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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transwestern Pipeline Company, LLC **Docket No. CP06-459-000**

TOWN OF BUCKEYE'S COMMENTS TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

LA2-1 The Town of Buckeye ("Buckeye") hereby submits its comments to the draft environmental impact statement ("Draft EIS") prepared by the Federal Energy Regulatory Commission ("FERC"). Buckeye's ability to fully comment has been prejudiced by FERC's failure to prepare an adequate Draft EIS for comment and Transwestern Pipeline Company, LLC's ("Transwestern") failure to provide Buckeye adequate notice of its application so that Buckeye could timely undertake the investigation necessary to properly comment on the Draft EIS. These comments will be supplemented as Buckeye's evaluation of the proposed pipeline continues.

I. INTRODUCTORY COMMENTS

As part of what is referred to as the "Phoenix Expansion Project," Transwestern has proposed that 27.8 miles of pipeline be routed through Buckeye, passing directly through its development corridor. The development corridor consists of a series of already-approved master-panned communities that are currently under construction, or are soon to be under construction.

Between January and March 2006, FERC and Transwestern held public information meetings concerning the proposed Phoenix Expansion Project in Prescott Valley, Sun City West, Black Canyon City, Maricopa and Casa Grande, Arizona. No public information meeting was held in Buckeye despite the fact that nearly 28 miles of the proposed pipeline route would run through the heart of Buckeye's development corridor.

LA2-1 See the responses to comments PM3-1 and PM3-2. These general comments are followed by more specific comments that are addressed in the responses to comments LA2-2 through LA2-282.

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LA2-1 (cont'd)

In February and March 2006, FERC and Transwestern held public scoping meetings in Black Canyon City, Casa Grande, Prescott Valley and Avondale, Arizona. Again, no public scoping meeting was held in Buckeye. In fact, no meetings at all were held in Buckeye until December 14, 2006 when FERC held a technical review meeting in Buckeye following objections and motions to intervene filed by Buckeye and several interested developers.

On October 11, 2006, Buckeye, along with the builders and developers that would be adversely affected by Transwestern's proposed pipeline route through Buckeye filed motions to intervene in the FERC proceeding. In its motion, Buckeye expressed its concern that the proposed pipeline route may have unnecessary adverse short and long term impacts on environmental and economic conditions within its planning area, may interfere with the development of already-approved master-planned communities in the area, and may otherwise adversely affect the interests of Buckeye and its citizens. Buckeye further objected and expressed its concerns that Transwestern did not adequately consider alternative routes through or adjacent to its planning area that would reduce or minimize such impacts.

Following a series of Environmental Information Requests issued by FERC staff to Transwestern seeking such additional required information as to development along the proposed pipeline route, potential impacts on development along the proposed pipeline route and suggested alternative routes, to which Transwestern provided inadequate responses, FERC issued the subject Draft EIS for public comment. The failure to provide required information and analysis, coupled with the failure to include Buckeye in the process until December 2006, has denied Buckeye the ability to fully comment upon issues of importance to its citizens.

The Draft EIS for the Proposed Phoenix Expansion Project lacks critical and meaningful information and fails to adequately address matters required by relevant statute, regulations and case law including, but not limited to, failure to present any salient discussion of alternatives to the proposed project, failure to properly discuss the pipeline routing alternatives, failure to adequately discuss and include an assessment of

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LA2-1 (cont'd)

collective or total direct, indirect and secondary impacts to be caused by the proposed agency action, failure to adequately address adverse human health and environmental affects of the proposed agency action on minority and low income populations and federally recognized Indian tribes, failure to analyze threats of terrorism acts, failure to analyze effects on global warming, failure to appropriately analyze and compare public safety risks and the postponement or deferral of analyses necessary for informed decision making and informed public participation in the present process.

The purpose of the National Environmental Policy Act ("NEPA") is described in 42 U.S.C. § 4331(b). Among other objectives, NEPA is designed to "assure for all Americans, safe, healthful...surroundings," "attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences," and "achieve a balance between population and resource use which will permit high standards of living..." In order to meet these goals, NEPA requires federal agencies to prepare an Environmental Impact Statement ("EIS") for all actions significantly affecting the quality of the human environment. 32 U.S.C. § 4332. The EIS is the heart of NEPA and "must discuss the environmental effects of the federal action it covers and any alternatives to that action." Daniel R. Mandelker, NEPA Law and Litigation § 1.1 (2006). "The very purpose of NEPA's requirement that an EIS be prepared for all actions that may significantly affect the environment is to obviate the need for…speculation by insuring that available data is *gathered* and analyzed prior to the implementation of the proposed action." Save Our Ecosystems v. Clark, 747 F.2d 1240, 1248 (9th Cir. 1984). An EIS need not "document every particle of knowledge that an agency might compile in considering the proposed action...The detail required is that which is sufficient to enable those who did not have a part in [the EIS's] compilation to understand and consider meaningfully the factors involved." Environmental Defense Fund v. Corps of Engineers, 492 F.2d 1123, 1136 (5th Cir. 1974). Its importance to NEPA's goals cannot be overstated.

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LA2-1 (cont'd)

The EIS required by NEPA is designed to ensure that the federal agency responsible for the action takes a "hard look" at the environmental consequences of that action and fosters informed decision-making and informed public participation. See State of California v. Block, 690 F.2d 753 (9th Cir. 1982). "What constitutes a 'hard look' cannot be detailed with 'rule-like precision,' but at least 'it encompasses a thorough investigation into the environmental impacts of an agency's action and a candid acknowledgment of the risks that those impacts entail.'" Daniel R. Mandelker, NEPA Law and Litigation § 10.16 (2006) (quoting National Audubon Soc' v. Dep't of the Navy, 422 F.3d 174 (4th Cir. 2005)). Nevertheless, an EIS must, at a minimum, adequately address those issues set forth in the relevant statutes, regulations and case law. Some of the more important subjects include:

LA2-2

A. Alternatives.

While the EIS is the heart of the NEPA, the alternatives to the proposed federal action are the heart of the EIS. 40 C.F.R. § 1502.14. 42 U.S.C. § 4331(2)(C)(iii) requires the federal agency undertaking a major action to prepare a detailed statement on the "alternatives to the proposed action." 40 C.F.R. § 1502.14 includes more detailed instructions:

> Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public. In this section agencies shall:
>
> (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

LA2-2 See the response to comment PM3-12 regarding the adequacy of the alternatives analysis contained in the draft EIS.

Potentially viable alternatives in the Buckeye area were not ignored. The analysis in the draft EIS contained sufficient information to allow the Agency Staffs to conclude that neither the North nor South Buckeye Alternative represents an environmentally preferable or economically viable alternative to the proposed route through the Buckeye area. Nevertheless, in response to other comments on the draft EIS, section 3.4.2.5 has been revised to include additional analysis of the Buckeye Alternatives in comparison with the corresponding segment of the proposed route.

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LA2-2 (cont'd)

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

The present Draft EIS fails to present any meaningful discussion of alternatives and ignores the viable alternatives proposed by interested parties, such as the alternative route proposed by Buckeye that would avoid the Town's expansive development corridor.

B. Cumulative Effects.

LA2-3

40 C.F.R. § 1508.7 requires FERC to undertake an analysis of "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." The EIS must include a "useful analysis of the cumulative impacts of past, present, and future projects" in sufficient detail to be "useful to the decision maker in deciding whether, or how, to alter the program to lessen cumulative impacts." Natural Res. Def. Council v. U.S. Forest Service, 421 F.3d 797, 814 (9th Cir. 2005). "At a minimum," EIS must provide a catalog of relevant past projects in the area and a discussion of how those projects have "harmed" the environment. Id. at 814-815. The analysis of cumulative impacts should include an assessment of "collective" or "total" direct impacts caused by activities authorized by the proposed agency action, as well as indirect, or secondary, impacts in the area, i.e.,

LA2-3 See the response to comment PM3-36. Additionally, section 4.12 adequately addresses both the direct and indirect impacts associated with the Phoenix Expansion Project that could result in cumulative impacts in the project area if other reasonably foreseeable future projects within the project area are constructed. See also the response to comment PM3-2.

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LA2-3 (cont'd) foreseeable future activities in the same geographic area that are not authorized by the proposed action. Wyoming Outdoor Council v. U.S. Army Corps of Engineers, 351 F.Supp.2d 1232, 1241 n. 1 (D. Wyo. 2005); Taxpayers of Michigan v. Norton, 433 F.3d 852, 864 (D.C. Cir. 2006); Natural Res. Def. Council v. U.S. Forest

LA2-4 Serv., 421 F.3d 797, 815-816 (9th Cir. 2005). The Draft EIS does not meet this requirement and is silent on important subjects such as climate change. Border Power Plant Working Group v. Dep't of Energy, 260 F. Supp.2d 997 (S.D. Cal 2003).

C. Postponed and Deferred Information.

LA2-5 FERC lists some 16 different analysis areas that were not complete or acceptable enough for Draft EIS review by public stakeholders. Yet these deficient and incomplete analyses are directed by FERC to be completed and filed with FERC during the "Draft EIS comment period for analysis in the Final EIS." This upside down procedure has shifted the burden of information development, necessary for informed decision-making and informed public participation, away from the applicant and to the public stakeholders.

Among the regulations violated by the Draft EIS's lack of information are 40 CFR § 1502.15, requiring information on the "affected environment;" 40 CFR § 1508.27(b)(9) regarding endangered species; 40 CFR § 1508.27(b)(3) regarding parkland and other scenic resources; 40 CFR § 1508.8 regarding natural resources and 40 CFR § 1508.27(b)(3) and (8) regarding cultural resources. Further, because the federally required information has not yet been developed, FERC cannot have conducted meaningful consultation with other agencies as required by 40 U.S.C. § 4332.

D. Environmental Justice.

LA2-6 Executive Order 12898 requires federal agencies to implement actions that will identify and address disproportionately high and adverse human health or

LA2-4 See the response to comment PM3-20.

LA2-5 See the response to comment PM3-2.

LA2-6 See the response to comment PM3-20.

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LA2-6 (cont'd) environmental effects of their programs, policies, and activities on minority and low-income populations and federally recognized Indian tribes. The Draft EIS fails to provide the information required under Executive Order 12898 or NEPA concerning such potential impacts of the Phoenix Expansion Project.

E. Terrorism.

LA2-7 The threat of terrorist attacks must be addressed in the EIS. See San Luis Obispo Mothers for Peace v. NRC, 449 F.3d 1016 (9th Cir. 2006). There is no analysis meeting NEPA requirements in the Draft EIS. The proposed high-pressure gas pipeline will travel through the middle of Buckeye's development corridor as close as 15 feet to residential development. Given a blast radius that would put thousands of homes in harm's way, how can the public evaluate and make an informed decision regarding the proposed pipeline or routing alternatives without an analysis of the effects of a terrorist attack, including a comparison of the results of such an attack on the proposed alignment versus the alternative alignment? They cannot.

The Draft EIS fails to comply with relevant law or adequately support its conclusions.

F. Public Safety.

LA2-8 The Draft EIS understates the potential impact on public safety by applying an incorrect standard of risk for the following reasons:

1. Standard probabilistic measures of (safety) risk which multiply probabilities and consequences are not adequate in assessing the safety risk of natural gas transmission pipelines especially when routed adjacent to inhabited structures. Risk numbers alone do not distinguish between high consequences, low probability events from low consequence, high probability events.

2. Between 1986-2004, an annual average of 60 accidents occurred on natural gas transmission pipelines and are associated with a higher number of fatalities than other types of pipelines.

LA2-7 See the response to comment PM3-19.

LA2-8 Section 4.11 adequately addresses the potential safety impacts associated with the Phoenix Expansion Project. See also the responses to comments PM3-2 and PM3-7.

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LA2-8 (cont'd)

3. Between 1999-2001 an annual average of 73 natural gas pipeline accidents occurred causing 6 fatalities, 10 injuries, and over $20 million in property damage with the risk of injury and damage increasing with pipeline proximity to human activity.

4. Pipeline safety is not a function of adherence to minimum federal safety standards regulating the pipeline industry. Safety is a complex idea that involves not only adherence to regulatory standards, but also involves operating company safety leadership, effective implementation of operation and maintenance programs, local community stakeholder communication, and prudent pipeline routing decisions based upon risk informed assessment.

5. Current U.S. regulation of natural gas transmission pipelines focus primarily on ensuring the safety of the physical pipeline facilities themselves, and do not focus upon or require setbacks from pipeline easements by local communities.

6. Local communities do not have the expertise or resources to properly evaluate risks associated with pipeline routing and therefore are disadvantaged by proposals which discount the safety risks imposed by such routing decisions.

7. Emergency response planning proposed by pipeline operators as safety mitigation is not useful as a credit against the risks associated with pipeline rupture events. No matter how effective such planning may be, response to such emergencies cannot be fast enough to save those most at risk in the extreme heat flux zones associated with the most likely early ignition gas release scenarios.

8. The hazard radius associated with a 36-inch natural gas transmission pipeline operating at 1100 psig is between 1100 feet and 1200 feet. No habitable structures should be planned within the hazard areas.

9. There are a minimum of twenty-two key pipeline integrity risks of concern that require detailed assessment by stakeholders and the pipeline risk managers (operators) including corrosion, defective pipe, defective welding, various environmental events, vandalism and damage inflicted by third parties.

10. Natural gas transmission pipelines may potentially cause unacceptable consequences so that even if the probability of rupture is very low, prudent routing decisions will locate these distance from populated areas similar to standards in other countries.

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LA2-8 (cont'd)

Risk Informed Assessment of the Proposed Phoenix Expansion Natural Gas Transmission Pipeline Project, Brown and Caldwell, Robert Esenwein, CEP, Principal Investigator, Houston, Texas 2007, a partial draft copy of which is attached hereto as Exhibit A and incorporated herein by reference. The final report, when completed, will be separately filed.

It is recognized that construction of the proposed pipeline through Buckeye's development corridor will result in hundreds of conflicts with construction and maintenance of roadway and dry and wet utilities, greatly increasing the risk of incident.

> "The dominant incident cause is outside forces, constituting 53.8 percent of all service incidents between 1970 and 1984 and 38.5 percent between 1986 and 2005. Outside forces incidents result from the encroachment of mechanical equipment such as bulldozers and backhoes; earth movements due to soil settlement, washouts, or geologic hazards; weather effects such as winds, storms, and thermal strains; and willful damage. . . ."

Draft EIS, p. 4-200, para. 2.

The impact on public safety expressed as 0.01 fatalities per year per 1,000 miles of pipeline is not an appropriate measure of the potential impact on the soon to be heavily populated Buckeye development corridor.

The Draft EIS, at best, fails to adequately inform the public of the potential risks associated with a large, high-pressure pipeline to be located in a population center or compare the risks to the public from the proposed pipeline route with the alternative route. The failure is a violation of FERC's obligations under NEPA.

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II. SPECIFIC COMMENTS

LA2-9 Sec. 1.0, third paragraph of the Draft EIS states:

The environmental staffs of the FERC; the U.S. Department of the Interior, Bureau of Land Management (BLM); the U.S. Department of Agriculture, Forest Service (FS); the U.S. Department of Transportation (DOT), Office of Pipeline Safety (OPS); the U.S. Department of the Interior, Bureau of Indian Affairs (BIA); and the Navajo Nation, collectively referred to as the Agency Staffs, have prepared this draft environmental impact statement (EIS) to assess the environmental impacts associated with the construction and operation of the facilities proposed by Transwestern in accordance with the requirements of the National Environmental Policy Act (NEPA).

Response:

While Buckeye agrees that it is the responsibility of the identified agencies to prepare the EIS, Buckeye disagrees that meaningful consultation or participation with FERC by any of the agencies has occurred.

LA2-10 Sec. 1.1, first paragraph of the Draft EIS states:

The goal of the proposed Phoenix Expansion Project is to serve the increasing demand for energy in the fast-growing Phoenix area.

Response:

Buckeye denies that the goal of the proposed Phoenix Expansion Project is to serve the increasing demand for energy in the fast-growing Phoenix area. There is no evidence contained in the Draft EIS that the proposed project meets an existing demand or that such a demand exists. The proposed project would provide far more natural gas to the State of Arizona than was used by the entire State in 2005 and there is no evidence provided by the Draft EIS that the growth of the State will more than double the demand for natural gas in the foreseeable future. This is an important issue that has not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegation without substantial additional investigation and analyses. Buckeye believes that the project is designed to produce additional power by electric generation plants for sale to users outside the State of Arizona, although that contention is not addressed in the Draft EIS either.

LA2-11 Sec. 1.1, first paragraph of the Draft EIS states:

While some of the natural gas provided by the project would directly serve the heating and cooling needs of individual homes and businesses, most of the project's capacity would be used by local utility companies to generate electricity.

Response:

Buckeye denies that the natural gas will provide heating and cooling needs of individual homes and businesses in the Buckeye area. The developers of the communities in Buckeye that would be impacted by the construction of the proposed pipeline already have agreements in place whereby the communities will be provided natural gas without the construction of the proposed pipeline.

LA2-9 See the response to comment PM3-13.

LA2-10 As discussed in section 1.1 and supported by policy statements of the ACC, there is a strong need for competitive natural gas transportation infrastructure in central and southern Arizona.

Some commentors have suggested that the natural gas transported by the proposed project would benefit other markets outside of Arizona; however, Transwestern's shippers have stated that the proposed project would benefit their Arizona customers directly by meeting the growing demand for natural gas in Arizona, by providing pipeline-on-pipeline competition to areas historically served by only one provider (EPNG), and by increasing natural gas supply reliability.

The proposed project would not provide far more natural gas to the State of Arizona than was used by the entire state in 2005. The Phoenix Expansion Project could deliver up to 500 MMcfd to its Arizona customers. Assuming that the project operates at full capacity, it would deliver 182.5 bcf of natural gas in 1 year. The Natural Gas Annual 2005 indicates that Arizonans consumed 321 bcf in 2005. Therefore, the Phoenix Expansion Project would provide 43.2 percent <u>less</u> than Arizona consumed in 2005, not <u>far more</u> as reported by the commentor.

LA2-11 In comment letter CO19, SWG, the local distribution company in the Buckeye area, stated that the proposed project would provide pipeline-on-pipeline competition with EPNG, additional natural gas supplies, and natural gas supply reliability benefits to its Arizona customers. SWG concluded that there is no realistic, feasible alternative to the proposed project, and certainly no alternative that would involve less construction. SWG also noted that, because of its central location in the Buckeye area, the proposed alignment of the Phoenix Lateral would require the construction of less natural gas distribution infrastructure in the Buckeye area than would the Buckeye Alternatives.

LA2-12 Sec. 1.1, second paragraph of the Draft EIS states:

The Phoenix Expansion Project would not only help to satisfy the increasing demand for electricity and natural gas, but would also increase competition in the regional energy market, thereby working to stabilize costs to the consumer.

Response:

There is no evidence contained in the Draft EIS that the proposed project meets an existing demand or that such a demand exists. The proposed project would provide far more natural gas to the State of Arizona than was used by the entire State in 2005 and there is no evidence provided by the Draft EIS that the growth of the State will more than double the demand for natural gas in the foreseeable future. There is no evidence contained in the Draft EIS that the proposed project would have any effect on the costs of natural gas or electricity to the consumer. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-13 Sec. 1.1, third paragraph of the Draft EIS states:

More specifically, the objectives of the proposed project are to:

- *expand the Transwestern pipeline system to allow for the delivery of up to 500 million cubic feet per day (MMcfd) of natural gas to customers in the Phoenix, Arizona area;*
- *add natural gas supply reliability and flexibility to customers in central and southern Arizona; and*
- *provide an alternative source of competitively priced natural gas to Arizona markets from supplies in the San Juan and Rocky Mountain Basins.*

Response:

There is no evidence contained in the Draft EIS that any natural gas provided by the proposed project will benefit consumers in the Phoenix, Arizona area, that there will be any improvement in reliability and flexibility to customers in central and southern Arizona or that such reliability and flexibility are needed or desired by consumers in those areas. Further, as explained above, there is no evidence contained in the Draft EIS that an alternative source of natural gas will result in more competitive prices to the Arizona markets. Natural gas is a utility and, as such, the pricing is regulated by the Arizona Corporation Commission. There is no discussion in the Draft EIS about the position of the Arizona Corporation Commission regarding the proposed pipeline or how its presence in the State of Arizona would have the alleged benefits described in this section. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses.

Local Agencies 2

LA2-12 See the response to comment LA2-10 regarding the proposed capacity of the Phoenix Expansion Project in comparison with historical natural gas consumption in Arizona.

It is not unreasonable to anticipate that one of the outcomes of introducing a competitive supply of natural gas to an area that has historically been served by only one provider would be downward pressure on natural gas prices.

LA2-13 See the responses to comments LA2-10 and PM3-14 regarding the purpose and need for the Phoenix Expansion Project.

LA2-14 Sec. 1.1, fourth paragraph of the Draft EIS states:

The Arizona Corporation Commission (ACC) estimates that electricity generation in the States of Arizona, New Mexico, and Nevada will increase nearly 50 percent by 2009, with the majority of that increase being fueled by natural gas. Accordingly, the ACC is considering mechanisms to encourage utilities to invest in the infrastructure needed to provide additional natural gas supplies and thereby meet the projected demand for electricity.

Response:

The amount of natural gas proposed to be delivered to the State of Arizona by Transwestern as a result of the proposed project is well more than the entire amount of natural gas utilized by the entire State of Arizona in 2005. Even if this statement in the Draft EIS is an accurate representation, it does not justify the need for the amount of natural gas that would be delivered to the State of Arizona by the proposed project. The additional gas would be for the sole benefit of those who are not resident of the State of Arizona at the expense of the residents of the State of Arizona. The Draft EIS does not explain or investigate the other mechanisms being encouraged by he ACC and which may be under consideration by other natural gas providers. This failure to investigate constitutes a failure to consider alternatives, including the No Action Alternative, required by NEPA and regulations adopted pursuant thereto. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-15 Sec. 1.1, fifth paragraph of the Draft EIS states:

In 2004, Arizonans consumed over 350 billion cubic feet of natural gas, a 28.8 percent increase over the total consumption in the state during 2003.

Response:

This statement ignores the fact that in 2005 Arizonans consumed approximately the same amount of natural gas as was consumed in 2004, resulting in a near 0% increase in demand. Utilizing selected years to determine demand without analyzing information which is contrary to the statements contained in the Draft EIS is evidence of FERC's pre-determination of the outcome of this application and is impermissible under NEPA and regulations adopted pursuant thereto. *See e.g. International Snowmobile Mfrs. Ass'n v. Norton*, 304F.Supp.2d 1278 (D. Wyo. 2004).

The Governor's Essential Services Task Force on Natural Gas and Electric Power Sources in Arizona, dated June 27, 2005, found that, "The Task Force was presented several views on the adequacy of the reserves of natural gas, with the majority agreeing that supplies of domestic gas, though declining, are sufficient to meet the needs of Arizona customers now and into the near future. Untapped reserves in the Rocky Mountains are being explored and show some promise of substantial reserves. To offset the declining domestic reserves and address long-term supply needs, there are potential projects to bring supplies of liquefied natural gas (LNG) on tankers from foreign and Alaskan sources. The LNG would then be off-loaded at proposed coastal terminals in California, the Gulf Coast and Sonora, Mexico for re-gasification and transmission throughout the western U.S.

Local Agencies 2

LA2-14 See the responses to comments LA2-10 and PM3-14 regarding the purpose and need for the Phoenix Expansion Project.

LA2-15 See the responses to comments LA2-10 and PM3-14 regarding the purpose and need for the Phoenix Expansion Project.

The comments attributed to the Governor's Essential Services Task Force on Natural Gas and Electric Power Sources in Arizona are in reference to the U.S. natural gas reserves and other potential sources of natural gas. The Phoenix Expansion Project proposes to provide additional, competitive natural gas transportation service to the growing Phoenix metropolitan area, including the Town of Buckeye.

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LA2-15 (cont'd)

markets. Gas brought to other markets reduces the demand pressure on basins that supply Arizona." Nowhere in the Draft EIS is there an analysis or discussion of the alternative sources discussed in that statement. FERC's failure to investigate and analyze those alternatives is a failure under NEPA to investigate alternatives to the proposal and a failure to consider cumulative impacts as required by NEPA, the regulations promulgated thereunder, and the court cases interpreting NEPA.

LA2-16

Sec. 1.1, sixth paragraph of the Draft EIS states:

Forty-three new power plants totaling more than 8,000 megawatts have come online in Arizona since 2001 (California Energy Commission, 2005). These plants are intermediate load and peaking power plants, which often ramp up quickly to meet changing electricity demand. Under normal circumstances, this practice is not troublesome if the demand can be balanced by taking gas out of storage. In the Phoenix area, however, the nearest storage is over 300 miles away and it is becoming increasingly common for pipeline pressure to drop during periods of high demand. EPNG has modified its system in response to these constraints; however, the growing demand for natural gas in the project area continues to strain the existing transmission system.

