Express Crude Oil Pipeline Record of Decision
United States Department of the Interior Bureau of Land Management

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The Bureau of Land Management is responsible for the balanced management of the public lands and
resources and their various values so that they are considered in a combination that will best serve the
needs of the American people. Management is based upon the principles of multiple use and sustained
yield a combination of uses that take into account the long term needs of future generations for renewable
and nonrenewable resources. These resources include recreation, range, timber, minerals, watersheds,
fish and wildlife, wilderness and natural, scenic, scientific and cultural values.
RECORD OF DECISION

FOR THE
EXPRESS CRUDE OIL PIPELINE

Right-of-way Case File No. WYW-128830

Lead
Bureau of Land Management Office
Worland District Office

Co-Lead Agency
State of Montana
Department of Environmental Quality

Cooperating Agencies
Bureau of Reclamation
U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service

Prepared by:
United States Department of the Interior
Bureau of Land Management
Worland District
Worland, Wyoming

Wyoming State Director, Bureau of Land Management

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This document records the decision made by the Bureau of Land Management (BLM) for granting a right-of-way (ROW) across BLM-administered lands (public lands) to Express Pipeline, Inc. for the construction of a 24-inch crude oil pipeline from Wildhorse, Alberta, Canada to Casper, Wyoming.

DECISION

It is my decision to grant a ROW and a temporary use permit across public lands to Express Pipeline Inc., for the construction of a 24-inch crude oil pipeline from Wildhorse on the U.S.-Canada border to Casper, Wyoming. A single ROW grant will be issued for all the Federal lands including those administered by other Federal agencies. Alternative 3, "Proposed Action As Modified by the Wildlife Timing Alternative," is the BLM's selected alternative. Further, we concur with the request of Express Pipeline Inc., to include the South-Central Montana Realignment as an element of the Proposed Action. Finally, we concur with the State of Montana Department of Environmental Quality's (DEQ) recommendations regarding stream crossing timing and methods. The BLM recognizes that final stream crossing requirements will be determined by the U.S. Army Corps of Engineers, section 404, permitting process, and (in Montana) the decision of the State of Montana Board of Environmental Review.

In this decision, the BLM does not select the Bridger Trail Realignment or the Pipeline Casing Alternative. This decision does not affect any state or private lands crossed by the proposed route, and does not create any right or easement or establish eminent domain across such lands.

Construction on the public land segments of the ROW may not begin until a Notice to Proceed is given by BLM. The Notice to Proceed will not be issued until a Plan of Development (POD) (per 43 CFR 2882.3(m)), has been submitted by Express Pipeline, Inc., and approved by the BLM.

This decision identifies the "No Action" Alternative as the "Environmentally Preferred" Alternative.

ALTERNATIVES CONSIDERED IN DETAIL

Three alternatives were analyzed in detail in the environmental impact statement (EIS):

Alternative 1: No Action. The BLM would deny the ROW across public lands.

Alternative 2: Proposed Action. The BLM would grant the ROW application as proposed by Express Pipeline Inc.

Alternative 3: Proposed Action with Modifications. The BLM would approve the ROW application, with various modifications designed to respond to issues raised during scoping. This alternative was structured such that the decision-maker could select all or any combination of the sub-alternatives.

- Boring the Yellowstone River: The Yellowstone River would be crossed by boring rather than open-trenching.
- Bridger Trail: A reroute proposed to place the pipeline’s crossing of this historic trail in an area of existing disturbance.
- South-Central Montana: A reroute to place an irrigation canal crossing in a more topographically favorable location.
- A construction timing-window to avoid impacts to big game winter habitat, threatened or endangered species, and nesting raptors.
- Stream Crossing Timing: A construction timing-window such that open-trench river crossings take place during periods of low flow.
- Pipeline Casing: Using "pipe-in-pipe" construction at river crossings.

RATIONALE FOR THE DECISION

I have determined that the draft EIS and the final EIS together, adequately disclose the impacts to the human environment of the Proposed Action and the Alternatives Discussed in Detail, and provide a sound basis for my decision. I have further determined that all practicable means to avoid or minimize environmental harm have been adopted. I also find that construction, operation, and maintenance of the pipeline would not result in unnecessary or undue degradation of the public lands.

