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July 15, 2013

Kimberley D. Bose, Secretary
Federal Energy Regulatory Commission (FERC)
888 First Street NE, Room 1A
Washington, DC 20426

RE: Proposed Sierrita Natural Gas Pipeline
Docket Numbers: CP13-73-000 and CP13-74-000

Dear Ms. Bose:

We are filing these comments for the record on the issue of alternatives that should be analyzed in the environmental impact statement (EIS) that will inform FERC's decisionmaking regarding the request for permits under the Natural Gas Act and Executive Orders 10485 and 12038 for the proposed Sierrita gas pipeline. As explained in earlier correspondence, the Altar Valley Conservation Alliance (Alliance) is a collaborative conservation organization of ranchers and others involved in agriculture who live and work in the Altar Valley. We would be directly and adversely impacted by the project as currently configured by the applicant.

A number of our members attended a public meeting held by FERC in Tucson on June 18th, 2013, regarding the issue of restoration for the proposed pipeline, at which meeting FERC staff made it clear that the record would stay open for comments on the proposal and associated environmental review requirements. Because of the many significant concerns we have regarding the serious impacts of placing this proposed pipeline in the Altar Valley, an Alliance member inquired as to the possibility of holding a similar public meeting on the topic of alternative locations. A FERC representative explained that lack of travel funding precluded another public meeting at this time, but suggested that we any additional comments regarding alternatives in writing for the record.

The Alliance, of course, has raised the importance of evaluating reasonable alternatives from the beginning. Specifically, we discussed the necessity of evaluating alternatives in our scoping letter of October 26, 2012. We reiterated the importance of the issue in our letter to FERC of December 13, 2012, regarding what appeared to be a premature commitment on Kinder Morgan's part in entering into a transportation precedent agreement, and have continued raising

concerns about alternatives at every available opportunity. The purpose of this letter is to offer additional thoughts about the importance of alternatives analysis generally and some observations about specific alternatives.¹

The Requirement to Analyze Reasonable Alternatives

The mandate for a federal agency to analyze alternatives when preparing an environmental impact statement under the National Environmental Policy Act (NEPA) is a critical requirement of the law. Absent the requirement to analyze alternatives, the “NEPA process” would simply be a documentation of the potential effects of a proposed action, possibly with the identification of some mitigation. The requirement to analyze reasonable alternatives transforms the process into one that can, and at times does, dramatically affect the ultimate decision about a proposed action. The statute, the regulations implementing NEPA’s requirements and the relevant case law underscores and highlights the importance of this requirement. When the requirement to comply with NEPA is triggered by a private applicant’s request for a federal agency’s approval, as in the case of the proposed Sierrita gas pipeline, the lead agency – in this case, FERC – must consider the needs and purposes of the applicant, but must balance those considerations with the public’s interest as reflected in the legal framework in which requested approval must be considered.

Congress passed NEPA in 1969 to, among other things, articulate this country’s national environmental policies and to establish an analytical process to inform federal agency decisionmaking. The only requirement identified in the law twice relates to the need to analyze alternatives. Congress directed federal agencies to include “alternatives to the proposed action”² in the required documentation that has come to be known as an environmental impact statement (EIS), and agencies also were instructed in NEPA to, “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”³

FERC regulations for implementation of NEPA generally require preparation of an EIS for construction and operation of a major natural gas pipeline under Sections 3 and 7 of the Natural Gas Act⁴. In regards to alternatives, FERC’s NEPA regulations state that in addition to the requirements for an EIS under the Council on Environmental Quality’s regulations, among other items, a “staff conclusion section”. That staff conclusion section is to include summaries of “Any alternative to the proposed action that would have a less severe environmental impact or impacts and the action preferred by the staff”.⁵

¹ This letter does not reiterate the numerous and serious substantive concerns with Kinder Morgan’s proposed route through the Altar Valley, but those concerns are set out in great detail in earlier filings, as enumerated in the Alliance’s Comments and Protest(s) filed April 15, 2013, CP13-73-000 and CP13-74-000.