Response:

It is interesting that the Draft EIS alleges that the proposed project is for the benefit of the citizens of Arizona and then quotes the California Energy Commission as a source for the justification for the need for the project. There is no meaningful discussion in the Draft EIS of where the power generated by the 43 power plants will be utilized. There is also no meaningful discussion of alternatives which may be under consideration by other natural gas providers. For example, there is no discussion of EPNG's plan for building a new storage facility south of Phoenix. This failure to investigate constitutes a failure to consider alternatives, including the No Action Alternative, required by NEPA and regulations adopted pursuant thereto. 40 CFR § 1502.14. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-17

Sec. 1.1, seventh paragraph of the Draft EIS states:

The ability of Arizona consumers to pay for natural gas is also of statewide concern. Even though prices have moderated since the peaks of the recent energy crisis in neighboring California (which resulted in part from short- and mid-term imbalances in natural gas supply and demand), the price consumers currently pay for natural gas is significantly greater than the price consumers paid in the 1990s. Any action that can increase both supply and competition in the local energy market will reduce prices and have a significant impact on economic growth because the Phoenix area is among the fastest growing metropolitan regions in the United States. The new natural gas supplies that would result from the Phoenix Expansion Project would benefit consumers in the project area by increasing competition and putting downward pressure on prices.

LA2-16 See the responses to comments LA2-10 and PM3-14 regarding the purpose and need for the Phoenix Expansion Project, which include comments from Arizona utilities affirming the benefits that the project would provide to Arizona consumers.

A potential EPNG natural gas storage facility referred to by the commentor would not be a viable alternative to the proposed project because it would not meet one of the principal objectives of the Phoenix Expansion Project, which is to provide a competitive source of natural gas to the project area (i.e., competition to the EPNG system).

The FERC is not aware of any other proposed natural gas transmission or storage projects in Arizona that would be a viable alternative to the Phoenix Expansion Project.

LA2-17 See the responses to comments LA2-10, LA2-11, LA2-12, and LA2-16 pertaining primarily to the purpose and need for the proposed project.

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LA2-17 (cont'd)

Response:

Once again, justification for a proposed project in Arizona is built upon information more relevant to California (demonstrating the unstated, but clearly intended, intention of Transwestern to use Arizona as an electrical generation site for the benefit of California) than to Arizona. The fact that prices of natural gas have increased over the amounts paid in the 1990s is not surprising. In fact, it would be surprising only if those prices had not increased in light of the fact that virtually every aspect of consumer costs increased over that same period of time. The assumption that this project will reduce prices and have an impact on economic growth in the Phoenix area is unsupported by research and analysis contained in the Draft EIS. This paragraph is the "poster child" for the continuous use of unsupported allegations throughout this Draft EIS. This failure to investigate constitutes a failure to consider alternatives, including the No Action Alternative, required by NEPA and regulations adopted pursuant thereto. 40 CFR § 1502.14. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-18

Sec. 1.1, eighth paragraph of the Draft EIS states:

Transwestern currently has executed binding precedent agreements for firm natural gas transportation service for 66 percent of the total proposed capacity of its expanded system.

Response:

This statement is irrelevant without a proper analysis of the use each of the contractors proposes to make of the natural gas they are contracting for, and analysis which is wholly absent from this Draft EIS. The premise utilized by FERC in recommending approval of this project pursuant to this Draft EIS is that consumers in the State of Arizona need and will be benefited by the proposed project. Without proper factual investigation of the proposed use by the contractors, this statement adds nothing to FERC's efforts to justify the project. This failure to investigate constitutes a failure to consider alternatives, including the No Action Alternative, required by NEPA and regulations adopted pursuant thereto. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-19

Sec. 1.1, last paragraph of the Draft EIS states:

On September 15, 1999, the FERC issued a Policy Statement that established criteria for determining whether there is a need for a proposed project and whether the proposed project would serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the FERC balances the public benefits against the potential adverse consequences. In evaluating new pipeline construction, the FERC's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain.

LA2-18 Commitments for firm natural gas transportation service are an indication of the need for a proposed project. As stated in section 1.1, some of the natural gas provided would directly serve the heating and cooling needs of individual homes and businesses; however, most of the project's capacity would be used by local utility companies to generate electricity. See also the responses to comments LA2-10, LA2-11, LA2-12, and LA2-16 pertaining to the purpose and need for the proposed project.

LA2-19 See the response to comment PM3-12.

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LA2-19 (cont'd

Response:

Buckeye acknowledges FERC's Policy Statement, but denies that FERC has followed the Policy Statement in this instance. The investigation conducted by FERC to produce the Draft EIS contains little factual information and does not analyze facts that would allow it to balance the public benefits against the potential adverse consequences. Alternatives were not investigated in a meaningful manner.

LA2-20

Sec. 1.2, first paragraph of the Draft EIS states:

The principal purposes for preparing an EIS are to:

- *identify and assess the potential impacts on the natural and human environment that would result from the implementation of the proposed project;*
- *describe and evaluate reasonable alternatives to the proposed project that would avoid or substantially lessen any significant adverse effects of the project on the environment;*
- *identify and recommend specific mitigation measures, as necessary, to avoid or minimize significant environmental effects; and*
- *encourage and facilitate involvement by the public and interested agencies in the environmental review process.*

Response:

FERC has failed to comply with or complete any of the purposes set out in this paragraph. The specific reasons for this failure are set out below in reference to specific sections of the Draft EIS.

LA2-21

Sec. 1.2, second paragraph of the Draft EIS states:

The topics addressed in this EIS include alternatives; geology (including paleontological resources); soils; groundwater; surface waters; wetlands; vegetation; wildlife and aquatic resources; special status species; land use, recreation and public interest areas, and visual resources; socioeconomics (including transportation and traffic and environmental justice); cultural resources; air quality and noise; reliability and safety; and cumulative impacts. The EIS describes the affected environment as it currently exists, discusses the environmental consequences of the proposed project, and compares the project's potential impact to that of various alternatives. The EIS also presents recommended mitigation measures.

Response:

While the EIS purports to address each of the topics set out in this paragraph, there is little more than conclusory statements, unsupported by evidence, contained in the Draft EIS regarding most of the topics. In many instances, the Draft EIS does not identify the location of activities such as staging areas, pipe storage areas, access roads, and other construction activities. Without the disclosure of that information it is impossible for FERC to have investigated the impact such activities will have on the flora, fauna, and human population of the proposed locations and it is further impossible for FERC to have consulted with cooperating agencies to determine the impact to the various environmental

LA2-20 See the responses to comments PM3-1 and PM3-12. The public review and comment process is described in section 1.3. These general comments are followed by more specific comments that are addressed in the responses to comments LA2-21 through LA2-282.

LA2-21 All areas identified to date that would be used or disturbed during construction are addressed in the EIS and considered in the Agency Staffs' analysis of impact and mitigation for the proposed project. The potential for additional areas needed for construction to be identified and the requirements for their analysis are addressed by the FERC staff's recommended mitigation measure number 5 in section 5.3. In accordance with this mitigation measure, Transwestern would be required to identify areas that would be used or disturbed that have not previously been identified and explicitly request approval for their use before construction. Transwestern would be required to file, and the FERC staff would evaluate, the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. The FERC staff would consult with other jurisdictional agencies as appropriate before approving the use of these areas. Transwestern would not be allowed to use areas that would affect sensitive resources for which impacts could not be fully mitigated. See also the response to comment PM3-2.

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LA2-21 (cont'd)

media without defining the sites for those activities. Because of insufficient investigation of the locations of construction related activities and the impact of the construction related activities on each area, it is impossible for the Draft EIS to have considered and recommended any meaningful mitigation measures. This failure to investigate constitutes a failure to consider alternatives, including the No Action Alternative, required by NEPA and regulations adopted pursuant thereto. 40 CFR § 1502.14. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-22

Sec. 1.2.1, second paragraph of the Draft EIS states:

As the lead federal agency for the Phoenix Expansion Project, the FERC is required to comply with section 7 of the Endangered Species Act of 1973 (ESA), section 106 of the National Historic Preservation Act (NHPA), and section 176 of the Clean Air Act (CAA). These and other statutes have been taken into account in the preparation of this EIS. The FERC will use the document to consider the environmental impact that could result if it issues Transwestern a Certificate under section 7 of the NGA.

Response:

Buckeye agrees that FERC is required to comply with section 7 of the Endangered Species Act of 1973 (ESA), section 106 of the National Historic Preservation Act (NHPA), and section 176 of the Clean Air Act (CAA). Buckeye denies that FERC has taken into account in the preparation of the Draft EIS any of those statutes or regulations adopted pursuant to any of those statutes. In many instances, the Draft EIS does not identify the location of activities such as staging areas, pipe storage areas, access roads, and other construction activities. Without the disclosure of that information it is impossible for FERC to have investigated the impact such activities will have on the flora, fauna, and human population of the proposed locations and it is further impossible for FERC to have consulted with cooperating agencies to determine the impact to the various environmental media without defining the sites for those activities. FERC's proposal to use a document with so little meaningful investigation, and which relies almost entirely on supported conclusory statements, is compelling evidence that the outcome of the requested action on Transwestern's proposal has been predetermined by FERC in violation of the statutes and case law regulating the preparation of environmental impact statements. *See e.g. International Snowmobile Mfrs. Ass'n v. Norton*, 304F.Supp.2d 1278 (D. Wyo. 2004).

LA2-23

Sec. 1.2.1, last paragraph of the Draft EIS states:

The FERC will also consider non-environmental issues in its review of Transwestern's application. Authorization will be granted only if the FERC finds that the evidence produced on financing, rates, market demand, gas supply, existing facilities and service, environmental impacts, long-term feasibility, and other issues demonstrates that a project is required by the public convenience and necessity. Environmental impact assessment and mitigation development are important factors in the overall public interest determination.

LA2-22 See the responses to comments PM3-2 and LA2-21.

LA2-23 See the response to comment PM3-12. Section 1.1 discusses the need for the project. The No Action Alternative is addressed in section 3.1 and in section 4.0 for each major resource topic.

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LA2-23 (cont'd)

Response:

Buckeye agrees that FERC should consider each of the items identified in this paragraph. However, merely stating that "it will also consider…" does not mean that it did, in fact, actively consider each of those issues. As is discussed elsewhere in these comments, FERC did not develop and analyze meaningful evidence in regards to market demand, rates, gas supply, existing and proposed facilities and service, environmental impacts, long-term feasibility, overall public interest, environmental impacts, or relevant mitigation. Most importantly, FERC did not engage in a meaningful investigation of a proposed alternative that satisfies all of FERC's concerns with significantly less potential impact on people working and residing in the area of the proposed pipeline. This failure to investigate constitutes a failure to consider alternatives, including the No Action Alternative, required by NEPA and regulations adopted pursuant thereto. 40 CFR § 1502.14. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses. This failure to investigate a proposed alternative further constitutes a failure on FERC's part to investigate reasonable alternatives to the proposed routing that is required by NEPA and regulations adopted pursuant thereto.

LA2-24

Sec. 1.2.2, second paragraph of the Draft EIS states:

The BLM will use the EIS to meet its NEPA responsibilities in considering Transwestern's application for a Right-of-Way Grant and obtain Temporary Use Permits for the portion of the project on federal lands.

Response:

The Draft EIS does not comply with NEPA, therefore, if BLM utilizes the EIS resulting from this Draft EIS to make decisions as described in this paragraph, it will have failed to take steps required pursuant to NEPA and regulations adopted pursuant thereto. The failure to properly investigate the facts surrounding this application, the dearth of information provided in the Draft EIS, and the lack of analyses contained in the Draft EIS constitute a failure on the part of FERC to have a meaningful consultation with BLM, as required by NEPA and regulations adopted pursuant thereto. 40 CFR § 1503.1.

LA2-25

Sec. 1.2.2, third paragraph of the Draft EIS states:

The BLM would consider conformance with land use plans and impacts on resources and programs to determine whether to issue a Right-of-Way Grant and Temporary Use Permits.

Response:

The Draft EIS fails to discuss in any meaningful way the land use plans and impacts on resources and programs, therefore it is impossible for BLM to rely on the Draft EIS in reaching any decision regarding the issuance of Right-of-Way Grants or Temporary Use Permits. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone, including BLM, to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-24 See the responses to comments PM3-2 and PM3-13.

LA2-25 An analysis of the proposed project's consistency with regional and local plans, including the Resource Management Plans (RMPs) of the BLM, is presented in section 1.5. See also the response to comment PM3-2.

LA2-26 Sec. 1.2.2, fourth paragraph of the Draft EIS states:

The FS and the BOR would issue letters to the BLM that would concur or not concur with issuance of a Right-of-Way Grant and Temporary Use Permits across lands under their jurisdiction. The BLM would consider the concurrence or non-concurrence of the FS and BOR, as well as FERC approval or denial, in making its decision whether to issue the Right-of-Way Grant and Temporary Use Permits.

Response:

The Draft EIS fails to discuss in any meaningful way the land use plans and impacts on resources and programs, therefore it is impossible for the FS or the BOR to rely on the Draft EIS in reaching any decision regarding the issuance of Right-of-Way Grants or Temporary Use Permits that cross lands under their jurisdiction. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone, including the FS and BOR, to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-27 Sec. 1.2.2, fifth paragraph of the Draft EIS states:

The Right-of-Way Grant would include standard and site-specific stipulations of the BLM, the FS, and the BOR conditions imposed on the project as the result of the NEPA review, and a complete Plan of Development (POD).

Response:

In many instances, the Draft EIS does not identify the location of activities such as specific rights-of-way, staging areas, pipe storage areas, access roads, and other construction activities. Without the disclosure of that information it is impossible for FERC, BLM, the FS, or BOR to have investigated the impact such activities will have on the flora, fauna, and human population of the proposed locations and it is further impossible for those agencies to have consulted with cooperating agencies to determine the impact to the various environmental media without defining the sites for those activities. Without the specific information necessary to completely analyze the proposal, it is impossible for FERC, BLM, the FS, or BOR to determine which conditions to impose on the project or the proper levels of mitigation for the proposed project. FERC's proposal to use a document with so little meaningful investigation, and which relies almost entirely on supported conclusory statements, is compelling evidence that the outcome of the requested action on Transwestern's proposal has been predetermined by FERC in violation of the statutes and case law regulating the preparation of environmental impact statements. *See e.g. International Snowmobile Mfrs. Ass'n v. Norton*, 304 F.Supp.2d 1278 (D. Wyo. 2004). These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone, including BLM, the FS and BOR, to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-28 Sec. 1.2.3 of the Draft EIS states:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the federal agency responsible for regulating and ensuring the safe and secure movement of natural gas and

Local Agencies 2

LA2-26 An analysis of the proposed project's consistency with regional and local plans, including the RMPs of the FS, is presented in section 1.5. See also the response to comment PM3-2.

LA2-27 See the responses to comments PM3-2 and LA2-21.

LA2-28 See the responses to comments PM3-12 and PM3-30.

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LA2-28 (cont'd)

hazardous liquids by pipelines, under 49 United States Code (USC) 60101 et seq. (the pipeline safety laws). The PHMSA's operation and maintenance responsibilities to ensure pipeline safety are found under Title 49 CFR Parts 190 to 199. The PHMSA carries out these responsibilities through its OPS. The OPS is the federal agency responsible for ensuring the safe, reliable, and environmentally sound operation of the nation's transportation system and for providing oversight for oil and natural gas pipelines. The OPS' authority is found under the Natural Gas Pipeline Safety Act of 1968 (49 USC 1671 et seq.) and the Hazardous Liquids Pipeline Safety Act of 1979 (49 USC 2001 et seq.).

Response:

Buckeye agrees that the PHMSA is the federal agency responsible for regulating and ensuring the safe and secure movement of natural gas and hazardous liquids by pipelines. Buckeye alleges that the very existence of the PHMSA is compelling evidence that natural gas pipelines are inherently dangerous and the location of such pipelines in urban areas should be avoided whenever possible. In spite of the numerous regulations of natural gas pipelines and the extensive oversight of natural gas pipeline construction and operation by PHMSA and OPS, natural gas pipeline incidents occur, sometimes with death, injury, and property destruction to innocent bystanders living or working in the area. It is the responsibility of FERC to consider all alternatives that would locate natural gas pipelines outside of urban areas, but FERC has not fulfilled that requirement in the Draft EIS by refusing to consider in great detail the alternative route proposed by the Town of Buckeye and property owners therein.

LA2-29

Sec. 1.3 of the Draft EIS states, in relevant part:

On November 10, 2005, Transwestern filed a request with the FERC to implement the Commission's Pre-Filing Process for the Phoenix Expansion Project... On November 22, 2005, the FERC granted Transwestern's request and established a pre-filing docket number (PF06-04-000) to place information related to the project into the public record. The purpose of the Pre-Filing Process is to encourage the early involvement of interested stakeholders, facilitate interagency cooperation, and identify and resolve issues before an application is filed with the FERC...

As part of the Pre-Filing Process, Transwestern mailed notification letters to landowners, government and agency officials, and the general public informing them about the project and inviting them to attend open houses on January 9, 10, 11, 12, and 25 and May 30, 2006 to learn about the project and to ask questions and express their concerns. Notifications of the open houses were also published in local newspapers. The open houses were held in Prescott Valley, Sun City West, Black Canyon City, and Casa Grande, Arizona; Bloomfield, New Mexico; and Maricopa, Arizona, respectively. We[1] attended the open houses to explain the NEPA environmental review process to interested stakeholders and take comments about the project. The questions and concerns raised by the public at the open houses are addressed in this EIS...

[1] "We," "us," and "our" refer to the environmental staff of the Federal Energy Regulatory Commission's Office of Energy Projects, also referred to in this draft EIS as the FERC staff.

LA2-29 See the response to comment PM3-1.

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LA2-29 (cont'd)

The four public scoping meetings were held to provide an opportunity for agencies and the general public to learn more about the proposed project and participate in the environmental analysis by commenting on the issues to be addressed in the draft EIS. The first meeting was held in Black Canyon City, Arizona on February 27, 2006; the second meeting was in Casa Grande, Arizona on February 28, 2006; the third meeting was in Prescott Valley, Arizona on March 1, 2006; and the fourth meeting was held in Avondale, Arizona on March 2, 2006. These meetings were announced in the NOI and in four local newspapers. Twenty people commented at the meeting in Black Canyon City, 2 people commented at the meeting in Casa Grande, 22 people commented at the meeting in Prescott Valley, and 3 people commented at the meeting in Avondale. Each meeting was recorded, and the transcripts were placed into the public record for the project...

On March 2, May 11, and June 28, 2006, the FERC staff conducted interagency scoping meetings in the project area to solicit comments and concerns about the project from other jurisdictional agencies. Agencies present at the meetings were the BLM (Farmington, Hassayampa, and Lower Sonoran Field Offices), the Kaibab National Forest, the Prescott National Forest, the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers (COE), the BOR, the BIA, the Arizona Game and Fish Department (AGFD), the Arizona State Historic Preservation Office (SHPO). Native American tribes also attended. In addition, during the Pre-Filing Process, the Agency Staffs conducted conference calls on an approximately weekly basis with Transwestern representatives to discuss project progress and issues...

We attended or conducted other informational meetings in the project area. These meetings included an appearance before the Resources Committee of the Navajo Nation Council on February 23, 2006; a meeting with the Arizona State Land Department (ASLD) on March 1, 2006; a meeting with the Town of Prescott Valley, Arizona on May 10, 2006; meetings with the City of Casa Grande, Arizona on January 12 and June 28, 2006; and a meeting with Native American tribes on June 28, 2006. The tribes that participated in the June 28, 2006 meeting are listed in section 4.9.3. The FERC staff also attended technical conferences in the City of Casa Grande and the Town of Buckeye, Arizona on December 13 and 14, 2006, respectively, to discuss potential project-related impacts on approved and proposed developments in those areas...

Response:

At a public meeting on June 6, 2007, held in Buckeye, Arizona, Chris Heeter, the CEO of a developer that owns approximately 12,400 acres in the Town of Buckeye, testified that he was contacted by Transwestern in October 2005 to discuss the proposal for this pipeline. Mr. Heeter testified that he advised Transwestern that the pipeline would cross several miles of planned and approved development in the Town of Buckeye and that he would be opposed to the proposed route for many reasons, not the least of which were the number of utility and road crossings that would conflict with the proposed location of the pipeline. He also advised Transwestern that an alternate route was available that would utilize a utility corridor that had far fewer planned and approved developments adjacent to it and which would, therefore, result in far fewer incidents of conflict between the proposed gas transmission line and the developments. He suggested Transwestern carefully evaluate that route.

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LA2-29 (cont'd)

At no time since that October 2005 meeting was Mr. Heeter contacted by Transwestern, other than in mass mailings, to discuss his concerns or the issues that he had raised. In fact, Transwestern has actively avoided discussing the project with Mr. Heeter.

Even though Transwestern met with Mr. Heeter and learned of his opposition to the proposed pipeline in October 2005, before Transwestern's request to FERC to implement the Commission's Pre-Filing Process, the public meetings that were allegedly for the purpose of informing the public, as set out in this section of the Draft EIS, were not held in Buckeye, Arizona. While approximately 28 miles of the proposed pipeline will traverse Buckeye, far more than will impact any other community in central Arizona, public meetings in the central Arizona area were held in Prescott Valley, Casa Grande, Black Canyon City, and Avondale. Only three people, none of them from Buckeye, showed up at the meeting in Avondale, a town located more than 16 miles from Buckeye, but which was the closest location for any of the open houses.

At the public meeting held in Buckeye on June 6, 2007, Mr. Sipe, the FERC staff member who conducted the meeting, explained that Transwestern was responsible for setting up the open houses and that FERC attended. In light of Transwestern's actual knowledge of opposition in Buckeye and the extensive length of the pipeline that would traverse the Town, it can only be concluded that Transwestern intentionally concealed from FERC the concerns that at least one major property owner in the Town had regarding Transwestern's proposal.

A second round of public meetings were held by FERC in the summer of 2006. Again, no meetings were held in Buckeye, even though it was the community being impacted the most.

As can be seen from the recitation in this section, it was not until December 2006, approximately ten months after the original open houses, that FERC conducted a public meeting in Buckeye. That public meeting was the result of specific requests by the Town of Buckeye after being notified by property owners in the area of the pending proposal that there were significant issues that were not being properly addressed. While a Buckeye official may have received one or more of the mass mailings sent out by Transwestern, at no time did Transwestern conduct meetings with the Town's Director of Public Works, Scott Lowe, to determine the nature and extent of developments that had been approved along the proposed route. Whether or not FERC has met the letter of the law in regards to involving the public in this process, it clearly has not met the intent of the law by keeping the Town of Buckeye and its residents out of the investigation and approval process for ten months more than any other community in central Arizona.

LA2-30

Section 1.4 of the Draft EIS states, in relevant part:

The nonjurisdictional facilities associated with the proposed project are those facilities that Transwestern anticipates would be constructed by the customer downstream of the interconnection between the Phoenix Lateral and the existing pipeline facilities of the customer. Three anchor shippers, Arizona Public Service Company (APS), Salt River Project Agricultural

LA2-30 See the response to comment PM3-2.

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LA2-30 (cont'd)

Improvement and Power District (SRP), and Gila River Power, LP are electric generators in the Phoenix area. These shippers would construct minor piping from the outlet flange of the project's jurisdictional meter station to connect to the existing station fuel gas line of the generating facilities. The other two anchor shippers, Southwest Gas Corporation (SWG) and Unisource Energy, Inc. (UNS), are local distribution companies in the Prescott Valley and Phoenix areas, respectively, that would construct certain facilities downstream of the proposed jurisdictional taps and/or meter stations that could include metering facilities, interconnect piping, filter-separators, pressure regulators, odorization facilities, and other ancillary equipment as required at the identified meter station sites in order to deliver natural gas into existing or planned distribution networks.

After applying the four-factor procedure to the Phoenix Expansion Project, the Agency Staffs have concluded:

- *The Phoenix Expansion Project is more than a mere link in a corridor-type project because the recipients of the natural gas to be transported through the Phoenix Expansion Project are primarily end-users who will use the gas for electric generation.*
- *The nonjurisdictional facilities would directly connect the jurisdictional facilities to existing customer facilities. Therefore, there are no aspects of the nonjurisdictional facilities that affect the location and configuration of the regulated activity.*
- *The nonjurisdictional facilities are relatively minor and, unlike a major nonjurisdictional facility, such as a power plant, likely would not require extensive environmental review, particularly where these nonjurisdictional facilities would be constructed within existing customer facilities that have already been approved.*
- *The nonjurisdictional facilities to be constructed as a part of this project are outside the Commission's control and jurisdiction.*

In summary, the Agency Staffs have concluded that even though the Phoenix Expansion Project is more than a mere link in a corridor-type project, they have no jurisdiction over the associated downstream facilities to require their environmental analysis in connection with the analysis of the proposed project.