Relatively few environmental or resource-based concerns were raised during the EIS process. Most of these related to major river crossing timing and methodology in Montana. These issues were addressed in Appendix O of the final EIS.

The most prevalent concern identified during the EIS process was the impact that the volume of Canadian oil to be shipped through the pipeline may have on the price of crude paid to Wyoming producers, and the impact that this could have on producer’s income, employment, and Federal, state, and local revenues. To
address this issue, the BLM retained a contractor to study the potential economic impact, whose report appears as Appendix N in the final EIS. This report predicts a potential reduction in price of $0.50 to $1.50 per barrel paid for Wyoming sweet crude. For purposes of analysis, the impacts of a $1 per barrel decrease are detailed. I believe that this scenario is based on reasonable assumptions and represents the most probable outcome if the pipeline is constructed. However, I recognize that this is a prediction of the future, not an assertion of fact. There is uncertainty attendant to any such prediction. I recognize that if any of the assumptions used for analysis prove to be incorrect, the impacts may be substantially different. I have reviewed all the comments, and accompanying data, submitted on the draft EIS and the final EIS which make predictions on price impact ranging from zero impact to $4.50 per barrel for all crude types. While I believe that a result which differs significantly from the scenario presented in Appendix N is not likely, I cannot state categorically that one will not occur.

On the other side of this issue, I have reviewed the comments of refiners and others who support the project. They claim that adverse economic impacts will result from the BLM’s denial of a ROW to Express Pipeline, Inc. These refiners, particularly those in Salt Lake City, Utah, assert that they can no longer compete with West Coast refineries able to access feedstock at world market prices while they are forced to pay a bonus over world price to access scarce and declining local production; and that closure of these refineries would be the likely result. Further, they note, and Appendix N agrees, that if local refineries are forced to shut down, loss of this market would result in impacts to Wyoming producers worse than those predicted with Express Pipeline, Inc.

I am aware of the National Environmental Policy Act of 1969 (NEPA) mandate to disclose all impacts of a Federal action, including socioeconomic impacts. I believe the record before me does that. Ultimately, however, I do not feel that I may base my decision whether or not to grant a ROW on economic factors. Under 43 CFR 2882.3(e), I must consider whether the proposed ROW would be in the “public interest.” In this regard, I have taken into account two recent and unequivocal Congressional definitions of the public interest: the ratification of the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA). I have determined that it would be inappropriate to use the BLM’s ROW process, on only 19 percent of the proposed route, to frustrate the clear mandate of these international treaties, to discriminate against the import of Canadian oil, or to provide economic protection to a segment of the domestic oil industry. Nor do I consider it appropriate to use the process to favor one competing business venture over another (since most of Express’s competitors require no permit from BLM), or to attempt to micromanage the supply and demand dynamic of the pipelining and refining market.

MITIGATION AND MONITORING

General mitigation provisions are described in the draft EIS on pages 4-81 through 4-84, and in Appendix B. For public lands, the site-specific provisions governing construction techniques, backfilling, clean-up, revegetation, and reclamation, and contingency planning for fires, spills, and hazardous materials will be contained in the POD. This document is currently in preparation. No “Notice to Proceed” for the project will be issued until an acceptable POD has been submitted by Express Pipeline, Inc., and approved by the BLM. The site specific measures in the approved POD will be mapped on 1:2000 strip maps which will be made available to the construction supervisors, and contract and BLM environmental inspectors.

BLM environmental inspectors will monitor all phases of construction and reclamation across public lands for compliance with terms of the approved POD.

PUBLIC INVOLVEMENT

A Notice of Intent to Prepare an EIS was published in the Federal Register on September 7, 1993. Public scoping was conducted in October 1993. Several hundred scoping notices were mailed to BLM and Montana DEQ’s scoping mailing lists. Public scoping meetings were held in Havre, Lewistown, and Billings, Montana; and in Worland and Casper, Wyoming. The Notice of Availability of the draft EIS was published in the Federal Register on August 18, 1995. More than 450 copies of the draft EIS were distributed. The draft EIS public comment period was 60 days. Comment meetings for the draft EIS were held in the same five locations as the scoping meetings. The final EIS Notice of Availability was published in the Federal Register on February 23, 1996. The final EIS comment period was 30 days; 800 copies of the final EIS were distributed.

