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From: James Buchal <jbuchal@mblp.com>
Sent: Thursday, March 05, 2015 6:24 PM
To: comment@boardmantoemingway.com
Subject: B2H Comments
Attachments: CSRIA-B2H DEIS-3-5-2015 (final).pdf

Please lodge these attached comments on the DEIS.

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Murphy & Buchal LLP3425 SE Yamhill Street, Suite 100
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To: Tamara Gertsch, BLM National Project Manager
Boardman to Hemingway Transmission Line Project
DEIS Comments

From: James L. Buchal

Date: March 5, 2015

Re: NEPA Compliance and the Longhorn Alternative, B2H Draft Environmental Impact Statement (EIS)—Need for Further Alternative Analysis Review

I am writing to you on behalf of the Columbia-Snake River Irrigators Association (CSRIA), whose members include irrigated farm operations in Eastern Washington and Oregon. The CSRIA is currently engaged in reviewing the legal and economic features of the Draft Environmental Impact Statement (DEIS) for the Boardman to Hemingway (B2H) Transmission Line Project. In doing so, we have identified a specific legal issue that should be brought now to your attention, rather than wait for the completion of our comment review.

The B2H DEIS is not compliant with the National Environmental Policy Act of 1969 (NEPA) with respect to its consideration of alternatives. While the DEIS provides a “proposed action” extending to the existing Grassland Substation west of the Naval Weapons System Training Facility, BPA may or may not determine to construct a Longhorn Substation in Boardman. The DEIS thus includes two potential alternative routes for the transmission line to terminate at that new Substation: the Longhorn Alternative and the Longhorn Variation. Another alternative, consisting of extending the line west of Horn Butte to BPA’s C.J. Slatt Substation and Relay House Facility, was discussed during initial review of the Carty Generating Station, as this line would allow for additional capacity for multiple projects or Station additions. This Slatt Alternative merits formal review within the DEIS, and may well be the preferred alternative for the final EIS.

The failure to consider the Slatt alternative is not adequately explained in the existing DEIS, and it has the potential to permit Idaho Power Company to reach the main BPA transmission line while mitigating substantially adverse impacts to irrigated agriculture. With respect to the Longhorn Alternative to reach the main BPA line, BLM added this completely new route late in the process after scoping and initial public commenting processes were complete. Here NEPA will require BLM to consider

alternative methods of reaching the Longhorn Substation that would result in less impact on irrigated agriculture. Interested parties are submitting separate comments on the DEIS demonstrating in detail that a “West of Bombing Range Road” alternative would improve the Longhorn Variation. This is consistent with BLM’s statement in the cover letter transmitting the DEIS inviting commenters to “identify a new proposed alternative route”. (*Id.* at 2.) NEPA will require BLM to respond to such commentary, particularly in light of pre-existing concerns over impacts to irrigated agriculture, by either modifying the Longhorn Variation to move it west of Bombing Range Road, or considering a separate West of Bombing Range Road alternative in the final EIS.

Legal Context

The discussion of alternatives to the proposed action is “the heart” of the NEPA process and is intended to provide a “clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14. *See also* 42 U.S.C. § 4332(C)(iii), (E). NEPA regulations and Ninth Circuit precedent require an agency to “[r]igorously explore and objectively evaluate all reasonable alternatives.” *Id.* § 1502.14(a). Indeed, the courts have consistently held that a failure to consider an available and reasonable alternative is fatal to an agency’s NEPA analysis. *See, e.g., Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998) (“The existence of reasonable but unexamined alternatives renders an EIS inadequate.”). This rule is commonly applied in planning system routes. *See, e.g., I-291 Why? Ass’n v. Burns*, 372 F. Supp. 223 (D. Conn. 1974) (failure to consider alternative highway routes), *aff’d*, 517 F.2d 1077 (2d Cir. 1975) (affirming grant of preliminary injunction).