² 42 U.S.C. § 4332.

³ 42 U.S.C. § 4332(E).

⁴ 18 C.F.R. § 380.6.

⁵ 18 C.F.R. 380.7(b).

Further, FERC's NEPA regulations require applicants to "describe alternatives to the project and compare the environmental impacts of such alternatives to those of the proposal."⁶ Specifically, Resource Report 10 must "demonstrate how environmental benefits and costs were weighed against economic benefits and costs, and technological and procedural constraints. The potential for each alternative to meet project deadlines and the environmental consequences of each alternative shall be discussed." It must:

(1) Discuss the "no action" alternative and the potential for accomplishing the proposed objectives through the use of other systems and/or energy conservation. Provide an analysis of the relative environmental benefits and costs for each alternative.

(2) Describe alternative routes or locations considered for each facility during the initial screening for the project.

(i) For alternative routes considered in the initial screening for the project but eliminated, describe the environmental characteristics of each route or site, and the reasons for rejecting it. Identify the location of such alternatives on maps of sufficient scale to depict their location and relationship to the proposed action, and the relationship of the pipeline to existing rights-of-way.

(ii) For alternative routes or locations considered for more in-depth consideration, describe the environmental characteristics of each route or site and the reasons for rejecting it. Provide comparative tables showing the differences in environmental characteristics for the alternative and proposed action. The location of any alternatives in this paragraph shall be provided on maps equivalent to those required in paragraph (c) (2) of this section.⁷

Despite persistent efforts by FERC to obtain this information from Kinder Morgan, El Paso Natural Gas (EPNG), Sasabe Lateral, LLC and now Sierrita Pipeline, LLC, this analysis has yet to be produced. This reluctance to fully and fairly address these questions flies in the face of a considerable body of case law. We offer a few examples:

- Balancing the Agency's and the Applicant's Needs:

Southern Utah Wilderness Alliance v. Norton, 237 F. Supp. 2d 48 (D.D.C. 2002) dealt with the Bureau of Land Management's compliance with NEPA for proposed seismic oil and gas exploration in Utah. In considering how BLM had framed the purpose and need and alternatives, the Court said:

As part of its preparation of an EA [environmental assessment], an agency is required to "study, develop, and describe appropriate alternatives to recommended courses of action," 42 U.S.C. § 4332(E), and to discuss alternatives that it has considered, 40 C.F.R. § 1508.9. Agency compliance vel non with the requirement to consider alternatives is evaluated under the "rule of reason," meaning that "the concept of alternatives must be bounded by some notion of feasibility," and that agencies are required to deal with circumstances "as they exist and are likely to exist," but are not required to consider alternatives that are

⁶ 18 C.F.R. § 380.12.

⁷ *Id.*

"remote and speculative." [Natural Resources Defense Council, Inc. v. Hodel, 865 F.2d 288, 294-95 \(D.C.Cir.1988\)](#) (internal citations omitted). However, in examining alternatives to the proposed action, an agency's consideration of environmental concerns must be more than a pro forma ritual. Considering environmental costs means seriously considering alternative actions to avoid them. [Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm., 449 F.2d 1109, 1128 \(D.C.Cir.1971\)](#).

In preparing the EA in this case, BLM did discuss alternative plans (AR 169-70). What plaintiffs challenge is the sufficiency of BLM's analysis, and particularly BLM's unquestioning acceptance of the statements of WesternGeco and Eclipse Exploration, the project applicants, that limiting their operations to existing roads and trails would not meet the project objectives, AR 27 (IBLA's discussion of alternative plans focuses on George Handley's declaration that alternative plans would not meet the project goals); AR 1656 (letter from George Handley of Eclipse Exploration to Rich McClure of BLM); AR 382 (declaration of George Handley dated March 14, 2002); AR 387 (declaration of 53*53 Stuart Wright of WesternGeco dated March 2002), in the face of public comments questioning the accuracy of those statements, AR 1838-40, 1863-66. It is undisputed that BLM neither conducted nor commissioned an independent analysis of alternatives.^[3]