RESPONSE TO COMMENTS ON THE FINAL EIS

On March 25, the BLM received comments on the draft EIS from various State of Wyoming agencies which were “inadvertently never forwarded” during the draft EIS comment period. Most of these raised economic concerns which were addressed in the final EIS. There was also a letter from the Wyoming Game and Fish Department which expressed wildlife and reclamation concerns. Some of these were addressed in the final EIS. We will to the greatest extent practical incorporate their remaining suggestions in the POD.
Thirty comments were received on the final EIS. A list of the commentors is appended to this ROD. In the following discussion, the numbers in parentheses identify the commentor from this list.

General comments:
One comment (26), requested a definition of the term "tariff".
Response: In this context, "tariff" refers to the fee pipeliners charge for the shipment of product.

Requests for an extension of the final EIS comment period.
Several comments (6, 9, 12, 16, 27, 31, 32), requested that BLM extend the final EIS comment period for up to 90 days. Others (7, 15, 25, 28, 29), were opposed to any extension and expressed general support for the project and the existing NEPA documentation.
Response: On April 5, 1996, the BLM’s Wyoming State Director issued a letter to the Governor of Wyoming denying the request for extension. A copy of this letter is appended to this Record of Decision.

Issues related to private lands.
One comment (1), was from landowners who do not want the pipeline route to cross their land. Another (3), was concerned that BLM’s ROW would grant eminent domain to Express Pipeline, Inc., and wanted the BLM to require that the pipeline follow section lines to minimize impacts to private lands.
Response: The BLM’s ROW grants no eminent domain across private lands, and BLM is making no decisions regarding the route on private lands, as we lack statutory authority to do so. Access and condemnation on private lands would be adjudicated according to applicable state law.
One landowner (21), was opposed to BLM applying wildlife timing restrictions on construction on his lands.
Response: Technically, BLM’s timing restrictions apply only to the public land crossed on the route. However, as a practical matter, we recognize that the restrictions will result in construction on the private lands during crop growing seasons. This is because pipelines are constructed by spreads of equipment moving in a linear fashion, which cannot start and stop, or jump ahead to a different location on the route. In reaching my decision, I felt that State law provides a mechanism to compensate for crop damages, and that such damages are relatively easy to assess. By contrast, it is difficult or impossible to assign a dollar value to impacts to wildlife, or to use money to mitigate those impacts.

Issues related to economic impacts.
Two comments (18, 23), stated that it is inappropriate to discuss economic impacts in a NEPA document.
Response: If our action would result in an economic effect, BLM must make a reasonable effort to predict the foreseeable consequences of that action, and disclose the impact to the public. However, I agree, for the reasons stated in the "Rationale" section of this ROD, that economic impacts cannot form the primary basis for my decision.

Many comments (2, 3, 4, 13, 14, 20, 22, 27), cited negative economic impacts to domestic oil producers and to the State of Wyoming, without disagreeing specifically with the conclusions of the final EIS.
Response: The BLM’s economic analysis predicts that construction of the Express pipeline could result in adverse impacts to segments of the oil industry, and in loss of revenue to the state of Wyoming and the Federal government. However, I do not feel that the BLM can legally use its ROW process to protect Wyoming producers from the effects of an international market. I have presented my reasons more fully in the "Rationale" section of this ROD.

Many comments disagreed with various aspects of the BLM’s economic analysis. One (17), felt that the assumptions were generally unsupported. Some (4, 10, 12, 17, 24), disagreed with the assumption that Canadian producers will not accept a sharply discounted price simply to gain Petroleum Administration Defense District IV (PADD IV) market penetration. One commentor (10), felt that this scenario was not presented. This could lead to impacts greater than predicted (12, 17, 24). Another commentor (23), felt that the production decline and refining demand were overstated, that there was no basis for the prediction of a reduced crude oil price, and predicted zero economic impacts.
Response: Each assumption used for analysis in Appendix N is followed by a parenthetical statement giving the basis for the assumption. I felt that these assumptions were reasonable and well-supported. However, as with any prediction of the future, I recognize that they could ultimately prove incorrect. In Chapter 2, on the final EIS, the BLM presented the impacts of one such scenario, which could result from Canadian producers accepting a discounted price. In reaching my decision, I also carefully considered all comments on the draft EIS and the final EIS, which make predictions of price impact to crude oil ranging from zero to $4.50 per barrel.