Response:

As with most of the Draft EIS, the information supplied by FERC in the Draft EIS is insufficient to determine the factors that were considered by FERC in reaching the decision that it has no jurisdiction over the associated downstream facilities. It is not possible for Buckeye or any other person to determine the propriety of FERC's decision as a result of the lack of meaningful information contained in the Draft EIS. FERC's decision in this regard therefore violates the principals set out in *Mississippi River Basin Alliance v. Westphal,* 230 F.3d 170 (5th Cir.2000), where the court stated that an EIS must be prepared

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LA2-30 (cont'd) **in sufficient detail to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved.**

LA2-31 Sec. 1.5 of the Draft EIS states, in relevant part:

The proposed project must be consistent or in conformance with the guidelines, management objectives, and/or designated uses set forth in regional and local plans for the project area, or a plan amendment would be required. Plans that were reviewed for consistency include BLM Resource Management Plans (RMPs), FS forest management plans, and local land management plans. A summary of the applicable plans and consistency information is presented below. The FERC's consultation efforts with the agencies discussed below are described in section 1.3.

Response:

The entire portion of section 1.3 of the Draft EIS regarding consultation with other agencies is set out below.

"On February 6, 2006, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement and Proposed Land Use Plan Amendment for the Proposed Phoenix Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings (NOI). The NOI was published in the FR and briefly described the project and the EIS process and announced that the BLM would be using the EIS to consider an amendment to the Phoenix Resource Management Plan. The BLM subsequently determined that a land use plan amendment would not be required for the proposed Phoenix Expansion Project (see section 1.5.1). The NOI also provided a preliminary list of draft EIS issues identified by the Agency Staffs, invited written comments on the environmental issues to be addressed in the draft EIS, listed the date and location of four public scoping meetings to be held in the project area, and established a closing date for receipt of comments of March 8, 2006…

"On March 2, May 11, and June 28, 2006, the FERC staff conducted interagency scoping meetings in the project area to solicit comments and concerns about the project from other jurisdictional agencies. Agencies present at the meetings were the BLM (Farmington, Hassayampa, and Lower Sonoran Field Offices), the Kaibab National Forest, the Prescott National Forest, the U.S. Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers (COE), the BOR, the BIA, the Arizona Game and Fish Department (AGFD), the Arizona State Historic Preservation Office (SHPO). Native American tribes also attended."

Based on this paucity of information, Buckeye and others are not able to determine if the consultation required by NEPA was conducted by FERC. While the information contained in the Draft EIS does not disclose what issues were discussed during the meetings, it is clear that a substantial amount of information was not discussed because the Draft EIS does not identify the location of activities such as staging areas, pipe storage areas, access roads, and other construction activities. Without the disclosure of that information it is impossible for FERC or the cooperating agencies to have investigated the impact such activities will have on the flora, fauna, and human population of the proposed locations and it is further impossible for FERC to have consulted with cooperating agencies

LA2-31 See the responses to comments PM3-2, PM3-13, and LA2-21.

LA2-31 (cont'd)

to determine the impact to the various environmental media without defining the sites for those activities. As a result of the insufficient information available to the cooperating agencies at the time of the meetings, it is not possible for a meaningful consultation to have taken place. Further, because of insufficient investigation of the locations of construction related activities and the impact of the construction related activities on each area, it was impossible for the cooperating agencies to have suggested meaningful mitigation measures for inclusion in the Draft EIS. This failure to investigate constitutes a failure to consider alternatives, including the No Action Alternative, required by NEPA and regulations adopted pursuant thereto. 40 CFR § 1502.14. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-32

Sec. 1.5.1 of the Draft EIS states:

The proposed project would cross BLM-managed lands under the jurisdiction of the BLM Farmington District (Farmington Field Office) in New Mexico and the BLM Phoenix District (Hassayampa and Lower Sonoran Field Offices) in Arizona.

A review of the applicable RMPs indicates that the proposed project would substantially conform to these plans in their current forms or when recently revised versions of these plans are adopted by the BLM. At that time, the proposed project would conform to BLM plans and programs, subject to site-specific conditions that may be implemented as a result of this analysis.

Response:

This statement by FERC shows FERC's willingness to pre-determine the outcome of processes being conducted by other agencies and supports Buckeye's contention that FERC has pre-determined the outcome of Transwestern's application in this matter. In this particular instance, while discussing the Bradshaw-Harquahala Planning Area of the BLM, FERC states, "*In response to the creation of the AFNM and to address future management for the planning area, the BLM issued the Agua Fria National Monument and Bradshaw-Harquahala Draft RMP and Draft EIS in January 2006. When finalized, the Bradshaw-Harquahala RMP will replace and consolidate the Phoenix RMP, the Lower Gila North Management Framework Plan, and the Kingman Resource Area RMP into a comprehensive RMP for the Bradshaw-Harquahala Planning Area and AFNM (BLM, 2006a). In the Bradshaw-Harquahala Draft RMP, the BLM evaluated several new and modified transportation and utility corridor alternatives to accommodate future utilities in proximity to the AFNM area. Based on its analysis, the BLM identified Alternative "E" as the preferred future transportation and utility corridor. The proposed alignment of the Phoenix Lateral would be consistent with the final Bradshaw-Harquahala RMP as Alternative E is expected to encompass the proposed alignment between Cordes Junction and Black Canyon City. Furthermore, as discussed in sections 2.0 and 4.0, Transwestern has proposed specific construction plans and mitigation measures to address BLM staff concerns regarding potential project-related impacts on environmental resources in the Bradshaw-Harquahala Planning Area. By implementing these plans and measures, construction and operation of the proposed project would be consistent with the final Bradshaw-Harquahala RMP, when adopted.*" (emphasis added).

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LA2-32 See the responses to comments PM3-2, LA2-21, and LA2-25.

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LA2-32 (cont'd)

As shown by the underlined portions of FERC's statement in the Draft EIS, FERC has made a determination that Transwestern's proposal will comply with a plan that has not even been adopted. Even though the BLM plan is only in draft form, and even though FERC readily admits that portions of Transwestern's proposal are incomplete, including the failure to identify the location of activities such as staging areas, pipe storage areas, access roads, and other construction activities, FERC concludes that Transwestern's proposal complies with the BLM plan. Clearly, there is insufficient information currently available for FERC to reach such a conclusion within the bounds of its obligations under NEPA and regulations adopted pursuant thereto. Further, it is impossible for Buckeye or any other commenter on the Draft EIS to properly evaluate the Draft EIS as a result of this incomplete information.

To remind itself that draft plans such as those discussed in this section are not automatically approved, FERC needs only look to U.S. District Judge Ricardo Martinez's recent decision in *Pacific Coast Federation of Fishermen's Associations v. National Marine Fisheries Service*, No. 04-1299, __ F. Supp. 2d __, 2007 WL 1031717 (W.D. Wash. March 30, 2007), where Judge Martinez rejected amendments made by the Departments of Agriculture and the Interior to the Aquatic Conservation Strategy, a key component of the Northwest Forest Plan. Until such time as the Bradshaw-Harquahala RMP is finalized, FERC cannot fully consider the propriety of the proposed project or its likely impacts on the area covered by that RMP.

FERC's inappropriate determination as described in this paragraph results in a failure to consult with BLM, as required by NEPA (40 CFR § 1503.1), and a failure to properly consider alternatives, including the No Action Alternative. 40 CFR § 1502.14. These are important issues that have not been investigated beyond a cursory analysis by FERC and Transwestern and it is impossible for anyone to make conclusions regarding the allegations without substantial additional investigation and analyses.

LA2-33

Sec. 1.5.2 of the Draft EIS states:

Approximately 29.9 miles of the proposed Phoenix Lateral would cross lands managed by the FS: 9.0 miles in the Kaibab National Forest and 20.4 miles in the Prescott National Forest. As discussed in section 1.2.2, the FS is a cooperating agency in the preparation of this EIS, but the BLM is ultimately responsible for issuing the Right-of-Way Grant and Temporary Use Permits for crossing Forest System lands. The BLM would consider the concurrence or non-concurrence of the FS in making its decision.

Response:

For the reasons set out in the Response to Section 1.5 of the Draft EIS, above, Buckeye denies that the FS or BLM have properly consulted with each other or with FERC. There is insufficient information developed in the Draft EIS to allow for a meaningful consultation between these agencies.

LA2-34

Sec. 1.5.2 of the Draft EIS also states:

A decision that allows the Phoenix Lateral to cross the Kaibab National Forest must be compatible with the Kaibab Forest Plan, including the Kaibab National Forest Recreation

LA2-33 See the responses to comments PM3-2, PM3-13, and LA2-21.

LA2-34 See the responses to comments PM3-2, PM3-13, and LA2-21.

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LA2-34 (cont'd)

Opportunity Spectrum and Scenery Management System Guidebook (ROS-SMS Guidebook)... Visual resources in the Kaibab National Forest are managed using the Scenery Management System (SMS) detailed in the ROS-SMS Guidebook, which is consistent with the FS' current guidance on scenery management Landscape Aesthetics A Handbook for Scenery Management (SMS Handbook)... The majority of the Phoenix Lateral that would be located in the Kaibab National Forest would be located in SIO Level 4, with the exception of an area at Little Hell Canyon Reservoir (MP 9.5), which would be located in SIO Level 2... The guidelines on special uses management for SIO Level 2 suggest, "Attempt to avoid expansion or development of new major utility rights-of-way in this SIO. Utility and transmission lines should be located outside of this SID where possible, or should be buried underground." Based on Transwestern's consultations with the Kaibab National Forest, it is acknowledged that there is no reasonable way to locate the pipeline outside of the SIO Level 2 area (Little Hell Canyon Reservoir). The proposed project would not involve the development of a new utility right-of-way through this SID Level, would be located adjacent to the existing EPNG pipeline right-of-way, and would be buried underground. Furthermore, as discussed in section 4.7.7, Transwestern is consulting with the FS to develop mitigation measures that would minimize adverse visual effects of pipeline construction and operation in the Kaibab National Forest. Therefore, the project would be consistent with the scenic management plans detailed in the Kaibab Forest Plan and the ROS-SMS Guidebook.

Response:

There is no discussion in the Draft EIS that describes the conversations between Transwestern and the Kaibab National Forest or which shows what alternatives were considered to putting the pipeline through the SIO Level 2 area of Little Hell Canyon Reservoir. This statement is typical of the conclusory statements contained throughout the Draft EIS that are not supported by evidence or analysis, in violation of the provisions of NEPA and regulations adopted thereunder.

This section is also another example of FERC relying on promises from Transwestern to "develop mitigation measures that would minimize…effects…" instead of requiring Transwestern to provide factual information from which reasonable mitigation measures could be determined and imposed on the development. FERC readily admits that portions of Transwestern's proposal are incomplete, including the failure to identify the location of activities such as staging areas, pipe storage areas, access roads, and other construction activities. The lack of factual information, leading to the lack of any defined mitigation measures, prevents Buckeye or any other commenter from being able to understand what is being proposed and to intelligently comment on the proposal and this Draft EIS.

LA2-35

Section 1.5.2 of the Draft EIS also states:

The FS manages the Prescott National Forest under the Prescott National Forest Land and Resource Management Plan (Prescott Forest Plan), and the proposed project must be consistent with this plan.

The Prescott Forest Plan adopts the ROS as a framework for recreation planning... The proposed pipeline would fall entirely within the Roaded Natural ROS class. As discussed above, the guidelines in the SMS-ROS Guidebook for special uses management in the Roaded Natural

LA2-35 See the responses to comments PM3-2, PM3-13, and LA2-21.

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LA2-35 (cont'd)

ROS class suggest, "Attempt to avoid clearing of new major utility corridors within sensitive travel corridor foregrounds," and also suggest that new utilities be constructed underground.

The Phoenix Lateral would be parallel to the EPNG pipeline for its entire length across the Prescott National Forest, and would be installed underground. Therefore, the Phoenix Lateral would be compatible with the ROS for the area.

The Prescott Forest Plan uses an older visual management system of Visual Quality Objectives (VQOs), which has since been replaced by the SID described in the SMS Handbook (by revised Forest Service Manual Chapter 2380, effective as of May 2, 2003). The SMS Handbook provides a conversion system for VQO classes and SMS classes, as described in section 4.7.7.

The majority of the Phoenix Lateral would be located in areas of SIO Level 4 (Modification) or SIO Level 3 (Partial Retention) with small portions of the proposed route entering areas of SIO Level 2 (Retention) at Hell Canyon (MP 17.8) and the Verde River (MP 23.8). For its entire length through the Prescott National Forest, the pipeline would be adjacent to an existing pipeline right-of-way. Additionally, the Phoenix Lateral would be installed to meet SIO guidelines in the Kaibab National Forest, and installation in the Prescott National Forest would utilize the same methods. Furthermore, as discussed in section 4.7.7, Transwestern is consulting with the FS to develop mitigation measures that would minimize adverse visual effects of pipeline construction and operation in the Prescott National Forest. Therefore, the project would be consistent with the scenic management plans detailed in the Prescott Forest Plan.

The Arizona Wilderness Coalition, an association of groups and individuals concerned with preserving and restoring wilderness in Arizona, has prepared a Wild and Scenic River Proposal for the portion of the Verde River within the project area. The proposal briefly describes the key issues regarding the suitability of segments of the Verde River for designation as Wild or Scenic and includes a recommendation to designate the reach crossed by the Phoenix Lateral and the existing EPNG pipeline as Wild. The proposal is not a comprehensive suitability study, and the key issues raised in the proposal are under review by the FS to determine eligibility of this segment for Wild or Scenic designation within the Prescott National Forest.

Response:

FERC has clearly considered only two factors in determining that it is appropriate for this pipeline to follow the proposed route through the Prescott National Forest, those considerations being that another pipeline already traverses the area and that the pipeline will be located underground. There is no examination of cumulative impacts (40 CFR § 1508.7), no examination of alternative routes (40 CFR § 1502.14), and FERC summarily dismisses concerns expressed by The Arizona Wilderness Coalition with no discussion or fact finding concerning those concerns (violates 40 CFR § 1502.16). FERC's conclusion regarding the suitability of the pipeline in the Prescott National Forest, as with the Kaibab National Forest, ignores the failure of Transwestern to identify the location of activities such as staging areas, pipe storage areas, access roads, and other construction activities. It is impossible for the FS, FERC, or any commenter to analyze or understand the potential impact on the National Forests without that information. The lack of factual information, leading to the lack of any defined mitigation measures, prevents Buckeye or any other

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LA2-35 (cont'd) **commenter from being able to understand what is being proposed and to intelligently comment on the proposal and this Draft EIS. FERC has not taken the "hard look" required by the courts in analyzing the impact of the proposed pipelines on these National Forests and has, therefore, failed in its obligations under NEPA and regulations adopted pursuant thereto in the preparation of this Draft EIS.**

LA2-36 Section 1.5.3 of the Draft EIS states:

Transwestern has met with the Navajo Nation and will continue to work with Navajo Nation representatives for survey permission and on the terms and conditions for the right to construct and operate the pipeline.

Response:

The results of Transwestern's meeting(s) (we're not told how many meetings have occurred or the topics discussed in those meetings) are not discussed in the Draft EIS, but it is clear that the Navajo Nation has not approved the location of the pipeline as proposed. The approval of the Navajo Nation is a critical element of this proposal as the ultimate decision by the Navajo Nation could cause a realignment of the project. Analysis of Transwestern's options in the event the proposed alignment is not approved should be included in the Draft EIS.

LA2-37 Section 1.5.4 of the Draft EIS states:

The proposed project would cross a portion of BOR land that is managed by the Lower Colorado Regional Office of the BOR... The Phoenix Lateral would cross approximately 0.8 mile of BOR land, 100 percent of which follows existing rights-of-way. Transwestern filed an application for a Transportation Utility Systems right-of-way with the BOR in mid-2006. As discussed in section 1.2.2, the BLM is ultimately responsible for issuing the Right-of-Way Grant and Temporary Use Permits for crossing BOR lands. The BLM would consider the concurrence or non-concurrence of the BOR in making its decision.

Response:

There is no discussion of the impact the proposal would have on the Lower Colorado River. A meaningful discussion of the topic is not possible without more information being included in the Draft EIS concerning the location of activities such as staging areas, pipe storage areas, access roads, and other construction activities. Without sufficient information, BOR and the BLM cannot make an informed decision. The lack of information contained in the Draft EIS makes it impossible for the agencies involved to have properly completed consultation on this issue.

LA2-38 Sec. 1.5.4 of the Draft EIS also states:

The Phoenix Lateral would cross approximately 56.6 miles of ASLD lands... Transwestern has applied for a Right-of-Way Grant from the ASLD for authorization to construct and operate the proposed project on ASLD lands. Transwestern anticipates that the ASLD Right-of-Way Grant process would be completed subsequent to the completion of this EIS. Issuance of the ASLD Right-of-Way Grant would indicate that the project conforms to the requirements of the ASLD.

LA2-36 See the response to comment PM3-13.

LA2-37 See the responses to comments PM3-2, PM3-13, and LA2-21.

LA2-38 See the response to comment PM3-2.

LA2-38 (cont'd)

Response:

Once again FERC makes a conclusory statement unsupported by factual evidence. There is no attempt to analyze the impacts of the proposed pipeline on the ASLD lands. There is insufficient information contained in the Draft EIS for Buckeye or any other commenter or any state or federal agency to understand the potential impact to the ASLD lands or the mitigation that may be proposed. The lack of information results in a failure of FERC to have meaningfully consulted with ASLD, the failure of FERC to have analyzed and considered alternatives, including the No Action Alternative (40 CFR § 1502.14), and the failure of FERC to take the "hard look" at the proposal required by NEPA, the regulations adopted pursuant thereto, and the courts.

LA2-39

Sec. 1.5.5 of the Draft EIS states:

Many counties in Arizona and New Mexico have adopted a general or comprehensive plan to set forth policies guiding local land use and development… The proposed project's consistency with local land management plans and local zoning codes was evaluated by consulting these land use plans, codes, and land use maps.

Response:

While the Draft EIS makes passing comment on the land use regulations of the various counties through which the pipelines would pass, it does not discuss the land use regulations of any city or town that would be impacted by the proposed pipeline. Jurisdiction for regulation of land use activities in Arizona are separate and distinct between municipalities and counties. Cities and towns are entitled to the same consideration as counties on this issue. Although the proposed pipeline would traverse approximately 28 miles within the town limits of the Town of Buckeye, Arizona, there is no discussion of Buckeye's General Plan, Zoning Ordinance, or approved master planned communities anywhere in the Draft EIS. Clearly, the concerns of the Town of Buckeye have been ignored throughout the process by FERC and Transwestern. The Draft EIS is wholly deficient in analyzing impacts on the Town of Buckeye or any other town located along the proposed route. Failure to consider the impact of the proposal on the various towns and cities is a failure by FERC to take a "hard look" at the proposal as required by NEPA and the courts.

LA2-40

Sec. 1.6 of the Draft EIS includes a table of "…the major federal, state, and local permits, approvals, and consultations identified for the construction and operation of the Phoenix Expansion Project."

Response:

There is no information regarding any city or town that would be impacted by the proposed project, including the Town of Buckeye. FERC has not taken into consideration the impacts the proposed projects would have on those communities.

LA2-41

Sec. 2.1 of the Draft EIS states:

Detailed maps showing the pipeline routes, aboveground facilities, pipe storage and contractor yards, borrow/disposal areas, and access roads are in Appendix B.

LA2-39 See the response to comment PM3-2.

LA2-40 As noted by the commentor, section 1.6 states that table 1.6-1 lists the major federal, state, and local permits, approvals, and consultations identified for the construction and operation of the Phoenix Expansion Project. Section 1.6-1 also states that Transwestern would be responsible for obtaining all permits and approvals required to implement the proposed project regardless of whether they appear in table 1.6-1. See also the response to comment PM3-2.

LA2-41 The hard and CD ROM copies of the draft EIS contain Appendix B, which shows the pipeline routes, aboveground facilities, pipe storage and contractor yards, borrow/disposal areas, and access roads. It appears that the copy of the draft EIS referred to by the commentor was downloaded from the FERC Internet website. In the aftermath of the terrorist attacks that occurred on September 11, 2001, the FERC has removed energy facility design plans and location information from its Internet website to ensure that sensitive information is not readily available. This information is referred to as Critical Energy Infrastructure Information (CEII). CEII includes information concerning proposed or existing critical infrastructure (physical or virtual) that: (1) relates to the production, generation, transmission, or distribution of energy; (2) could be useful to a person planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act; and (4) gives strategic information beyond the location of the critical infrastructure. While Appendix B is not available on the FERC's Internet website, a hard or CD ROM copy of the EIS that includes Appendix B will be provided by the FERC upon request. Instructions for obtaining a copy of the EIS were included in the To the Party Addressed letter that appeared in the front of the draft EIS and in the Notice of Availability of the draft EIS that was issued by the FERC and published in the Federal Register. See also the response to comment LA2-21.

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LA2-41 (cont'd)

Response:

The copy of the Draft EIS provided to the Town of Buckeye does not include Appendix B. Instead, a page entitled "Non-Internet Public" directs the public to access the information "…only through the Public Reference Room, or by e-mail at public.referenceroom@ferc.gov." This effectively prevents any person who does not have access to a computer or the financial wherewithal to visit the Public Reference Room in Washington, D.C., from viewing this information. Even those with access to a computer quickly discover that the missing material comprises a multitude of pages of maps consisting of more than 50 gigabytes of information. In other words, it is not reasonably possible for anyone to download the information from his or her computer. Therefore, the only realistic option for people living in New Mexico and Arizona to view this critical part of the Draft EIS is to make a request to the Public Reference Room to have the exhibit sent to them via mail and pay for the cost of receiving the exhibit. Further, any potential commenter encounters delays in receiving the material which shortens the already short time frame set out by FERC for comments on the Draft EIS. This violates both the letter and intent of NEPA, which requires a thorough public comment process. It also is a clear violation of environmental justice provisions as it effectively keeps lower income individuals from being able to receive and review critical information that may be relevant to their environment and well being.

The statement misrepresents the contents of Appendix B to the Draft EIS because many of the pipe storage yards, contractor yards, access roads, etc., are not yet defined by Transwestern and therefore cannot accurately be shown on the plans.

LA2-42

Sec. 2.2.1 of the Draft EIS states:

During the scoping process, the Prescott National Forest requested that Transwestern narrow its proposed construction right-of-way to reduce impacts on Forest System lands. Through the Kaibab National Forest (MPs 0.8 to 9.8) and the Prescott National Forest (MPs 9.8 to 29.8, MPs 29.3 to 29.8, and MPs 65.0 to 65.9), the Phoenix Lateral would be adjacent to an existing EPNG pipeline with some minor deviations required for safe construction. To minimize impacts on Forest System lands, Transwestern proposes to overlap the EPNG right-of-way by 15 feet. By overlapping the EPNG right-of-way by 15 feet, construction equipment would be working within 10 feet of an existing high pressure natural gas pipeline. Transwestern investigated further overlap of the EPNG right-of-way and determined that safety concerns associated with operating equipment close to an existing pressurized natural gas pipeline would be too significant. In addition, blasting is anticipated in multiple locations during construction through the National Forests and would result in further potential impacts on worker safety if the proposed pipeline was to be installed any closer to the existing EPNG pipeline. During pipeline operation, equipment used to conduct maintenance activities and the potential interference with cathodic protection associated with the close proximity of two pressurized natural gas pipelines would create additional safety hazards. Transwestern cites these safety concerns as reasons that it does not propose further overlap of the EPNG right-of-way through the National Forests.

LA2-42 The FERC is not being inconsistent, deceptive, or convenient in analyzing the safety risks associated with the proposed project. The construction and operation of competing natural gas transmission pipelines within the same easement is not a common practice because such a practice would require the use of heavy construction equipment parallel and in close proximity to the existing pipeline for miles. The safety concerns posed by this construction scenario are greater than those posed by utility and road crossings of pipelines that occur perpendicular to the pipeline under controlled conditions. Such utility and road crossings of existing natural gas pipelines occur many times each day in the United States without incident.

Interference between nearby cathodic protection systems can occur if mitigative measures are not implemented. Section 4.11.1 includes a detailed discussion of the monitoring and measures that Transwestern would implement to reduce the potential effects of stray currents.

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LA2-42 (cont'd)

Response:

Throughout the siting process, FERC and Transwestern have provided inconsistent information to the public. When it is convenient for Transwestern to find a dangerous situation regarding the location of the pipeline, danger is cited as a reason for doing what Transwestern wants. When the presence of such danger is inconvenient for Transwestern, it and FERC ignores the danger in their presentations and in this Draft EIS.