An agency is obligated to take the needs and goals of the project applicant in mind when considering alternatives, [Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 \(D.C.Cir.1991\)](#), but that obligation does not limit the scope of the agency's analysis to what the applicant says it needs. Here, the question is whether the agency had the duty to conduct an independent analysis of alternatives to running source lines across undamaged soils when at least one member of the public asserted that the use of existing roads and trails would yield acceptable data. At oral argument, counsel for the government argued that the agency was justified in relying upon the admittedly self-serving statements of the project applicants because Stuart Wright was a scientist and the commenting member of the public did not have the necessary vibroseis qualifications. Tr. of December 13, 2002 at 8. This argument, though, is not clearly supported by the record (the public commenter asserted that he had twenty years of experience with seismic mapping and that he was well acquainted with seismic equipment, terminology, and survey methods, AR 1863), and is in any event the ad hoc argument of agency counsel. E.g., [Camp v. Pitts, 411 U.S. 138, 142, 93 S.Ct. 1241, 36 L.Ed.2d 106 \(1973\)](#) ("[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court."). BLM failed to adequately study, develop, and describe appropriate alternatives to recommended courses of action."

- Generalized analysis about the "types of impacts" that will occur as between and betwixt alternatives is not sufficient:

In *State of New Mexico v. Bureau of Land Management*, 565 F.3d 683 (10th Cir. 2009), BLM had prepared an EIS for subsurface oil, gas and geothermal resources on a particular area of New Mexico. The proposal was highly controversial and many commentators, proffered alternatives more protective of natural resources in response to the draft EIS. The final EIS

rejected those alternatives, but modified the original preferred alternative in several ways, one of which was more protective than in the original draft, but in other ways was not. BLM argued that the nature of the impacts was the same and that no additional supplemental analysis was needed for the new preferred alternative. The 10th Circuit disagreed, stating that, “. . . *we cannot accept that because the category of impacts anticipated from oil and gas development were well-known after circulation of the final EIS, any change in the location or extent of impacts was immaterial. . . . NEPA does not permit an agency to remain oblivious to differing environmental impacts, or hide these from the public, simply because it understands the general type of impact likely to occur. Such a state of affairs would be anathema to NEPA’s ‘twin aims’ of informed agency decisionmaking and public access to information.*”

- Reasonable alternatives proffered by outside groups must be considered in an EIS:

In *Colorado Environmental Coalition v. Salazar*, 875 F. Supp. 2d 1233 (D. Colo. 2012), the Bureau of Land Management (BLM) prepared an EIS for a proposed Resource Management Plan for an area with perceived high value for oil and gas leasing. Plaintiffs developed and submitted an alternative that allowed for drilling, but limited it to multi-lateral directional drilling from wells around the perimeter of the area. The court found that BLM’s failure to analyze the alternative in the EIS was unjustified and required BLM to analyze it under NEPA.

- Reasonable alternatives not within the jurisdiction of the agency must be analyzed:

This rule stems from the landmark NEPA decision in *NRDC v. Morton*, 458 F. 2d 827 (D.C. 1972) and is codified in the Council on Environmental Quality’s regulations at 40 C.F.R. § 1502.14(c). The need to examine “out of the box” alternatives that would fulfill the purpose and need of the project may be especially relevant for some of the alternatives identified below.

- An alternative consistent with a basic policy objective and more environmentally protective must be analyzed even if outside of the immediate ability of the agency to implement:

Muckleshoot Indian Tribe v. Forest Service, 177 F.3d 800 (9th Cir. 1999) dealt with an EIS prepared for a proposed land exchange between the Forest Service and Weyerhaeuser Co. The Muckleshoot Tribe advocated that the Forest Service purchase Weyerhaeuser’s land instead of Forest Service land, but the Forest Service declined to analyze that alternative in the EIS, arguing that the purpose of the proposed action was an exchange, not a purchase. The lower court concluded that such analysis was unnecessary because there was no evidence that the company would agree to a purchase rather than an exchange. On the basis of a detailed examination of the record, the Court of Appeals overturned that decision, stating that, “Although NEPA does not require the Forest Service to ‘consider every possible alternative to a proposed action, nor must it consider alternatives that are unlikely to be implemented or those inconsistent with its basic policy objectives,’ [cite omitted], we are troubled that in this case, the Forest Service failed to consider an alternative that was more consistent with its basic policy objectives than the alternatives that were the subject of final consideration.”

