

	First Name	Last Name	Organization	Issue Number	Issue	Description	Response
Dealt with in a soils discussion in the evaluation	Doug	Heiken	Oregon Wild	0213-10	Soils	RE the Fremont NF Amendment, the violations of soil disturbance standards need to consider the fact that the ROW will not follow contours but will go up and down steep slopes, creating a great risk of soil erosion, especially since these sites will never be revegetated with large rooted plants that will help hold the soil in place.	<p>The analysis for soils considered the ROW and how it crossed the landscape. On steep slopes Ruby Pipeline will utilize erosion control methods and mitigation practices dictated by the soil characteristics and topography. Erosion control methods would include minimizing surface disturbance and implementing permanent and temporary erosion control measures, including, but not limited to, trench breakers at proper spacing, sediment barriers, water bars, wattles, erosion control blankets, and mulching as detailed in Ruby's Plan. Areas with steep slopes may have temporary slope breakers installed at 100- to 200-foot intervals. Temporary slope breakers are intended to reduce runoff velocity and divert water off the construction right-of-way. Temporary slope breakers may be constructed of materials such as soil, silt fence, staked hay or straw bales, or sand bags. The run-off water from each temporary slope breaker will be directed to a stable, well vegetated area or an energy-dissipating device will be constructed at the end of the slope breaker and off the construction right-of-way. These slope breakers will be maintained until permanent revegetation measures are successful or the upland areas adjacent to wetlands, waterbodies, or roads are stabilized. The nature of the construction and being confined to the clearing limits means that an area greater than 20 percent of a activity area would be impacted by soil disturbance. The Forest Plan amendment for soil standards will make the action consistent with the forest plan and allow time for vegetation to recover. Trees would return to the construction clearing but not be allowed to grow within XX feet of the top of the pipeline, where brush and grasses would be allowed to grow and hold soil in place.</p>

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	Doug	Heiken	Oregon Wild	0213-2	Purpose and Need	<p>The purpose and need for the project should be restated as "Facilitating pipeline construction across public lands in such a way as to <i>meet</i> the standards and objectives of the Fremont Forest Plan, or by transmitting gas from the Rockies to west coast markets via alternate pipeline routes, or meet domestic gas needs through energy conservation, or developing alternative gas sources such as LNG."</p>	<p>CEQ's regulations require FERC's EIS to "specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 CFR Sec. 1502.13. The 9th Circuit and other courts agree that FERC and the Forest Service are given deference in formulating the purpose and need statement, which is evaluated under a "reasonableness" standard. <i>Friends of Southeast's Future, et al. v. Morrison</i>, 153 F.3d 1059, 1066-67 (9th Cir. 1998). The Ruby pipeline is an applicant-proposed action, not an agency-proposed project. In such circumstances, the federal agencies must necessarily consider the applicant's goals and objectives in proposing the project. See, e.g., <i>Citizens Against Burlington, Inc. v. Busey</i>, 938 F.2d 190, 196 (D.C. Cir. 1991). KS Wildlands and Oregon Wild cite to the 7th Circuit's decision in <i>Simmons v U.S. Army Corps of Eng'rs</i>, 120 F.3d 664, 666 (7th Cir. 1997) for their position that the Forest Service is improperly constricting the purpose and need. But the 7th Circuit has subsequently revisited <i>Simmons</i> and approved an agency statement of purpose and need that comported with <i>Citizens Against Burlington</i>. See <i>Environmental Law and Policy Center v. U.S. Nuclear Regulatory Comm'n</i>, 470 F.3d 676 (7th Cir. 2006). In particular, the 7th Circuit noted that an application for a nuclear power plant license did not require the NRC to consider energy efficiency alternatives. <i>Id.</i> at 682. Similarly, Ruby's pipeline application does not trigger a duty for FERC or the Forest Service to develop alternatives related to LNG or energy efficiency. And because the Forest Service is a cooperating agency with FERC as the lead agency, it is appropriate for the Forest Service to adopt FERC's EIS purpose and need statement as part of the Forest Service's evaluation of forest plan amendments.</p>

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							These amendments to Forest Plan are being proposed because the Federal Energy Regulatory Commission is considering authorizing a natural gas pipeline that crosses the Fremont National Forest. The Federal Energy Regulatory Commission (FERC) is the federal agency responsible for authorizing the construction and operation of natural gas pipelines. The FERC accepted the application of Ruby Pipeline to build and operate a 48 inch high pressure natural gas pipeline to carry gas from Wyoming to a 48 inch interstate gas distribution line at Malin, Oregon. The FERC analyzed the environmental consequences of construction and operation of the PCGP in an Environmental Impact Statement published in May, 2009. The Forest Service was a Cooperating Agency in that EIS. The route, developed in cooperation with the Forest Service, and recommended by FERC, crosses the Fremont National Forest. The FERC EIS for construction and operation of the PCGP recommends that the facility be authorized.
	Doug	Heiken	Oregon Wild	0213-3	Regulatory Process	The scoping notice asks people not to comment on the pipeline but on the plan amendment, but these are essentially the same thing. The Forest Service should issue a new scoping notice that does not give the public irrational instructions to limit their comments.	The FERC, as lead agency for the Ruby Pipeline Project, has provided scoping for the pipeline on several occasions, including issuances of notices to the public soliciting comments. The Forest Service, as a cooperating agency, posted its notice to address the plan amendment that may be needed to respond to the Project being reviewed by the FERC.