This section is a classic example of this deception by FERC and Transwestern. This section shows the concern that Transwestern and FERC have for the potential danger involved when construction activities occur near an existing natural gas pipeline. Of particular note is the comment that, "*Transwestern investigated further overlap of the EPNG right-of-way and determined that safety concerns associated with operating equipment close to an existing pressurized natural gas pipeline would be too significant.*" This statement is inconsistent with the position taken by FERC and Transwestern that the location of the proposed pipeline through the Town of Buckeye, Arizona, where there will be hundreds of conflicts between the proposed pipeline and already approved development in the area, does not pose a risk to the people working and living in the Town.

It is also significant that FERC states, "*During pipeline operation, equipment used to conduct maintenance activities and the potential interference with cathodic protection associated with the close proximity of two pressurized natural gas pipelines would create additional safety hazards.*" In discussing the location of the proposed pipeline beneath the existing high-voltage powerlines within the Town of Buckeye, both FERC and Transwestern have assured the citizens and officials of the Town that there is no danger associated with cathodic protection.

The Governor's Essential Services Task Force on Natural Gas and Electric Power Sources in Arizona, dated June 27, 2005, found that, "The number one threat to natural gas system reliability and safety is third party excavation damage." FERC apparently considers that threat to be a legitimate concern when Transwestern wishes to avoid having to comply with requests of the NF, but contends there is no such threat when arguing against the siting of the pipeline along the alternate route supported by the Town of Buckeye.

LA2-43

Sec. 2.2.1 of the Draft EIS also states:

In addition to the construction right-of-way, Transwestern has identified temporary extra workspaces that would be required for staging areas and construction at waterbodies, roads, and railroads, and in areas of steep slopes and rugged terrain. The approximate locations and sizes of temporary extra workspaces identified by Transwestern are listed in table E-1 in Appendix E.

Response:

Appendix E contains 37 pages of charts that contain little useful information. The descriptions of the proposed activities are incomplete and specific locations for the activities are not delineated. It is impossible for Buckeye or any other commenter to make intelligent use of the information provided. Further, there is no analysis by FERC of the

LA2-43 The extra workspaces listed in table E-1 in Appendix E are delineated on the photo-based alignment sheets filed by Transwestern and considered in the Agency Staffs' analysis of impact and mitigation for the proposed project. Air quality impacts and mitigation are discussed in section 4.10.1. The project would be in conformance with all applicable federal, state, and local air quality regulations, including the federal General Conformity requirements. The FERC's Final General Conformity Determination (see Appendix Q) was prepared in consultation with the MAG; the ADEQ; and the EPA, Region IX. See also the responses to comments PM3-2, FA4-11, and LA2-21.

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LA2-43 (cont'd)

environmental impacts of any specific proposed activity outside of the general, unsupported statements included throughout the Draft EIS. This section fails to comprise the "hard look" required by NEPA and the court cases interpreting that statute.

The description of the proposed development does not take into consideration the possible negative impacts such development could have on Maricopa County's air quality. Portions of Maricopa County have been designated "nonattainment" by EPA for three pollutants: particulate matter (PM10), carbon monoxide (CO) and ozone, under Maricopa County's State Implementation Plan. The Phoenix metropolitan area is not currently meeting either the annual or the 24-hour PM10 health-based standard. Under the state implementation plan, ADEQ, Maricopa County, and the local cities and towns will implement control measures for all the primary sources of airborne particulates. The primary sources of particulate pollution in the Phoenix area are windblown dust from construction sites, agricultural fields, unpaved parking lots and roads, disturbed vacant lots, and paved road dust. (ADEQ, http://www.maricopa.gov/aq/divisions/planning_analysis/state_implementation_plan.aspx). FERC is obligated to investigate the cumulative impact the proposed project will have on Maricopa County's air quality issues. 40 CFR § 1508.7. Such investigation has not been completed in the Draft EIS.

LA2-44

Sec. 2.2.3 of the Draft EIS describes the locations of Pipe Storage and Contractor Yards and Borrow/Disposal Areas.

Response:

The description of the Pipe Storage and Contractor Yards and Borrow/Disposal Areas are contained in tables that are incomplete and specific locations for the activities are not delineated. It is impossible for Buckeye or any other commenter to make intelligent use of the information provided. Further, there is no analysis by FERC of the environmental impacts of any specific proposed activity outside of the general, unsupported statements included throughout the Draft EIS. This section fails to comprise the "hard look" required by NEPA and the court cases interpreting that statute.

The description of the proposed development does not take into consideration the possible negative impacts such development could have on Maricopa County's air quality. Portions of Maricopa County have been designated "nonattainment" by EPA for three pollutants: particulate matter (PM10), carbon monoxide (CO) and ozone, under Maricopa County's State Implementation Plan. The Phoenix metropolitan area is not currently meeting either the annual or the 24-hour PM10 health-based standard. Under the state implementation plan, ADEQ, Maricopa County, and the local cities and towns will implement control measures for all the primary sources of airborne particulates. The primary sources of particulate pollution in the Phoenix area are windblown dust from construction sites, agricultural fields, unpaved parking lots and roads, disturbed vacant lots, and paved road dust. (ADEQ, http://www.maricopa.gov/aq/divisions/planning_analysis/state_implementation_plan.aspx). FERC is obligated to investigate the cumulative impact the proposed project will have on Maricopa County's air quality issues. 40 CFR § 1508.7. Such investigation has not been completed in the Draft EIS.

LA2-44 The pipe storage and contractor yards and borrow/disposal areas are shown on the maps in Appendix B and considered in the Agency Staffs' analysis of impact and mitigation for the proposed project. Air quality impacts and mitigation are discussed in section 4.10.1. The project would be in conformance with all applicable federal, state, and local air quality regulations, including the federal General Conformity requirements. The FERC's Final General Conformity Determination (see Appendix Q) was prepared in consultation with the MAG; the ADEQ; and the EPA, Region IX. See also the responses to comments PM3-2, FA4-11, and LA2-21.

Local Agencies 2

LA2-45 Sec. 2.2.4 of the Draft EIS states:

The locations, conditions, lengths, and acres of the proposed access roads are listed in table E-2 in Appendix E... Transwestern has stated that it would develop and implement a post-construction schedule of maintenance for access roads on Forest System lands (see section 4.2.3). In section 4.7.4.1, we have recommended that Transwestern develop and implement a post-construction schedule of maintenance for access roads on BLM-managed lands as well.

Response:

The description of the access roads are contained in tables that are incomplete and specific locations for the activities are not delineated. It is impossible for Buckeye or any other commenter to make intelligent use of the information provided. Further, there is no analysis by FERC of the environmental impacts of any specific proposed activity outside of the general, unsupported statements included throughout the Draft EIS. This section fails to comprise the "hard look" required by NEPA and the court cases interpreting that statute.

It is not possible for FERC, Buckeye, any cooperating agency, or any other commenter to comment on the proposed post-construction schedule for maintenance for access roads because such a schedule has not been created by Transwestern and included in the Draft EIS. This is another area where FERC has failed to take a "hard look" at this project.

The description of the proposed development does not take into consideration the possible negative impacts such development could have on Maricopa County's air quality. Portions of Maricopa County have been designated "nonattainment" by EPA for three pollutants: particulate matter (PM10), carbon monoxide (CO) and ozone, under Maricopa County's State Implementation Plan. The Phoenix metropolitan area is not currently meeting either the annual or the 24-hour PM10 health-based standard. Under the state implementation plan, ADEQ, Maricopa County, and the local cities and towns will implement control measures for all the primary sources of airborne particulates. The primary sources of particulate pollution in the Phoenix area are windblown dust from construction sites, agricultural fields, unpaved parking lots and roads, disturbed vacant lots, and paved road dust. (ADEQ, http://www.maricopa.gov/aq/divisions/planning_analysis/state_implementation_plan.aspx). FERC is obligated to investigate the cumulative impact the proposed project will have on Maricopa County's air quality issues. 40 CFR § 1508.7. Such investigation has not been completed in the Draft EIS.

LA2-46 Sec. 2.3 of the Draft EIS sets out Transwestern's various mitigation plans in summary fashion and refers the reader to later sections of the Draft EIS.

Response:

Buckeye's comments regarding the various mitigation plans will be addressed in the sections of the Draft EIS where the plans are discussed with more (albeit inadequate) specificity.

LA2-45 The access roads identified to date are considered in the Agency Staffs' analysis of impact and mitigation for the proposed project. Air quality impacts and mitigation are discussed in section 4.10.1. The project would be in conformance with all applicable federal, state, and local air quality regulations, including the federal General Conformity requirements. The FERC's Final General Conformity Determination (see Appendix Q) was prepared in consultation with the MAG; the ADEQ; and the EPA, Region IX. See also the responses to comments PM3-2, FA4-11, and LA2-21.

LA2-46 The purpose of section 2.0 is to provide a description of the proposed project and project facilities. Section 2.3 describes the construction procedures. Impacts and mitigation measures, including mitigation plans, are addressed in section 4.0; many of the plans are included as appendices of the EIS. As such, it is appropriate to summarize the plans in section 2.3 while referring the reader to the applicable resource sections in section 4.0 and appendices of the document for additional details.

LA2-47 Sec. 2.3.1 of the Draft EIS discusses Transwestern's proposed procedures for clearing and grading.

Response:

There is no discussion of the protected native plants classified under the Arizona Native Plant Law (A.R.S. § 3-904) which are located on much of the Property that would be graded and/or cleared under Transwestern's proposal. Failure of FERC to consider the impacts on the plants protected by that law is a failure to fully evaluate the proposal as required by NEPA and the regulations adopted pursuant thereto.

Further, there is no discussion of the environmental impact on Maricopa County's air quality even though this section of the Draft EIS describes an intended burn program as part of this proposed development and will generate substantial amounts of particulate matter into the air during the construction process. Maricopa County has had great difficulty in complying with the United States Environmental Protection Agency's air quality requirements and it is likely that additional pollution resulting from burning plants as part of this project would further damage the air quality and Maricopa County's ability to comply with EPA regulations.

The description of the proposed development does not take into consideration the possible negative impacts such development could have on Maricopa County's air quality. Portions of Maricopa County have been designated "nonattainment" by EPA for three pollutants: particulate matter (PM10), carbon monoxide (CO) and ozone, under Maricopa County's State Implementation Plan. The Phoenix metropolitan area is not currently meeting either the annual or the 24-hour PM10 health-based standard. Under the state implementation plan, ADEQ, Maricopa County, and the local cities and towns will implement control measures for all the primary sources of airborne particulates. The primary sources of particulate pollution in the Phoenix area are windblown dust from construction sites, agricultural fields, unpaved parking lots and roads, disturbed vacant lots, and paved road dust. (ADEQ, http://www.maricopa.gov/aq/divisions/planning_analysis/state_implementation_plan.aspx). FERC is obligated to investigate the cumulative impact the proposed project will have on Maricopa County's air quality issues. 40 CFR § 1508.7. Such investigation has not been completed in the Draft EIS.

LA2-48 Sec. 2.3.1 of the Draft EIS states:

The trench would be excavated to a depth sufficient to provide the minimum cover required by DOT specifications. Typically, the trench would be sufficiently deep to allow for about 3 feet of cover and wide enough to allow for about 4 to 6 feet of stable soils and rock. In areas with rock, the minimum cover would be 2 feet. In certain agricultural areas, and under flowing surface waters and roads, the depth of cover could be up to 5 feet.

Response:

The trenching described in this section of the Draft EIS is the same as proposed for the portion of the pipeline that would traverse the Town of Buckeye. Many large developments have been approved and have vested development rights adjacent to the proposed pipeline route through the Town of Buckeye. There will be hundreds of instances where the potential for conflicts between the proposed pipeline and the wet and dry

Local Agencies 2

LA2-47 The purpose of section 2.0 is to provide a description of the proposed project. Section 2.3 describes the construction procedures. Impacts and mitigation measures, including those for protected native plants, are addressed in section 4.0.

LA2-48 The pipeline would be designed and constructed in accordance with PHMSA/OPS requirements. Transwestern would be required to monitor development progress in proximity to the pipeline and implement measures to remain in compliance with DOT regulations as development occurs near the pipeline.

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LA2-48 (cont'd)

utilities, road structures, retention basins, and other development issues will be present. Burying the proposed pipeline the minimum amounts described in the Draft EIS will create unsafe conditions because of the ongoing construction and maintenance over and around the proposed pipeline. FERC has not completed a detailed review of the number of encroachments that will occur and the likelihood of a catastrophic event resulting from those encroachments. FERC's failure to investigate and analyze those facts is a violation of FERC's obligations under NEPA.

LA2-49

The description of the proposed development does not take into consideration the possible negative impacts such development could have on Maricopa County's air quality. Portions of Maricopa County have been designated "nonattainment" by EPA for three pollutants: particulate matter (PM10), carbon monoxide (CO) and ozone, under Maricopa County's State Implementation Plan. The Phoenix metropolitan area is not currently meeting either the annual or the 24-hour PM10 health-based standard. Under the state implementation plan, ADEQ, Maricopa County, and the local cities and towns will implement control measures for all the primary sources of airborne particulates. The primary sources of particulate pollution in the Phoenix area are windblown dust from construction sites, agricultural fields, unpaved parking lots and roads, disturbed vacant lots, and paved road dust. (ADEQ, http://www.maricopa.gov/aq/divisions/planning_analysis/state_implementation_plan.aspx). FERC is obligated to investigate the cumulative impact the proposed project will have on Maricopa County's air quality issues. 40 CFR § 1508.7. Such investigation has not been completed in the Draft EIS.

LA2-50

Sec. 2.3.2 of the Draft EIS describes in general terms the special construction techniques that may be required for portions of the proposed project.

Response:

The description of the proposed development does not take into consideration the possible negative impacts such development could have on Maricopa County's air quality. Portions of Maricopa County have been designated "nonattainment" by EPA for three pollutants: particulate matter (PM10), carbon monoxide (CO) and ozone, under Maricopa County's State Implementation Plan. The Phoenix metropolitan area is not currently meeting either the annual or the 24-hour PM10 health-based standard. Under the state implementation plan, ADEQ, Maricopa County, and the local cities and towns will implement control measures for all the primary sources of airborne particulates. The primary sources of particulate pollution in the Phoenix area are windblown dust from construction sites, agricultural fields, unpaved parking lots and roads, disturbed vacant lots, and paved road dust. (ADEQ, http://www.maricopa.gov/aq/divisions/planning_analysis/state_implementation_plan.aspx). FERC is obligated to investigate the cumulative impact the proposed project will have on Maricopa County's air quality issues. 40 CFR § 1508.7. Such investigation has not been completed in the Draft EIS.

Further, there is no analysis of the impact such construction techniques could have on other environmental issues, such as where roads cross waterways.

LA2-49 The purpose of section 2.0 is to provide a description of the proposed project. Section 2.3 describes the construction procedures. Air quality impacts and mitigation are discussed in section 4.10.1. The project would be in conformance with all applicable federal, state, and local air quality regulations, including the federal General Conformity requirements. The FERC's Final General Conformity Determination (see Appendix Q) was prepared in consultation with the MAG; the ADEQ; and the EPA, Region IX. See also the response to comment FA4-11.

LA2-50 See the response to comment LA2-49. Impacts on waterbodies crossed by access roads are discussed in section 4.3.2.2. Transportation and traffic are discussed in section 4.8.4.

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LA2-50 (cont'd)

As with most of the Draft EIS, this section makes findings and conclusions without actually investigating the potential impacts. For example, FERC has determined that *"There would be little or no disruption to traffic at road or railroad crossings that are bored. Where feasible and practical, traffic would be detoured around the work site. If no reasonable detour is feasible, road closure signs would be posted sufficiently far from the construction site to allow traffic to select alternate means around the work site... Construction of the crossing and restoration of the road would be completed as quickly as possible. Construction at each open-cut road crossing typically would be completed in 1 day, and would be anticipated to have a significant impact on local traffic."* There are no facts or investigations about traffic conditions at the locations of the proposed crossings, but FERC makes this determination anyway. The EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-51

Sec. 2.3.2 of the Draft EIS addresses Transwestern's proposed construction techniques in areas of rugged topography, water body crossings, blasting, in residential areas, and working adjacent to existing easements.

Response:

Buckeye incorporates its comments to Section 4 of the Draft EIS, set out below, as if set out in full herein.

LA2-52

Sec. 2.3.3 of the Draft EIS states:

Construction of the other proposed aboveground facilities, including the Ash Fork Facility, meter stations, valves, and pig launchers/receivers, would involve site clearing and grading as needed to establish appropriate contours for the facilities. Following installation of the equipment, the sites would be graveled, as necessary, and fenced.

Response:

The description of the proposed development does not take into consideration the possible negative impacts such development could have on Maricopa County's air quality. Portions of Maricopa County have been designated "nonattainment" by EPA for three pollutants: particulate matter (PM10), carbon monoxide (CO) and ozone, under Maricopa County's State Implementation Plan. The Phoenix metropolitan area is not currently meeting either the annual or the 24-hour PM10 health-based standard. Under the state implementation plan, ADEQ, Maricopa County, and the local cities and towns will implement control measures for all the primary sources of airborne particulates. The primary sources of particulate pollution in the Phoenix area are windblown dust from construction sites, agricultural fields, unpaved parking lots and roads, disturbed vacant lots, and paved road dust. (ADEQ, http://www.maricopa.gov/aq/divisions/planning_analysis/state_implementation_plan.aspx). FERC is obligated to investigate the cumulative impact the proposed project will have on Maricopa County's air quality issues. 40 CFR § 1508.7. Such investigation has not been completed in the Draft EIS.

LA2-51 The purpose of section 2.0 is to provide a description of the proposed project. Section 2.3 describes the construction procedures. Impacts and mitigation are addressed in section 4.0.

LA2-52 See the response to comment LA2-49.

Local Agencies 2

LA2-53 Sec. 2.3.3 of the Draft EIS states:

Any exposed steel pipe and appurtenances would be externally coated with paint to mitigate the effects of atmospheric corrosion. This coating would be applied in the field in a multi-step process that includes cleaning the pipe exterior, creating an anchor pattern to enhance the adhesion of the paint material, applying the paint, and finally allowing the paint to cure and harden. All aboveground facilities would be painted to blend with the surrounding landscape. On BLM- and FS-managed lands, Transwestern is conducting visual resource assessments and is consulting with the BLM and the FS to develop additional mitigation measures that would further reduce visual impacts (see section 4.7.7).

Response:

It is not possible for Buckeye, BLM, FS, or other commenters to meaningfully comment on Transwestern's efforts to mitigate visual impacts because there is no detail provided in the Draft EIS describing the proposed measures. This is a failure of FERC's obligation under NEPA to consult with BLM and FS. 40 CFR § 1503.1.

In addition, there is no analysis in the Draft EIS regarding the effectiveness of the proposed paint coatings to mitigate the effects of atmospheric corrosion. FERC appears to assume that the proposed treatment will be acceptable without any sort of detailed analysis or fact finding. In any event, FERC's decision in this regard violates the principles set out in *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170 (5th Cir.2000), where the court stated that an EIS must be prepared in sufficient detail to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved. It is not possible for Buckeye or other commenters to understand and consider the pertinent environmental influences because there is no factual discussion presented in the Draft EIS by FERC.

LA2-54 Sec. 2.4 of the Draft EIS sets out Transwestern's proposed construction schedule.

Response:

The construction schedule does not allow sufficient time for the preparation of an EIS in compliance with NEPA and the regulations and court decision thereunder. Transwestern is attempting to rush this project through without providing adequate time for the citizens and communities that could be negatively impacted by the project to fully understand and evaluate the project prior to construction.

LA2-55 Sec. 2.5 of the Draft EIS states:

The environmental inspection and mitigation monitoring program for the Phoenix Expansion Project would address requirements placed on the project by the FERC, the BLM, the FS, and other applicable agencies. Full-time third-party Compliance Monitors representing the FERC, the BLM, and the FS would be present on each construction spread to monitor compliance with project mitigation measures and requirements. This would include verifying and documenting that the appropriate monitoring is being conducted at sensitive areas (e.g., at cultural resources sites). Other federal and state agencies would conduct oversight of inspection and monitoring to the extent determined necessary by the individual agency.

LA2-53 The purpose of section 2.0 is to provide a description of the proposed project. Section 2.3 describes the construction procedures. Visual resources impacts and mitigation are addressed in section 4.7.7. See also the response to comment PM3-13.

LA2-54 See the response to comment PM3-2.

LA2-55 See the response to comment PM3-2.

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LA2-55 (cont'd)

Response:

All of the proposed oversight does not protect the citizens of Buckeye if the proposed pipeline is improperly located, mitigation is not carefully thought out and imposed on the project, or proper consultation with cooperating agencies has not occurred. Until such time as Buckeye and other commenters have been provided sufficient information to understand the proposed project, the potential impacts the project would have on the environment and the health, safety and welfare of the community, and the mitigation measures imposed by FERC or other agencies to insure the protection of the people and the environment that would be impacted by the proposed development, it is impossible to determine whether the proposed oversight activities set out in this section are reasonable and proper.

Likewise, stating that *"Transwestern would develop an environmental training program tailored to the proposed project and its requirements"* is meaningless without providing the information needed to determine what should be included in such a training program and then providing details of the components of the training program. This statement amounts to nothing more than Transwestern's promise to do the right thing. Unfortunately, Buckeye cannot be comfortable simply relying on Transwestern's good faith to develop a project that will not have unacceptable negative impacts on the Town and citizens of Buckeye, particularly in light of Transwestern's history of non-cooperation and obfuscation to date on this project.

LA2-56

Section 2.5 of the Draft EIS states:

It is expected that these variance requests would be necessary because during construction, unforeseen or unavoidable site conditions can result in the need for changes from approved mitigation measures and construction procedures. Additionally, the need for route realignments, extra workspaces, or access roads outside of the previously approved construction work area may arise. Changes to previously approved mitigation measures, construction procedures, and construction work areas would require some level of regulatory approval and would be handled in the form of variance requests to be submitted by Transwestern and reviewed and approved or denied by the agencies with the delegation of some authority to the third-party Compliance Monitors.

Response:

Buckeye objects to a process whereby Transwestern can vary mitigation measures, construction procedures, and even route alignments without participation by the public. Such a procedure could effectively render the entire NEPA process meaningless. Based on the information (or lack thereof) contained in the Draft EIS, it is apparent that FERC's and Transwestern's primary concern is with the cost of this project. A variance procedure that does not include public participation provides too big a temptation to Transwestern to apply for variances for no purpose other than cost savings at a potential detriment to the people and the community. This proposal violates the intent of NEPA that the activities of federal agencies should be transparent to the public and allows decision making to occur behind closed doors.

LA2-56 It is common practice for additional areas to be identified by the contractors during the construction phase of the project that are needed in order to safely install the pipeline. For all areas not previously identified and approved for construction, the FERC staff would evaluate the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. Other jurisdictional agencies would be consulted as appropriate before the FERC would approve the use of additional work areas. No variances for additional work areas would be granted that would affect sensitive resources for which impacts could not be fully mitigated.

Variances to a mitigation measure would be approved only if the results of implementing the change would provide equal or better protection for the resource than the original mitigation measure or if the original mitigation measure is not applicable to that specific site. Other jurisdictional agencies would be consulted as appropriate before the FERC would approve changes to the mitigation measures.

LA2-57 Section 2.6 of the Draft EIS states:

Transwestern would operate the pipeline facilities in compliance with DOT regulations at Title 49 CFR 192. Transwestern's existing pipeline system is monitored and controlled 24 hours a day for pressure drops in the pipeline that could indicate a leak or other operating problem by full-time staff at the Transwestern Gas Control Center in Houston, Texas... The estimated response time for a leak could be up to 2 hours depending on time of day and location of personnel.

Response:

Brown and Caldwell have been retained by the Town of Buckeye to prepare a detailed risk analysis for the proposed project where it passes through the Town. Due to the lack of response time provided by FERC to respond to this Draft EIS, FERC's denial of Buckeye's request for the withdrawal of the Draft EIS, FERC's denial of Buckeye's request for additional time in which to respond to it, and the failure to properly include Buckeye in the public process at the beginning of the FERC's review of the proposed project, Buckeye was unable to hire its consultant in sufficient time for a complete risk analysis to be completed by the deadline for commenting on the Draft EIS. A review of the draft Brown and Caldwell report clearly indicates that while the probability of a catastrophic event is low, the results of such an event are so cataclysmic that there can be no justifiable reason for locating this project in an urban area such as the Town of Buckeye when a viable alternative is available, such as has been suggested for this project. While the proposed construction and monitoring may be within allowable parameters for a typical pipeline project, there is effectively nothing Transwestern can do to make this particular project safe in the proposed location through the Town of Buckeye. We will supplement the record with a final report from Brown and Caldwell upon receipt.

