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# PUBLIC COMMENT ON THE PLAN OF DEVELOPMENT (POD) REGARDING THE BRIDGER PIPELINE EXPANSION PROJECT

**DOI-BLM-MT-C020-2026-0054-EIS**

*SUBMITTED ON BEHALF OF:*

Honor the Earth
350 Montana
Center for Biological Diversity
Families for a Livable Climate
Montana Environmental Information Center
Montana Health and Climate
Mountain Mamas
Red Medicine LLC
Sierra Club
Western Environmental Law Center
Western Organization of Resource Councils
Western Watersheds Project
Wild Montana
WildEarth Guardians
Wyoming Outdoor Council

DATE: May 1, 2026

## TABLE OF CONTENTS

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May 1, 2026

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**RE: Public Comment on the Plan of Development (POD) regarding the Bridger Pipeline Expansion Project (DOI-BLM-MT-C020-2026-0054-EIS)**

Dear Mr. Blundell and Mr. Jones:

Honor the Earth, 350 Montana, Center for Biological Diversity, Families for a Livable Climate, Montana Environmental Information Center, Montana Health and Climate, Mountain Mamas, Red Medicine LLC, Sierra Club, Western Environmental Law Center, Western Organization of Resource Councils, Western Watersheds Project, Wild Montana, WildEarth Guardians, and Wyoming Outdoor Council submit these comments to highlight the significant potential risks of the Bridger Pipeline Expansion Project. If constructed, the pipeline would traverse ecologically and culturally important lands in Eastern Montana and Wyoming. It would cross major rivers and their tributaries that support fisheries, recreation, and agricultural activities; wetlands that provide crucial habitat for nesting and migrating birds; important cultural sites for numerous Tribes; cropland that supports families and local economies; and critical drinking water aquifers. And with the capacity to carry 1.13 million barrels of crude oil per day, the pipeline

would be massive.[1] For all of these reasons, the Bridger Pipeline deserves the agencies' closest scrutiny.

Unfortunately, the agencies have failed to disclose fundamental details about the project that are crucial to understanding its potential impacts. Most importantly, project documents do not identify the nature of the crude oil the pipeline would carry, which is essential to understanding risks from spills, as well as the pipeline's purpose and need. However, based on available evidence,[2] it appears likely that the Bridger Pipeline will carry Alberta's heavy tar sands crude—actually, bitumen mixed with a diluent to allow the thick, heavy substance to flow—one of the dirtiest fuel sources in the world. In fact, one day before this public comment period closed, the developer went on record stating that the pipeline would carry tar sands oil—meaning that reporters have been given more information about what this pipeline will carry than regulators. Further, the project documents do not disclose the destination of the crude after it reaches Guernsey, Wyoming, including whether it would be refined for export out of the United States, which is another crucial data point for understanding the project's purpose and need.

Further, prior to the close of the current comment period, DEQ had apparently informed Bridger that the company's Major Facility Siting Act ("MFSA") Application for a Certificate of Compliance ("MFSA Application") was incomplete and deficient under state law. DEQ has not disclosed that information to the public. Instead, DEQ has allowed this public comment period to end and, as a result, solicited public comment on an application that it knows to be outdated and incomplete. DEQ's approach raises serious concerns about the agency's willingness to allow meaningful public participation during the MFSA process. DEQ should

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[1] According to the developer, "[t]he Project will be engineered to deliver a nominal capacity of around 550,000 barrels per day (bpd), however the proposed pipeline size with additional pump stations can move up to 1.13 million bpd." Plan of Development (POD) at 34.

[2] The pipeline would cross the United States–Canada border in Phillips County, Montana, and connect with one or more existing pipelines in Alberta, Canada. Alberta is one of the world's largest producers of crude from tar sands (also called oil sands) and it has been reported that the Bridger Pipeline applicant is partnering with South Bow, a spinoff of TC Energy, the Canadian developer of the Keystone XL pipeline, which was developed as a tar sands pipeline. *See* Tuttle, R., TC Energy Spinoff Weighs Keystone XL Revival, Bloomberg News (Feb. 25, 2026), https://www.ttnews.com/articles/tc-energy-spinoff-weighs-keystone-xl-revival; Potkins, M., South Bow confirms open season for new pipeline to the U.S. using legacy Keystone XL permit, Financial Post (Mar. 6, 2026), https://financialpost.com/commodities/energy/oil-gas/south-bow-open-season-new-pipeline-us.

pause the MFSA process and re-open it only after it has received an application that complies with state law. At minimum, upon receipt of a *complete* application from Bridger, DEQ should re-open the public comment period.

These comments address the scope of environmental analyses that the U.S. Bureau of Land Management (BLM) and Montana Department of Environmental Quality (DEQ) will perform. At the outset, it is essential that the environmental impact statement (EIS) look at all state and federal approvals together rather than just physical impacts on BLM lands. Further, given the Applicant's recent admission that the utility of the Bridger Pipeline depends on the construction of an *additional* pipeline to refineries in the Gulf Coast or Cushing, Oklahoma,[3] the agencies must evaluate the cumulative effects of this integral action. And the agencies must disclose fundamental details about the proposed pipeline and its impacts in a draft EIS for more meaningful public scrutiny and comment.

## I. THE AGENCIES MUST EVALUATE AN APPROPRIATE "PURPOSE AND NEED" FOR THE PIPELINE.

The "purpose and need" statement of an EIS is an essential element to help guide the agencies' review and inform the scope of feasible alternatives. Here, BLM must ensure that it properly, and not overly narrowly, defines its objectives in reviewing Bridger's Application.

The Notice of Intent (NOI) identifies two statements of purpose and need: that of the agency and that of the applicant. The NOI's purpose-and-need statement states, in full:

> *BLM Purpose and Need*
>
> The purpose and need for the BLM is to respond to the SF–299 application submitted by Bridger to construct, operate, maintain, and terminate the following elements: pipeline, access roads, main line values, pump stations and temporary workspaces on BLM lands in Montana and Wyoming.
>
> *Applicant Purpose and Need*
>
> The purpose of the Project is to transport crude oil from production areas in Canada to existing infrastructure and downstream markets in the United States. The proposed Project facilitates fulfillment demand for crude oil resources from production areas in Canada to existing infrastructure in

[3] Desroches, K., Leadership along the Hi-Line react to Canadian oil sands pipeline, Yellowstone Public Radio (Apr. 30, 2026), https://www.ypradio.org/energy/2026-04-30/leadership-along-the-hi-line-react-to-canadian-oil-sands-pipeline.

> Guernsey, Wyoming and other downstream markets. The Project is needed to address critical energy supply challenges facing the United States and increase oil supply into the U.S. for growing refinery production. The Project reflects a significant and meaningful investment in the U.S. energy economy. Executive Order (E.O.) 14156 ("Declaring a National Energy Emergency," January 20, 2025) directs Federal agencies to expedite the identification, siting, production, transportation, and generation of domestic energy resources, including crude oil, on Federal lands and elsewhere, to ensure national energy security and economic stability, specifically Section 3, Expediting the Delivery of Energy Infrastructure.[4]

The Applicant's purpose and need statement is unreasonably narrow, based on a false premise, and cannot be adopted by BLM for purposes of its NEPA review. First, there is no demonstrated energy emergency and, second, even if there was, there is no evidence that the Bridger Pipeline is necessary to alleviate it.[5] Crucially, the Applicant has supplied *no* information to suggest that the crude oil the pipeline would carry is needed to supply domestic fuel needs, or even that its end use would be in the United States at all. The Applicant's purpose states the proposed pipeline would "transport crude oil from production areas in Canada to existing infrastructure *and downstream markets in the United States*."[6] BLM and DEQ must evaluate whether there is a need for heavy, sour crude from Canada's tar sands crude oil in the current downstream market.