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	Doug	Heiken	Oregon Wild	0213-4	Regulatory Process	The commenters are concerned that the Forest Service is amending the forest plan to fit the project, rather than amending the project to fit the existing forest plan.	The regulations are clear. If a proposed project is not consistent with the applicable forest plan, the Forest Service can do one of three things: (1) modify the project to make it consistent, (2) reject the proposed project, or (3) amend the forest plan so that it will be consistent with the project. 36 CFR Sec. 219.8(e) The Forest Service reasonably states in its March 19, 2009 NOI that if FERC approves the project as proposed, the Forest Service will need to implement the third option, amendment of the forest plan. The FERC EIS will include a no-action alternative.
	Doug	Heiken	Oregon Wild	0213-5	Alternatives	The USFS needs to consider the merits of Ruby vs. other options. eg, a NEPA analysis of coastal LNG terminals vs. domestic gas from the Rocky Mountains, and the relative merits of the Ruby pipeline vs. the Bronco pipeline (or other alternate routes).	Evaluating other proposed projects that may supply natural gas to the western states is not within the purpose and need for proposing an amendment to the Fremont National Forest Land and Resource Management Plan (Forest Plan). While the Forest Service has a mission to manage the National Forests, the Federal Energy Regulatory Commission (FERC) determines where and when new energy sources and transmission facilities need to be developed. The FERC is also the federal agency responsible for authorization of energy projects.. Ruby provided an evaluation of several alternatives in its RR10 submitted to the FERC as part of it application. This evaluation included a review and discussion of meeting project objectives through the options listed in this comment. These options are to be addressed in the Draft EIS being prepared by FERC.

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	Doug	Heiken	Oregon Wild	0213-6	Alternatives	<p>The alternatives must include not amending the Fremont NF, but this need not be called the "no action" alternative because it just means the pipeline will be built elsewhere.</p>	<p>When FERC accepts an application from a utility company to cross public land, Congress, through the 2005 Energy Policy Act (EPAct), has directed the responsible agencies to coordinate with FERC to process authorizations required to construct the project. The 2005 EPAct reinforced Executive Order (EO) 13212 issued May 18, 2001 which directed federal agencies to take appropriate actions, consistent with applicable law, to expedite reviews of authorizations for energy-related projects and to take other action necessary to accelerate the completion of such projects while maintaining safety, public health and environmental protections.</p> <p>FERC has analyzed the environmental consequences of the Ruby Pipeline construction and operation and disclosed those findings in their Final Environmental Impact Statement (FEIS). The Forest Service has identified what parts of the Forest Plans need to be amended to make provision for the linear nature of the Ruby Pipeline. The Forest Service will determine the significance of the proposed Forest Plan amendments on the overall balance of goods and services in the Forest Plan in preparing its own ROD as required by Forest Service planning regulations.</p> <p>The no action alternative is being evaluated through the FERC NEPA process for the entire pipeline; the appropriate place for such no action analysis. Through this process, numerous alternative routes have been evaluated.</p>
	Doug	Heiken	Oregon Wild	0213-7	Wildlife, habitat	<p>Please consider the timeframe of the environmental impacts of this plan amendment. Many of the standards and guidelines that will be amended assumed that impacts would be transient, but the pipeline will maintain a permanent 50 ft ROW that will never be restored to mature native forest.</p>	<p>Ruby has been working with the Forest Service to develop mitigation measures to offset the loss of forested areas along the Project route.</p>

