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RE: Association of Oil Pipe Lines and American Petroleum Institute Comments on USDA Forest Service National Environmental Policy Act Compliance, Advance Notice of Proposed Rulemaking Request for Comment, Docket No. RIN 0596-AD31

The Association of Oil Pipe Lines (“AOPL”) and American Petroleum Institute (“API”) submit these comments in response to the Advance Notice of Proposed Rulemaking issued by the U.S. Department of Agriculture Forest Service (USFS) on January 3, 2018, in the above-referenced proceeding.

AOPL is a national trade association that represents owners and operators of liquids pipelines across North America and educates the public about the vital role oil pipelines serve in the daily lives of Americans. AOPL members bring crude oil to the nation’s refineries and important petroleum products to our communities, including all grades of gasoline, diesel, jet fuel, home heating oil, kerosene, propane, and biofuels.

API is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and nearly 8 percent of the U.S. economy. API’s more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. They provide most of the nation’s energy and are backed by a growing grassroots movement of more than 40 million Americans.

AOPL and API members appreciate the opportunity to provide comments on ways to improve USFS permitting and compliance with the National Environmental Policy Act (NEPA). AOPL and API members believe USFS has numerous opportunities to make its NEPA compliance more efficient and effective.

Categorical Exclusions for No or Low Impact Projects

Pipeline Maintenance Activities

Pipeline operators periodically perform preventative maintenance on their pipelines to keep them in safe working order. Pipeline maintenance activities are conducted within the right of way of an existing pipeline. Thus, not only do they pose little environmental impact to the surrounding forest, they are conducted by the pipeline operator with the express purpose of preventing environmental impact to surrounding forest lands. However, the USFS frequently subjects these safety maintenance activities to lengthy permitting reviews and delays and still reach the same conclusion; that these actions do not individually nor cumulatively have a significant effect on the environment. USFS resources, the environment generally, and forest service lands specifically, would be better served by prompt action by pipeline operators to meet the maintenance needs of their existing facilities. Thus, USFS should establish a categorical exclusion (CE) for maintenance, including pipeline monitoring, inspection, maintenance and repair activities of existing pipelines within existing rights of way.

Projects Less than a Certain Length

The USFS currently triggers NEPA review from the moment a foot is on federal property for the purposes of new construction, no matter how little impact a pipeline project presents. This can represent an unnecessary use of federal resources for small projects that will not pose meaningful impact on the environment. A CE for pipeline projects below a certain maximum distance (exact distance TBD) would reflect this de minimis reality. Pipeline projects beyond a certain length would continue through more extensive NEPA review, including EA and/or EIS. This type of expanded use of CEs could also dictate certain construction requirements such as maximum construction ROW width, procedures for timber management, specific requirements for BMP implementation, etc., that would need to be complied with in order for a project proponent to use CEs.

Process and Analysis Improvements

Expand Forest Management Plan Inclusion of Special Use Permits for Utilities

Special use permits, including for relocation of utilities or operation and maintenance activities, have a role in streamlining review of routine activities. Agencies oftentimes develop standard provisions for certain types of special use permits.

Some USFS Units have established processes for creating and approving special uses for utilities. However, not all Forest Management Plans include these process and approval mechanisms. Those that don't subject themselves to additional unnecessary reviews and delays undertaking a plan amendment process in addition to a special use process. Some units will require a separate NEPA process for each project seeking a special use permit, even if the special use is standard and predictable. The USFS can avoid these unnecessary and ad hoc additional delays by directing the update of all Forest Management Plans to allow for, and create a process for, approving special uses for utilities or other routine pipeline operation and maintenance activities.

Pre-Approved Best Management Practices

Similar to greater standard use of special use permits, pre-approved best management practices (BMPs) should be established for certain types of projects in various and similar environmental settings. The published expectation that specific types of BMPs or mitigation measures will be required in association with certain types of proposed actions in specific environmental conditions could remove uncertainty and improve the timing of review and the amount of analysis required (assuming that understanding of the requirement of the BMPs or measures is acknowledged by the proponent).

