November 29, 2001

Mr. James Connaughton  
Chairman  
Council on Environmental Quality  
Executive Office of the President  
17th and G Streets, N.W.  
Washington, D.C. 20503  

Attn: Ms. V.A. Stephens  
White House Energy Task Force  

Dear Mr. Connaughton:

The Petroleum Association of Wyoming (PAW) would like to thank the Council on Environmental Quality (CEQ) for the opportunity to comment on issues affecting mineral access to federal lands. PAW is Wyoming’s largest and oldest oil and gas organization, the members of which account for over ninety percent of the natural gas and over seventy percent of the crude oil produced in the State. This CEQ Task Force will focus on issues that directly affect members of PAW.

In your request for information, PAW would like to submit the following example, which should be placed in the “Exploration and Production” category:

- **Surface disturbing mitigation decisions determined by BLM that could have an affect on the gas transportation market:**

  The Bureau of Land Management (BLM) has the responsibility of managing certain public lands in the West. Their management decisions include mitigation restrictions that revolve around the placement of oil and gas wells, roads, gathering lines, transportation pipelines, corridors, etc. The BLM Pinedale Field Office in Wyoming has recently made a decision that is concerning to PAW.

  A producer, Double Eagle Petroleum Company, participated as a non-operator in the drilling of five wells in the Pinedale Anticline area during the summer and fall of 2001. The company then filed a right-of-way (ROW) application with BLM on October 9, 2001 (see Attachment A) for a four (4) inch temporary surface natural gas pipeline to transport its share of the produced gas to market. There are two existing sales pipelines in the area of the five wells. Both pipelines are owned by Pipeline A, an affiliate of the operator that drilled the wells. Due to economic concerns, the non-operating partner chose to apply for a two-and-one-half (2½) mile temporary surface pipeline to connect with another pipeline owned by a third party pipeline company (Pipeline B) and this temporary line was
proposed to be placed twenty-five (25) feet from the existing pipeline which is
within an existing pipeline corridor (see Attachment C).

To provide CEQ with additional information, most gas in the Pinedale Anticline
area or southwest Wyoming goes into three (3) main plants for processing
(removing of liquids to meet sales pipeline standards). These plants include:
The Opal Plant, the Granger Plant, and Black Fork's Plant all owned by different
companies. All three plants are located near the town of Opal (40-60 miles south
of the Pinedale Anticline Field). After the gas is processed at the plants, it
generally flows west out of Wyoming. Frequently the company gathering the gas
at the wellhead does not own the entire line from the well to the plant; however,
the pipeline company has agreed with other pipeline companies to transport gas
to the specified plant.

According to Double Eagle, currently the preferred market to deliver this gas to is
the Opal Plant since there are five (5) pipelines at its tailgate (owned by five
separate companies) and that Plant offers the most competition and accordingly
offers the best prices to the producer. The offer initially proposed to Double
Eagle by Pipeline A was to take all of the gas to its Black's Fork Plant. The
problem with this proposal is that Pipeline A owns the Plant and the only pipeline
class of the Plant. Based on October's index prices, Pipeline A's price was
$.29/mcf below two other pipeline companies in the area.

The offer proposed by Pipeline B was to deliver gas to the Opal Plant for less
gathering cost than Pipeline A. This would allow the operator less gathering cost
and allow the delivery of gas to a preferable market. The only problem was that
Pipeline B's interconnect was 2½ miles south of the five wells, hence the 2½ mile
R-O-W request. Because of BLM's decision to reject the R-O-W application, the
producer must use Pipeline A and pay more in gathering costs. This decision will
in turn cause the producer to receive less money for the produced gas, pay more
in transportation costs, and reduce the money paid to the royalty owners which in
this case is the federal government.

BLM rejected the R-O-W application by stating that "[s]ince there is already
sufficient capacity in existing pipelines to transport your natural gas, it has been
determined that allowing this additional pipeline at this time would not be in the
public interest and would cause undue and unnecessary degradation to the
public lands" (see Attachment B)

It is not PAW's position to defend a particular company or project over another;
however, PAW brings this example to CEQ's attention because there is a
concern that BLM's land management decision to refuse granting the second
pipeline connection based on surface disturbance will affect the market and
potentially set a precedent for future projects on public lands. PAW believes that
it is not within BLM's authority to make land management decisions that significantly affect the gas transportation market (i.e. pricing, available pipeline capacity, transportation, etc.).

Clear and concise written instructions should be issued to BLM state and field offices immediately to guide land management, surface disturbing decisions, which may potentially affect the gas transportation market. Once instructions are issued, careful oversight must be provided by the Administration to ensure that such instructions are interpreted and implemented as were intended.

PAW appreciates this opportunity to provide meaningful comment to the CEQ Energy Task Force regarding issues that affect our ability to access public lands for purposes of natural resource development and industry will continue to strive for a balance between economic growth and environmental protection. Should you have questions or require additional information, please do not hesitate to contact me.