LA2-58 Sec. 3.0 of the Draft EIS states:

A fundamental principle of NEPA is that an agency should consider reasonable alternatives to a proposed action to minimize environmental impacts while ensuring that the project objectives are met.

Response:

This is an incorrect statement of the principles of NEPA. While it is true that an agency should consider reasonable alternatives to a proposed action to minimize environmental impacts (40 CFR § 1502.14), the investigation is not limited to "ensuring that the project objectives are met." Part of the NEPA process requires the agency to determine the need for the project. If there is no need for the proposed project, then there is no basis upon which to strive to assure that project objectives are met.

This Draft EIS makes no more than a superficial effort to examine the need for the proposed project. The reason for such indifference to the need investigation is obvious when considering this statement.

Local Agencies 2

LA2-57 Pipelines constructed and operated in accordance with the DOT regulations for higher population densities provide a safe means of energy transportation. See also the response to comment PM3-2 regarding the filing of comments.

LA2-58 Achieving the objectives of a proposed project would meet the need for the project. One of the objectives of the Phoenix Expansion Project would be to deliver up to 500 MMcfd to meet the energy needs of the growing Phoenix metropolitan area. Section 3.0 of the draft EIS examined alternatives that could potentially accomplish the objectives of the proposed project, and thus meet the need for additional energy supplies in the Phoenix area.

The purpose and need for the proposed project are discussed in section 1.1. See also the responses to comments LA2-10, LA2-11, LA2-12, and LA2-16.

LA2-59 Sec. 3.0 of the Draft EIS states:

The alternatives evaluated include the no action or postponed action alternatives, energy and energy conservation alternatives, system alternatives, route alternatives, route variations, and aboveground facility site alternatives.

Response:

This is simply an untrue statement. If FERC considered any of these alternatives they are not discussed in the Draft EIS to the level of detail required by NEPA, the regulations promulgated thereunder, and court decisions rendered interpreting the NEPA requirements. *See e.g.* 40 CFR § 1502.14.

LA2-60 Sec. 3.0 of the Draft EIS states:

The criteria used to evaluate potential alternatives included whether they offer a significant environmental advantage over the proposed project; are technically and/or economically feasible and practical; and meet the project objectives, which are to:

- *deliver up to 500 MMcfd of natural gas to customers in the Phoenix, Arizona area;*
- *add natural gas supply reliability and flexibility to customers in central and southern Arizona; and*
- *provide an alternative source of competitively priced natural gas to Arizona markets from supplies in the San Juan and Rocky Mountain Basins.*

Response:

FERC has assumed that there is a need for the proposed project without taking a "hard look" at the factors that would determine whether or not such a need exists. It has assumed that the project objectives are valid without a comprehensive investigation and analysis into the facts and circumstances surrounding the use of natural gas in Arizona. This is an improper assumption and invalidates the entire Draft EIS, as determination of need is the first step in any NEPA process.

LA2-61 Sec. 3.0 of the Draft EIS states:

The alternatives analysis is based on information provided by Transwestern; field surveys; aerial reconnaissance; aerial photographs; U.S. Geological Survey (USGS) topographic maps; other publicly available electronic data; agency consultations; and input from intervenors, local communities, and the public. By definition, the alternatives possess unique characteristics when compared to the proposed project; therefore, each alternative did not warrant the same degree of analysis. In general, the analysis advanced from consideration of broad criteria (e.g., determining whether the alternative would meet the objectives of the proposed project) to successively more detailed criteria (e.g., quantifying how many residences would be located within 50 feet of the construction work area) until it was clear that the alternative either was or was not preferable to the proposed project.

Local Agencies 2

LA2-59 The draft EIS evaluated the No Action or Postponed Action Alternatives (section 3.1), energy and energy conservation alternatives (section 3.2), system alternatives (section 3.3), route alternatives (section 3.4), route variations (section 3.5), deviations from existing rights-of-way (section 3.6), and aboveground facility location alternatives (section 3.7).

As discussed in the response to comment PM3-2, the draft EIS was prepared in accordance with NEPA, CEQ guidelines, and other applicable requirements. The draft EIS is comprehensive and thorough in its identification and evaluation of the environmental impacts of the proposed project and feasible mitigation measures to reduce those effects wherever possible. The draft EIS includes sufficient detail to enable the reader to understand and consider the issues raised by the proposed project and addresses a reasonable range of alternatives.

LA2-60 The purpose and need for the proposed project are discussed in section 1.1. See also the responses to comments LA2-10, LA2-11, LA2-12, and LA2-16 regarding the purpose and need of the project. See also the response to comment PM3-2 regarding the adequacy of the EIS.

LA2-61 See the response to comment LA2-59 regarding the alternatives analysis included in the EIS.

See the response to comment PM3-15 regarding construction and right-of-way acquisition cost estimates.

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LA2-61 (cont'd)

Response:

The analysis described above was not undertaken or given only cursory examination in this Draft EIS. Contrary to the requirements of NEPA, the issue of the need for the proposed project was not investigated by FERC. Instead, FERC made unsupported assumptions regarding the need and thereafter devoted virtually the entire analysis of alternatives to a cost consideration of the project. Even when FERC analyzed costs, it relied almost entirely on the figures provided by Transwestern without taking into consideration mitigating factors, costs of condemning of property, and other relevant factors.

LA2-62

Sec. 3.1 of the Draft EIS states:

The actions triggering this environmental review were Transwestern's applications to the FERC for a Certificate and to the BLM for a Right-of-Way Grant to cross federal lands, including lands managed by the BLM, the FS, and the BOR. This environmental review will also satisfy the BIA's NEPA responsibilities in considering issuance of a Right-of-Way Grant to cross tribal and allotted lands. The FERC and affected land management agencies have three courses of action in processing these applications. They may: (1) grant the approvals with or without conditions; (2) deny the approvals; or (3) postpone action pending further study by denying the application without prejudice.

Response:

The inadequacy of this Draft EIS is magnified by the fact that BIA will rely upon it in considering Right-of-Way Grants across tribal and allotted lands, and BLM and the FS will rely upon it in making decisions regarding rights-of-ways across federal lands. FERC is correct that one action it may take is to postpone action pending further study by denying the application without prejudice. In this instance, that is the only legally acceptable course other than denying the application for the reasons set out in this comment document.

LA2-63

Sec. 3.1 of the Draft EIS states:

Furthermore, because central and southern Arizona is currently served by one natural gas supplier, selection of the No Action Alternative would not provide the added supply reliability, flexibility, and access to an alternative source of competitively priced natural gas that would result from construction of the Phoenix Expansion Project. Therefore, consequences of the No Action Alternative could include the potential for natural gas shortages and higher natural gas prices.

Response:

FERC assumes that prices for natural gas are subject to market forces in the same manner as any other fungible goods. This is an incorrect assumption. Natural gas providers are regulated utilities. Prices are not subject to the same fluctuations as other fungible goods. FERC has not devoted sufficient fact finding and analysis to the pricing issue to reach the conclusions set out in this section.

The project need is not identified in the Draft EIS. Independent information indicates that additional natural gas capacity may be available through other announced

LA2-62 See the responses to comments PM3-2 and PM3-13.

LA2-63 The purpose and need for the proposed project are discussed in section 1.1 and in the responses to comments LA2-10, LA2-11, LA2-12, and LA2-16.

It is not unreasonable to conclude that adoption of the No Action Alternative could potentially result in natural gas shortages and higher natural gas prices. As documented in section 1.1, EPNG is the sole provider of natural gas to the Phoenix metropolitan area and regularly experiences natural gas shortages on its existing system.

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LA2-63 (cont'd)

projects such as El Paso Natural Gas's proposed salt cavern storage facility near Eloy, Arizona. The amount of gas to be stored in this facility and residential customers projected to be served (735,000) may affect the pipeline capacity proposed by Transwestern. Moreover, other information indicates current status of gas supplies are adequate to meet projected demand (88th Arizona Town Hall, 9-12 April 2006). Still other data indicate the capacity proposed by Transwestern for the Phoenix Expansion project to be 500MCF which is 38% more natural gas than consumed by the State of Arizona in 2005 (Natural Gas Annual 2005).

FERC appears to confuse project objectives with project need, which causes a de-limiting of alternatives. Other alternatives within the scope of this EIS should include detailed analysis of load management, conservation and renewable energy once the project need is defined. Applicant's rationale that proposed Phoenix Expansion capacity will create 'downward pressure' on natural gas prices is a complex idea, and requires analysis. Is there a need for more natural gas to prevent price gouging during peak demand periods that could be avoided by regulation? Will there be excess natural gas available as a result of this project that would be available for sale to other interstate customers. If so, how much gas is anticipated to be available and who would the customers be?

LA2-64

Sec. 3.1 of the Draft EIS states:

In its December 18, 2003 Policy Statement, the ACC encouraged the development of alternative natural gas supplies in Arizona, including the construction of one or more interstate natural gas pipelines (ACC, 2003). According to the ACC, the States of Arizona, New Mexico, and Nevada are expected to have an increase of nearly 50 percent in electric generation by 2009, with the majority of that increase fueled by natural gas. In light of the growing energy demands of central and southern Arizona, the No Action or Postponed Action Alternatives are not considered viable alternatives to the proposed project.

Response:

FERC's statement regarding findings of the ACC are taken out of context and do not represent the full analysis undertaken by the ACC and the requirements of NEPA.

Since the date of the referenced Policy Statement the ACC has approved Kinder Morgan Energy Partners, LP's ("Kinder Morgan") proposed acquisition of the Silver Canyon Pipeline Project. That project is not discussed in the Draft EIS. Failure to discuss that project is a failure to consider cumulative impacts as required by NEPA.

FERC also fails to take into consideration or discuss in the Draft EIS other relevant studies of the need for additional natural gas and alternative sources to fill that need, including the Governor's Essential Services Task Force on Natural Gas and Electric Power Sources in Arizona, dated June 27, 2005. That report states, "The Task Force was presented several views on the adequacy of the reserves of natural gas, with the majority agreeing that supplies of domestic gas, though declining, are sufficient to meet the needs of Arizona customers now and into the near future. Untapped reserves in the Rocky Mountains are being explored and show some promise of substantial reserves. To offset the declining domestic reserves and address long-term supply needs, there are potential

LA2-64 The Silver Canyon Pipeline project is not now before the FERC. The FERC is not aware of any other proposed natural gas transmission or storage projects in Arizona that would be a viable alternative to the Phoenix Expansion Project.

See the response to comment LA2-15 regarding the Governor's Essential Services Task Force on Natural Gas and Electric Power Sources, which addressed natural gas reserves and other potential sources of natural gas, not transportation projects such as the Phoenix Expansion Project.

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LA2-64 (cont'd)

projects to bring supplies of liquefied natural gas (LNG) on tankers from foreign and Alaskan sources. The LNG would then be off-loaded at proposed coastal terminals in California, the Gulf Coast and Sonora, Mexico for re-gasification and transmission throughout the western U.S. markets. Gas brought to other markets reduces the demand pressure on basins that supply Arizona." Nowhere in the Draft EIS is there an analysis or discussion of the alternative sources discussed in that statement. FERC's failure to investigate and analyze those alternatives is a failure under NEPA to investigate alternatives to the proposal and a failure to consider cumulative impacts as required by NEPA, the regulations promulgated thereunder, and the court cases interpreting NEPA. *See e.g.* 40 CFR § 1502.14; 40 CFR § 1508.7.

The proposal by Transwestern, if constructed, would provide 38% more natural gas than was utilized by the entire State of Arizona in 2005. In other words, Arizona would suddenly be receiving all of the natural gas it received in 2005, plus that amount again, plus an additional 38%. There is nothing in the Draft EIS which explains the demand for such a huge increase in the availability of natural gas.

The Task Force further found that, "Both El Paso and Transwestern have pipeline expansion projects proposed that are designed to improve gas delivery to Arizona's major market areas. Other potential projects (Red Lake and Unocal) seek to address Arizona's lack of natural gas storage. Although the total existing pipeline capacity is adequate to meet the consumer needs, the rapid growth of natural gas fired electric generating plants is putting a strain on the transmission systems." The demand for natural gas fired electric generating plants is not to support the needs of the citizens of Arizona. The suspicion is that the large amount of natural gas, over and above the demands of the citizens of Arizona, would be used to generate electricity by those gas fired plants that would be sold to out of state consumers. There is no benefit to the citizens of Arizona to be the energy production source for other locations in the western United States, absorbing all of the burdens and risks associated with the gas pipelines, but receiving no comparable benefit.

LA2-65

Sec. 3.2 of the Draft EIS states:

Because of the high rate of population growth in Arizona, Arizona's actual increase in total natural gas consumption was much higher than these predicted increases, averaging 15 percent annually from 2000 to 2004, with electric power generation accounting for the largest share (72 percent) of the state's natural gas consumption (DOE, EIA, 2004).

Response:

The population growth in Arizona cannot possibly support the extraordinary amount of additional natural gas being proposed by Transwestern. There is no accounting contained in the Draft EIS to support the proposition that such amount is needed. The only purpose for providing the amount of natural gas proposed by Transwestern is to supply electric power generators that would supply electricity to California. However, the Draft EIS does not acknowledge that proposed use and does not consider the impacts on the residents, counties and municipalities of Arizona in order to provide additional electrical service to California.

LA2-65 The purpose and need for the proposed project are discussed in section 1.1 and in the responses to comments LA2-10, LA2-11, LA2-12, and LA2-16.

LA2-66 Sec. 3.2 of the Draft EIS states:

The increasing energy needs associated with the growing population of the Phoenix metropolitan area, and regulatory requirements for improved air quality, necessitate that natural gas provided by the proposed project be used, in part, as fuel for electric power generation. Because air pollution is a concern in the project area and natural gas is a cleaner burning fuel, most existing and future electric generating plants are or will be gas fired. If alternative fuel sources (e.g., fuel oil, coal, nuclear) are used to meet electrical generation and other needs, the increased use of these fuels, which are often delivered by truck, would increase highway traffic. Highway transportation has much poorer safety and reliability records, more associated risks, and greater air quality impacts than transportation via natural gas pipelines. Further, the increased use of these alternative fuels would result in higher emission rates of nitrogen oxides (NO,,) and sulfur dioxide (SOZ), which have the potential to negatively affect air quality. The use of nuclear energy to replace other fuel sources also carries undesirable consequences such as negative public perception of the safety of electric generation through nuclear plants and the disposal of waste byproducts.

Response:

Once again, FERC has elected to discuss an issue when it supports this proposed project while ignoring the same issue when it does not support the project. In this instance, FERC argues that air quality issues are a concern in the Phoenix metropolitan area (a position with which we agree), and then makes conclusory statements about how the proposed project would assist in resolving the air quality issue. There is no factual data to support the conclusions, no studies suggested, and no analysis other than the bald statements of FERC. However, as pointed out above, FERC completely ignored air quality issues in the Phoenix area when discussing construction of the pipeline, particularly the dust and air particulates caused by construction and the impact that construction would have on air quality issues. The EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

FERC's attacks on alternative fuels as having negative implications to air quality and the "undesirable consequences" based on "negative public perception" are unsupported by facts and are tenuous at best.

FERC's failure to properly identify facts and include them in the Draft EIS, to ignore important issues (such as air quality) in portions of the Draft EIS while citing them in other, unrelated contexts, is a violation of NEPA's requirements that cumulative impacts be analyzed by FERC and a further failure of FERC to fully consider viable alternatives. By not including relevant factual information, FERC has violated the principles set out in *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170 (5th Cir.2000), where the court stated that an EIS must be prepared in sufficient detail to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved. It is not possible for Buckeye or other commenters to understand and consider the pertinent environmental influences because there is no factual discussion presented in the Draft EIS by FERC.

LA2-66 See the responses to comments PM3-2 and PM3-12.

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LA2-67 Sec. 3.2 of the Draft EIS states:

In light of the preceding analysis, renewable fuels do not offer an environmentally preferable and technically feasible alternative to the proposed project.

Response:

As discussed in the immediately preceding Response, there was no fact-based analysis, so the conclusion drawn by FERC is unsupportable.

LA2-68 Sec. 3.3 of the Draft EIS states:

System alternatives would make use of other existing, modified, or proposed pipeline systems to meet the stated objectives of the proposed project. A system alternative would make it unnecessary to construct all or part of the proposed project, although some modifications or additions to another existing pipeline system may be required to increase its capacity, or another entirely new system may need to be constructed. Such modifications or additions would result in environmental impact; however, the impact could be less than, similar to, or greater than that associated with construction of the proposed project. The purpose of identifying and evaluating system alternatives is to determine whether potential environmental impacts associated with the construction and operation of the proposed facilities could be avoided or reduced while still allowing the stated basic objectives of the project to be met.

Response:

System alternatives should be investigated as part of the EIS, if the need for the project is established. FERC appears to confuse project objectives with project need, which causes a de-limiting of alternatives. Other alternatives within the scope of this EIS should include detailed analysis of load management, conservation and renewable energy once the project need is defined. The need for this project requires detailed analysis that has almost wholly been avoided in this Draft EIS. The EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24. Because the need for the proposed project has not received the "hard look" required by NEPA, the discussion of alternatives is inherently flawed and cannot be the basis for approval of the project by FERC.

LA2-69 Sec. 3.3.1 of the Draft EIS discusses the proposed San Juan Lateral Loops and concludes, *"…the Agency Staffs' analysis did not identify any viable or environmentally preferable alternative to the proposed San Juan Lateral Loops A and B."*

Response:

Alternatives, including building storage capacity in lieu of additional pipeline construction, are not discussed in this section. Once again FERC has structured the question of need so that only one conclusion can be reached, without presentation of factual information that would allow the reader of the Draft EIS to determine the basis for the conclusions reached. This is a violation of the principles set out in Mississippi River Basin Alliance v. Westphal, 230 F.3d 170 (5th Cir.2000), where the court stated that an EIS must be prepared in sufficient detail to allow those who did not participate in its preparation to

LA2-67 See the response to comment PM3-2.

LA2-68 The EIS does not confuse project objectives and needs. The purpose and need for the proposed project are discussed in section 1.1 and in the responses to comments LA2-10, LA2-11, LA2-12, and LA2-16. See also the responses to comments PM3-2 and PM3-12 regarding the adequacy of the EIS and the alternatives analysis, respectively, and section 3.0 that discusses reasonable alternatives to the proposed project.

LA2-69 Section 3.3.1 considered alternatives to the San Juan Lateral Loops and found none to be preferable to the proposed project, which would complete looping of the San Juan Lateral initiated in the San Juan 2005 Expansion Project.

LA2-69 (cont'd) **understand and consider the pertinent environmental influences involved. It is not possible for Buckeye or other commenters to understand and consider the pertinent environmental influences because there is no factual discussion presented in the Draft EIS by FERC.**

LA2-70 Sec. 3.3.2 of the Draft EIS states:

Customers in central and southern Arizona are entirely dependent upon the existing EPNG pipeline system to meet their natural gas needs. Because the EPNG pipeline system currently provides 100 percent of the natural gas to the Phoenix metropolitan area, the only potentially viable existing system alternative to the Phoenix Lateral is the EPNG system... Therefore, expansion of the EPNG system would be needed to accommodate the additional capacity of the Phoenix Expansion Project. This expansion of the EPNG system would likely include significant looping and additional compression, and would result in environmental impacts that could be less than, similar to, or greater than the impacts associated with the Phoenix Expansion Project.

Response:

Although conceding that an expansion of the EPNG system could provide any anticipated (but unsupported allegations of) need and that such expansion could "…result in environmental impacts that could be less than…the Phoenix Expansion Project", FERC does not make any effort to analyze the possible EPNG expansion.

LA2-71 Sec. 3.2.2 of the Draft EIS states:

Also, expanding the EPNG system, instead of building the proposed project, would not accomplish two of the major objectives of the project, which are to increase the reliability and flexibility of natural gas supplies to central and southern Arizona markets and to provide an alternative source of competitively priced natural gas to Arizona markets.

Response:

This statement sets out FERC's entire rationale for not investigating the alternative of expanding the EPNG system as an alternative to the proposed project. As pointed out above, there is virtually no factual evidence provided in the Draft EIS to support the conclusions that the proposed project will result in better reliability, flexibility, or competition will lower natural gas prices. Once again, FERC has reached conclusions based on assumptions unsupported by facts, in violation of NEPA.

LA2-72 Sec. 3.2.2 of the Draft EIS states:

Based on the above analysis, the Agency Staffs have concluded that there is no existing, viable system alternative to the proposed Phoenix Lateral. In addition, there are no other planned projects that could meet the objectives of the Phoenix Expansion Project and allow for an in-service date of mid-2008. Even if such projects were developed, it is likely that they would require more pipeline and thus result in greater environmental impact than the proposed project because such projects would not have an existing mainline pipeline system in New Mexico and Arizona.

Response:

As pointed out above, there has been no factual analysis, therefore the conclusion is invalid under NEPA. The EIS is required, among other things, to contain scientific and

LA2-70 Expansion of the EPNG system would fail to meet one of the primary objectives of the proposed project (i.e., to provide a competitive alternative to the EPNG system).

LA2-71 Because the Phoenix area is entirely reliant on EPNG, a competitive transporter of natural gas such as the proposed project would provide natural gas supply reliability to the area in the event of a service interruption on the EPNG system. It is also not unreasonable to conclude that a competitive supply of natural gas to the area would cause downward pressure on natural gas prices.

LA2-72 The purpose and need for the proposed project are discussed in section 1.1 and in the responses to comments LA2-10, LA2-11, LA2-12, and LA2-16.

As discussed in the response to comment PM3-2, the draft EIS was prepared in accordance with NEPA, CEQ guidelines, and other applicable requirements. The draft EIS is comprehensive and thorough in its identification and evaluation of the environmental impacts of the proposed project and feasible mitigation measures to reduce those effects wherever possible. The draft EIS includes sufficient detail to enable the reader to understand and consider the issues raised by the proposed project and addresses a reasonable range of alternatives.

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LA2-72 (cont'd)

analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24. Further, the statement that there are no other planned projects that could meet the objectives of the Phoenix Expansion Project and allow for an in-service date of mid-2008 is irrelevant. There has been no showing of need for additional natural gas supplies by mid-2008, so failure to meet that objective is a red herring not worthy of consideration in this Draft EIS. Finally, the conclude that "Even if such projects were developed, it is likely that they would require more pipeline and thus result in great environmental impact than the proposed project…" rises to the level of insulting the reader of the Draft EIS. There is no possible way such a conclusion can be reached without a factual investigation into other projects, including expansion by EPNG, storage of natural gas in locations that could result inadequate supplies from existing lines, and other scenarios that have been completely ignored by FERC. This section is ample demonstration that FERC has pre-judged this application, intends to approve it regardless of the facts, and is in violation of the "hard look" process required by NEPA, the regulations adopted pursuant thereto, and the court decisions. At the very least, such sophistry violates the principles set out in Mississippi River Basin Alliance v. Westphal, 230 F.3d 170 (5th Cir.2000), where the court stated that an EIS must be prepared in sufficient detail to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved. It is not possible for Buckeye or other commenters to understand and consider the pertinent environmental influences because there is no factual discussion presented in the Draft EIS by FERC.

LA2-73

Sec. 3.4 of the Draft EIS states:

In evaluating pipeline alternatives, the Agency Staffs considered both route alternatives and route variations.

Response:

Buckeye denies that FERC studied any route alternatives or route variations, at least as far as alternatives are available in and around the Town of Buckeye. The best alternative to the proposed route through the Town of Buckeye was summarily dismissed without investigation or consideration of the benefits of the alternative route.

LA2-74

Sec. 3.4.2 of the Draft EIS states:

The following criteria were utilized to consider potential route alternatives to the Phoenix Lateral:

- *impact on environmentally sensitive areas;*
- *the use of existing rights-of-way;*
- *impact on existing and planned developments;*
- *impact on public safety; and*
- *constructability and economic viability.*

Response:

Buckeye denies that FERC considered each of the five considerations in regards to the Alternative Route supported by the Town and property owners in the Town.

LA2-73 Alternatives to the proposed project were analyzed in section 3.0. Serious consideration was given to the Buckeye Alternatives as discussed in section 3.4.2.5.

LA2-74 See the response to comment PM3-12 that addresses the adequacy of the alternatives analysis.

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LA2-74 (cont'd)

FERC concluded that there was no significant impact on environmentally sensitive areas, so that became a non-issue.

Transwestern has the ability to utilize existing rights-of-way for either the proposed route or the Alternative Route, so this was a non-factor for FERC, although the Alternative Route provides an existing corridor 2,000 to 3,000 feet wide as opposed to the approximately 330 feet wide corridor of the proposed route. It takes little analysis to understand that safety, in the nature of setbacks from the pipeline, is more readily achieved in the wider right-of-way.