Specific Reasonable Alternatives

In identifying what “reasonable alternatives” need to be analyzed in the draft EIS, FERC, of course, has to take into account the purpose and need to which it is responding. Here, FERC is responding to the applicant’s requests for a certificate of “public convenience and necessity” under Section 7(c) of the Natural Gas Act and authorization under both Section 3 of the Natural Gas Act and Executive Order 10485 for construction of an international border crossing. Thus, the purpose and need will have to be evaluated in light of the “public convenience and necessity” standard and FERC’s policies interpreting that standard, as well as the requirement underlying the Presidential permit process to determine whether issuance of the permit is “consistent with the public interest”.⁸ In this context, FERC needs to consider not only the applicant’s preferences, but also, per its responsibilities to evaluate the public’s interest, convenience and necessity. We believe an appropriate purpose and need statement would reflect what we understand to be the ultimate goal of the underlying project – that is, to supply natural gas for the purpose of converting coal-fired power plants in Mexico in the Puerto Libertad and Guaymas areas to natural gas.⁹ Such a statement conforms to the proponent’s statement of the underlying purpose and need but also requires FERC in the draft EIS to include fully analyzed alternatives in the DEIS that are located outside of the Altar Valley.

Given the serious unresolved conflicts over the use of available resources in the Altar Valley, and the difficulties presented by both the proffered eastern and western routes in it, it is imperative that FERC analyze alternatives outside of the Altar Valley that would be reasonably available and appropriate for a pipeline intended to transport natural gas from the United States to the identified areas in Mexico. Kinder Morgan insists that the crossing point “must” be through Sasabe. As reported in trade press, Kinder Morgan chose to enter into a transportation precedent agreement with MGI that purportedly requires delivery of natural gas at Sasabe. Despite Kinder Morgan’s characterization of the execution of such an agreement as a “routine step”, the timing of the agreement was considered news in and of itself.¹⁰ We have also read that the Mexican Comisión Federal de Electricidad (CFE)’s invitation to bid on construction of a pipeline for natural gas being imported into Mexico from the U.S. specified that the new U.S. pipeline would be required to terminate Sasabe and that the contracts let by CFE specify Sasabe as the crossing point.¹¹ We have not had the opportunity to review these documents.

⁸ Executive Order 10485, “Providing for the performance of certain functions heretofore performed by the President with respect to electric power and natural gas facilities located on the borders of the United States; Section 1(a). The authority in EO 10485 was delegated from the Department of Energy to FERC in 2006, Delegation Order No. 00-004.99A.

⁹ In this regard, we note, for example, a similarly constructed purpose and need statement for the Ruby pipeline: *The purpose of the Ruby Pipeline Project is to provide a reliable means of natural gas transportation service from suppliers in the Rocky Mountain region of the United States to customers in Nevada and on the West Coast (Washington, Oregon, and northern California). According to Ruby, the need for the project arises from a growing demand for natural gas in Nevada and on the West Coast coupled with a decrease in supply from foreign sources and an increase in supply in the Rocky Mountains.*

¹⁰ “Kinder Morgan announces gas contact before pipeline is OK’d”, http://www.insidetucsonbusiness.com/news/kinder-morgan-announces-gas-contrat-before-pipeline-is-ok-d/article_88a1153a-3414-11e2-9896-0019bb2963f4.html. (last checked on 7/13/13).

¹¹ Sierrita Lateral Project, http://www.kindermorgan.com/business/gas_pipelines/projects/sasabelateral/ (last checked 7/9/13).