Sincerely,

Dru Bowser
Vice President
Petroleum Association of Wyoming

Cc: The Honorable Gale Norton
    The Honorable Ann Veneman
    The Honorable Spencer Abraham
    The Honorable Jim Geringer
    The Honorable Craig Thomas
    The Honorable Mike Enzi
    The Honorable Barbara Cubin
    Mr. Steve Degenfelder
    Mr. Curt Parsons
    Mr. Kirk Steinle
    Mr. Rick Robitaille
    Mr. Gene George
    Mr. Joe Icenogle
    Ms. Claire Moseley
    Mr. Bob Ugland
October 5, 2001

Mr. Bill Wadsworth
Bureau of Land Management
P.O. Box 768
Pinedale, Wyoming 82941

RE: Application for Pipeline Right-of-Way
Mesa #11-16 well
Sublette County, Wyoming

Dear Bill:

In accordance with our telephone conversation concerning Double Eagle constructing a pipeline to transport our gas from the above referenced well, please find enclosed an application for right-of-way across lands administered by BLM.

Sincerely,

[Signature]

D. Steven Degenfelder
Vice President, Land
APPLICATION FOR TRANSPORTATION AND
UTILITY SYSTEMS AND FACILITIES
ON FEDERAL LANDS

NOTE: Before completing and filing the application, the applicant should completely review this package and schedule a
pre-application meeting with representatives of the agency responsible for processing the application. Any agency
may have specific and unique requirements to be met in preparing and processing the application. Many times, with
the help of the agency representative, the application can be completed at the pre-application meeting.

1. Name and address of applicant (include zip code)
   Double Eagle Petroleum Company
   P.O. Box 766
   Casper, Wyoming 82602

2. Name, title, and address of authorized agent if different
   from line 1 (include zip code)
   Stephen K. Halil, President

3. TELEPHONE (area code)

   Authorized Agent
   (307) 237-9330

4. Are applicants or your (check one)
   a. Individual
   b. Corporation*
   c. Partnership/Association*
   d. State Government/State Agency
   e. Local Government
   f. Federal Agency

   * If checked, complete supplemental page

5. Specify what application is for: (check one)
   a. New authorization
   b. Renewing existing authorization
   c. Amending existing authorization
   d. Assigning existing authorization
   e. Issuing use for which no authorization has been received*
   f. Other*

   * If checked, provide details under item 7

6. If an individual or partnership are you a citizen(s) of the United States?  □ Yes  □ No

7. Project description (describe in detail): (a) Type of activity facility, e.g. canal, pipeline, road;
(b) related structures and facilities; (c) physical specifications (length, width, grading, etc.); (d) width
and length; (e) size of area; (f) date of survey; (g) date of construction; (h) temporary or permanent use
for construction (attach additional sheet if additional space is needed)

SEE ATTACHED EXHIBIT "A"

8. Attach a map covering area and show location of project proposed  YES

9. State or local government approval: □ Attached □ Applied for □ Not required

10. Nationwide permit application for: □ Attached □ Not required

11. Does project cross international boundary or affect international waters?  □ Yes  □ No  □ Yes, "indicate on map"

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

Double Eagle Petroleum Company is authorized to do business in the state of Wyoming.

(Continued on page 2)
A straight path between wellsite and pipeline interconnect.

b. Why not these alternatives not selected?

Following existing pipeline corridor would disturb less surface and is topographically more prudent.

c. Characteristics to why it is necessary to cross Federal Lands.

Federal lands surround all possible routes.

14. List alternatives and pending applications filed for similar projects which may provide information to the permitting agency. (Specify number, date, code, or amount)

None Known

15. Provide statement of need for project, including the economic feasibility analysis such as: (a) cost of proposed transmission, operation and expansion; (b) estimated costs of new transmission and/or expansion; (c) expected public benefits. See Economic need by Double Eagle to market its share of gas from respective wells and obtain highest prices for product.

16. Describe probable effects on the population in the area, including health and economic aspects, and thermal efficiencies.

None

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the extent or amount change in any reservoir or body of water; (e) existing use of land; and (f) the health of the land, including vegetation, soil, and land stability.

None

18. Describe the probable effects that the proposed project will have on: (a) populations of fish, plants, wildlife, and marine life; including threatened and endangered species; and (b) assess mismatches, including harvesting, capturing, collecting, or killing these animals.

None

19. State whether any hazardous material, as defined in this paragraph, will be used, produced, transported or stored on or within the right-of-way or any of the right-of-way facilities, or used in the construction, operation, maintenance or transmission of the right-of-way or any of the facilities. "Hazardous material" includes any substance, pollutant or combination that is listed or regulated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9001 et seq., and its regulations. The definition of hazardous substance under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 et seq., and its regulations. The term "hazardous waste" also includes any material or byproduct formed or generated by a person who knows, or has reason to know, that it is an otherwise specifically listed or designated as hazardous substance under CERCLA, Section 6904(a), 42 U.S.C. 6904(a), and it does not include nonhazard material.