The proposed route impacts thousands of homes, residences, businesses and municipal services that have been approved and are under construction in the Town of Buckeye. The Alternative Route potentially impacts far fewer people, but the Alternate Route was summarily dismissed by FERC, admittedly without any factual investigation or "hard look" at the Alternative Route.

The impact on public safety was totally ignored by FERC in its failure to analyze the Alternative Route, as will be discussed in detail, below.

Constructability and economic viability was the only basis examined by FERC in its decision to reject the Alternative Route, and even that analysis was based on assumption and flawed information.

As a result of FERC's failure to take a "hard look" at the issues set out by FERC as being important to the analysis of alternatives, FERC has failed to complete and analysis of alternatives as required by NEPA, the regulations promulgated thereunder, and the court decisions arising out of NEPA .

LA2-75

Sec. 3.4.2.5 of the Draft EIS states:

As discussed in section 4.7.3.2, numerous developments and master planned communities have been approved for construction along the proposed route of the Phoenix Lateral through the Buckeye, Arizona area from approximate MPs 134.5 to 159.7. The FERC staff conducted an aerial reconnaissance of the proposed route on January 10, 2006 and a ground reconnaissance of the area on December 14, 2006. Two communities, Sun City Festival and Tartesso, were under construction as of December 14, 2006, and others are expected to be under construction by the time the Phoenix Lateral would be constructed.

Response:

The developments referenced are all approved and have vested development rights. Projections by Arizona State University and others indicate that the Town of Buckeye will be the third largest city in Arizona within the next 20 years with the vast majority of the development occurring in the development corridor along the Sun Valley Parkway, which is the proposed route for this project. Although FERC staff may have conducted aerial and ground reconnaissance of the area, it did not meet with Town of Buckeye planning officials to determine the nature of the developments, the potential for conflicts with approved development, or the number or types of communities that would be impacted by the proposed pipeline.

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LA2-75 The EIS recognizes that numerous planned developments and master planned communities have been approved for development along the proposed route of the Phoenix Lateral through the Buckeye area. Nevertheless, in response to other comments on the draft EIS, section 3.4.2.5 has been revised to include additional analysis of the Buckeye Alternatives in comparison with the corresponding segment of the proposed route.

The FERC staff met with the Town of Buckeye and other stakeholders in a technical conference held in Buckeye on December 14, 2006, during which stakeholders described the proposed plans for the Buckeye area, expressed specific concerns with the proposed alignment through the area, and proposed an alternative alignment that would extend approximately 20 miles to the west of the proposed route.

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LA2-76 Sec. 3.4.2.5 of the Draft EIS states:

The proposed pipeline would cross or abut existing or planned developments for a distance of approximately 14.9 miles through the Buckeye area. The pipeline and the 50-foot-wide permanent right-of-way would be located within the outer edge of an existing 330-foot-wide SRP powerline easement for approximately 13.9 (93 percent) of the 14.9 miles. The proposed route also includes two natural gas delivery points, the SWG Sun Valley North and SWG Sun Valley South Meter Stations, at MPs 137.7 and 148.6, respectively. SWG would provide natural gas to the existing and planned developments in the Buckeye area through these connections to the Phoenix Lateral.

Response:

Southwest Gas has committed to providing natural gas service to the developments in the area. That commitment is not contingent on the proposed pipeline being built. The proposed pipeline provides no benefit to the residents or the Town of Buckeye while inflicting substantial cost and risk to them.

LA2-77 Sec. 3.4.2.5 of the Draft EIS states:

The primary concern raised by commentors was the risk to public safety posed by the project. Commentors also expressed concern about the environmental impact of the proposed project; the potential for the proposed pipeline to interfere with, damage, and increase costs for utility and street crossings; potential restrictions on the use of the permanent right-of-way; and decreased property values.

The majority of the commentors proposed a route alternative that would avoid most of the existing and planned developments in the Buckeye municipal planning area...

The proposed alternative would utilize an established utility corridor that includes an existing CAP canal, existing electric power transmission lines, and the approved APS Palo Verde Hub to TS-5 500 kilovolt (kV) transmission project, which is in final route design. The alternative would diverge by as much as 21 miles to the west of the proposed route and would be located within a 1-mile-wide BLM-designated utility corridor where it would cross BLM-managed land. With the exception of collocation within the existing CAP right-of-way, which would not be allowed due to concerns that the pipeline could damage the integrity of the canal (CAP, 2007), the alternative could potentially be located anywhere within the 1-mile-wide BLM-designated corridor.

Response:

CAP has provided a letter, which has been filed in this matter, which indicates that it does not object to the location of the proposed pipeline within the utility corridor, so long as the pipeline is not within the area managed by CAP. The area managed by CAP is only a few hundred feet wide and leaves substantial additional room within the utility corridor to located the proposed pipeline with adequate setbacks from most existing or proposed development, unlike the proposed route, which would provide a safety margin missing from the proposed route.

LA2-76 See the response to comment LA2-11 and comment letter CO19 from SWG describing the benefits that the proposed project would provide SWG's Arizona customers, including the Buckeye area.

LA2-77 The draft EIS recognizes that the Buckeye Alternatives could potentially be located anywhere within the designated utility corridor, except for within the Central Arizona Project (CAP) right-of-way. Although the Phoenix Lateral would be located in proximity to existing and planned developments in the Buckeye area and elsewhere along the proposed route, it would not pose a significant risk to public safety as discussed in section 4.11.

LA2-78 Sec. 3.4.2.5 of the Draft EIS states:

Transwestern analyzed two alignments within the established utility corridor in response to the Commission's January 12 and March 1, 2007 environmental information requests. Both alignments deviate from the proposed route at approximate MP 136.3. The first alignment (referred to as the North Buckeye Alternative) crosses to the north side of the CAP canal and parallels the north side of the canal for 27.7 miles at which point it crosses back to the south side of the CAP canal and proceeds to the south and southeast within the existing utility corridor for 19.5 miles. The second alignment (referred to as the South Buckeye Alternative), stays on the south side of the CAP canal and parallels it for 27.4 miles before turning to the south and southeast within the existing utility corridor for 19.5 miles. The North Buckeye Alternative and the South Buckeye Alternative are 47.2 and 46.9 miles long, respectively. Both alternatives rejoin the proposed route at approximate MP 162.7.

As shown on figure 3.4.2-4, the alignments of the North and South Buckeye Alternatives are similar except for their location on the north and south sides of the CAP canal, respectively. The alternatives would be approximately 19 miles longer and would require approximately 220 more acres of construction right-of-way and 115 more acres of permanent right-of-way compared to the corresponding segment of the proposed route. This additional land disturbance would result in correspondingly greater impacts on soils, vegetation, wildlife, and visual resources when compared to the proposed route. The collocation status of the alternatives and the proposed route would be relatively similar.

The North and South Buckeye Alternatives would each cross 7.5 miles of state lands compared to 5.5 miles of state lands that would be crossed by the corresponding segment of the proposed route. Approximately 26.5 and 24.3 miles of BLM-managed lands would be crossed by the North and South Buckeye Alternatives, respectively. In comparison, the corresponding segment of the proposed route would cross 0.2 mile of BLM-managed lands. The BLM was the lead federal agency in conducting the NEPA review of the APS Palo Verde Hub to TS-5 500 kV transmission project and is a cooperating agency for the EIS for the Phoenix Expansion Project. The BLM examined the North and South Buckeye Alternatives and concluded that the alternatives did not warrant detailed analysis because each would impact approximately 220 more acres than the proposed route and because the detailed analysis of the proposed route did not identify any competing or conflicting environmental resource issues.

Response:

FERC states, "*The BLM examined the North and South Buckeye Alternatives and concluded that the alternatives did not warrant detailed analysis because each would impact approximately 220 more acres than the proposed route and because the detailed analysis of the proposed route did not identify any competing or conflicting environmental resource issues.*" In other words, FERC admits that it did not conduct a detailed analysis of either of the alternatives. The basis for determining that the detailed analysis was not warranted was one of the five important considerations identified by FERC in Section 3.4.2 of the Draft EIS (impact on environmentally sensitive areas), plus the failure to identify "any competing or conflicting environmental resource issues." Had FERC and BLM engaged in the detailed factual investigation required by NEPA, they would have discovered that there are important competing or conflicting environmental resource issues at stake that have been ignored in this process. By its own admission, FERC has ignored two of the most important considerations set out in Section 3.4.2 of the Draft EIS; impact

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LA2-78 Each alternative considered does not warrant the same degree of analysis. In general, the analysis of potential alternatives, including the Buckeye Alternatives, advanced until it was clear that the alternative either was or was not preferable to the proposed project. The analysis in the draft EIS contains sufficient information to allow the Agency Staffs to conclude that neither the North nor South Buckeye Alternative represents an environmentally preferable or economically viable alternative to the proposed route through the Buckeye area. Nevertheless, in response to other comments on the draft EIS, section 3.4.2.5 has been revised to include additional analysis of the Buckeye Alternatives in comparison with the corresponding segment of the proposed route. The Agency Staffs' conclusion remains unchanged in the final EIS.

The DOT is mandated to provide pipeline safety under Title 49, United States Code (USC) Chapter 601, and the DOT has the exclusive authority to promulgate federal safety standards used in the transportation of natural gas. The federal pipeline safety standards promulgated by the DOT are protective of public safety. Among other things, the DOT regulations require the determination of class locations and HCAs along the proposed route, and impose more stringent standards in areas where the pipeline would be located in proximity to human populations. Transwestern would be required to comply with all DOT safety standards.

See also the responses to comment PM3-2 regarding the adequacy of the EIS, and comment PM3-15 regarding the estimated impact on land values.

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LA2-78 (cont'd)

on existing and planned developments and impact on public safety. Had FERC engaged in appropriate analysis of those two issues, the conclusion that one or both of the alternate routes are preferable to the proposed route through the Town of Buckeye would have been inescapable.

Although specific figures are not currently available to Buckeye (the figures should have been developed by FERC as part of the Draft EIS, but were not), it is certain that over 4,000 homes will be built in the immediate vicinity of the proposed natural gas pipeline. The developments have been approved by the Town of Buckeye, development agreements have been entered into, and the rights of the property owners to develop the proposed subdivisions have vested. Some are under construction, with others to follow in the near future. The developments span the Sun Valley Parkway and, therefore, the utility corridor within which Transwestern has proposed to construct the pipeline. The developments will include not only homes, but schools, businesses, and municipal services such as fire stations and water delivery structures.

At the public hearing held by FERC in Buckeye on June 6, 2007, the owner of the Stardust –Tartesso development (a project comprising some 12,400 acres) testified that his master planned community would include 2,165 residential units, an elementary school, power substation, fire station, three municipal well sites, three commercial sites, a regional sports park, retention basins with dry wells, all of which would be adjacent to the proposed right-of-way within which the proposed natural gas pipeline would be located. In most instances, the described development would be within 100 feet of the proposed pipeline. Stardust-Tartesso is just one of numerous such developments underway in the area.

The alternative routes would traverse far fewer developments. The vast majority of the area has not been planned for development and planning officials in Buckeye and Maricopa County would have the ability to require appropriate setbacks from the pipeline when development occurs, an option not available along the proposed route. In addition, the utility corridor along the Alternate route is much wider (up to a mile versus 330 feet in the proposed route), thereby allowing the setbacks without significant economic impairment to the property owners along the Alternate Route.

It is readily apparent even from this limited amount of information (far less than FERC should develop when taking a proper "hard look" at the routes) that the proposed route will impact substantially more existing and planned development than would either Alternate Route. With proper investigation and analysis is possible, even likely, that FERC would determine that the Alternate Routes provide better alternatives than the proposed route because the potential impact to existing and planned development outweighs the relatively minor impact to the additional 220 acres cited by BLM.

On the basis of impact to existing and proposed development alone FERC could reasonably determine that the Alternate Routes are superior choices. When FERC properly analyzes the impact on public safety, the results are compelling that either of the Alternate Routes are superior choices to the proposed route.

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LA2-78 (cont'd)

There is a disturbing tendency throughout the Draft EIS to give lip service to public safety as a factor in FERC's decision, but to completely ignore or discount that factor whenever it is compared to cost discussions. The reality is, FERC suggests that there is relatively little risk to the public from the location of the proposed pipeline in highly developed urban areas because it will meet federal minimum safety standards. Nothing could be further from the truth.

LA2-79

No detailed consideration is given to the potential effects to the pipeline as a result of the numerous road and utility crossings that are proposed as a result of developing buried infrastructure to serve the many master planned communities located and permitted to be located adjacent to the proposed route. As a result, the cost to protect the pipeline from third party impacts is not evaluated. Moreover, no assessment concerning the potential risk the pipeline poses to public safety and welfare is included in this or in other EIS sections addressing pipeline safety and reliability. The FERC is obligated to analyze remote probability events having potentially catastrophic consequences or it must explain why such analysis cannot be grounded in science or subject to the rule of reason, and therefore are not analyzable. Because this is such an important topic, we set out herein some of the information FERC should have developed when analyzing the Alternate Routes, as provided to the Town of Buckeye by Brown and Caldwell. This information will be supplemented in more detail when the Risk Analysis being prepared by Brown and Caldwell for the Town of Buckeye is complete. In part, Brown and Caldwell has advised the Town of Buckeye of the following:

1. **Standard probabilistic measures of (safety) risk which multiply probabilities and consequences are not adequate in assessing the safety risk of natural gas transmission pipelines especially when routed adjacent to inhabited structures. Risk numbers alone do not distinguish between high consequence, low probability events from low consequence, high probability events.**
2. **Between 1986-2004, an annual average of 60 accidents occurred on natural gas transmission pipelines and are associated with a higher number of fatalities than other types of pipelines.**
3. **Between 1999-2001 an annual average of 73 natural gas pipeline accidents occurred causing 6 fatalities, 10 injuries, and over $20 million in property damage with the risk of injury and damage increasing with pipeline proximity to human activity.**
4. **Pipeline safety is not a function of adherence to minimum federal safety standards regulating the pipeline industry. Safety is a complex idea and involves not only adherence to regulatory standards, but also involves operating company safety leadership, effective implementation of operation and maintenance programs, local community stakeholder communication, and prudent pipeline routing decisions based upon risk informed assessment.**
5. **Current U.S. regulation of natural gas transmission pipelines focus primarily on ensuring the safety of the physical pipeline facilities themselves, and do not focus upon or require setbacks from pipeline easements by local communities.**
6. **Local communities do not have the expertise or resources to properly evaluate risks associated with pipeline routing and therefore are disadvantaged by proposals which discount the safety risks imposed by such routing decisions.**

LA2-79 See the responses to comments PM3-2, PM3-29, and LA2-8.

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LA2-79 (cont'd)

7. **Emergency Response planning proposed by pipeline operators as safety mitigation is not useful as a credit against the risks associated with pipeline rupture events. No matter how effective such planning may be, response to such emergencies cannot be fast enough to save those most at risk in the extreme heat flux zones associated with the most likely early ignition gas release scenarios.**
8. **The hazard radius associated with a 36-inch natural gas transmission pipeline operating at 1100 psig is between 1100 feet and 1200 feet. No habitable structures should be planned within the hazard areas.**
9. **There are a minimum of twenty-two key pipeline integrity risks of concern that require detailed assessment by stakeholders and the pipeline risk managers (operators).**
10. **Natural gas transmission pipelines may potentially cause unacceptable consequences so that even if the probability of rupture is very low, prudent routing decisions will locate these distant from populated areas similar to standards in other countries.**

Among the information contained in the partial draft Risk Analysis prepared by Brown and Caldwell is the following:

"The purpose of this risk-informed assessment is to provide The Town of Buckeye, Arizona with pertinent information necessary to inform citizens how to evaluate the risks posed to a variety of land uses by a proposed natural gas transmission pipeline (NGTP). The need for this assessment arises from two directions. First, the routing of NGTP near urban and residential land uses is relatively new. Few local governments, nationally, are prepared technically to evaluate the risk such facilities pose to public safety and welfare and, as a result, zoning and set-back provisions in local ordinances are relatively limited."

"The second need for the assessment arises from The Town of Buckeye's recognition that adequate land use guidance and risk assessment have not been provided by the project applicant (Transwestern Pipeline Company) nor by the Federal Energy Regulatory Commission, FERC, through the draft environmental impact statement prepared to meet National Environmental Policy Act requirements."

"However, the mere assertion that NGTPs are safe or even citing statistical evaluation of the safe record of gas transport is only one part of multiple considerations concerning risk. Those who assume risk or who have unknown risks imposed upon them want a more complete understanding of the factors that affect the overall risk of a technology, whether it be well known technologies such as automobile operation or lesser known technology such as nuclear power. Part of the purpose of this risk-informed assessment is to identify what can happen to NGTP facilities, evaluate the likelihood of these occurrences, identify risk mitigation options, and recommend mitigation options that minimize risk commensurate with practicability and economics."

"The analysis and conclusions in this report are directly applicable to stakeholder considerations of the potential risk NGTP pose to sensitive land uses. The information contained herein is derived directly from federal and commercial sources dealing with the

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issue of assessing the risks posed by NGTP facilities. In order to provide clear and compelling reasons to apply resources to evaluate the risk of such facilities, specific pipeline incidents are described in detail. The purpose of these descriptions is to draw out and identify the multitude of factors that affect the design, construction, operation, and maintenance of an NGTP of the type proposed by Transwestern Pipeline Company. One pipeline incident, commonly known as the Carlsbad rupture, is a paradigm case in this assessment. The multiple issues that affect the design, operation, and maintenance of a NGTP are best understood in the context of an actual pipeline incident or failure. Through the presentation of a chronology of events of the Carlsbad pipeline rupture, a real world context can be provided which brings the abstraction of probability theory into the world of contingent matters of fact. The intent is to provide stakeholders a clear sense of the institutional, corporate, and personnel factors that interact during an emergency, and to suggest the true controlling safety case for these facilities is a full bore pipeline rupture and ignition."

"In addressing likelihood, a fundamental issue is the metric to be used. For example, the probability of failure per unit length of pipeline or volume transported is very low, and safety measured this way exceeds, by far, that of all other transportation modes. However, for the pipeline system as a whole, there are about 300 accidents per year, (including liquid pipelines) which is not negligible especially from the point of view of those who are adversely affected." (Transmission Pipelines and Risk Informed Guidance in Land Use Planning, Special Report 281, TRB/NAS p. 59)."

"'…The common practice of obtaining a measure of risk by multiplying probabilities and consequences is, in general, not adequate. One reason for the preference for the expression, R= {Si, Pi, Ci)—or Risk = (scenarios/ probability or respective likelihood of the scenarios occurring/ consequences) is that a risk number alone does not distinguish a high consequence, low probability event from a low consequence, high-probability event.' (TRB, 281, P. 59)"

"'On August 19, 2000, five year old Kirsten Sumler was enjoying the great American outdoors with her mother, Amanda Smith. They were camping and fishing on the banks of the Pecos River in New Mexico with ten other members of their extended family. Six hundred and seventy-five feet away, an El Paso pipeline (EPNG) ruptured (30" EPNG operating at less than 675 psig). In an instant, six family members were burned alive. The six survivors sought shelter in the river, as the 500-foot tall flame roared over their heads for almost an hour. When rescuers arrive, one badly burned victim begged to be shot. As the rescuers tried to evacuate Kirsten, she cried, not wanting to leave her mother. Amanda told her to go. She promised that the fireman would take good care of her. Unfortunately, Kirsten was burned well beyond the point where good care would help; she died later in the burn unit. Her mother, Amanda, and the four remaining family members also died from their injuries.' (Carol Parker, Natural Resources Journal)"

We note that the proposed pipeline is larger and under greater pressure than the Carlsbad pipeline. We also note that homes and businesses will be located as near as 20 feet to the proposed pipeline and that the entire width of the utility easement being proposed

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LA2-79 (cont'd)

for use by this pipeline is less than one-half the distance the Sumler family was from the EPNG line at the time of the explosion.

We will not set out herein, but will include a detailed account of the failure of the EPNG Carlsbad safety system (essentially the same system being proposed for this project) in the Risk Analysis being prepared by Brown and Caldwell, which will be filed with FERC at a later date.

"The National Transportation Safety Board's (NTSB) investigation into the fire indicated the force of the rupture and the violent ignition of the escaping gas created a 51-foot-wide crater about 113 feet along the pipe. A 49-foot section of the pipe was ejected from the crater in three pieces measuring approximately 3 feet, 20 feet, and 26 feet in length. The largest piece was found about 287 feet northwest of the crater in the direction of the suspension bridges. Visual examination of the pipeline in the crater and the ejected pieces showed significant corrosion on the inside pipe surfaces and the pipe wall exhibited significant thinning. No significant corrosion was found on the outside pipe wall."

"Ultimately, EPNG was found to have not trained its personnel responsible for detecting corrosion or to implement corrosion control procedures. EPNG also was found to have failed in following its own procedures, failed to investigate corrosion, failed to consider and act upon several unusual operating and maintenance conditions affecting line 1103, failed to follow its own leak and failure reporting procedures, and failed to maintain an accurate profile drawing of line 1103 which would have helped EPNG identify low points where liquids could accumulate in the pipeline."

"Emergency response planning (ERP) is not useful as a credit against the risks associated with pipeline rupture events. No matter how effective the ERP, response cannot be fast enough to save those most at risk in the extreme heat flux zones associated with the most likely early ignition gas release scenarios."

"Details from Transwestern are warranted, and needed, to support a thorough understanding of the rupture mass release over time curve for the pipeline segments within the Town of Buckeye. The specific pipeline capacity throughput that defines this curve should be clearly stated. In the meantime, the following is one approach to identifying the proposed impact area radius as determined by various pipeline diameters and pressures (NAS, TRB Report 281, P. 112, Citing Stephens, 2000)."

"A 36" to 42" pipeline operating at 1100 to 1200 psig would require a nominal hazard area radius of between 980 feet to 1140 feet. Note: Even this may be too conservative for reality: On July 30, 2004 a natural gas pipeline explosion in Ghilsenghien, Belgium ruptured/ignited and killed 24 people and left 132 injured. This explosion melted or burned everything within a radius of 1,312 feet. The pipeline was owned by Royal Dutch Shell."

"The National Transportation Safety Board has looked into well over 100 pipeline explosions which required special investigative reports between 1969 and 2003. Over 65 of these reports concerned natural gas transmission pipeline accidents and almost 20% (some

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LA2-79 (cont'd)

12-15) of these accidents were investigated between 1990 and 2003, a thirteen-year period during which regulatory focus on the U.S. natural gas pipeline industry was arguably higher than the previous twenty years."

In addition, the proposed Phoenix Expansion pipeline is routed under major electrical transmission infrastructure whose temporary interruption or long term loss due to a pipeline rupture/ignition should be subject to detailed analysis. It is likely this part of electrical transmission system must survive the worst disturbance which could occur as the result of a single cause (State of New York Electrical Reliability Council criteria for extreme contingencies). Since the northeast power blackout (1965) national (electrical transmission) reliability criteria recognize 'extreme contingencies' or those disturbances which can occur which are more severe than the normal failure modes.

While the probability of these extreme events is low, they are chosen to represent a test of system strength—a well planned and well operated system should be able to survive such contingencies without major loss of load or system breakdown under reasonable power transfer conditions. In the event of a pipeline rupture, there is the potential for a threat to electrical power transmission in the narrow (less than 400 feet easement width) space proposed for placing the Phoenix pipeline. Collocating the pipeline with this power source could be setting up the local community and other critical areas of the state for a larger catastrophe should a rupture occur. To comply with NEPA requirements, FERC must acknowledge and discuss the criticality of the electrical transmission line in the corridor and discuss what a sudden loss would mean to Arizona electric customers. If the corridor is also the source of emergency backup power supply to other electrical generating units this information must be disclosed.

None of the above information is acknowledged or discussed in the Draft EIS. Had FERC taken the required "hard look," instead of summarily dismissing the Alternate Routes based on one factor, it would have been forced to reach the conclusion that the Alternate Routes are both safer and represent less of an impact on existing and proposed development. These factors outweigh the single factor cited by BLM, the impact to an additional 220 acres of land, particularly since FERC has essentially discounted any impact to land along the 280+ miles of the proposed pipeline.

LA2-80

The only remaining consideration listed by FERC in the five factors to be considered is constructability and economic viability. Constructability was not given any more detailed analysis than the rest of the "desk-top" analysis provide of the suggested Alternate Routes. Therefore, FERC cannot authoritatively comment on that issue. Economic viability is "bureaucrat-speak" for cost. This is, in truth, the only factor FERC considered in arriving at its decision that the Alternate Routes around Buckeye were not prudent choices, and even in that analysis FERC accepted allegations from Transwestern as to costs without any detailed analysis of the alleged extras.