After the agencies identify the type of crude the pipeline would carry, the agencies consideration of "need" must include an evaluation of whether there is *already* pipeline, truck, or rail capacity to transport the undisclosed crude oil from Guernsey, Wyoming, through PADD-2 and on to the area of "growing refinery production." Additionally, the agencies must consider whether there is, in fact, refinery capacity for tar sands crude oil, which can only be refined at facilities with specialty coking equipment to handle it. And ultimately, the agencies must determine whether the refined fuel would be used domestically. The U.S. is a net exporter of petroleum products, including the gasoline, diesel fuel, and jet fuel that are the most common end products of the crude oil and tar sands refining

[4] Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Bridger Pipeline Expansion Project, Montana, 91 Fed. Reg. 16218 (Apr. 1, 2026) (hereafter, NOI).

[5] *See infra* Sect. IV.

[6] *Id.* (emphasis added).

processes.[7] Importing petroleum only to export it again cannot possibly address a *domestic* energy emergency.

BLM may not lawfully adopt the Applicant's purpose and need. In addition to the reasons summarized above, as lead agency, BLM's obligations extend far beyond just the "elements" of the proposed pipeline on "BLM lands in Montana and Wyoming." Instead, the agency must identify the need for, or purpose of, the project through the lens of the agency's statutory authorization to act[8]— an agency must identify "the purpose and need for the proposed action based on the [agency's] statutory authority."[9] Here, BLM's statutory obligations under the Mineral Leasing Act and Federal Land Management Policy Act require the agency to evaluate whether the pipeline would serve the public interest, or have serious environmental consequences that cannot be mitigated—both grounds for rejecting Bridger's Application.[10]

Thus, in addition to determining whether there is actually a need for the project, BLM's purpose also must be to evaluate whether the pipeline would be inconsistent with the public interest and BLM's conservation obligations. And guided by this purpose, BLM must evaluate the full range of less-harmful alternatives, including a no-action alternative in which a crude oil pipeline is *not* built and domestic fuel needs, if they exist, are met through existing capacity or clean and sustainable means.[11]

## II. BLM AND DEQ MUST THOROUGHLY EVALUATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS.

Bridger's proposal to transport crude oil—potentially diluted bitumen from Canada's tar sands—via a 646.9-mile pipeline across Montana and Wyoming poses significant risks to the people and environments of Montana, Wyoming, and beyond. BLM and DEQ's analysis of the proposed project must acknowledge the high risk that the pipeline will rupture or leak, as we have learned with petroleum pipelines

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[7] Ex. 79, U.S. Energy Info. Admin., Oil and petroleum products explained: Oil imports and exports (Jan. 19, 2024), https://www.eia.gov/energyexplained/oil-and-petroleum-products/imports-and-exports.php.

[8] *Friends of Animals v. Burgum*, 164 F.4th 738, 756 (9th Cir. 2026).

[9] U.S. Dep't of the Interior Handbook of NEPA Implementing Procedures (DOI NEPA Handbook), 516 DM 1, Appendix 1, § 2.2 (2025), https://www.doi.gov/oepc/national-environmental-policy-act-nepa.

[10] 43 C.F.R. §§ 2804.26(a), 2884.23(a); *see also infra* Sect. V (discussing the Mineral Leasing Act and Federal Lands Management and Policy Act).

[11] *See infra* Sect. III (discussing feasible alternatives).

time and again. And in addition to the spill risk, the pipeline would carry significant consequences (direct, indirect, and cumulative) for water resources, wildlife, soils and vegetation, climate and air pollution, health and safety, recreation, cultural resources, and a host of other values and resources.

To aid its consideration of these impacts, BLM's environmental review of the pipeline must comply with the National Environmental Policy Act (NEPA).[12] NEPA has two fundamental purposes: (1) to guarantee that agencies take a "hard look" at the consequences of their actions before the actions occur by ensuring that "the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts"; and (2) to ensure that "the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision."[13] NEPA "emphasizes the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that 'the agency will not act on incomplete information, only to regret its decision after it is too late to correct.'"[14]

The Department of the Interior recently adopted new NEPA implementing procedures to replace its former NEPA regulations. Those procedures confirm the statutory requirement that BLM must prepare an environmental impact statement (EIS) for any project that could result in potentially significant environmental effects.[15] In making a significance determination, the procedures require agencies to "consider, as appropriate to the proposed action, any connected actions, the scope of the affected area (national, regional, or local), reasonably foreseeable trends and planned actions within that area, and the affected area's natural and cultural resources."[16] Agencies shall also consider the following criteria, as appropriate to the proposed action:

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[12] 43 C.F.R. § 1610.5-5.

[13] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); *see also Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 145 S. Ct. 1497, 1510 (2025) (NEPA "ensures that the agency and the public are aware of the environmental consequences of proposed projects").

[14] *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (internal citation omitted); *see also Seven Cnty.*, 145 S. Ct. at 1510 ("Properly applied, NEPA helps agencies to make better decisions and to ensure good project management.").

[15] U.S. Dep't of the Interior Handbook of NEPA Implementing Procedures (DOI NEPA Handbook), 516 DM 1, Appendix 1, § 11.8 (Feb. 2026), https://www.doi.gov/oepc/national-environmental-policy-act-nepa.

[16] *Id.* § 1.2(b)(1).

(i) Both short- and long-term effects;
(ii) Both beneficial and adverse effects;
(iii) Effects on public health and safety;
(iv) Economic effects; and
(v) Effects on the quality of life of the American people.[17]

DEQ's environmental review obligations stem from MEPA and MFSA. MEPA, which applies to state agency projects and project approvals, was designed to "enable[e] fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment."[18] To that end, and like NEPA, "MEPA compliance requires that agencies take a 'hard look' at a project's environmental impacts."[19] The required "hard look" at "environmental consequences" imposes an obligation on agencies to "'make an adequate compilation of relevant information, to analyze it reasonably, and to consider all pertinent data.'"[20] Properly implemented, "MEPA's procedural mechanisms … enabl[e] fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment."[21]

MEPA requires DEQ to consider, among other things: an action's "proximate environmental impacts;" the "proximate adverse effects on Montana's environment that cannot be avoided if the proposed action is implemented;" alternatives; and "the economic advantages and disadvantages of the proposal.[22] DEQ must prepare an EIS if the proposed project will "significantly affect[] the quality of the human

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[17] *Id.* § 1.2(b)(2). The Department's replacement of its NEPA regulations with less robust procedures is unlawful and does not comply with NEPA.

[18] *Park Cnty. Env't Council v. Mont. Dep't of Env't Quality*, 2020 MT 303, ¶ 70, 402 Mont. 168, 477 P.3d 288.

[19] *Mont. Env't Info. Ctr. v. Mont. Dep't of Env't Quality*, 2025 MT 3, ¶ 14, 420 Mont. 150, 561 P.3d 1033 (quoting *Mont. Trout Unlimited v. Mont. Dep't of Env't Quality*, 2024 MT 36, ¶ 18, 415 Mont. 214, 544 P.3d 163); *Mont. Wildlife Fed'n v. Mont. Bd. of Oil & Gas Conservation*, 2012 MT 128, ¶ 43, 365 Mont. 232, 280 P.3d 877.