None Expected

20. Name of the Department(s)/Agency(Gov) where this application is being filed.

Department of the Interior
Bureau of Land Management
Pinedale Field Office

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information is correct to the best of my knowledge.

[Signature]

This 18, U.S.C. Section 1001 and Title 18 U.S.C. Section 1012, makes it a crime for any person knowingly and willfully to make or to cause to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

[Signature]

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DOE016-0865

Obtained and made public by the Natural Resources Defense Council, March/April 2002
PLAN OF DEVELOPMENT - PIPELINE RIGHT-OF-WAY
DOUBLE EAGLE PETROLEUM COMPANY
Section 21, 22 and 27
Township 32 North, Range 109 West
Sublette County, Wyoming

PROJECT:
To construct a 4-foot natural gas pipeline crossing federal lands approximately 1.5 miles in length in order to connect Wexpro's Mesa #11-16 well into existing gas gathering system of Duke Energy, formerly known as Jonah Gas Gathering.

Facility Description:
1) Purpose and Need for the Right-of-Way Facility:
   a) Commodity - natural gas from gas well.
   b) Pipeline is a temporary gathering line.
   c) Pipeline will be placed on surface during winter 2001-2002 pending installation of a larger pipeline by Duke Energy expected in the summer of 2002.
   d) There is no required area of disturbance as pipeline will be placed on surface. The surface will not be bladed. Work on installation will be confined to the existing roadway area parallel to the pipeline. Once the pipeline is prepared, it will be place on the surface manually.
   e) Pipeline will occupy space adjacent and parallel to existing pipelines operating under right of way #WY-7538 across federal lands.
   f) The entire route of the proposed right of way across federal lands has been the subject of several cultural surveys performed by Jonah Gas Gathering, Mountain Fuel Supply, Ultra Resources and Mountain Gas Resources.

2) Facility Design Factors:
   a) Pipeline pressure will be 200-1,000 psi, pipe weight and grade to withstand said pressure with estimated flow rates up to 5 MMCFD.
   b) Gas is "sweet" gas, no measurable toxic gases are present.
   c) Soil is clay and sandy clay.
   d) Pipeline operating temperature 60-80 degrees Fahrenheit.

3) Additional Components to the Right-of-Way:
   a) Gathering line from the Mesa #11-16 will connect into existing gathering line owned by Duke Energy, formerly Jonah Gas Gathering in Section 27, Township 32 North, Range 109 West.
   b) No pumping, compressor or metering facilities will be located on the BLM right of way requested.

4) A right of way will be obtained from The Wyoming State Land Office on
approximately .5 miles of proposed pipeline that cross in Section 16 (T32N-R109W).

5) Right-of-Way is located as captioned above and as shown on the attached map, more specifically from the Mesa #11-16 well across State Lands for approximately .5 miles and across BLM lands for approximately 1.5 miles until pipeline connects with said pipeline owned by Duke Energy.

6) No other resource values are affected.

7) Stabilization and Rehabilitation - recontoured ground will be reseeded, water diversion ditches will be cut on all grades. Pipeline will be left in place upon completion of the project. There will be no unnecessary surface disturbance.

8) Operation - no regular vehicle traffic will run on the right-of-way, however, the line will be checked occasionally for leaks. It may be necessary to expose a portion of the line for repairs from time-to-time; if so, the disturbance will be minimized, ground recontoured and reseeded.
DOUBLE EAGLE PETROLEUM COMPANY

PLAN OF DEVELOPMENT
PIPELINE RIGHT-OF-WAY
Section 21, 22 and 27
Township 32 North, Range 109 West
Sublette County, Wyoming

Obtained and made public by the Natural Resources Defense Council, March/April 2002
Attachment B
DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

Pinedale Field Office
P.O. Box 766
Pinedale, Wyoming 82941-4768

Certified Mail 7000 0520 0021 8232 3869 Return Receipt Requested

Mr. Steven Degenfelder
Double Eagle Petroleum & Mining Company
PO Box 766
Casper, WY 82602

Application Received
October 9, 2001

Application Rejected

Re: Pipeline - Mesa 11-16


It is Bureau of Land Management policy to review natural gas pipeline right-of-way applications with respect to existing pipelines. There are two existing sales pipelines in this area which have the capacity to transport your natural gas. Both of these pipelines have the "common carrier" 30 U.S.C. §185 (g)(1) stipulation placed on them as provided for under Section 28 of the Mineral Leasing Act as amended. A copy of this statute is enclosed for your information.