In examining Transwestern's alleged costs, FERC should have enquired into the mitigation factors that must be built in any good-faith attempt to protect the citizens of the Town of Buckeye. Such an analysis is to be found nowhere in the Draft EIS. FERC should

LA2-80 The evaluation of the Buckeye Alternatives was not based solely on costs, although for an alternative to be adopted as the preferred alternative, it must be economically viable. Transwestern has stated that the additional costs associated with the Buckeye Alternatives would render the project uneconomic. The conclusion that the Buckeye Alternatives analysis was based solely on cost ignores the increased environmental impacts that would be associated with constructing an additional 19 miles of 36-inch-diameter pipeline through a sensitive desert environment and the impact that construction and operation of additional compression would have, primarily on air quality. In its comments on the draft EIS, the EPA supported the conclusion that the proposed route would result in fewer adverse environmental impacts than the Buckeye Alternatives, and specifically noted that the additional construction emissions associated with the longer Buckeye Alternatives would be a "significant adverse impact, especially in Maricopa County which is in nonattainment of national air quality standards for ozone and particulate matter" (see comment letter FA4).

See the response to comment PM3-15 regarding right-of-way acquisition costs between the proposed route and the Buckeye Alternatives, and comments PM3-2 and PM3-12 regarding the adequacy of the EIS and alternatives analysis, respectively.

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LA2-80 (cont'd)

also have investigated the condemnation costs associated with the proposed route versus the Alternate Routes. Again, the Draft EIS is essentially silent on this point, but at least one property owner, Mr. Pike Oliver, testified at the public hearing in Buckeye on June 6, 2007, that he anticipated condemnation costs to exceed $100,000,000 for the proposed route. If that figure is even close to accurate, the cost of the proposed route would exceed the cost of the Alternate Route, even considering Transwestern's inflated and unsupportable estimates.

By failing to examine each of the five factors that FERC admits is central to any alternative analysis, FERC has failed to conduct the alternative analysis required by NEPA, the regulations adopted pursuant thereto, and the court decisions rendered thereunder. By failing to include an analysis of the facts related to all five of those factors, and including the facts and analysis in the Draft EIS, FERC has failed to give the Alternate Routes the "hard look" required by NEPA and the courts, and has failed to satisfy the principles set out in *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170 (5th Cir.2000), where the court stated that an EIS must be prepared in sufficient detail to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved. It is not possible for Buckeye or other commenters to understand and consider the pertinent environmental influences because there is no factual discussion presented in the Draft EIS by FERC.

LA2-81

Sec. 3.4.2.5 of the Draft EIS states:

As discussed in section 3.6, we have recommended that Transwestern work with the developers of Desert Creek to avoid or reduce impacts on the development if it is constructed.

Response:

At the public hearing held by FERC in the Town of Buckeye on June 6, 2007, the owner of the Stardust –Tartesso development testified that he met with representatives of Transwestern in October 2005 and that they have ignored his comments and suggestions and have refused to have meaningful discussions with him since that time. FERC's proposal that Transwestern "work with the developers of Desert Creek to avoid or reduce impacts" is meaningless and any such attempts to avoid or reduce impacts should not be limited to the developers of Desert Creek.

LA2-82

Sec. 3.4.2.5 of the Draft EIS states:

According to Transwestern, the North and South Buckeye Alternatives would cross or abut existing or planned developments for a distance of approximately 9.4 and 18.0 miles, respectively. Transwestern estimates that the alternatives would place permanent right-of-way on between 642 and 835 residential lots within these developments. However, we believe that the Buckeye alternatives would likely impact significantly fewer lots. Plans filed by developers indicate that one residential lot would be located within 50 feet of the permanent right-of-way for every approximate 1,000 feet that the Phoenix Lateral would cross the Tartesso and Sun City Festival developments. Based on this distribution, 50, 95, and 79 residential lots would be located within 50 feet of the permanent right-of-way of the North Buckeye Alternative, the South Buckeye Alternative, and the corresponding segment of the proposed route, respectively. Because the proposed pipeline would be located nearly entirely within the right-of-way of the existing SRP electric power transmission system through the Buckeye development corridor,

LA2-81 Transwestern committed to working with the Town of Buckeye and Buckeye area developers to minimize impact on the area's existing and planned developments.

LA2-82 The analysis in the draft EIS contains sufficient information to allow the Agency Staffs to conclude that neither the North nor South Buckeye Alternative represents an environmentally preferable or economically viable alternative to the proposed route through the Buckeye area. Nevertheless, in response to other comments on the draft EIS, section 3.4.2.5 has been revised to include additional analysis of the Buckeye Alternatives in comparison with the corresponding segment of the proposed route. The Agency Staffs' conclusion remains unchanged in the final EIS.

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LA2-82 (cont'd)

construction of the proposed alignment would not result in the placement of permanent right-of-way on any residential lots with the possible exception of within the Desert Creek development noted above.

Response:

This analysis shows both the inaccuracy of the information provided to FERC by Transwestern and FERC's conclusion that the pipeline would have less of an impact on existing and future development along the Alternate Routes than along the proposed route. It is axiomatic that fewer homes result in less danger. Therefore, even the meager amount of investigation into the Alternate Routes led FERC to conclude that at least two of the five factors it acknowledges it is supposed to consider mitigate towards the Alternate Routes. Nevertheless, FERC summarily dismissed those routes without further investigation. That failure to take a "hard look" at the Alternate Routes is a violation of NEPA, the regulations adopted pursuant thereto, and the court cases decided thereunder. It also constitutes a failure of FERC to properly consider alternatives.

LA2-83

Sec. 3.4.2.5 of the Draft EIS states:

Due to the added length of the North and South Buckeye Alternatives, Transwestern would be required to install approximately 15,000 horsepower of additional compression to meet the contractual deliveries of the project. Based on Transwestern's modeling and the availability of electric power, this additional compression would be installed at a new compressor station near MP 180 of the Phoenix Lateral. The site for the compressor station would require additional land near the proposed right-of-way. Operation of the facility would result in increased impacts on air quality and noise. In addition, the new compressor station would create a visual impact.

Response:

There is no factual information contained in the Draft EIS to support the allegation by Transwestern that the additional compressor would be necessary. This is another conclusory statement by FERC that does not fulfill the requirements of NEPA or the principles set out in *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170 (5th Cir.2000), where the court stated that an EIS must be prepared in sufficient detail to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved. It is not possible for Buckeye or other commenters to understand and consider the pertinent environmental influences because there is no factual discussion presented in the Draft EIS by FERC.

Once again we must point out that when FERC is attempting to justify the location of the proposed pipeline it uses air quality as a consideration, although that issue is totally ignored when discussing the impact of the overall proposal on Maricopa County and the greater Phoenix area.

LA2-84

Sec. 3.4.2.5 of the Draft EIS states:

As discussed above, there are two natural gas delivery points, the SWG Sun Valley North and SWG Sun Valley South Meter Stations, at MPs 137.7 and 148.6, respectively, of the proposed route. The central location of these meter stations within the Buckeye development

LA2-83 Transwestern reaffirmed that approximately 15,000 horsepower (hp)of additional compression at an approximate cost of $30 million would be required in order for Transwestern to make delivery point pressure obligations and to maintain line pack for contractual deliveries if either of the Buckeye Alternatives are adopted (see comment letter A1).

The impact that the proposed project would have on air quality in Maricopa County was not ignored. Additional information regarding air quality impacts in Maricopa County has been included in section 4.10.1.4, and the Final General Conformity Determination for the Phoenix Expansion Project is included in Appendix Q. The FERC has determined that the project would be in conformance with the federal General Conformity requirements. See also the response to comment FA4-11.

LA2-84 See the response to comment LA2-11 and comment letter CO19 from SWG describing the benefits that the proposed project would bring to SWG's Arizona customers, including the Buckeye area.

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LA2-84 (cont'd)

corridor would minimize the overall length of pipeline that would be needed to serve the developments in the Buckeye area... In comparison, Transwestern would need to construct lateral pipelines to deliver gas to the Buckeye area from the North or South Buckeye Alternative...

Response:

This analysis is accurate only if the need for the proposed pipeline to supply natural gas service to the area is accepted as fact. That need has not been established. The reality is that Southwest Gas has committed to provide natural gas service to the communities in the Buckeye development corridor regardless of whether or not the proposed pipeline is constructed, therefore the contentions are inaccurate and irrelevant to a proper consideration of the proposal.

LA2-85

Sec. 3.4.2.5 of the Draft EIS states:

Transwestern estimates that the cost to construct the North and South Buckeye Alternatives and the corresponding segment of the proposed route would be approximately $1.99 million, $1.96 million, and $1.88 million per mile, respectively... Based on these estimates, the cost to construct the pipeline facilities for the North and South Buckeye Alternatives would be approximately $41.1 and $39.1 million more, respectively, than the cost for the corresponding segment of the proposed route. Transwestern estimates that the cost to construct the laterals and the compressor station associated with the Buckeye alternatives would be approximately $5 million and $30 million, respectively. Therefore, the total cost to construct the Buckeye alternatives would be between $126.9 million and $128.9 million, or $74.1 million to $76.1 million more than the $52.8 million estimated to construct the corresponding segment of the proposed route. Transwestern has stated that these additional capital costs render both of the Buckeye alternatives economically unacceptable.

Response:

Herein lies the crux of FERC's pre-determination that the proposed pipeline should be located through the center of Buckeye's development corridor. Transwestern wants to subject hundreds of thousands of people to the risk of a catastrophic event to save money constructing its project. There is no supporting documentation in the Draft EIS to verify the alleged additional costs, there is no meaningful analysis of the different classification of the pipeline that would be built along the proposed route (which Transwestern has suggested should be built to Class II rural standards) versus the Alternate Routes (which legitimately could be built to Class II standards), there is no meaningful analysis of the type of mitigation that would need to be institute to provide at least minimal protections to the citizens of the Town of Buckeye, there is no analysis of the costs of condemnation proceedings along the proposed route versus the Alternate Routes, and there is no consideration or analysis of the increased costs that would be placed on the Town of Buckeye to maintain emergency response crews and other expenses associated with the location of the pipeline through the heart of an urban area. The failure of FERC to assemble relevant facts concerning the costs and to include those facts with a comprehensive cost analysis, and then compare the actual costs to the undeniable lower risk to human life and property along the Alternate Routes, is the worst kind of failure to comply with NEPA and the principles set out in *Mississippi River Basin Alliance v.*

LA2-85 As discussed in the response to comment LA2-80, the suggestion that the Buckeye Alternatives analysis is based solely on costs ignores the additional environmental impacts that would be associated with the Buckeye Alternatives, some of which the EPA has characterized as "significant."

Transwestern would be required to design, construct, and operate the proposed project in accordance with federal standards that are protective of public safety. Transwestern would be obligated to meet these standards in the Town of Buckeye as it would in other areas where the project would be proximal to existing and planned developments such as in Black Canyon City, the City of Casa Grande, and greater Pinal County. As discussed in section 4.11 and addressed in numerous responses to comments, natural gas pipelines are a safe mode of transport and do not subject the nearby public to significant safety risks. Development in close proximity to high pressure natural gas transmission pipelines is common in the United States, including in Maricopa and Pinal Counties, where development has occurred or is planned to occur adjacent to existing EPNG transmission pipelines. For example, one of the developers of a project that would be crossed by the proposed alignment in Buckeye is developing a master planned community in Pinal County that would be bisected by two to four existing EPNG pipelines (see the response to comment CO7-3).

See the responses to comment PM3-56 regarding pipeline class standards and comment LA2-78 regarding the DOT's pipeline safety responsibilities.

The draft EIS concluded that implementation of mitigation measures suggested by Buckeye area stakeholders, including deep burial of the pipeline or construction of concrete-reinforced blast walls along both sides of the pipeline, would not significantly improve public safety. See also the response to comment PM3-52 for additional discussion of pipeline safety in Buckeye.

See the responses to comment PM3-15 regarding costs to acquire right-of-way along the proposed route or Buckeye Alternatives, and comment PM3-23 regarding the expected expansion of the Town of Buckeye Fire Department to serve the growth envisioned for the area.

LA2-85 (cont'd)

***Westphal*, 230 F.3d 170 (5th Cir.2000), where the court stated that an EIS must be prepared in sufficient detail to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved. It is not possible for Buckeye or other commenters to understand and consider the pertinent environmental influences because there is no factual discussion presented in the Draft EIS by FERC.**

LA2-86

Sec. 3.4.2.5 of the Draft EIS states:

Stardust-Tartesso W-12, Inc. and Pulte Home Corporation filed a report with the Commission that identified third-party damage and a subsequent explosion as the greatest risk posed by the proposed project. To mitigate these concerns if an alternative route to avoid the Buckeye area is not selected, the report recommended that the Phoenix Lateral be installed at a depth of 14 to 20 feet and reinforced concrete walls be constructed along both sides of the pipeline route through the Buckeye area. As discussed in section 4.11, the available pipeline accident data show that by designing, constructing, and operating the Phoenix Expansion Project in accordance with applicable DOT regulations, including the safety measures outlined above, the proposed project would not pose a significant safety risk to the nearby public. Therefore, the mitigation measures recommended in the report would not significantly improve public safety.

Response:

FERC's response to the safety issue ignores the factors set out above in our Response to Section 3.4.2.5 of the Draft EIS, where we explain the failure of FERC to properly consider safety factors. The reality is that the proposed route is more dangerous than either Alternate Route. The only significant reason for FERC to not select one of the Alternate Routes is Transwestern's unsupported allegations of additional costs to construct along the Alternate Routes. Transwestern is proposing, and FERC is supporting, risking human lives and property to save corporate dollars.

LA2-87

Sec. 3.4.2.5 of the Draft EIS states:

As proposed, the Phoenix Lateral would generally be installed 15 feet inside the outer edge of the existing SRP right-of-way through the Buckeye development area. SRP is the operator of jointly owned high voltage lines supported on parallel electric transmission towers. Comments were received suggesting that locating the pipeline between the towers would improve public safety by providing a greater distance between the pipeline and homes located near the SRP right-of-way. However, standard industry practice has not permitted any facilities to be constructed between transmission lines because such close collocation would impact normal operating and maintenance procedures for both utilities and could affect the ability of Transwestern and SRP to respond to an emergency situation. Therefore, locating the Phoenix Lateral between the powerline towers would not improve overall public safety and energy reliability when compared to the proposed alignment.

Response:

Although Brown and Caldwell have determined that separation of over 1,200 feet is required from any residential housing to provide a safety buffer, although FERC's own publications discuss setbacks of at least 660 feet to create a safety buffer, the proposal for this pipeline is to put it only 15 feet inside the utility corridor, thereby locating the

LA2-86 See the response to comment PM3-16.

LA2-87 The 660 feet mentioned in the comment was developed by the PHMSA/OPS in reference to a potential impact radius that is used to determine if an area qualifies as an HCA (see section 4.11.1).

The safety concerns associated with locating a pipeline directly beneath high voltage transmission lines are primarily regarding construction and maintenance activities that include the potential for conflicts between construction equipment operating in close proximity to support structures. See also the responses to comments PM3-2 and LA2-8.

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LA2-87 (cont'd)

proposed pipeline within 20 feet of some homes. This is astounding considering the reasons for the "standard industry practice" of not permitting facilities to be constructed between the transmission lines. The reason given is that such location would "impact normal operating and maintenance procedures for both utilities and could affect the ability of Transwestern and SRP to respond to an emergency situation."

At least FERC finally admits that the proposed pipeline could result in an emergency situation, even though it then discounts that potential for any purpose other than accommodating the corporate giants at the expense of the citizens of the Town of Buckeye.

In section 4.11.2 of the Draft EIS FERC states, "*The dominant incident cause is outside forces, constituting 53.8 percent of all service incidents between 1970 and 1984 and 38.5 percent between 1986 and 2005. Outside forces incidents result from the encroachment of mechanical equipment such as bulldozers and backhoes; earth movements due to soil settlement, washouts, or geologic hazards; weather effects such as winds, storms, and thermal strains; and willful damage. Table 4.11.2-2 shows that, of the service incidents caused by outside forces, human error in equipment usage was responsible for approximately 75 percent of the incidents.*" The Governor's Essential Services Task Force on Natural Gas and Electric Power Sources in Arizona, dated June 27, 2005, stated, "*The number one threat to natural gas system reliability and safety is third party excavation damage.*" El Paso Natural Gas Company has filed comments in this proceeding saying that it doesn't' want Transwestern's pipeline co-located with its own because it doesn't want the "serious operational and safety concerns" that would be involved when either company has to engage in excavation near the other's pipeline (See January 26, 2007, Comments of El Paso Natural Gas Company).

Each of the above quotations expresses the very real concern that any excavation near a gas pipeline, even for routine maintenance work, involves a degree of risk that a catastrophic event could occur. That uncomfortable fact is why EPNG doesn't want the pipeline co-located, it is why SRP does not want Transwestern's pipeline located beneath its electrical transmission towers, and it is why the Town of Buckeye and other intervenors in this matter want the Alternate Route selected.

FERC has not developed any meaningful statistics regarding the number of conflicts that will occur between the proposed pipeline, if built in the Buckeye development corridor, and road and utility crossings that will result from the extensive development going on around it. FERC has not developed any meaningful statistics regarding the number of conflicts that will arise between the proposed pipeline and maintenance crews working on the various roads and utilities after they are built. Statistics supplied by the developers of those communities have been submitted to FERC, but have apparently been ignored because they are not included in the Draft EIS.

FERC has violated the provisions of NEPA, the regulations adopted pursuant thereto, and the court cases determined thereunder, by not taking a "hard look" at the factors that demand the selection of an Alternate Route in the area of the City of Buckeye.

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LA2-87 (cont'd)

FERC has not properly considered alternatives, as required by NEPA, for the same reasons. FERC has violated the principles set out in *Mississippi River Basin Alliance v. Westphal*, 230 F.3d 170 (5th Cir.2000), where the court stated that an EIS must be prepared in sufficient detail to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved. It is not possible for Buckeye or other commenters to understand and consider the pertinent environmental influences because there is no factual discussion presented in the Draft EIS by FERC.

LA2-88

Sec. 3.4.2.5 of the Draft EIS states:

To address concerns raised by developers and the Town of Buckeye, the pipeline would be installed below existing utilities that are within approximately 7 feet of the land surface. Transwestern has also committed to working with developers and the Town of Buckeye to incorporate planned utility and street crossings into the final pipeline design at Transwestern's expense. Future utility crossings that are currently unplanned could be more costly but would not be prevented due to the presence of the pipeline.

Response:

FERC's response to the serious concerns raised by Buckeye and the developers is to install the pipeline at a depth that would put it above most other utilities, thereby increasing the likelihood of an incident when installation and maintenance of those utilities is undertaken. FERC relies on Transwestern's commitment to work with the developers and the Town, when the reality is that Transwestern has ignored the developers and the Town as much as possible and has intentionally presented false information to FERC, including providing recommended locations for open houses when it knew of the concerns of property owners in Buckeye. FERC acknowledges that "Future utility crossings that are currently unplanned could be more costly…" but ignores those potential costs to private property owners and the Town in favor of creating a lower cost alternative for Transwestern. This is further evidence that FERC has pre-determined the outcome of this application, has not made a good faith effort to analyze the risks inherent in Transwestern's proposal, and has violated the mandates of NEPA in preparing the Draft EIS.

LA2-89

Sec. 3.4.2.5 of the Draft EIS states:

"… as discussed in section 4.11, by constructing and operating the proposed alignment in accordance with applicable regulations and Transwestern's additional proposed safety measures, the nearby public would not face a significant increased safety risk."

Response:

As discussed above, operating the proposed pipeline as discussed in section 4.11 provides the Buckeye and its residents no more security than the people located near the EPNG pipeline in Carlsbad were provided. Viable alternatives exist to locate the pipeline in a demonstrably safer location, but FERC has summarily rejected those Alternative Routes based solely on a desire to recognize alleged, but unsupported, cost savings for Transwestern.

LA2-88 See the responses to comments PM3-7 and IND5-2 pertaining to existing and future utility crossings in the Buckeye area.

LA2-89 Section 4.11 discusses pipeline safety and reliability. Specifically, the historical pipeline incident data summarized in sections 4.11.2 and 4.11.3 demonstrate that natural gas pipelines continue to be a safe, reliable means of energy transportation. These results encompass data from the entire U.S. natural gas transmission system, including from pipelines located in heavily urbanized settings.

The analysis in the draft EIS contains sufficient information to allow the Agency Staffs to conclude that neither the North nor South Buckeye Alternative represents an environmentally preferable or economically viable alternative to the proposed route through the Buckeye area. See also the response to comment PM3-28 regarding the commentor's suggestion that the Buckeye Alternatives analysis was based solely on cost.

Adoption of the Casa Grande EPNG Collocation Alternative (CGEPNG Alternative) would involve construction within very limited space over existing high pressure natural gas transmission pipelines operated by EPNG. Construction of the proposed route in Buckeye would occur under significantly safer working conditions because Transwestern would utilize an industry standard 100-foot-wide construction work area within an existing easement that does not contain any high pressure natural gas transmission pipelines.

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LA2-89 (cont'd)

It is instructive that in Section 3.4.2.6 of the Draft EIS that FERC discusses at some length two alternative routes through the City of Casa Grande. FERC's conclusion is that, *"While the CGEPNG Alternative offers some advantages over the corresponding segment of the proposed route, the advantages are outweighed by the construction safety and reliability concerns that would be associated with the alternative. In addition, the proposed route would result in reduced construction-related impacts on existing residences. Therefore, based on the above analysis, the FERC staff has concluded that the CGEPNG Alternative is not preferable to the proposed alignment through The Wash."* In other words, when cost to Transwestern is not a primary consideration, selecting a route that has less impact on existing residents, and which is safer, is a viable consideration for FERC.

LA2-90

Sec. 3.5.2.4 of the Draft EIS states:

In comments filed with the FERC, WMA raised safety and operational concerns regarding the installation of a natural gas pipeline within its active landfill facility. Specifically, WMA noted that heavy earthmoving equipment frequently crosses the powerline easement and haul roads within the powerline easement are constantly graded without inspection or survey control. This grading can result in a surface elevation change of 1 to 3 feet during any shift depending on ground conditions and haul road grade requirements. These activities are expected to increase as the landfill expands in the future. WMA also stated that the proposed pipeline would complicate the construction of planned environmental mitigation measures such as a landfill gas collection system, and would prevent WMA's proposed future expansion of the landfill after the existing powerline easements expire in 2028.

WMA proposed a route variation to alleviate its safety and operational concerns regarding the proposed alignment. This variation, referred to as the Waste Management Arizona Variation, would deviate from the proposed route at MP 126.0, traverse the southeastern, southern, and southwestern limits of the WMA property, and rejoin the proposed route at approximate MP 127.5. The Waste Management Arizona Variation would be approximately 1 mile longer than the corresponding segment of the proposed alignment but would be located entirely on WMA property.

Based on the information provided by WMA, construction of the proposed alignment across the Northwest Regional Landfill would appear to pose significant safety and operational concerns for both the pipeline and the landfill facility. The Waste Management Arizona Variation would appear to alleviate those concerns. It is not known, however, whether the Waste Management Arizona Variation would create other concerns, impact sensitive resources, or potentially affect other landowners. ***Therefore, the FERC staff recommends that:***

- ***Transwestern shall prepare a report of the land requirements, other potentially affected landowners, and impacts that the Waste Management Arizona Variation would have on cultural, biological, and other resources. Transwestern shall include in the report further justification for the proposed alignment, including a detailed description of the specific construction and operational measures that would be implemented to alleviate WMA's concerns about the crossing of its Northwest Regional Landfill and ensure the integrity of the pipeline if the proposed alignment is approved. This report shall be filed with the Secretary during the draft EIS comment period for analysis in the final EIS."*** (emphasis in the original).

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LA2-90 The safety concerns associated with the construction and operation of a natural gas transmission pipeline through an active solid waste landfill that involves the daily use of very heavy equipment and uncontrolled grade changes are substantially greater than those associated with the construction of future street and utility crossings of the Phoenix Lateral that would occur in a controlled manner as discussed in section 3.4.2.5 and in the response to comment PM3-7.

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LA2-90 (cont'd)

Response:

WMA's objections to the route over its property are essentially the same objections posed by developers in the Buckeye development corridor, i.e. "*…heavy earthmoving equipment frequently crosses the powerline easement and haul roads within the powerline easement…*" While the activities undertaken by the heavy earthmoving equipment is different, the potential impacts are the same. FERC recommended Transwestern investigate the alternative route in this instance, but did not in regards to the Buckeye Alternative Routes. The only apparent reason for the different treatment is the alleged cost considerations for the Buckeye Alternative Routes. Once again, FERC only considers factors in this Draft EIS when it is beneficial to the result which FERC has already determined will be achieved in this application. Pre-judging the application in this manner is a violation of NEPA, the regulations adopted thereunder, and the court decisions rendered in regards thereto.