However, whether or not the applicant committed to a course of action prior to compliance with U.S. law does not in any way diminish FERC's obligations to analyze reasonable alternatives under NEPA. Indeed, were the situation reversed and a U.S. company was trying to "lock in" a crossing point for the import of natural gas into the U.S., we seriously doubt the Mexican government would automatically cede to that decision under their own laws.

Indeed, we would bring to FERC's attention the applicant's swift response to our letter of December 13, 2012 regarding our concerns about what appeared to be a possible premature commitment on the applicant's part.¹² Six days following the posting of our letter, the applicant filed a letter in the docket disclaiming any intent to make a pre-decisional commitment, stating that the agreement it signed allowed it to be released from its obligations under certain circumstances, and stating that it understood that an identification and analysis of alternative routes was part of the process.¹³ **The applicant appears to want to have it both ways: on the one hand, claiming that there is no inappropriate pre-decisional commitment while at the same time citing the "pre-determination" that the line must cross at Sasabe as a rationale for why the line must cross at Sasabe.**¹⁴

FERC's NEPA regulations, as discussed earlier, make it clear that a robust comparison of alternative routes or locations, including a description of environmental characteristics and mapping, is necessary to, among other things, meet the requirement that FERC staff identify alternatives that would cause less severe environmental impacts. It is painfully obvious that in this situation, the applicant has repeatedly failed to do that. A summary of FERC's requests for information about alternatives and explanations the applicant has made regarding its insistence on Sasabe as the point for entry of the pipeline from the U.S. into Mexico is as follows:

- June 11, 2012, Draft Environmental Report No. 10, Sasabe Lateral Project: In its first submission to FERC regarding alternatives, EPNG, the applicant at that stage, characterized the eastern and western routes in the Altar Valley as the "two primary routes." Several other potential system alternatives were briefly discussed and dismissed, including the existing EPNG system lines running from Tucson to Nogales, the Willcox Lateral lines and lines running from Phoenix and Yuma. The longest discussion (approximately half a page) was devoted to use of the existing Nogales lines. The discussion states that the diameter of the existing pipe does not have sufficient capacity to meet the project demand, and so a replacement pipe or pipeline loop would be required.
- July 30, 2012, FERC's Comments on Draft Resource Report 10 (Alternatives): FERC poised 10 questions regarding alternatives, including a request to expand the alternative analysis to include pipeline systems at border crossing locations in California and New Mexico, and in Mexico and in Arizona west of the Baboquivari mountain range and asked for impacts analysis for each such alternative.

¹² Letter from Patricia King, President, Altar Valley Conservation Alliance to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, December 13, 2012, PF 12-11-000.

¹³ Response from Francisco Tarin, Director, Regulatory Affairs, El Paso Natural Gas Company, December 19, 2012, PF 12-11-000.

¹⁴ See *infra* at p. 8, discussion of April 16, 2013 submission.

- October 18, 2012, Public Scoping Meeting: A representative of EPNG, in response to what he characterized as one of the most frequently asked questions about the project – “Why Sasabe?” – stated that Mexico’s energy agency had just put out a Request for Proposals last week that identified Sasabe as the entry point.
- November 12, 2012, Comments on Draft Resource Report 10: FERC told EPNG to consult with its potential customers in Mexico to identify other reasonable points of interconnection at the U.S.-Mexico border, including Nogales, Naco, Lukeville, Douglas, etc. It asked for comparison tables for Nogales, Willcox, Yuma and the Tohono O’odham System alternatives, an alternative that would be located within the West-wide energy corridor and a pipeline that would follow existing pipeline systems in California and/or New Mexico.
- April 1, 2013, Environmental Information Request: FERC’s request includes a number of pertinent questions about alternatives outside of the Altar Valley and requests that Sierrita discuss interconnection points at Nogales, Naco, Lukeville, Douglas, etc., along with pipelines pipeline systems in California and/or New Mexico. It asks for an analysis of relevant land management plans as well as border security issues associated with each alternative. It also asks for further information about placement in the West-wide energy corridor and an expanded discussion about Sierrita’s earlier statements that any change in the border crossing location would delay and increase the cost of the pipeline.
- April 16, 2013, Response to Data Request: In response to FERC’s earlier requests, Sierrita stated that use of the 15-mile federally designated energy corridor (which is incorrectly characterized as “proposed”) would add significant distance, disturbance and overall costs and that, “the border crossing location associated with this alternative would not be acceptable to the Mexican customer.” It similarly dismissed alternative routes in New Mexico or California as involving “significantly greater environmental impacts and costs” without providing publicly available analysis. It also dismissed other multi-use energy corridors because, “**with the pre-determined delivery point for the Project near the Town of Sasabe, Arizona, none of these corridors are appropriately located to be considered feasible.**”¹⁵ It states that the company consulted with Sempra Energy as well as MGI and that Sasabe “is the only viable crossing.”