Since there is already sufficient capacity in existing pipelines to transport your natural gas, it has been determined that allowing this additional pipeline at this time would not be in the public interest and would cause undue and unnecessary degradation to public lands.

Therefore, right-of-way application WYW-153987, is hereby rejected.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the attached Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993), 43 CFR 2804.1, or 43 CFR 2824.1, for a stay (extension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named.

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DOE016-0871

Obtained and made public by the Natural Resources Defense Council, March/April 2002.
in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

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

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of immediate and irreparable harm if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

Priscilla Mecham
Field Manager

Enclosures: 30 U.S.C. Form 1842-1
Sec. 185. Rights-of-way for pipelines through Federal lands

- (a) Grant of authority
  Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

- (b) Definitions
  - (1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.
  - (2) "Secretary" means the Secretary of the Interior.
  - (3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

- (c) Inter-agency coordination
  - (1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.
  - (2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

- (d) Width limitations
  The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

- (e) Temporary permits
  A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural

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environment or public safety.

- (f) Regulatory authority
  Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance use and termination.

- (g) Pipeline safety
  The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

- (h) Environmental protection
  - (1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) (42 U.S.C. 4332(2)(C)) or any other provision of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
  - (2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

- (i) Disclosure
  If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3% or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

- (j) Technical and financial capability
  The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way or permit is requested in accordance with the requirements of this section.

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Obtained and made public by the Natural Resources Defense Council, March/April 2002
(k) Public hearings
The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

(l) Reimbursement of costs
The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

(m) Bonding
Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.

(n) Duration of grant
Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility; its useful life, and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

(o) Suspension or termination of right-of-way

(1) Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to section 554 of title 5, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) If the Secretary or agency head uses the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: Provided, That where the failure to use the right-of-way is due to circumstances not within the holder’s control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) Joint use of rights-of-way
In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or
adjacent to rights-of-way or permit area granted pursuant to this section.

4 (q) Statutes
No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant’s option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

4 (r) Common carriers

4 (1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

4 (2)

4 (A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

4 (B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.

4 (3)

4 (A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (15 U.S.C. 717 et seq.) or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

4 (B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

4 (4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this chapter.

4 (5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor. The Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

4 (6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a

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DOE016-0876

Obtained and made public by the Natural Resources Defense Council, March/April 2002
right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;
(B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(a) Exports of Alaskan North Slope oil

(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this chapter or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 1652 of title 43, such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of November 28, 1995. In evaluating whether exports of this oil are in the national interest, the President shall consider:
(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;
(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of November 28, 1995; and
(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories. If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 1652 of title 43 shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 802 of title 46, Appendix).


(4) The Secretary of Commerce shall, if necessary, issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices
SIGNIFICANTLY ABOVE WORLD MARKET LEVELS AND FURTHER FINDS THAT THESE SUPPLY SHORTAGES OR PRICE INCREASES HAVE CAUSED OR ARE LIKELY TO CAUSE SUSTAINED MATERIAL ADVERSE EMPLOYMENT EFFECTS IN THE UNITED STATES, THE SECRETARY OF COMMERCE, IN CONSULTATION WITH THE SECRETARY OF ENERGY, SHALL RECOMMEND, AND THE PRESIDENT MAY TAKE, APPROPRIATE ACTION CONCERNING EXPORTS OF THIS OIL, WHICH MAY INCLUDE MODIFYING OR REVOKING AUTHORITY TO EXPORT SUCH OIL.

§ 6 ADMINISTRATIVE ACTION UNDER THIS SUBSECTION IS NOT SUBJECT TO SECTIONS 551 AND 553 THROUGH 559 OF TITLE 5.

§ 7 EXISTING RIGHTS-OF-WAY

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) (42 U.S.C. 4332(2)(C)) of the National Environmental Policy Act of 1970 (Public Law 90-920; 42 U.S.C. 4321).

§ 8 LIMITATIONS ON EXPORT

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (30 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: Provided, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President’s finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

§ 9 STATE STANDARDS

The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

§ 10 REPORTS

§ 10(1) The Secretary and other appropriate agency heads shall report to the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

§ 10(2) The Secretary or agency head shall promptly notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until a notice of

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intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to the terms and conditions he proposes to impose, has been submitted to such committees.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

(x) Liability

(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this chapter shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(y) Antitrust laws

The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws.
Attachment C
DOUBLE EAGLE PETROLEUM COMPANY

PLAN OF DEVELOPMENT
PIPELINE RIGHT-OF-WAY
Section 21, 22 and 27
Township 32 North, Range 109 West
Sublette County, Wyoming
FAX TRANSMITTAL
From City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Date: February 15, 2002
To: The Honorable Spencer Abraham
    FAX: 202/586-4403
From: Mayor Judy Nadler, City of Santa Clara
Re: DOE Electricity Advisory Board Recommendation

Total Pages sent, including cover: 4

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