In regards to FERC's discussion of alternatives in other communities, including, but not limited to, Casa Grande, Black Canyon City, and Prescott Valley, the Town of Buckeye alleges that FERC has failed to comply with NEPA, the regulations adopted thereunder, and the court decisions rendered in regards thereto. Among the failures observed in the Draft EIS are failure to properly consider the affected environment, the environmental consequences of the proposed action, failure to consider both direct and indirect effects, failure to consider cumulative impacts, failure to provide complete information, failure to describe cost-benefit analyses, failure to explain scientific methodologies, and failure to analyze need for the proposed project. All of our comments related to the Draft EIS's consideration of the Alternative Routes near Buckeye are incorporated in the discussion of the other communities.

LA2-91

Sec. 4.0, first paragraph of the Draft EIS states:

This section describes the affected environment as it currently exists and discusses the environmental consequences of the proposed project.

Response:

Buckeye disagrees that section 4.0 gives any meaningful or in depth discussion of the environmental consequences resulting from the Phoenix Expansion Project. In fact, the Draft EIS is so void of information, that consequences to the environment cannot be determined. All missing analysis and information must be provided to the public for review and comment prior to the finalization of the Draft EIS.

LA2-92

Sec. 4.0, second paragraph of the Draft EIS states:

In accordance with BLM Manual guidance (H-1790-1), the major resource sections address the following "critical elements of the human environment:" air quality . . .

Response:

While the Draft EIS may have topics listed under "critical elements of the human environment," the analysis required under NEPA is not met and the public is not given an opportunity to review all necessary information needed to form an informed opinion and provide comments as necessary.

LA2-91 See the response to comment PM3-2.

LA2-92 See the response to comment PM3-2.

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LA2-93 Sec. 4.0, fourth paragraph of the Draft EIS states:

Transwestern, as part of its proposal, developed certain mitigation measures to reduce the impact of the project. In some cases, we determined that additional mitigation measures could further decrease the project's impacts.

Response:

The mitigation measures proposed by both FERC and Transwestern are lacking detailed analysis, and, therefore, there is insufficient information in the Draft EIS on which to form an opinion as to whether the proposed mitigation measures will provide added protection for human health and the environment.

In order to comply with CEQ regulations, mitigation analysis must include: (a) Avoiding the impact altogether by not taking a certain action or parts of an action, (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, (e) Compensating for the impact by replacing or providing substitute resources or environments. 40 CFR § 1508.20.

LA2-94 Sec. 4.0, fifth paragraph of the Draft EIS states:

The conclusions in this EIS are based on the Agency Staffs' analysis of the environmental impact . . .

Response:

Buckeye questions how the Agency could analyze the environmental impact when the Draft EIS is so void of meaningful information, with large critical data gaps that Transwestern is required to fill at some point in the future. The EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-95 Sec. 4.1.1.1 of the Draft EIS states:

The San Juan Lateral Loop facilities would be located entirely within the Colorado Plateau physiographic province, which is characterized by mesas, . . . The San Juan Lateral Loops would cross two major structural elements. Loop A would cross the San Juan Basin and Loop B would cross the Chaco Slope. . .

Response:

There is no discussion or analysis in this section as to the resulting human or environmental impacts from these crossings. Buckeye is, therefore, unable to provide comment. The Draft EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-93 See the response to comment PM3-2.

LA2-94 See the response to comment PM3-2.

LA2-95 See the response to comment PM3-2.

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LA2-96 Sec. 4.1.1.2, first paragraph of the Draft EIS states:

The proposed pipeline facilities in Arizona would be located within the Colorado Plateau . . . and the Basin and Range Physiographic provinces . . . The northern portion . . . would be located in the southern Grand Canyon section . . . Mountain ranges in this section of the Basin and Range province comprise less than 25 percent of the area . . .

Response:

All information cited in this paragraph is conclusory. It appears to be suggesting that a portion of this pipeline will pass through the Grand Canyon, a national park. Supporting data must be provided to allow Buckeye to provide meaningful comment.

LA2-97 Sec. 4.1.1.2, third paragraph of the Draft EIS states:

Construction and operation of the Phoenix Expansion Project would not materially alter the geologic conditions of the project area.

Response:

FERC provides no analysis to support this statement; Buckeye cannot provide meaningful comment. The Draft EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-98 Sec. 4.1.1.2, third paragraph of the Draft EIS states:

Effects from construction could include disturbances to the natural topography along the right-of-way and at aboveground facility sites due to the trenching and grading activities . . . Over most of the project area, alteration of topographic contours would consist of minimal grading of the construction right-of-way . . .

Response:

NEPA requires FERC to make an analysis of the effects from construction on natural topography so that Buckeye can provide an informed comment. FERC makes no such analysis in this section. The Draft EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-99 Sec. 4.1.2.1, first paragraph of the Draft EIS states:

Twenty-seven oil and gas wells are within 1,000 feet of Loop A and I well is within 1,000 feet of Loop B. . . Table 4.1.2-1 also lists . . . This listing . . . does not include information on the current status of the wells. . . no active wells would be crossed by either loop.

Response:

Statements in this paragraph contradict each other. In one sentence FERC states that well status is unknown, yet it goes on to conclude that no "active" wells within 1,000

LA2-96 See the response to comment PM3-2.

LA2-97 See the response to comment PM3-2.

LA2-98 See the response to comment PM3-2.

LA2-99 The statements are not contradictory. The description of oil and gas wells in proximity to the proposed project, and their status, are based on several sources that are cited in the text and on the referenced table.

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LA2-99 (cont'd) **feet of the proposed line will be crossed. Table 4.1.2-1 indicates that there are many wells within less than 1,000 feet of the proposed line.**

LA2-100 Sec. 4.1.2.1, fifth paragraph of the Draft EIS states:

In general, potential effects on future mineral production may include loss of revenue and diminished mineral land values . . . Because the depth of the oil and gas reserve is hundred to several thousand feet or more below ground surface and they can be reached by angled wells, these resources and future access to them would not be affected by construction and operation of the loops.

Response:

FERC provides no discussion on the possible impact to these precious mineral resources, other than to make conclusory remarks that there will be no effect. Without such a discussion, Buckeye cannot provide meaningful comment. The Draft EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-101 Sec. 4.1.2.2, 3rd paragraph of the Draft EIS states:

The BLM has 24,135 mining claims recorded in Arizona. However, many of these may be inactive due to abandonment, relinquishment to the federal government, or failure of the claimant to pay the annual maintenance fees.

Response:

FERC made no effort to determine the status of those claims other than to identify that there are 122 active mining claims. The status of and impact on 24,013 claims remains unknown. FERC simply acknowledges that Transwestern is willing to work with any claimant to "avoid impact on safe operation of the pipeline." (*SEE* 4th paragraph of this section) There is no cumulative impact analyses of these claims.

LA2-102 Sec. 4.1.2.2, 5th paragraph of the Draft EIS states:

. . . because the majority of the proposed pipeline route would be located adjacent to existing utility corridors . . . they are not likely to affect future exploitation of the mineral resources.

Response:

FERC provides no discussion of the impact on natural minerals from that portion of the pipeline that would be located outside of an existing utility corridor; thereby not affording Buckeye an opportunity to comment.

LA2-103 Sec. 4.1.3 of the Draft EIS states:

Large rocks would be screened out of the trench backfill material and swelling clays would not have an impact on the pipeline during operation.

LA2-100 See the response to comment PM3-2.

LA2-101 See the response to comment PM3-2.

LA2-102 See the response to comment PM3-2.

LA2-103 The pipeline facilities associated with the Phoenix Expansion Project would be constructed in accordance with applicable material specifications and construction techniques and, thus, would be able to withstand minor earth movements that could be associated with swelling clays.

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LA2-103 (cont'd)

Response:

Other than making this conclusory statement, FERC provides no technical discussion as to why swelling clays will not affect the pipeline, therefore, Buckeye is unable to comment. The Draft EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-104

Sec. 4.1.3.1, first paragraph of the Draft EIS states:

. . . there is a low potential for soil liquefaction . . .

Response:

FERC provides no basis for this conclusion, therefore, Buckeye cannot provide comment. Buckeye response is also applicable to FERC's last paragraph of this section. The Draft EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-105

Sec. 4.1.3.1, eighth paragraph of the Draft EIS states:

The proposed facilities would be constructed to meet federal standards outlined in Title 49 CFR Part 192. These are the same regulations that govern the construction and operation of natural gas pipelines throughout the country, including areas with greater seismic hazards. Thus, the pipeline facilities would be able to withstand both the intensity and duration of transient ground motions resulting from seismic activity in the project area.

Response:

Without a detailed technical discussion about the strength of the pipeline, the magnitude of and length of time of the seismic activity that such a pipeline can withstand, Buckeye is unable to comment on potential risk to human health or the environment. The EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-106

Sec. 4.1.3.2, second paragraph of the Draft EIS states:

Although the potential exists for landslides in the area of the southern portion of Loop B, field surveys did not find evidence of landslide activity along the proposed pipeline route . . . Historically, landslides have not been an issue along the existing San Juan Lateral.

Response:

FERC provides no mitigation discussion in the event of a landslide. However, low the probability, the pipeline will be located in a landslide area and it is important to Buckeye to understand how Transwestern intends to mitigate that likelihood.

LA2-104 The conclusion that the potential for liquefaction hazards would be minimal is based on the low seismic risk and the limited amount of unconsolidated soils with high groundwater levels in the project area.

LA2-105 Section 4.1.3.1 contains sufficient detail regarding the seismicity of the project area and the historic performance of modern transmission pipelines in areas of greater seismic intensity to draw the referenced conclusion and enable the reader to understand and consider the issues raised by the proposed project.

LA2-106 Section 4.1.3.2 describes the measures Transwestern would implement to reduce the potential for slope failure and damage to the pipeline to occur.

LA2-107 Sec. 4.1.3.2, sixth paragraph of the Draft EIS states:

In areas where the pipeline would be installed perpendicular to the slope, the overall energy to which a segment of pipe would be exposed during a major landslide event would be limited by the length of the slope. In areas where the pipeline would be installed parallel to the slope, the angle of the slope, as well as the composition of the soil and rock present, would likely limit the extent of landslide events. Therefore, it is expected that any major landslide events would, at worst, expose a short section of pipe along the slope face, requiring subsequent reburial.

Response:

What are these conclusions based on? Without a technical discussion, Buckeye cannot comment on the soundness of these conclusions. It also seems highly likely that such exposure could cause damage to the line, yet FERC does not address that possibility nor mitigation considerations for such a possibility. The Draft EIS is required, among other things, to contain scientific and analytic analysis of impacts and alternatives with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-108 Sec. 4.1.3.2, seventh paragraph of the Draft EIS states:

If areas are identified where slope instability could occur during wet periods, one or more of the following drainage control measures specified in Transwestern's UECRM Plan (see Appendix F) would be implemented to reduce the potential for slope failure to occur:

Response:

These areas should have already been identified and addressed in the EIS; because they are not, Buckeye cannot provide comment.

LA2-109 Sec. 4.1.3.3, second paragraph of the Draft EIS states:

For some minor drainages, Transwestern may extend the minimum required burial depth to 40 inches, based on engineering judgment. Where pipeline upheaval due to flood events is of concern, Transwestern would install external weighting (e.g., concrete coating or concrete weights) on the pipeline to prevent movement.

Response:

FERC provides no information as to the expected locations of these pipeline upheavals due to flooding, nor the length of pipe that maybe exposed as a result. Buckeye, therefore, cannot comments on the potential impact to human life or the environment. Furthermore, Buckeye has no ability to analyze whether burial depth to 40 inches or the use of concrete coating or concrete weights will have any impact on the exposed pipe. The EIS is required, among other things, to contain scientific and analytic analysis of impacts, alternatives and mitigation efforts with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

Local Agencies 2

LA2-107 Section 4.1.3.2 contains sufficient detail regarding the risk of landslides in the project area to draw the referenced conclusions and enable the reader to understand and consider the issues raised by the proposed project.

LA2-108 The Town of Buckeye's comment is noted.

LA2-109 Section 4.1.3.3 contains sufficient detail regarding the risk of flooding in the project area to draw the referenced conclusions and enable the reader to understand and consider the issues raised by the proposed project.

LA2-110 Sec. 4.1.3.3, third paragraph of the Draft EIS states:

Transwestern retained a geotechnical consultant who recommended site-specific scour analyses at two locations deemed susceptible to major scour events: the Gila River (MP 174.9) and Vekol Wash (MP 217.7). A local geotechnical engineering firm would perform a detailed evaluation of the subsurface strata and hydraulic study of the historical flow and depth of scour at these locations to determine a safe burial depth at each of these crossings . . . Transwestern would file the proposed burial depth at the Gila River and Vekol Wash with the Secretary of the Commission (Secretary) as part of its Implementation Plan that would be submitted before construction (see mitigation measure number 6 in section 5.3).

Response:

Without the geotechnical report, Buckeye has no information as to the proposed depth of the line in this flood zone, and, therefore, cannot provide meaningful comment. Submitting this information before construction does not allow anyone an opportunity to evaluate the reliability of the proposed mitigation. The Draft EIS is required, among other things, to contain scientific and analytic analysis of impacts, alternatives and mitigation efforts with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-111 Sec. 4.1.3.3, fourth paragraph of the Draft EIS states:

Monthly aerial pipeline inspections would be conducted to monitor the stability of the pipeline right-of-way. Any areas of inadequate cover resulting from a sequence of high rain events would be corrected.

Response:

While aerial inspections may help detect large exposed areas of pipeline, there is no information in the Draft EIS discussing whether aerial inspections detect all areas of exposed pipeline, or how smaller, undetectable exposures might affect human health and the environment.

LA2-112 Sec. 4.1.3.4, third and fifth paragraphs of the Draft EIS states:

According to Haller et al. (2005), karst terrain may be crossed by the Phoenix Lateral between approximate MPs 17.0 and 26.0. This area is indicated as having the potential for karst fissures, tubes, and caves over 1,000 feet long with a vertical extent of 25 to 250 feet. However, field surveys did not find evidence of sinkholes or subterranean features along the proposed pipeline route that might cause the pipeline to be installed in an unsupported position.

Table 4.1.3-4 lists zones within 1 mile of the Phoenix Expansion Project facilities in Arizona that have experienced significant groundwater losses that may lead to future ground subsidence.

Response:

Arizona is in a drought and has been for several years, at the same time large quantities of groundwater are extracted for agricultural purposes and groundwater tables are dropping. As a result, many areas in Arizona have experienced sinkholes. FERC

Local Agencies 2

LA2-110 See the response to comment PM3-2 that discusses the issue of deferred reports.

LA2-111 As described in section 2.6, monthly aerial inspection is only one of several means that would be implemented to monitor and ensure the condition and integrity of the pipeline. Section 2.6 has been revised to indicate the type of response action that would be taken should the pipeline be exposed.

LA2-112 Transwestern has conducted ground surveys of the proposed route for biological, cultural, and engineering purposes, and the FERC staff has conducted aerial and ground reconnaissance of the proposed route. During these field surveys and reconnaissance, no evidence of subsidence was observed.

Measures that would be implemented in the event subsidence occurs during construction or operation are discussed in section 4.1.3.4.

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LA2-112 (cont'd) **should include in the Draft EIS the survey it relied upon to support its finding there is no evidence of sinkholes or subterranean features exist along the pipeline route. FERC must also include a mitigation discussion explaining how the pipeline will be protected in the event subsidence occurs.**

In order to comply with CEQ regulations, mitigation analysis must include: (a) Avoiding the impact altogether by not taking a certain action or parts of an action, (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, (e) Compensating for the impact by replacing or providing substitute resources or environments. 40 CFR § 1508.20.

LA2-113 Sec. 4.1.3.4, seventh paragraph of the Draft EIS states:

Table 4.1.3-6 lists the closest known giant desiccation cracks. As shown in table 4.1.3-6, the Phoenix Lateral and customer laterals would not directly cross any known giant desiccation cracks.

Response:

Because the pipeline comes within 0.3 of a mile to a desiccation, FERC must include a mitigation discussion explaining how the pipeline will be protected in the event a desiccation crack occurs.

In order to comply with CEQ regulations, mitigation analysis must include: (a) Avoiding the impact altogether by not taking a certain action or parts of an action, (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, (e) Compensating for the impact by replacing or providing substitute resources or environments. 40 CFR § 1508.20.

LA2-114 Sec. 4.1.3.5, first paragraph of the Draft EIS states:

Along the Phoenix Lateral, blasting may be required at specific locations within the segments between the following: MPs 0.0 and 30.3, MPs 31.6 and 31.8, MPs 38.1 and 38.4, MPs 42.7 and 43.8, MPs 47.9 and 50.3, MPs 53.4 and 74.8, MPs 77.2 and 115.9, and MPs 172.9 and 190.0. Blasting in these locations would occur on ASLD, BLMmanaged, and private lands. No blasting is anticipated to be necessary along the customer laterals.

Response:

FERC must explain the basis for determining "no blasting is anticipated to be necessary along the customer laterals." Have geotechnical investigations been conducted at the customer lateral sites? If so, that information should be provided for analysis by all parties. The EIS is required, among other things, to contain scientific and analytic analysis of impacts, alternatives and mitigation efforts with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-113 See the response to comment LA2-112.

LA2-114 The conclusion that no blasting is anticipated to be necessary along the customer laterals was made after determining that shallow bedrock was not likely to be present in these locations based on a review of U.S. Department of Agriculture, Natural Resources Conservation Service soil surveys.

LA2-115 Sec. 4.1.3.5, second paragraph 4th bullet point of the Draft EIS states:

If the damage is substantiated, Transwestern would negotiate a settlement with the landowner to have damages repaired or replaced.

Response:

What is the landowners recourse if a settlement cannot be reached?

LA2-116 Sec. 4.1.3.5, second paragraph 5th bullet point of the Draft EIS states:

Where the pipeline route parallels or crosses an electrical transmission corridor, . . .

Response:

FERC provides no discussion regarding the potential impact/damage from blasting to transmission poles, lines, etc. and its cumulative effect on human health or the environment. CUMULATIVE EFFECTS DISCUSSION

LA2-117 Sec. 4.1.3.6, second paragraph of the Draft EIS states:

The pipe storage and contractor yards and access roads would be located in the same general vicinity of the pipelines and are, therefore, not expected to impact geologic resources. Further, it is unlikely that these facilities would be affected by geologic hazards.

Response:

The impact to geologic resources cannot be known until the locations of the yards and roads are identified. 40 C.F.R. § 1508.7 requires FERC to undertake an analysis of "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." The EIS must include a "useful analysis of the cumulative impacts of past, present, and future projects" in sufficient detail to be "useful to the decision maker in deciding whether, or how, to alter the program to lessen cumulative impacts." Natural Res. Def. Council v. U.S. Forest Service, 421 F.3d 797, 814 (9th Cir. 2005). "At a minimum," EIS must provide a catalog of relevant past projects in the area and a discussion of how those projects have "harmed" the environment. Id. at 814-815. The analysis of cumulative impacts should include an assessment of "collective" or "total" direct impacts caused by activities authorized by the proposed agency action, as well as indirect, or secondary, impacts in the area, i.e., foreseeable future activities in the same geographic area that are not authorized by the proposed action. Wyoming Outdoor Council v. U.S. Army Corps of Engineers, 351 F.Supp.2d 1232, 1241 n. 1 (D. Wyo. 2005); Taxpayers of Michigan v. Norton, 433 F.3d 852, 864 (D.C. Cir. 2006); Natural Res. Def. Council v. U.S. Forest Serv., 421 F.3d 797, 815-816 (9th Cir. 2005).

LA2-118 Sec. 4.1.4.2, sixth paragraph of the Draft EIS states:

In summary, with the exception of one area near the Verde River within the Prescott National Forest, the Phoenix Lateral is not located in an area with a high potential for paleontological resources. The FS staff at the Prescott National Forest has determined that paleontological resources surveys near the Verde River are not necessary (Clay, 2006).

Local Agencies 2

LA2-115 The landowner may choose to seek legal counsel for advice in the event a negotiated settlement cannot be reached.

LA2-116 Section 2.3.2 describes the special construction techniques, including blasting, that would be utilized in proximity to existing powerline and pipeline easements.

LA2-117 See the response to comment LA2-21 that notes that all areas identified to date that would be used or disturbed during construction are addressed in the EIS and considered in the Agency Staffs' analysis of impact and mitigation for the proposed project. The potential for additional areas needed for construction to be identified and the requirements for their analysis are addressed by the FERC staff's recommended mitigation measure number 5 in section 5.3.

LA2-118 Section 4.1.4.2 describes the measures that would be implemented if significant paleontological resources are encountered during construction.

Local Agencies 2

LA2-118 (cont'd)

Response:

The Draft EIS must address how it will mitigate impact to those possible paleontological resources located Condition 1 area, an area classified as "significant." Without this discussion, Buckeye cannot provide meaningful comment. In order to comply with CEQ regulations, mitigation analysis must include: (a) Avoiding the impact altogether by not taking a certain action or parts of an action, (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, (e) Compensating for the impact by replacing or providing substitute resources or environments. 40 CFR § 1508.20.

LA2-119

Sec. 4.1.5 of the Draft EIS, No Action Alternative –

Response:

Until the Draft EIS meets all NEPA requirements, FERC's only option is to grant the "no action alternative."

LA2-120

Sec. 4.2.1.1 through Sec. 4.2.1.4, pages 4-22 through 4-27 of the Draft EIS –

Response:

All soil information contained in these pages is conclusory. Little or no information is provided as to the location of the various soil types along the proposed pipeline and the effect the various soils will have on the pipeline and its supporting facilities. Buckeye cannot examine the effect of burying the pipeline in soil with high potential for compaction versus soil with potential for shallow bedrock. The EIS is required, among other things, to contain scientific and analytic analysis of impacts, alternatives and mitigation efforts with reference to and explanation of the scientific methodologies involved including the sources relied upon for conclusions in the statement. 40 CFR § 1502.16; 40 CFR § 1502.24.

LA2-121

Sec. 4.2.2, sixth paragraph of the Draft EIS states:

. . . all of the soils crossed by the project would be susceptible to contamination from spills or leaks of fuels, lubricants, and coolants from construction equipment. Although these impacts would typically be minor because of the low frequency and volumes of these occurrences, the introduction of these contaminants to soils can adversely affect productivity.

Response:

FERC fails to discuss effect to human health and the environment resulting from construction contamination and what mitigation measures Transwestern will take to prevent construction contamination. A review of Appendix F does not shed light on this issue. Without this information, Buckeye is unable to provide meaningful comment.

LA2-122

Sec. 4.2.2, eighth paragraph of the Draft EIS states:

For example, Transwestern does not propose to seed all disturbed areas but has limited seeding to site-specific locations identified in its Restoration Plan where it has determined that seeding would be effective.

LA2-119 The draft EIS was prepared in accordance with NEPA, CEQ guidelines, and other applicable requirements. The draft EIS is comprehensive and thorough in its identification and evaluation of the environmental impacts of the proposed project and feasible mitigation measures to reduce those effects wherever possible and includes a reasonable range of alternatives. The need for the Phoenix Expansion Project is addressed in section 1.1. In light of the growing energy demands of central and southern Arizona, the No Action Alternative is not considered a viable alternative to the proposed project.

LA2-120 For the purposes of the EIS, a summary description of the soil types crossed by the project is provided in section 4.2.1.1. Specific information regarding the 213 map unit identifiers crossed by the project was included in Transwestern's application and is available for viewing on the FERC Internet website (http://www.ferc.gov) under Docket Number CP06-459.

LA2-121 The potential effects of fuel spills and the measures that would be implemented are discussed in sections 4.3.1.4, 4.3.2.2, and 4.5.2.2. Additional information on spill prevention and remediation is included in Transwestern's Spill Prevention and Response Procedures provided in Appendix H.

LA2-122 In section 4.2.2 of the draft EIS, the Agency Staffs concluded that with the implementation of Transwestern's UECRM Plan and its Restoration Plan, revised as recommended by the BLM and the FS, the project would not result in a reduction of soil productivity by compaction. Section 4.2.2 has been revised to note that Transwestern has revised its UECRM Plan and Restoration Plan to address the concerns of the BLM and the FS. Section 4.2.2 includes a recommendation that Transwestern continue to consult with the BLM, the FS, and other applicable agencies to finalize its Restoration Plan to address any additional issues identified by these agencies before construction (see also mitigation measure number 14 in section 5.3). The Restoration Plan is too voluminous to be included in the final EIS but is available for viewing on the FERC Internet website (http://www.ferc.gov) under Docket Number CP06-459.