Further, Sierrita Gas Pipeline argued that engineering, permitting and right-of-way acquisition for a pipeline running from Sasabe to Guaymas was underway in Mexico and that reengineering and modifying permit allocations in the United States would result in six months’ delay in the construction of the pipeline. The discussion also identifies a six-month delay from the time that the Mexican contractor was selected by CFE, apparently referencing the lack of publication of the draft EIS (although this is not clear). There is no explanation of the reason for the latter six month delay, unless one assumes that what is being referenced is the need to go through the permitting process with FERC and other government agencies. This discussion ends with the notion that these two delays could cost Mexico millions of dollars and ultimately affect the viability of the project. We

¹⁵ Responses to OEP Data Request – OEP/DG2E/Gas1, Resource Report 10, p. 1-14, Section 10.6.1.2., emphasis added.

cannot help observing that if the applicant has sufficiently answered FERC's inquiries at the beginning, the process would have moved faster.

- April 30, 2013, Motion for Leave to Answer and Answer of Sierrita Gas Pipeline, LLC: Sierrita states that the eastern route is not viable because of the U.S. Fish and Wildlife Service's finding that it would not be appropriate for the pipeline to be located on the Buenos Aires National Wildlife Refuge. Sierrita further states that it has evaluated using facilities or existing pipeline corridors of EPNG, including its Nogales, Willcox and Yuma systems, a route over the Tohono O'odham Nation's land and alternatives that would utilize facilities of Transwestern Pipeline Company, LLC and North Baja Pipeline, LLC. "After extensive work and consultation on these project alternatives, including consultation with local stakeholders, Sierrita determined that the currently proposed, preferred route is the best option. Sierrita's rationale for the existing route is well documented in Docket CP 13-73-000 " We find no publicly accessible information that details this work and no identification of the local stakeholders who were purportedly consulted.
- June 7, 2013, Response to Previously Requested Comments: This material purports to respond to FERC's request that each alternative be analyzed in light of its compatibility with land management agencies' plans and programs, as well as a comparison of how each alternative would affect border security issues. The response is dramatically inadequate, although candid in some respects. The applicant states that *no land management agencies were consulted in developing the response*. It states that formal compatibility use determinations would be necessary for construction in publicly owned lands, but that is incorrect – the "compatibility determination" requirement exists only for proposed activities on national wildlife refuges. And stunningly, it assumes that border security issues would be generally similar for each project alternative, equating highly developed urban areas near official border crossings where one out of every 24 people are with a law enforcement agency¹⁶ to remote areas with heavily used smuggling corridors. The "discussion" of individual land units appears to be cut and paste material from websites or existing land management plans with virtually no analysis in terms of how a pipeline would actually affect plans and programs. We also note that every alternative route, whether coming from Yuma or Willcox, purportedly would have to go through the Buenos Aires National Wildlife Refuge, leaving the only alternative that does not go through the Refuge the western route in the Altar Valley. There is no explanation of why a pipeline hundreds of miles from the Refuge would have to go through the Refuge. Thus, Sierrita is saying that every possible alternative crossing into Mexico would have to go through the Buenos Aires National Wildlife Refuge except for the one route closest to that Refuge – the one that the applicant prefers.
- June 18, 2013, Further Data Request: FERC asks for further information on both the Lukeville and Nogales/West-wide energy corridor alternatives.