[20] *MEIC 2025*, ¶ 14 (quoting *Belk v. Mont. Dep't of Env't Quality*, 2022 MT 38, ¶ 26, 408 Mont. 1, 504 P.3d 1090).

[21] *Park Cnty Env't Council v. Mont. Dep't of Env't Quality*, 2020 MT 303, ¶ 70, 402 Mont. 168, 477 P.3d 288.

[22] Mont. Code Ann. § 75-1-201(1)(a)(iv); *see also* Admin. R. Mont. 17.4.609(3)(d) (requiring an evaluation of "impacts, including cumulative and secondary impacts, on the physical environment").

environment."[23]

DEQ also has review obligations arising from the Major Facility Siting Act (MFSA), which applies to new pipeline facilities. The purposes of the MFSA are to:

> (a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;
>
> (b) ensure consideration of socioeconomic impacts;
>
> (c) provide citizens with the opportunity to participate in facility siting decisions; and
>
> (d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter.[24]

MFSA contemplates the preparation of an EIS under MEPA "compelling evidence indicates that adverse environmental impacts are likely to result due to the construction and operation of a proposed facility."[25] Before certifying a new facility under MFSA, DEQ must make a host of findings, including the need for the facility; probable environmental impacts, "that the facility minimizes adverse environmental impacts," and "that the facility will serve the public interest."[26]

Pursuant to these governing statutes, BLM and DEQ must prepare a draft EIS to thoroughly evaluate the pipeline's potentially significant impacts and alternatives to avoid or mitigate them, as discussed below. While these comments raise a number of issues the agencies must consider in their analysis, the agencies must disclose their draft EIS for meaningful public review of this significant project.

### A. The EIS Must Thoroughly Consider the High Risk of Pipeline Spills, Ruptures, and Leaks.

The environmental effects of the proposed project include the direct, indirect, and cumulative impacts of the proposed pipeline: primarily, the risk that oil leaks, spills, or ruptures into the environment.

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[23] Admin. R. Mont. 17.4.607(1).

[24] Mont. Code Ann. § 75-20-102(6).

[25] *Id.* § 75-20-216(4).

[26] *Id.* § 75-20-301(1)

The question is not whether a pipeline will spill oil, but rather when it will spill oil. "From 2004 to 2023, across the country, there were 1,187 'significant incidents' involving spills of crude oil from pipelines, with a total of 750,000 barrels of oil spilled into the environment."[27] From 2004 to 2017, data from the Pipeline and Hazardous Materials Safety Administration showed that that there were an average of 186 incidents involving crude oil pipeline systems in the United States each year, and that, on average, 42,517 barrels of crude oil were released per year.[28] Research showed that twenty-nine percent of that oil was never recovered from the environment.[29]

Montana is no stranger to oil pipeline disasters. In January 2015, a pipeline owned by Bridger's parent company "spilled at least 30,000 gallons of oil into the Yellowstone River, causing the governor to declare a state of emergency," and "contaminated the drinking water for 6,000 people."[30] The State of Montana and the U.S. Department of Interior have publicly disclosed detailed information about the damage caused by the oil spill that occurred in the Yellowstone River that DEQ must consider when evaluating this project.[31]

On January 17, 2015, the 12-inch diameter Poplar Pipeline, owned by Bridger's parent company, Bridger Pipeline, LLC, spilled crude oil into the Yellowstone River just over 5 miles upstream from Glendive, Montana.[32] The United States Environmental Protection Agency estimated that up to 50,400 gallons of crude oil had been released.[33] [34] The spill was not confirmed until the next day

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[27] Ex. 1, Dutzik, et al., Accidents Waiting to Happen: Oil Pipelines (September 11, 2024) https://frontiergroup.org/resources/accidents-waiting-to-happen-oil-pipelines/.

[28] Ex. 2, Chiriboga, Cumulative Environmental Risk of Crude Oil and Natural Gas Pipelines at 2 (April 2022).

[29] *Id.*

[30] Ex. 1, Dutzik, et al., Accidents Waiting to Happen: Oil Pipelines (September 11, 2024) https://frontiergroup.org/resources/accidents-waiting-to-happen-oil-pipelines/.

[31] Ex. 3, State of Montana, Programmatic Damage Assessment and Restoration Plan and Environmental Assessment for the Bridger Pipeline 2015 Yellowstone River Oil Spill (July 2023).

[32] *Id.* at 2.

[33] Ex. 4, United States Environmental Protection Agency, Pollution/Situation Report #12 at 1 (March 24, 2015).

[34] Ex. 5, United States Environmental Protection Agency, Bridger Pipeline Release (last accessed April 24, 2026) https://response.epa.gov/site/site_profile.aspx?site_id=9708.

after odor and taste complaints about water from the City of Glendive's Water Treatment Plan.[35]

According to the Montana Department of Justice, evidence of the spill was reported at least 59 river miles downstream from the pipeline crossing,[36] just one day after the spill occurred.[37] The oil remained in the river for roughly two months, until the ice started to break up in mid-March of 2015, and was found on the shoreline through early April 2015.[38] The Montana Department of Justice also reported that the oil spill caused harm to surface water, to fish, and to recreational use.[39]

DEQ and BLM must carefully evaluate the broad swath of harms posed by the potential pipeline.

Further, because Bridger does not disclose, to the agencies, the type of crude oil that will be carried by the proposed pipeline, DEQ and BLM must evaluate the potential harms of all types of crude oil, including diluted bitumen or tar sands oil. It is particularly important that BLM and DEQ evaluate the different types of crude oil because the risks of spills differ based on the type of crude oil that is introduced to the environment.

For example, "in comparison to other commonly transported crude oils, many of the chemical and physical properties of diluted bitumen, especially those relevant to environmental impacts, are found to different substantially from those of the other crude oils."[40] Diluted bitumen is different from other crude oils primarily

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[35] Ex. 3, State of Montana, Programmatic Damage Assessment and Restoration Plan and Environmental Assessment for the Bridger Pipeline 2015 Yellowstone River Oil Spill at 2 (July 2023).

[36] Ex. 6, Montana Department of Justice, Bridger Yellowstone River 2015 Spill (accessed April 24, 2026) https://dojmt.gov/NRDP-sites/bridger-yellowstone-river-2015-spill/.

[37] Ex. 4, United States Environmental Protection Agency, Pollution/Situation Report #12 at 2 (March 24, 2015).

[38] Ex. 6, Montana Department of Justice, Bridger Yellowstone River 2015 Spill at 2 (accessed April 24, 2026) https://dojmt.gov/NRDP-sites/bridger-yellowstone-river-2015-spill/.

[39] *Id.* at 3.