Many comments (4, 6, 10, 12, 19, 22, 24, 26, 27), stated that refineries needs could be supplied by other projects, competing pipelines, reactivating shut-in wells, enhanced oil recovery (EOR) projects, or new technology.
Response: I feel that there are two considerations at issue here. First, the question is not simply whether these sources could supply the oil, but can it be supplied at a reasonable crude price which allows local refineries to compete with coastal refineries? The fact that local refineries must pay a bonus of $2 to $4 per barrel FAOGO world market price just to access the necessary amount of oil indicates to me that the answer to this question is no. Second, the amount of supply is not the only consideration. The refineries have stated that they need specific types of crude oil which Express can supply, and alternate sources cannot. In any event, I do not consider it appropriate to use the BLM's ROW process to favor one competing business venture over another, especially when some enjoy the advantage of requiring no permit from BLM.

Some comments (5, 20, 24, 26), urged the BLM to favor domestic oil producers over "subsidized" Canadian production. One (5) questioned the BLM's "agenda in showing favoritism towards Canadian oil."

Response: Under the existing international trade agreements, I cannot legally favor domestic producers or discourage Canadian imports. I strongly disagree that BLM is showing "favoritism" to Canadian oil. Under current law and regulation, Express Pipeline Inc., is entitled to apply for a ROW across public lands, and I believe we have processed that application just as we would any other. Finally, if Canadian "subsidies" constitute an unfair trade practice, this issue must be resolved in a different forum (such as through the U.S. Trade Representative or in the Court of International Trade).

One comment (12), urged the BLM to analyze the secondary social impacts resulting from unemployment and reduced income to the State.

Response: I recognize that certain secondary social impacts may occur. However, I feel that any attempt to quantify these impacts would be mere speculation. This is because I have no basis to predict the response of the state of Wyoming to a reduction in revenue. It could either raise taxes, cut services, or both. Also, the uncertain nature of the basic predictions of economic impact would mean that any derivation of secondary impacts would be even more uncertain and speculative.

One comment (24), stated that approval of the ROW would result in the premature abandonment of wells on Federal leases, and that this would be inconsistent with the BLM's mandate to insure maximum recovery of oil from these leases.

Response: This mandate is found in the 43 CFR Part 3160, regulations governing the BLM's supervision of onshore oil and gas lease operations. I do not believe it can be properly invoked to shield domestic producers from marketplace competition, or to abrogate international treaties ratified by Congress.

Issues related to environmental concerns.

Two comments raised issues with stream and river crossings. Of particular concern was the open-trench crossing of the Yellowstone River (8, 11). One commentor (11), felt that the discussion of mitigation of river crossings was inadequate, and called for a comprehensive review for Section 404, of the Clean Water Act.

Response: The BLM has no direct regulatory role in stream and river crossings, except where these occur on public lands. The crossing of the Yellowstone River occurs on private land. Express Pipeline, Inc., has submitted Section 404, permit applications for Wyoming and Montana to the U.S. Army Corps of Engineers. The Cheyenne office of the Corps has issued a letter authorizing the Wyoming crossings under Nationwide Permit 12. The Montana crossings are under review by the state of Montana DEQ and the Corps; directional drilling of the Milk River, Arrow Creek, and the Yellowstone are being given active consideration. I recognize our mandate under NEPA to disclose the potential impacts of river crossings, and explore all reasonable mitigating measures. I believe the draft EIS and final EIS fulfill this mandate.

One commentor (11), felt that impacts to wetlands had not been adequately addressed.

Response: I do not agree. The impacts to wetlands will be temporary and largely mitigated through proper construction techniques. Proper reclamation will assure no long-term net loss of wetlands. These issues are fully addressed in the draft EIS and the final EIS.

Issues related to NEPA procedure.

Comments allege that BLM failed to explore various alternatives. These were: the alternative that competing pipelines/alternate sources supply the refinery shortfall instead of Express (24, 27); that routes with less impact to private lands be considered (21); and that Royalty In Kind (RIK) oil be used to meet the needs of PADD IV refineries (10).