¹⁶ Statement by Santa Cruz County Sheriff Tony Estrada regarding law enforcement in Nogales, Arizona, at Congressional hearing on border issues, February 2, 2012, Nogales, Arizona. He went on to say that the highest ratio of law enforcement to citizens in the country is in Nogales.

Possible Alternative Routes

We offer a few observations below on possible routes that appear to warrant full analysis in the draft EIS.

Lukeville: Kinder Morgan's responses offer virtually no useful information to the public about this alternative. In the absence of even a potential route map, it is unclear to us why this alternative would have to cross the Buenos Aires National Wildlife Refuge.¹⁷ We do note that the terrain from the intersections of Highways 85 and 86 down to Lukeville is generally flat in comparison to some other areas. The land under Highway 85 is owned by the National Park Service, but we understand there are major rights of way and easements for both above ground and buried lines, including telephone, power, and, most recently, fiber optic line that parallels the highway both immediately adjacent and several hundred yards on the west side of the highway. The highway has a 300-foot corridor excluded from areas designated as wilderness.

Nogales: The Nogales systems alternatives would involve replacement of existing, aging pipelines with a larger capacity pipeline. Sierrita's June 7, 2013 Response to Previously Requested Comments indicates that the routes go through the Buenos Aires National Wildlife Refuge; this is not shown on route maps of the current pipelines. The June 7th material cites the Sierra Club as saying that the Coronado National Forest, which the western Nogales route does go through, has more species listed under the Endangered Species Act than other national forest. What the Forest Service says is that it has the highest rate of biodiversity of any national forest. This, of course, does not mean that all of the Coronado National Forest is necessarily off limits to any activity. Indeed, the federally designated West-wide energy corridor goes through the Coronado National Forest. In Sierrita's submission of April 16, 2013, the argument is repeatedly made that the programmatic EIS for those corridors is in the draft stage – thus, the argument goes, the route may change or there may be a delay, and “It is unclear when a final decision on the proposed corridors is expected.” However, the Record of Decision was signed in 2009 and litigation brought by environmental groups was settled in June 2012.¹⁸ The settlement agreement includes characterizations of corridors that are of concern to environmentalists, and the route through the Coronado National Forest to Nogales is not one of them. Clearly, the applicant's analysis of this route has been premised in part on a major factual error.

Altar Valley, eastern route: We are cognizant of the determination made by the U.S. Fish and Wildlife Service that placement of the proposed pipeline is not compatible with the Refuge's mission. At the same time, the Fish and Wildlife Service has also made it clear that ecologically, there are even more serious problems with the western route within the Altar Valley and that as between the two routes in the Altar Valley, “the eastern route, that essentially co-locates this pipeline with Highway 286, is the least damaging alternative. We strongly agree with that assessment. FERC's EIS should not drop this alternative from analysis; rather, any possible configuration, such as along or under Highway 286 or any possible compensation in the

¹⁷ It would be more understandable if the text for the Lukeville and Yuma routes referenced Cabeza Prieta National Wildlife Refuge, which is closer to both Lukeville and Yuma, but the text references the Buenos Aires Refuge.

¹⁸ The settlement agreement and associated documents can be accessed at <http://wilderness.org/resource/factsheet-west-wide-energy-corridors-new-way-forward>.

way of a land exchange with the Refuge should be explored. We say this with no interest or intent of harming the Refuge or its interests, but rather to make sure that all options are fully analyzed for the benefit of both FERC and the Department of the Interior as well as the public. Indeed, given the understandable but differing perspectives of two units of the U.S. Fish and Wildlife Service, a full analysis could provide the basis for reconciliation of these positions within the Department of the Interior.

In closing, we want to commend FERC for continuing to pursue information from the applicant rather than rushing to publication of a draft EIS. FERC must include a comprehensive analysis of all reasonable alternatives. We look forward to reviewing a robust analysis of all reasonable alternatives when that information becomes available.

Sincerely,



Patricia King
President
Altar Valley Conservation Alliance



Mary Miller
Vice-President
Altar Valley Conservation Alliance