[40] Ex. 84, National Academy of Sciences, Engineering, and Medicine, Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response at 3 (2016).

because it has "exceptionally high density, viscosity, and adhesion properties . . . that dictate environmental behavior as the crude oil is subjected to weathering[.]"[41]

While diluted bitumen will behave similarly to medium crude oil in the first several days of a spill, "diluted bitumen weathers faster than conventional oils."[42] "As the oil weathers, it becomes very viscous . . . and very sticky" and can "thickly coat and adhere to solid surfaces," including vegetation, debris, and wildlife.[43] "The bitumen component of diluted bitumen behaves like highly weathered oil" and persists in the environment—as a result, NOAA has noted that "under certain conditions there may be a need for more aggressive removal of stranded or submerged oil."[44]

Spills of diluted bitumen "pose particular challenges when they reach water bodies" and "[i]n some cases, the residues can submerge or sink to the bottom of the water body."[45] As a result, the diluted bitumen "may combine with particles present in the water column to submerge, and then remain in suspension or sink." "These factors are important to consider for Spill Response Planning and Implementation[.]"[46]

"It is the subsequent weathering effects, unique to diluted bitumen, that merit special response strategies and tactics."[47] "In cases where traditional removal or containment techniques are not immediately successful, the possibility of submerged and sunken oil increases."[48] This is highly problematic because "there are few effective techniques for detection, containment, and recovery of oil that is submerged in the water column" and "available techniques for responding to oil that has sunk to the bottom have variable effectiveness depending on the spill conditions."[49] "[S]pills of diluted bitumen should elicit unique, immediate actions in

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[41] *Id.*

[42] Ex. 7, NOAA, Diluted Bitumen Spills at 1,https://response.restoration.noaa.gov/sites/default/files/Diluted-Bitumen-Dilbit.pdf (accessed April 26, 2026).

[43] *Id.*

[44] *Id.*

[45] Ex. 84, National Academy of Sciences, Engineering, and Medicine, Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response at 3 (2016).

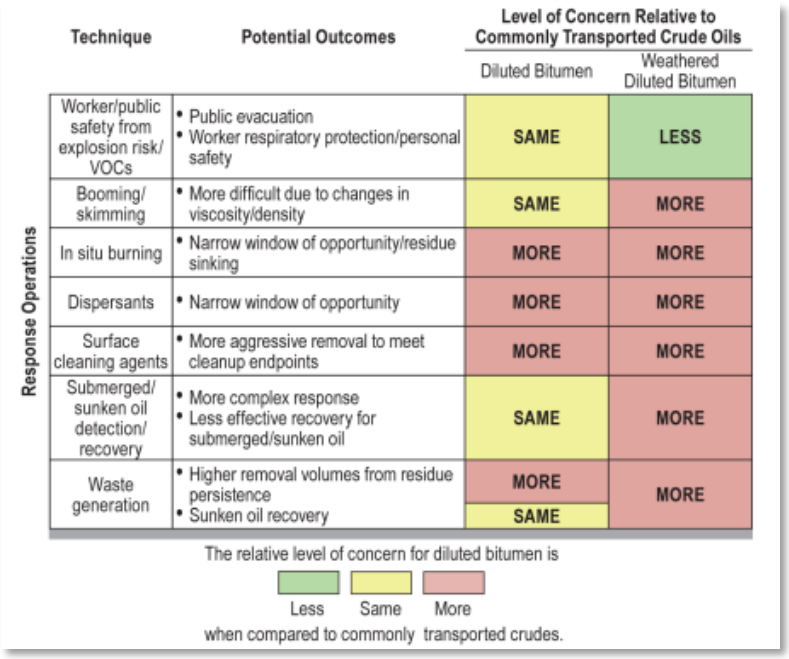
[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

response" distinct from those associated with other commonly transported crude oils,[50] as the following chart[51] makes clear:



| Response Operations: Technique | Potential Outcomes | Level of Concern Relative to Commonly Transported Crude Oils: Diluted Bitumen | Level of Concern Relative to Commonly Transported Crude Oils: Weathered Diluted Bitumen |
|---|---|---|---|
| Worker/public safety from explosion risk/ VOCs | • Public evacuation<br>• Worker respiratory protection/personal safety | SAME | LESS |
| Booming/ skimming | • More difficult due to changes in viscosity/density | SAME | MORE |
| In situ burning | • Narrow window of opportunity/residue sinking | MORE | MORE |
| Dispersants | • Narrow window of opportunity | MORE | MORE |
| Surface cleaning agents | • More aggressive removal to meet cleanup endpoints | MORE | MORE |
| Submerged/ sunken oil detection/ recovery | • More complex response<br>• Less effective recovery for submerged/sunken oil | SAME | MORE |
| Waste generation | • Higher removal volumes from residue persistence<br>• Sunken oil recovery | MORE<br>SAME | MORE |



In summary, "[d]iluted bitumen has unique properties, differing from those of commonly transported crude oils, which affect the behavior of diluted bitumen in the environment following a spill. This behavior differs from that of the light and medium crudes typically considered when planning responses to spills."[52]

### B. The EIS Must Evaluate Impacts to Surface and Ground Water Resources.

It is imperative that BLM and DEQ closely evaluate threats the pipeline poses to the region's important surface and groundwater resources, including major rivers, smaller streams and tributaries, wetlands, and drinking water aquifers. If constructed, the pipeline would cross a number of rivers in Montana and Wyoming, including the Poplar, the Missouri, the Yellowstone, the Little Missouri, the Bell Fourche, the Cheyenne, and the North Platte.[53] Bridger also states that the pipeline would cross perennial and intermittent waterways one hundred and eighty-seven

[50] *Id.* at 4.

[51] *Id.* at 6.

[52] *Id.*

[53] POD at 55–56.

times *just in Montana.*[54] In the water-starved West, all of these water bodies are precious.

Along with the U.S. Army Corps of Engineers (Corps), which has federal permitting authority for the pipeline's water crossings,[55] BLM and DEQ must clearly identify and describe the risks to these waterways. Among other things, the risk of spills and ruptures are inherent for petroleum pipelines, along with the potential for accidental spills of hazardous materials, including diesel fuel, gasoline, lubricating oils, grease, and hydraulic and other fluids.[56] Pipeline construction, operation, and decommissioning may also cause sedimentation, dewatering, and both temporary and long-term harm to streambank and wetland vegetation.

Given the multiple, overlapping threats the pipeline poses to surface and groundwater, BLM, DEQ, and the Corps must thoroughly investigate and disclose cumulative watershed impacts caused by the Pipeline.

BLM and DEQ must fully evaluate all potential impacts at all water crossings along the preferred and alternative routes to ensure that there is a complete understanding of the threats that the pipeline would pose to water resources, and evaluate available alternatives.

1. The EIS must evaluate the risks and impacts of "frac-outs."

On many of the major rivers the Project will cross, such as the Missouri River, Yellowstone River, Poplar River, West Fork Poplar River, Little Missouri River, Belle Fourche River Cheyenne River, Niobrara River, and North Platte River, the applicant will use horizontal directional drilling (HDD). The POD implies that the use of HDD eliminates most of the environmental impacts from pipeline construction, because there is less surface disturbance. However, while HDD is often preferable from an environmental standpoint, there can be significant risks associated with HDD, such as the risk of "frac-outs," or inadvertent releases of drilling fluid. In fact, the use of HDD may be *more* risky than conventional trenching methods. As such, it is critical that the BLM, DEQ, and the Corps evaluate the risks and impacts of frac-outs, which should include the potential impacts, frequency, size, and potential mitigation measures from frac-outs; and a crossing-by-crossing alternatives analysis that determines which crossing method is preferable based on site-specific conditions (i.e., the likelihood of frac-outs occurring at each water crossing along the Bridger Pipeline route, and which method would minimize impacts at each location).

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[54] MFSA Application, at 112.

[55] *See infra* Section VIII, discussing Clean Water Act permitting.

[56] POD at 54.