Response: Allowing competing pipelines/alternate sources to supply refineries instead of Express was in fact discussed in detail in the draft EIS and the final EIS. It is the "No Action" alternative. Using RIK oil to meet this demand is merely a sub-alternative of "No Action". It was not discussed in detail because it does not address the basic issue of a shortage of crude oil. RIK cannot generate any new oil; it can alleviate a shortage in one market only by creating a shortage somewhere else. In any event, this decision does not foreclose the RIK option. Refiners may still petition the Secretary of the Interior for RIK oil, if they choose to do so. Minimization of impacts to private lands was considered early in the process in the "All-Public-Lands Alternative" (considered but eliminated from detailed discussion). A review of a landownership map quickly reveals that it is
impossible to find a practical route from the Montana-Wyoming border to Casper, Wyoming that crosses significantly less private land than the route proposed. In fact, since public land ROW rental is generally cheaper than private damages agreements, and since all public lands ROW is made in a single grant rather than separate negotiated contracts with individual landowners, it has always been in Express's self-interest to minimize private lands crossings.

Commentors felt that the BLM failed to involve agencies with special expertise or jurisdiction: the Bureau of Reclamation (BOR) (21), the Minerals Management Service (MMS), and the Department of Energy (DOE) (24).

Response: The BOR has in fact been a Cooperating Agency since the beginning of the EIS process. The MMS and the DOE have no jurisdiction by law in the ROW process, and I do not feel that they could have provided "special expertise" in the area of Federal royalties or EOR technology that was not available to our economics consultant, or that was not brought out in the comments on the draft EIS. It should also be noted that they did not indicate a desire to participate in the EIS process in response to the three Federal Register notices that were published.

The Biological Assessment (BA) was inadvertently omitted from the final EIS. If you wish to receive a copy of the BA, please send your request to BLM, Worland District Office, Attn: Don Ogaard, P.O. Box 119, Worland, WY 82401-0119. A copy of the letter from the U.S. Fish and Wildlife Service concurring with our determination that the project is not likely to adversely affect any listed species is included as an appendix to this ROD.

The paragraph on page 2-3 and page 2-11, discussing the impact to Tribal revenues should be deleted in its entirety and replaced with the following:

"Oil and gas royalties are a major source of revenue for the Shoshone and Arapaho Tribes of the Wind River Indian Reservation. Yearly production of sweet crude on the reservation is approximately 130,000 barrels, 2.9 percent of total production. Assuming an average royalty rate of 18 percent, a reduction in the sweet crude price of $1.00 per barrel could potentially reduce tribal royalty revenue by $23,400 per year. Tribal severance tax lost would be approximately $11,000, producing a total estimated annual revenue loss of $34,400. No quantifiable secondary impacts to production or exploration are anticipated, because most of the sweet crude is produced as condensate from natural gas wells."

In the paragraph on page 2-4 and 2-11 through 12, describing the impacts of a price reduction for all crude types, delete the sentence "Tribal revenues lost could be approximately $950,000 per year." and substitute "Tribal revenues lost could approach $1.2 million dollars per year."

**APPEALS**

This decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the attached Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Wyoming State BLM Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003-1828, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993), or 43 CFR 2804.1, or 43 CFR 2884.1, for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must
also be submitted to each party named in this decision and to the IBLA and to the appropriate Office of the Solicitor (see 43 CFR 4.413), at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. the relative harm to the parties if the stay is granted or denied;
2. the likelihood of the appellant’s success on the merits;
3. the likelihood of immediate and irreparable harm if the stay is not granted; and
4. whether the public interest favors granting the stay.

LIST OF COMMENTORS ON THE FINAL EIS

1. Mr. and Mrs. George Gecky
2. W. A. Moncrief,Jr.
3. Dennis J. Brabec
4. Wyoming State Legislature (Joint Resolution)
5. Rim Operating, Inc.
6. Governor of Wyoming
7. Express Pipeline, Inc.
8. U.S. Fish and Wildlife Service, Montana Field Office
9. U.S. Senator Craig Thomas
10. State of Wyoming Science, Technology, and Energy Authority
11. U.S. Environmental Protection Agency, Region VIII, Montana Office
12. Wyoming State Legislature, Select Committee on Oil, Gas, and Mineral Transportation
13. Washakie County Commissioners
14. M & K Oil Company
15. Flying J, Inc.
16. County and Prosecuting Attorney’s Office, Campbell County
17. County and Prosecuting Attorney’s Office, Campbell County; for the Campbell County Commissioners
18. Frontier Oil Corporation
19. Belle Fourche Pipeline Company
20. Five Star Towing and Repair
21. David McKamey
22. Hot Springs County Commissioners
23. Express Pipeline, Inc.
25. U.S. Representative Bill Orton
26. Intermountain Conservation District
27. Campbell County School District
28. U.S. Senator Robert F. Bennett
29. Total Petroleum, Inc.
30. Wyoming Independent Producer’s Association (forwarding a transcript of the hearing of the Select Committee on Mineral Transportation)
31. U.S. Representative Barbara Cubin
32. U.S. Senator Alan Simpson
APPENDIX