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	Doug	Heiken	Oregon Wild	0213-8	Wildlife, habitat	The amendment's impacts to old growth forest are particularly troubling because there is such a shortage of older forests on the east side of the Cascades that the whole landscape must be managed to preserve them. Finding a little piece of replacement old growth to mitigate for the loss of the affected stands does not meet the newly recognized landscape approach to old forest conservation.	This approach is consistent with a landscape focus in that the USFS will be looking elsewhere within the relevant landscape for additional areas that otherwise would not be managed as old growth.
	George	Sexton	Klamath Siskiyou Wildlands Center	0214-1	Regulatory Process	The commenter believes that the decision to amend the Fremont Forest Plan to allow for otherwise prohibited harm to a protected area is both pre-ordained and inevitable, and that the public scoping period is being offered as a meaningless formality.	<p>The amendment deals only with the process to allow the pipeline through a narrow portion of the Forest and that the review of the feasibility of the pipeline itself is being conducted by FERC as lead agency.</p> <p>The Forest Service has worked with Ruby Pipeline to establish a route across the National Forest. Should FERC authorize the construction of the route, the Forest has determined that the construction process would not be consistent with the Fremont Forest Plan. Regulations require the Forest to amend its Plan. Should the Plan not be amended, construction could proceed anyway causing inconsistency problems to the Forest.</p> <p>See response to 0213-2, 0213-6</p>
	George	Sexton	Klamath Siskiyou Wildlands Center	0214-2	Regulatory Process	The commenter feels that the agency has defined the alternatives too narrowly, and that by defining the "need" for the amendment as "allowing the pipeline to occur," the agency is not presenting a good faith examination of purpose and need.	See response 0214-1, 01213-6 and 0213-2 above. Evaluation of the numerous alternatives to date through the FERC EIS process has occurred in the context of the purpose and need of the project. The Forest Service as a cooperating agency worked with Ruby Pipeline to establish a route to avoid major resource impacts but still found the construction process caused inconsistencies with the Fremont Forest Plan that required amendments.

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	George	Sexton	Klamath Siskiyou Wildlands Center	0214-3	Regulatory Process	<p>The USFS's refusal to consider action alternatives that do not run afoul of the current standards and guidelines of the Fremont Forest violates the very purpose of NEPA's alternative analysis requirement: to foster informed decision making and full public involvement.</p>	<p>As stated above, Ruby provided a lengthy discussion of alternatives in RR10 of its application to FERC.</p> <p>Further, as noted, the evaluation supporting this amendment is essentially tiering off of the much larger, detailed, public NEPA analysis of the FERC's licensing of the entire pipeline.</p> <p>Consideration of the amendments is consistent with Forest Service regulations for when a project is found to be inconsistent with Forest Plan Standards and Guideline. Higher level laws are in place that require the Forest Service to consider amending the Forest Plan should the FERC authorize the construction and operation of the pipeline.</p> <p>See response to 0213-2 and 0214-2</p>
	George	Sexton	Klamath Siskiyou Wildlands Center	0214-4	Regulatory Process	<p>It would have been better to state the purpose and need for the amendment as "facilitating pipeline construction across public lands in such a way as to meet the standards and objectives of the Fremont Forest Plan."</p>	<p>The purpose and need for the pipeline is defined in the larger EIS process evaluating the FERC action. By incorporating that larger, detailed evaluation into this site-specific proposed amendment, the USFS is conducting just the analysis sought--an evaluation of how to satisfy the standards and objectives of the Fremont Forest Plan, which includes providing the proposed mitigation measures where impacts occur.</p> <p>See response to 0213-2, 0213-6, 0214-2 and 0214-3</p>
	George	Sexton	Klamath Siskiyou Wildlands Center	0214-5	Water Quality and Hydrology	<p>The proposals to allow heavy equipment in wet areas and seeps violates not only the Fremont Forest Plan but also the Aquatic Conservation Strategy of the Northwest Forest Plan.</p>	<p>Ruby has reviewed the Fremont Forest Plan and INFISH to determine applicability to the Ruby Project and will update the construction plan and procedures as necessary.</p>

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	George	Sexton	Klamath Siskiyou Wildlands Center	0214-7	Soils	<p>The contention in the scoping notice that "it was not possible to avoid crossing soils that are highly susceptible to erosion and represented by soil capability areas 1,2,3, and scabland portions of 13" is incorrect. In fact, the pipeline could be routed to avoid not only these soil types, but the Fremont-Winema NF entirely.</p>	<p>The purpose and need for the pipeline is defined in the larger EIS process evaluating the FERC action. By incorporating that larger, detailed evaluation into this site-specific proposed amendment, the USFS is conducting just the analysis sought--an evaluation of how to satisfy the standards and objectives of the Fremont Forest Plan, which includes providing the proposed mitigation measures where soils are affected.</p> <p>The Forest Service worked with Ruby Pipeline to locate the route through the forest and avoid or reduce impacts to soils. The nature of soils on the landscape caused conditions where the pipeline had to cross these sensitive soils. Ruby Pipeline is aware of these soils and would adjust construction practices as needed.</p>
	George	Sexton	Klamath Siskiyou Wildlands Center	0214-9	Other -(identify)	<p>Please ensure that the Klamath Siskiyou Wildlands Center and the Cascadia Wildlands Project receive hard copies of both the Draft EIS and any additional documents regarding the proposed Forest Plan amendments.</p>	<p>Fremont-Winema NF should add KS Wild and Cascadia to the mailing lists at FERC.</p>