Federal permitting agencies have long been aware of the significant issues, as well as uncertainty, around the use of HDD and resulting frac-outs. During the Corps' 2017 reissuance of NWP 12, the Corps relied on a document that raises many troubling questions about the safety and environmental impacts of HDD in light of frac outs. The document was a PowerPoint presentation attached to an internal email from Jennifer Moyer, Chief of the Corps' Regulatory Program, during an exchange about CEQ's concerns about frac-outs.[57] The presentation states that many frac-out incidents have been reported and that releases range "from a few gallons to 10,000+ gallons" and "from a few square feet to several acres of wetlands, and up to a mile of stream," *id.* at 13; and that, in addition to water and bentonite, drilling mud can contain lignosulfates, which are "highly toxic to aquatic organisms," barium sulfate, which has "significant ecotoxicity to aquatic organisms," and other substances like calcium carbonate and hematite for which the ecotoxicity is unavailable, *id.* at 15. It also describes some known impacts of drilling mud on surface waters, *e.g.*, that it "[s]mothers and displaces macroinvertebrates," "[r]educes food availability to upper trophic levels," "[r]educes quality of fish spawning and rearing areas," and "[r]educes fish refuge sites," and that "[s]uspended solids interfere with fish gill development and function," *id.* at 17-18. The presentation goes as far as concluding that the environmental risks of inadvertent returns could outweigh the impacts of a non-HDD crossing method, *id.* at 22 (referring to "a well-managed open cut in high quality waters").

In 2020, the Corps' Southwest Galveston (SWG) District issued a study discussing "installation issues" with HDD that primarily focuses on frac-outs.[58] The Corps notes: "Drilling fluid release (or mud loss) has become a critical issue which engineers and contractors face during HDD because Frac-Out causes project delays and poses grave risks in environmental sensitive and urban areas."[59] The study includes case studies of 11 incidents of frac-outs in the SWG district alone, and determines one of the main causes for frac-outs is that the equation to determine maximum allowable pressure may not be suitable depending on site conditions.[60]

Another source produced by a drilling service states that "[i]t is relatively common for a frac-out to occur on a HDD project" and while they are usually minor,

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[57] Ex. 8, Moyer Powerpoint.

[58] Ex. 9, Sunday Akinbowale, P.E., Robert Thomas, P.E., SWG'S History/Case Studies of Frac-Out and Other Horizontal Directional Drilling (HDD) Installation Issues (2020), https://www.swg.usace.army.mil/Portals/26/THOMAS-SWG%20HDD%20-%20Winter%20Stakeholder%20Partnership%20Forum%202020.pdf.

[59] *Id* at 8.

[60] *Id.* at 26–29.

"[t]he seriousness of a frac-out depends on where it occurs. If the frac- out occurs in an environmentally or culturally sensitive area (which you are generally trying to avoid by using HDD), there is reason for concern."[61] It further explains:

> The drilling fluid itself may not be toxic, but the fine particles can smother plants and animals, particularly in an aquatic environment. If a saltwater polymer fluid is used, the salt can also impact on freshwater systems and terrestrial vegetation… Frac -outs may also damage infrastructure or nearby services. There are reports of sections of roads rising, nearby water pipelines failing as the frac- out washed away the bedding sand, power boxes filling with fluid and vegetation disappearing into a sinkhole caused by a frac -out.

The frequency of frac-outs in the installation of pipelines using HDD is outlined in a 2019 study of four gas pipelines in the Appalachian region.[62] On the Mariner East II Pipeline (ME2) alone, there were a shocking number of Inadvertent Releases (IRs), or frac-outs, and many of them adversely impacted wetlands and waterways:

> A total of 97 [Notices of Violations ("NOVs")] had been issued in Pennsylvania for the ME2 Pipeline through the summer of 2019 (PADEP, 2019a). Of these, 87 involved at least one IR, and many cited several IRs on the same NOV. An IR occurs when drilling fluid used in HDD is accidentally released to the ground or any surface water at the drill site or adjacent to the drill site. This includes releases to wetlands, streams, and upland areas, among others (PADEP, 2018a). …
>
> As of June 19, 2019, 125 IRs were recognized by PADEP, resulting in NOVs, with 40 percent of these IRs impacting wetlands, 52 percent impacting streams, 12 percent impacting

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[61] Ex. 10, Charles Stockton, Stockton Drilling Services, Technical Guide: information and advice for the successful planning and execution of horizontal directional drilling works,

http://stocktondrillingservices.com/wp-content/uploads/2017/08/Stockton-HDD-ebook-4-1.pdf.

[62] Ex. 11, Meghan Betcher, Alyssa Hanna, Evan Hansen, David Hirschman, Pipeline Impacts to Water Quality: Documented impacts and recommendations for improvements (Aug., 2019), https://www.tu.org/wp-content/uploads/2019/10/Pipeline-Water-Quality-Impacts-FINAL-8-21-2019.pdf.

> uplands and 14 percent impacting another area or unnamed area. Many IRs impacted more than one location—for example, drilling fluids from the same IR were released into a stream and a wetland on or near the site (PADEP, 2019a).
>
> Tens to hundreds of thousands of gallons of drilling fluid had been released into surrounding areas. According to NOVs in which the amount of fluid released was quantified, an estimated 83,000 to 110,900 gallons of drilling fluid were released into the surrounding areas (PADEP, 2019a). This is a conservative number, because the NOVs also document 41 occasions when an unknown amount of drilling fluid was released during IRs.
>
> PADEP maintained databases detailing IRs to waters (PADEP, 2019b) and upland areas (PADEP, 2019c). According to these databases, almost 275,000 gallons of drilling fluid were released via IRs to Pennsylvania waters during construction of ME2, with 30 instances that did not result in a NOV or Consent Order Agreement. Almost 58,000 gallons were released in upland areas, with 114 instances that did not appear to have resulted in a NOV or Consent Order Agreement (PADEP, 2019b; PADEP, 2019c).
>
> PADEP requires all IRs to be contained and the fluids removed from the site where possible, such as in a wetland (Blosser, 2019). However, containment and removal from streams can be more difficult.[63]

The same report discusses an April 2017 incident where, while using HDD to construct the Rover Pipeline under the under the Tuscarawas River in Ohio:

> [A]n estimated two million gallons of drilling fluid contaminated with diesel fuel were spilled into a pristine, protected wetland and covered it in up to 13 inches of drilling mud (State of Ohio v. Rover Pipeline, 2017; Rudell, 2017a; Rudell, 2017b). These were not isolated incidents. In January 2018, almost 150,000 gallons of drilling fluid were spilled at the same Tuscarawas River drill site (Chow, 2018). Additionally, 50,000 gallons of drilling fluid were spilled one day after the 2017 Stark County incident in Richland County, Ohio, and the following month 10,000 gallons of drilling fluid were spilled into a Harrison County pond and stream (Associated Press, 2017; Hendrix and Renault, 2017). Eleven incidents of drilling fluid being discharged into state

[63] *Id*. at 19.

> waters were listed in legal proceedings (State of Ohio v. Rover Pipeline, 2017).[64]

Similarly, a Minnesota case study discusses several frac-outs into wetlands in Minnesota, and discusses the causes, effects, site-specific conditions that allowed frac-outs to occur, and lessons learned.[65] The report specifically cites the need for additional analysis to determine long-term impacts to wetlands:

> There has been a great deal of speculation as to the ecological effects of releasing drilling fluid into sensitive environmental receptors, such as wetland systems. Many of the influences on recovery of the wetland systems will be determined by site-specific variables. The long-term effects of depositing drilling fluid in wetlands are yet unknown. However, there is evidence that the short-term effects of releasing drilling fluid into wetlands include temporary displacement of resident fauna, smothering of benthic organisms and plant root systems, increased turbidity of water quality, and effects on water chemistry and wetland hydrology.[66]

Another attached paper discusses the levels of toxicity of various HDD drilling fluids, the impacts of frac-outs on plant communities, invertebrates, and fish and fish habitat, and concludes that HDD may not be suitable at particularly sensitive locations.[67]

An evaluation of the environmental impacts of HDD operations emphasizes "the necessity for rigorous environmental impact assessments" recognizing while HDD has "significant advantages over traditional open-cut methods … HDD operations can still pose considerable environmental risks." [68]

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[64] *Id*. at 26.