COPIES OF LETTERS

SENT TO

THE GOVERNOR OF WYOMING

RECEIVED FROM

THE U.S. FISH AND WILDLIFE SERVICE

AND

INFORMATION ON TAKING APPEALS TO THE

BOARD OF LAND APPEALS

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Wyoming State Office

P.O. Box 1529

Cheyenne, Wyoming 82003-1529

Honorable Jim Geringer
Governor of Wyoming
State Capitol Building
Cheyenne, WY 82002

Dear Governor Geringer:

Thank you for meeting with me to discuss the Express Pipeline project. I appreciate our frank discussion of issues and concerns regarding this project.

I understand your concerns with the analysis of economic impacts presented in Appendix N of the Final Environmental Impact Statement (FEIS) for the Express Pipeline proposal. After carefully considering your request of March 22, 1996, for a 90 day extension of the comment period on the FEIS, I have concluded that such an extension would not be appropriate. However, as discussed at our April 2, 1996, meeting, we do not expect to issue the Record of Decision (ROD) or the right-of-way grant until April 15, 1996.

The economic analysis was expanded for the FEIS in response to comments submitted by the State and others on the draft Environmental Impact Statement. The expanded analysis is based on reasonable and well-supported assumptions, and represents the most probable impact scenario if the pipeline is built. As with any prediction, there is some uncertainty involved. We recognize that by using different assumptions, any number of alternate scenarios could be constructed. However, other economic impact scenarios based on different assumptions would be no more predictable or no more certain than the analysis presented in the FEIS. This predictive uncertainty is acknowledged in the FEIS (at pages 2-3 through 4, and 2-11 through 12), and the impacts of a different scenario are also estimated. The way the information is presented in the FEIS allows the reader to estimate the possible economic impacts at any oil price level, whether reduced or increased.
The business and marketplace effects of extending the FEIS comment period were also considered. The "window" for constructing the pipeline is between August 1 and November 15 due to restrictions to protect wildlife. If the comment period were extended 90 days and the right-of-way subsequently approved, this window of construction opportunity would be missed. The ROD for the FEIS and approval requirements for the right-of-way could not be completed in time to allow construction of the pipeline this year. This would result in severe penalties and increased costs to Express Pipeline Inc., (Express).

Since Express is in direct competition with other pipeline companies to transport Canadian oil to the same delivery points in the United States, failure to construct this year could threaten the viability of the project. The effect of extending the comment period could be construed as using the Bureau of Land Management's (BLM) National Environmental Policy Act of 1969 (NEPA) and right-of-way processes to discriminate against Express simply because it requires a BLM permit to cross public lands, while many of its competitors do not.

The proposed right-of-way crosses 97 miles of Federal land out of a total project length of 515 miles in the United States, a minor portion of the pipeline project. There are 418 miles of pipeline crossing non-Federal lands, including State of Wyoming lands. Those 418 miles cross many non-Federal landowners who have an interest in or are affected by construction of the proposed project. We have received few adverse or negative comments from those landowners regarding the proposed pipeline. In view of this and the limited extent of our jurisdiction over affected lands, we do not feel it is appropriate for BLM to delay the project due to market issues over which we have no authority.

I have also considered the comments of the refineries in Petroleum Administration Defense District (PADD) IV (including those located in Wyoming) and comments from the Governor of Utah. They assert that adverse economic effects would result from a BLM denial of the right-of-way, or a de facto denial through an extension of the comment period or other type of delay. Our economic analysis points out that if PADD IV refineries are forced to close due to inability to compete with refineries that are able to access needed supplies of crude oil at world market prices, the impacts to Wyoming's economy could be even greater than those predicted with the Express Pipeline.