There is a suggestion in the scoping report that many comments “focused on project effects and concerns outside the purview of BLM’s and USFS’s resource management responsibilities, including concerns about impacts to private lands and resources”. (Scoping Report at 91.) However, all the alternatives, including a West of Bombing Range Road alternative, implicate federal decisionmaking, and “socioeconomics and environmental justice” effects, including effects on agriculture, are analyzed in the DEIS. (*See, e.g.,* DEIS at 3-943 to 3-944 (“effects on the agricultural economy . . . are expected to be low”); *see also id.* § 3.2.6.6 (general discussion).)

We note that the cover letter transmitting the DEIS advises that “[r]oute locations are approximate and could vary by more than half a mile”. (Cover Letter, Dec. 5, 2014, at 1.) Unless BLM pinpoints the final location of alternatives with greater detail in the final EIS, NEPA compliance is likely to be regarded as inadequate, and further site-specific NEPA analysis may also be required. *Cf., e.g., Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1049 (9th Cir. 2013) (even if programmatic “EIS contains sufficient analysis for informed decision-making at the programmatic level” that analysis “does not reduce or minimize BLM’s critical duty to ‘fully evaluate[]’ site-specific impacts”); *see also id.* at 1050.

Factual Background

The question of Project routes produced comment in the scoping phase as well as during a Community Advisory Process (CAP) conducted by Idaho Power Company (IPC). The Slatt Alternative was discussed during the EIS process but not documented in the DEIS. However, the Longhorn issue did not emerge until late in the process when IPC's Revised Plan of Development (November 2011) added a single Longhorn Alternative to be considered in the event that BPA proceeded with the Longhorn Substation. (Rev'd POD at 3-24 to 3-25.)

The DEIS then added a single alternative to the Longhorn Alternative, the Longhorn Variation, a route that runs along the east side of Bombing Range Road, and for the most part runs parallel to an existing 128-kv transmission line (about 125 feet away). The DEIS reports that it "was developed to address concerns raised by the Navy with the Longhorn 27 Alternative about encroachment on military airspace, to minimize effects on irrigated agriculture in the 28 area, and to align with an existing transmission corridor." (DEIS at 2-54.)

However, the DEIS reports that the Variation only reduced impacts on private land from 485.7 acres to 450.3 acres (DEIS at 3-449), and impact on agricultural land from 262.2 to 249.7 acres (*id.* at 3-451). Indeed, "Total Prime Farmland Construction Acres rises from 173.7 in the Alternative to 263.1 in the Variation. (*Id.* at 3-455 (showing greater impacts).) An EIS with "no meaningful difference between the [] alternatives considered in detail" is insufficient; an agency cannot "make an informed decision on a project's environmental impacts when each alternative considered would authorize the same underlying action." *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1051 (9th Cir. 2013). While the Longhorn Alternative and Longhorn Variation are different, neither mitigates adverse effect on irrigated agriculture in a way sufficient to provide an informed decision.

Within the context of the Longhorn Route, a West of Bombing Range Road alternative, with significantly reduced impacts on irrigated agriculture, is the obvious way to provide a more meaningful alternative. While the Naval Weapons System Training Facility has specifically objected to any proposal which would "significantly increase the width or permitted height in the existing power line easement along the eastern boundary" of the Facilities (Scoping Appendix E, at 286),¹ the DEIS already proposes shorter towers with shorter intervals between towers would be used for those portions of the route adjacent to the Naval Weapons System Training Facility (*id.* at 2-55). The West of Bombing Range route should not be associated with any significant additional incremental impacts on the Facility.

Conclusion/Requests

Given the above, the CSRIA is making three requests from the BLM EIS managers.

¹ The DEIS makes reference to a more detailed letter from the commanding officer dated April 23, 2013 offering "a hierarchy of preferences based on minimizing adverse operational impacts". (DEIS at 3-411.) This letter does not appear to be available on the project website, and we hereby request a copy of it.

First, we are requesting that BLM provide written notice to us, and interested parties, that the agency will be adding the new Slatt and West of Bombing Range Road alternatives as soon as possible, and in any event before issuance of the Final EIS.

Second, in light of the additional NEPA compliance analysis required for the revised alternative review, we request an extension to the comment period.

And third, CSRIA technical representatives and I would like to meet with you to better discuss and clarify our above concerns. We are prepared to do so at your convenience, at your office.

Copy to: Mr. Michael Schoessler
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