[65] Ex. 12, Dana A. Slade**,** Case study: Environmental considerations of Horizontal directional drills (2000).

[66] *Id*.

[67] Ex. 13, Scott Reid, Paul Anderson, HDD may not be the answer for all sensitive water crossings, Pipe Line and Gas Industry, July 1998.

[68] Ex. 14, Sinead Walsh, Jae-Min Kim, *Environmental Impact Assessment: Evaluating the environmental impacts of HDD operations*, https://www.researchgate.net/publication/384355344_Environmental_Impact_Assessment_Evaluating_the_environmental_impacts_of_HDD_operations#:~:text=Key%20findings%20indicate%20that%20improper,rehabilitation%20to%20mitigate%20adverse%20effects.

The review identifies environmental impacts of HDD including: soil erosion "due to the disturbance of the ground during drilling and the movement of equipment"; water quality degradation due to risk of drilling fluid contamination of local groundwater and surface water which itself leads to toxicity to aquatic life and human health risks; habitat degradation by way of "altering the landscape and introducing noise and vibrations[]" leading to displacement of species and introduction of invasive species; and noise pollution effects on the local environment from drilling equipment and transport vehicles which can "disrupt animal behaviors, including mating, feeding, and nesting[]" and disrupt "[n]earby residents [who] may experience stress and decreased quality of life due to persistent noise, leading to potential health issues."[69]

HDD operations and the associated risks and impacts should be evaluated further. A 2021 report by the New Jersey Department of Environmental Protection Science Advisory Board recognized that HDD "represents a potential risk to groundwater as well as to surface water and sensitive ecological receptors."[70] This review emphasizes the importance of thorough review of HDD operations based on risk:

> As a result of the significant negative impacts resulting from IRs and unsuccessful HDDs that have been documented in surveys of HDD projects and the potential for future risks to groundwater, surface water, and ecological areas associated with using this technology, management of HDDs throughout the process of planning, construction, installation, and decommissioning should be considered to prevent potential impacts and minimize risk.

The same report also explains the importance of geotechnical investigation "to minimize risks of failure during HDD construction" and variability of HDD site locations, specifically mud composition and the need for individual assessment to mitigate frac-outs. [71]

> Drilling mud composition varies from one HDD project to another. Finding the right drilling mud mix for any HDD project requires proper understanding of the soil conditions along the alignment. The wrong mud composition can cause the fluid to break through the sidewall, causing an IR. The more thorough

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[69] *Id.*

[70] Ex. 15, Final Report, Horizontal Directional Drilling, https://dep.nj.gov/wp-content/uploads/sab/sab-hdd.pdf.

[71] *Id.*

> the geotechnical investigation of the proposed HDD path, the more precisely the ideal drilling mud formula can be determined (Mishra, 2019).

The necessary site-specific work up for HDD has been a recognized point of concern for contractors for many years.[72] The method faces "environmental scrutiny due to concerns regarding hydraulic fracturing and subsequent migration of drilling fluids to the surface." In response, "[s]tudies have … revealed that the two primary factors affecting hydraulic fracturing in soil are borehole pressure and depth of cover."[73]

An engineering geology study published in 2024 further illustrates the need for a crossing-by-crossing analysis, explaining the challenges with using geotechnical parameters for borehole stability evaluation in HDD, and its associated risk.[74] The parameters "for estimating the maximum allowable annular pressure in [HDD] are often empirically determined based on the results from the standard penetration test (SPT)."[75] They go on to explain:

> Despite the advantages and broad use of the SPT in geotechnical practices, its limitations should also be clearly understood. According to Park et al. (2023), the magnitudes of correlated geotechnical parameters can deviate significantly depending on the choice of SPT correlation used to determine the parameter, although the same N-value is applied. Such deviation in the magnitudes of geotechnical parameters can negatively impact the accuracy and precision of estimates of Pmax, which can increase the risk of hydraulic fracture during HDD operation. Although the risks associated with the use of SPT results have been well-recognized in geotechnical practices over a long time, most HDD designs (especially the estimation of Pmax during annular pressure analysis) still rely heavily on the results from SPT as a compromise. Therefore, a necessity to highlight the

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[72] Ex. 16, Samuel Ariaratnam, Richard Stauber, Jason Bell, Bruce Harbin, and Frank Canon, *Predicting and Controlling Hydraulic Fracturing during Horizontal Directional Drilling*, https://ascelibrary.org/doi/10.1061/40690%282003%29145.

[73] *Id.*

[74] Ex. 17, Inshik Park, Chao Kang, Alireza Bayat, *Challenges with using empirically determined geotechnical parameters for borehole stability evaluation in horizontal directional drilling* (2024), https://www.sciencedirect.com/science/article/abs/pii/S0013795224001650#preview-section-references.

[75] *Id.* at 1 (Abstract).

> risks associated with the use of SPT results was found, particularly focusing on design of HDD.[76]

The process of HDD creates a waste slurry found to have detrimental effects on water sources, soil and organisms. While "slurry plays a crucial role" in HDD:

> [D]uring the circulation process, the slurry accumulates drilling cuttings, inorganic salts, and heavy metal ions from the stratum, resulting in a complex composition… Improper disposal of waste slurry can have severe repercussions on the surrounding atmosphere, water bodies, and soil environment, with the soil being particularly susceptible to chemical pollution (Murray-Gulde et al., 2003, Brunori et al., 2005, Yang et al., 2013, Jiang et al., 2022)… The direct discharge of the waste slurry leads to contamination of surface water and groundwater resources, primarily due to the presence of chemical additives and the intrusion of contaminants[.][77]

Further, "[e]xisting studies lack quantitative analysis and assessment of the environmental hazards of waste slurry."

While HDD may be the least damaging construction method at many water crossings, the risk of frac-outs may make it unsuitable at many other locations. Thus, a crossing-method alternatives analysis prior to project approval is essential to necessary risk identification and mitigation.

For example, there is an increased risk of frac-outs in areas with shallow or fractured bedrock. That is because limited overburden provides low confining pressure, while fractures and joints in the rock create natural pathways for drilling fluid escape. As a result, HDD operations in these settings have a higher probability of inadvertent returns, particularly near entry and exit points where depths are shallowest.[78] Furthermore, frac-outs in fractured bedrock can be more severe because drilling fluids can migrate along joints, bedding planes, and fissures, rather than remaining localized near the bore path. This can result in fluids traveling

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[76] *Id.* at 3.

[77] Ex. 18, Pinghe Sun, YoRui He, Shengwei Zhou, Habiyakare Erneste, Qiang Gao, Zihao Zou, Junyi Zhu, *Experimental study on environmental chemical effect and purification treatment of waste slurry in horizontal directional drilling*, https://www.sciencedirect.com/science/article/abs/pii/S0886779823005680.