Systematic Review of Public Comments

Engagement of the public on proposed actions varies significantly by District and location, and has significant impacts to the timing of the NEPA process. In many cases, the input from the public is from persons remote to the project location, unfamiliar with the local conditions, and lacking scientific basis or understanding of the resources and potential impacts. As such, the agency's necessary review and response to such input is inherently inefficient. The agency would be well-served, then, to develop a system for engaging the public and encouraging feedback that prioritizes response based on the commenters' demonstrated understanding of the proposed action's potential impacts.

Project Review Process Improvements

In addition to greater use of CEs for low or no impact projects and standardizing special use permit approvals, USFS can undertake process improvements applicable to any projects. For all pipeline projects, USFS should hold a mandatory application kick-off meeting with the applicant to discuss and prioritize the project. This kick-off meeting should seek to accomplish the following:

- a) Educate USFS on purpose and priority of the Project. Is the project being done in furtherance of public safety, protection of the environment or in satisfaction of a local, state or federal regulatory requirement?
- b) Establish and agree upon key milestones for permit review process and development of an expected schedule or timeline (i.e. Gantt chart) of the project.

- c) Discuss and identify necessary (knowledgeable/experienced) USFS resources to perform and complete the key milestones of the permit review process and discuss availability or personnel shortages. Discuss preliminary components of a Cost Recovery Agreement.
- d) Agreement and commitment to meet on a continuous basis throughout the permit review process.

USFS should also be more transparent with applicants in communicating their ability to meet the key milestones established in the Project schedule. USFS must be willing to:

- a) Use the Cost Recovery Agreement (CRA) process.
- b) Supplement existing technical staff with additional support staff (internal or external staff) so that the application review process is not unduly delayed. USFS' overall budget or hiring constraints should not serve to impede key regional infrastructure projects.
- c) Be transparent with applicant on how CRA funds are being expended.

Expedited Permit Process for Projects of National Interest

USFS should consider establishing criteria for any projects that are deemed to be in the national interest, including economic and security factors. Where these criteria are met, the USFS should utilize an expedited permit process. If projects of national interest are identified, the USFS should assign personnel to facilitate a fast-tracked permit review and decision process.

Expand Use of Existing Decisions

The USFS should expand use of existing decisions to determine whether to authorize an action. While an extensive level of analysis may be appropriate for some (few) actions with national implications, many proposed actions are similar in scope to previous approved actions (e.g., a proposed utility line in an existing corridor with other similar lines, use of a previously approved access road, etc.) and are likely to result in similar minimal impacts to the environment. These would include proposed actions with multiple involved agencies and associated authorization processes. Efficiency would increase if the USFS would facilitate use of findings of previously approved actions – this could be enhanced through improved interagency communication and relationship management and development of an effective tracking system that provides information related to the type(s) and environmental settings of actions. In addition, previous studies should be made more accessible to the public and other agencies so that their findings and results can be utilized and duplication of some effort can be avoided.

Benefits of Dead Vegetation Thinning

Combatting wildfires has stressed the USFS budget in recent years, as over 50% of the most recent USFS budget is dedicated to wildfire control. In 1995, wildland firefighting made up only 16% of the Agency's appropriations. This budget shift has hurt the Agency's ability to process over 6,000 backlogged permits.

The USFS should develop a fast track permit program to approve the thinning of dead vegetation on USFS land, which will reduce the number of wildland fires and will subsequently free up USFS resources to apply to important environmental reviews.

Ensure USFS Scoping Requirements Consistent with CEQ Requirements

USFS policy has broadened NEPA scoping requirements to all proposed actions of the Agency. This current expansive view goes above and beyond CEQ requirements. CEQ only requires scoping to be commissioned for projects that require the preparation of an Environmental Impact Statement (EIS) and not Environmental Assessments (EA) or for projects that are Categorically Excluded (CE). USFS should limit its scoping requirements to those projects explicitly required by CEQ.

Lead Agency Clarification

USFS can provide more clarity regarding its NEPA lead agency responsibilities in reaching out to all agencies that have permitting and review responsibilities for the project. USFS has the opportunity to improve its facilitation of cross agency cooperation and drawing non-lead agencies into the EIS process at early stages to adequately cover issues of importance to all concerned. This additional USFS effort up front will keep the project moving and result in fewer critical comments being filed.