The provisions of the worldwide General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA), ratified by the United States Congress, prohibit discrimination in our decisionmaking regarding imports and exports. The same economic impact issues surfaced in the proposed Alaskan Pipeline Project a few years ago. It was the Department of the Interior's position then, as it is now, that NEPA provides no legal basis for protecting any business or entity from the competition of the marketplace. Therefore, delaying the project by granting an extension of time to comment on its potential socio-economic impacts would be an improper use of our authority under NEPA. This action could be perceived as de facto discrimination against importation of Canadian oil to the United States, an act clearly prohibited by NAFTA. The proper forum for resolving disputes, such as the potential economic impact to Wyoming due to construction of the Express Pipeline, lies within the exclusive jurisdiction of the President, his Trade Representative, or the Court of International Trade.

Express has complied with all requirements of the law and regulations for its right-of-way application. No significant environmental impacts from the action have been identified in the EIS. Therefore, I have no basis for not approving the ROD for the FEIS and granting the right-of-way, with an appropriate plan of development, across BLM administered lands. The ROD for the FEIS and the decision granting the right-of-way will be issued with the right of appeal providing adverse parties the opportunity to have BLM's decision reviewed by the Interior Board of Land Appeals.

I realize this is a very important matter for the State of Wyoming and understand your need to carefully analyze the potential impacts of the Express Pipeline on the State's economy. This has not been an easy decision for me to reach, and I want to assure you that your concerns were seriously considered.
As indicated earlier, I have instructed my staff to have the ROD and the right-of-way grant prepared for my signature by April 15, 1996. No further action on this project can occur on the Public Lands until Express has submitted and received approval for their Plan of Development to construct the pipeline. Meanwhile, I remain available to discuss and coordinate with you further on this matter. If you have any questions, please give me a call.

Sincerely,

[Signature]

Alan K. Pierson
State Director

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United States Department of the Interior

Dear District Manager, Bureau of Land Management, Worland, Wyoming

March 22, 1996

Memorandum

To: Field Supervisor, Ecological Services, Cheyenne, Wyoming

From: Field Supervisor, Ecological Services, Cheyenne, Wyoming

Subject: Request for Concurrence, Express Pipeline

In response to your February 21 memorandum concerning the subject, I have reviewed the Express Pipeline Biological Assessment prepared by Greystone. I concur that the project is not likely to adversely affect any species in Wyoming or Montana listed under the Endangered Species Act. You are reminded that if surveys reveal any active raptor nests within one-half mile of the pipeline corridor this office should be contacted with regard to compliance with the Migratory Bird Treaty Act and/or Bald Eagle Protection Act.

Charles P. Davis

CC: Corps of Engineers, Cheyenne
Corps of Engineers, Helena
FWS, ES, Billings
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you.
2. You believe it is incorrect.

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL . . . . Within 30 days file a Notice of Appeal in the office which issued this decision. You may state your reasons for appealing, i.e., desire.

2. WHERE TO FILE NOTICE OF APPEAL . . . Wyoming State Office, Bureau of Land Management 2515 Warren Avenue, P.O. Box 1829 Cheyenne, Wyoming 82001/82003

SOLICITOR ALSO COPY TO . . . The Regional Solicitor, Rocky Mountain Region U.S. Department of the Interior P.O. Box 25007, DFC Denver, Colorado 80225

3. STATEMENT OF REASONS . . Within 30 days after filing the Notice of Appeal, file a complete statement of reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203 (see 43 CFR Secs. 4.412 and 4.413). If you fully state reasons for appealing when filing the Notice of Appeal, no additional statement necessary.

SOLICITOR ALSO COPY TO . . . The Regional Solicitor, Rocky Mountain Region U.S. Department of the Interior P.O. Box 25007, DFC Denver, Colorado 80225

4. ADVERSE PARTIES . . Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the Notice of Appeal, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are to from decisions of the Director (WO-100).

5. PROOF OF SERVICE . . Within 15 days after any document is served on an adverse party, file proof of service with the United States Department of the Interior, Office of the Secret of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (38 FR 4939, January 19, 1973)) requesting a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

SUBPART 1821.2—OFFICE HOURS, TIME AND PLACE FOR FILING

Sec. 1821.2-1 Office hours of State Offices. (a) State Offices and the Washington Office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the State Offices and the Washington Office are open to the public for the filing of documents and inspection of records are from 9 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

Sec. 1821.2-2(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the State Office or the Washington Office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office next opens to the public.

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