[78] Ex. 19, *Final Environmental Impact Statement for the Lake Charles Liquefaction Project*, DOE/EIS-0491, at 4-157 to 4-158 (U.S. Dep't of Energy 2015) (Exhibit BB); *Catalina Island Transmission System Project: Final EIR/EIS, Appendix (HDD Inadvertent Return Plan)* (S. Cal. Edison Co).

significant distances and surfacing at locations far removed from the drilling alignment, including in multiple, unexpected emergence points. These pathways enable drilling fluids—and potentially mobilized subsurface contaminants—to enter aquifers, streams, and wetlands. The result is a recognized risk of water quality degradation in both groundwater and surface water resources. It also makes it inherently difficult to predict the extent and location of impacts from HDD in shallow bedrock areas.[79]

Similarly, frac-out containment and mitigation measures are less effective in areas with fractured bedrock because drilling fluids can be lost into subsurface voids faster than they can be recovered, a condition known as "lost circulation." This undermines standard HDD monitoring and containment techniques, which rely on maintaining fluid returns and pressure control within the bore. [80] Frac-outs in such conditions may also involve greater fluid losses and more extensive environmental releases, because fractured bedrock can accept large volumes of drilling fluid. The inability to maintain circulation can lead to continued pumping and escalating losses before the issue is detected or controlled, which can increase both the magnitude and environmental consequences of frac-out events.[81]

In short, BLM, DEQ, and the Corps must evaluate the risks and impacts of frac-outs from HDD, including in the specific proposed HDD crossing locations along the Bridger Pipeline route. If the site conditions demonstrate a high or uncertain risk of frac-outs, with potentially significant impacts on aquatic life, BLM, DEQ, and the Corps must evaluate alternative crossing methods in those locations, re-routes to avoid the locations altogether, and/or additional mitigation and monitoring measures.

2. <u>The EIS must evaluate other impacts on rivers and streams.</u>

In addition to the risk of frac outs, the agencies must evaluate the Project's other potential impacts to surface water resources, including impacts to the streams

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[79] Ex. 21, Rami Albattat & Hussein Hoteit, *A Semi-Analytical Approach to Model Drilling Fluid Leakage Into Fractured Formation*, arXiv:2011.04746 (2020).

[80] Ex. 22, *Schuylkill River HDD Project: Design Report* (Pa. Dep't of Envtl. Prot. permit record 2023); Rami Albattat & Hussein Hoteit, *A Semi-Analytical Approach to Model Drilling Fluid Leakage Into Fractured Formation*, arXiv:2011.04746 (2020).

[81] Ex. 21, Rami Albattat & Hussein Hoteit, *A Semi-Analytical Approach to Model Drilling Fluid Leakage Into Fractured Formation*, arXiv:2011.04746 (2020) (Exhibit DD); Ex. 23, *Final Environmental Impact Statement for the Lake Charles Liquefaction Project*, DOE/EIS-0491 (U.S. Dep't of Energy 2015).

and rivers crossed by the proposed pipeline. Bridger admits that the Bridger Pipeline passes over 151 different "features" on federal lands, including natural streams and rivers and canals and other "constructed waterways."[82] However, the scope of the agencies review must not be limited to federal lands and must instead cover the entire length of the proposed and alternative pipeline routes. The agencies must thoroughly evaluate each of the points where the proposed pipeline would cross impacted waterways in Montana and Wyoming.

The pipeline could impair water quality in both high quality and already degraded waters. The Bridger Pipeline would cross 16 "riverine features" that are listed as impaired under Section 303(d) of the Clean Water Act, all of which are located in Montana.[83] All but two of these riverine features are listed as Category 5 impaired.[84] The Bridger Pipeline would also cross Blue Ribbon fisheries, defined as recreational fisheries of outstanding value, and Red Ribbon fisheries, defined as recreational fishers of high value.[85]

Among other potential impacts to surface waters from the project, the agencies must take a hard look at potential degradation in water quality from temporary increases in suspended solids and sedimentation during in-stream construction activities, stormwater runoff, or erosion from disturbed lands; modifications to channels and banks affecting channel morphology and stability; reduced flows in streams where water is withdrawn for hydrostatic testing; and water quality degradation from pipeline spills or leaks, or from spills or leaks of

[82] POD at 57.

[83] *Id.* at 58.

[84] *Id.* at 59.

[85] MFSA Application at 134.

fuel, lubricants, or hazardous materials.[86] Bridger concedes many of these potential impacts.[87]

In particular, the agencies must thoroughly consider the Project's potential impacts to "smaller perennial or seasonal streams," "[e]phemeral or intermittent drainages, and wetlands that Bridger appears to plan to cross using open cut trenching.[88] This evaluation must include "direct disturbance of bed and banks," alteration of in-stream habitat, "mortality of benthic invertebrates inhabiting that reach of the water course," lessening of the quality of available habitat, and local habitat modification.[89] BLM and DEQ must also thoroughly consider the Project's potential impacts to water quality as a result of in stream excavation, which Bridger admits "can generate short term increases in total suspended solids."[90] Such impacts also include those from sedimentation.[91]

Finally, the agencies also must evaluate the impacts to water resources caused by hydrostatic testing on the project, including whether there is adequate water available from the water resource to support diversion for hydrostatic testing without adversely affecting both water rights and biological resources.

3. The EIS must evaluate impacts on groundwater.

BLM and DEQ must thoroughly consider the project's potential impacts to groundwater resources, including groundwater used for drinking water and critical agricultural purposes.

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[86] *See* Ex. 11, Betcher, M., et al., Pipeline Impacts to Water Quality, Documented impacts and recommendations for improvements (Aug. 21, 2019), https://downstreamstrategies.b-cdn.net/wp-content/uploads/2023/05/Pipeline-Water-Quality-Impacts-FINAL-8-21-2019.pdf; Ex. 24, Mall, A., Natural Res. Def. Council, Gas Pipelines: Harming Clean Water, People, and the Planet (May 24, 2021), https://www.nrdc.org/bio/amy-mall/gas-pipelines-harming-clean-water-people-and-planet (citing examples of water quality impairment from pipelines).

[87] MFSA Application at 125, 158 (discussing impacts to water resources that may result from Bridger's chosen construction methods and construction of the project itself, including increased water temperature due to loss of bank cover, reduced food supply, impaired aesthetics, and reduced productivity, along with the potential for channel migration).

[88] *Id.* at 128, 157.

[89] *Id.* at 157.

[90] *Id.* at 160.

[91] *Id.*

Bridger admits that "[c]onstruction of the Project may pose potential impacts to groundwater resources, particularly in regions with sensitive aquifers and shallow water tables," from "accidental spills or leaks of crude oil that would introduce hydrocarbons and other contaminants into the shallow aquifers."[92] Bridger also admits that spills of these contaminants could migrate through permeable soils, "potentially reaching groundwater supplies and affecting water quality for a variety of uses and users."[93] These threats are not hypothetical. Even underground, pipelines may develop cracks and leaks that have long-term and costly consequences for drinking water supplies.[94] Further, pipeline construction risks breaching of confined aquifers, as occurred in Enbridge's construction of the Linke 3 Replacement Project in northern Minnesota.[95] Groundwater contamination following a spill can extend several thousand meters and pose long-term water quality threats.[96]

In addition to these threats, Bridger conceded potential groundwater impacts from the disturbance of soils during trenching and excavation, which Bridger admits has the potential to "alter natural groundwater flow patterns,"[97] along with impacts caused by the removal of vegetation and compaction of soils, which Bridger admits "may reduce infiltration rates and increase surface runoff, which can decrease groundwater recharge in affected areas."[98]

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[92] POD at 60.

