the grounds that Constitution has appealed FERC's denial of its petition to the D.C. Circuit (*Constitution Pipeline v. FERC*, No. 18-1251 (docketed September 14, 2018)), and "there is no reason for the Commission to believe that Constitution . . . will not construct its facilities and place them in service by December 2020, *assuming a timely favorable decision from the court*." 165 FERC ¶61,081, para. 12 (2018).

Thus, FERC not only allowed Constitution to take the Hollerans' property back in 2015 on the completely unwarranted assumption that all other authorizations would follow, but is now allowing Constitution to hang on to it until at least 2020 on the chance *that FERC's own decision* will be overturned. The consequences of FERC's cavalier attitude towards other people's property could be avoided simply by not allowing exercise of eminent domain on the basis of a conditioned certificate. And the same fate that befell the Hollerans looms over hundreds of property owners as FERC walks the same steps that it did in Constitution.

The issue of whether eminent domain can be exercised when it is not certain that the intended public benefit will materialize is not new. In *Mayor of Vicksburg v. Thomas*, 645 So. 2d 940 (1994), the Mississippi Supreme Court addressed the situation where the City of Vicksburg condemned the defendant's property in order to convey it to a private corporation for casino development. However, the City's conveyance to the casino company did not specify, in any way, what the company was required to do with the property. Accepting the legislative determination that

casino development was a "public use", the Court found that:

> the City failed to provide conditions, restrictions, or covenants in its contract with Harrah's to ensure that the property will be used for the purpose of gaming enterprise or other related establishments. In fact, testimony indicates that Harrah's may do anything it wishes with Thomas' property, limited solely by a thirty year reversionary interest in the City.

Id. at 943. This led the court to conclude that, "Because the use of Thomas' land will be at the whim of Harrah's, the private use of Thomas' property by Harrah's will be paramount, not incidental, to the public use and any public benefit from the taking will be speculative at best." *Id.*

Similarly, in *Casino Reinvestment Development Authority v. Banin*, 320 N.J. Super. 342, 352 (1998), the issue was whether "there are sufficient assurances that the properties to be condemned will be used for the public purposes cited to justify their acquisition." The Court held that there were, in fact, no assurances of the property being used for the cited public uses, because the developer "is not bound to use these properties for those purposes." *Id.* at 357.

For pipelines, there simply can be no "reasonable assurances" that each and every other federal and state agency will grant the necessary permissions, or do so such that each particular parcel of condemned land will be necessary for pipeline construction or operation. As a result, there can be no "reasonable assurances" that property condemned under the Natural Gas Act will result in any "public benefit".

The specific issue of whether a conditioned certificate for a natural gas pipeline can be used to condemn property was recently decided in *Matter of National Fuel Gas Supply Corporation v. Schueckler*, 2018 N.Y. App. Div. LEXIS 7566 (4th Dept. 2018), *appeal docketed* December 7, 2018. The plaintiff in *Schueckler* tried to condemn property even though New York State had denied the required § 401 certification, arguing that while the § 401 certification was a condition precedent to construction of the pipeline, it was not a condition precedent to exercise of eminent domain. The Court dismissed this distinction:

> The certificate itself is not the source of petitioner's authority to condemn, and it thus can

> neither authorize nor prohibit the acquisition of property by eminent domain. Rather, the lodestar of petitioner's eminent domain power is the *public project* authorized by the certificate . . . . The certificate, in other words, simply authorizes the public project, and the power of eminent domain stands or falls with that project as a necessary ancillary to its implementation (see generally NY Const. art 1, § 7(a)). Thus, when the public project cannot be legally completed, any eminent domain power in connection with that project is necessarily extinguished. To say otherwise would effectively give a condemnor the power to condemn land in the absence of a public project, and that would violate the plain text of the State Constitution.

Id. at 15. *Schueckler* dealt with a § 401 certification that had been denied, as opposed to one that has not yet been granted, but the legal principle is the same: *unless the project can legally proceed*, there is no public use or benefit that can support the use of eminent domain. As the Ohio Supreme Court noted in *City of Norwood v. Horney*, 110 Ohio St. 3d 353, 383 (Ohio Sup. Ct. 2006): :

> A municipality has no authority to appropriate private property for only a contemplated or speculative use in the future. Public use cannot be determined as of the time of completion of a proposed development, but must be defined in terms of present commitments which in the ordinary course of affairs will be fulfilled.

Here, there is no basis for assuming that "in the ordinary course of affairs" Pacific Connector will receive all of the other necessary authorizations for its pipeline.

Respectfully submitted,

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