[93] *Id.*

[94] *See, e.g.*, Ex. 25, Delin, G. and Herkerath, W., Groundwater Contamination by Crude Oil (undated), https://mn.water.usgs.gov/projects/bemidji/results/intro-final.pdf; N. Carolina DEQ, Colonial Pipeline Spill Information - Huntersville, N.C., https://www.deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/colonial-pipeline-spill-information-huntersville-nc (describing remediation efforts for a 2020 gasoline pipeline spill).

[95] Minn. Attorney Gen., Enbridge admits it breached aquifer in Line 3 construction, will pay fine and perform environmental restoration (Oct. 17, 2022), https://www.ag.state.mn.us/Office/Communications/2022/10/17_Enbridge.asp?fbclid=IwAR1r4P7eJxGLjxjHDOk-eJ1aB9RqiRWAklF1AaxwarYgeblvtSR2R0iX0uc.

[96] *See* Duffy, J.J. et al., Oil spills on land as potential sources of groundwater contamination, Env't Int'l, Vol. 3, Issue 2 107–120 (1980), https://www.sciencedirect.com/science/article/abs/pii/0160412080900458 (abstract).

[97] POD at 60.

[98] *Id.*

Bridger claims there is a "considerable degree of uncertainty" regarding groundwater resources in some areas affected by the Project.[99] To be sure, Bridger has not yet completed its analysis of which groundwater resources that may be impacted by the Project are "considered sensitive groundwater resources."[100] BLM and DEQ must evaluate and disclose the location of, and potential impacts to, groundwater supply aquifers along the pipeline corridor. And BLM and DEQ must disclose, through text and maps, the linkages between the proposed pipeline, the distance to groundwater, and the proximity to drinking water.

Further, BLM and DEQ must also closely review the Bridger's proposed measures to avoid and mitigate the project's groundwater impacts, including its plans for above and underground leak detection and spill response.

4. The EIS must evaluate impacts on wetlands and floodplains.

BLM, DEQ, and the Corps must thoroughly consider the Project's potential harms to wetlands and wetland resources. Wetlands in eastern Montana and Wyoming are crucial, often small-scale ecosystems within the semi-arid landscape, including saline marshes, wet meadows, and prairie potholes. These areas provide important habitats for migratory birds and wildlife, with significant sites like the Bowdoin and Medicine Lake National Wildlife Refuges featuring extensive alkaline marshes.[101] Bridger admits that the Bridger Pipeline would "intersect[]" 96 different "features" that are "documented by the USFWS National Wetland Inventory," including lakes, ponds, and seasonal or temporary areas."[102]

Pipeline construction and operation could cause temporary and permanent harm to wetland vegetation community composition and structure from clearing and operational maintenance, loss of wetlands due to backfilling or draining, wetland soil disturbance, and temporary increases in turbidity and fluctuations in wetland hydrology. Additionally, the agencies must evaluate potential impacts to prairie pothole areas as construction in such areas could affect the water retaining

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[99] MFSA Application at 119.

[100] *Id.* at 119–120.

[101] Ex. 26, National Water Summary-Wetland Resources, Montana Wetland Resources, https://www.fws.gov/sites/default/files/documents/National-Water-Summary-Wetland-Resources-montana.pdf; Ex. 27, National Water Summary-Wetland Resources, Wyoming Wetland Resources, https://www.fws.gov/sites/default/files/documents/National-Water-Summary-Wetland-Resources-wyoming.pdf; *see also* Montana Field Guides, Great Plains Saline Marsh and Wet Meadow, https://fieldguide.mt.gov/displayEG_Detail.aspx?EG=EVWK0G984.

[102] POD at 57.

substrate and result in permanent alterations to their water holding capacity.[103] And the agencies must identify the wetland areas that will be revegetated and the wetland areas that are considered of special concern and value.

The pipeline would also cross "multiple floodplains," including 11 Federal Emergency Management Agency ("FEMA") Special Flood Hazard Areas ("SFHA") in Richland County, Montana and 21 FEMA SFHAs in Goshen County, Wyoming.[104] As with wetlands, the agencies must evaluate the Project's potential impacts to floodplains, including those caused by the disturbance of soils, vegetation, and natural surface hydrology, along with localized erosion, sedimentation of waterbodies, and short-term alteration of floodplain function.[105]

5. The EIS must evaluate impacts on other drinking water supplies, such as wells and intakes

BLM and DEQ must evaluate the Project's potential harms to water supplies, including municipal and agricultural supply wells, and agricultural canals and ditches. Bridger admits that the Bridger Pipeline would either cross, or run adjacent to, "private areas where municipal or agricultural water supply wells may exist."[106] At the same time, Bridger also admits that, at the time it prepared its Plan of Development, "specific well locations on federal lands [were] not available."[107] While Bridger presumably intends to identify and disclose those locations on federal lands, it must also identify such infrastructure on private lands on the entirety of the preferred and alternative routes. This information is crucial to allow members of the affected public to understand the risks and protect their water supply.

Bridger acknowledges that "the potential exists for groundwater wells to be affected by construction or operational activities, particularly in areas with shallow groundwater or near surface water bodies."[108] The impacts include, but are not limited to, temporary turbidity or sedimentation in shallow aquifers caused by surface runoff or soil disturbance, accidental spills or leaks of petroleum products, lubricants, or other hazardous materials that could infiltrate groundwater, and temporary disruption of access to wells or surface water intakes during construction

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[103] MFSA Application at 128.

[104] *Id.*

[105] *Id.* at 64.

[106] *Id.*

[107] *Id.*

[108] *Id.*

activities.[109] BLM and DEQ must also evaluate the project's potential impacts to underground drinking water sources and intakes, including public water supply surface water intakes along the proposed pipeline corridors and drinking water intakes located downstream of locations where the proposed pipeline crosses streams and rivers.

BLM and DEQ must evaluate whether the project impacts existing canals or ditches along its 684-mile path, as well as the alternative routes. The Bridger POD does not identify any existing canals or ditches crossed by the Bridger Pipeline.[110]

6. The EIS must evaluate cumulative watershed impacts.

Given the interconnected nature of the surface and groundwater features that could be impacted by the pipeline, as well as the cumulative nature of the multitude of threats, BLM, DEQ, and the Corps must evaluate the potential cumulative watershed impacts of the pipeline's construction, operation, and eventual decommissioning.

As discussed above, the project poses a number of threats to water resources along the pipeline route. These include increased sedimentation, turbidity, streambank erosion, water quality impacts due to pollution, changes to channel morphology, removal and displacement of streamside vegetation, and dewatering. And these impacts in turn lead to habitat loss and harm to fisheries and wildlife, reduction in the ecosystem services of riparian areas and wetlands, and loss of water resources for recreation, municipal, and agricultural uses.

The EIS must evaluate these cumulative threats within watersheds and throughout the pipeline corridor.

7. The EIS must identify mitigation measures to avoid the pipeline's significant potential harm to water resources.

In addition to evaluating the potential harm to water resources from the construction, operation, and decommissioning of the proposed pipeline, BLM and DEQ must identify alternatives and mitigation measures to avoid that harm.

### C. The EIS Must Evaluate Impacts on Wildlife.

BLM and DEQ must thoroughly evaluate the impacts of the Bridger Pipeline along the proposed and alternative routes, which are home to a variety of wildlife species—terrestrial, avian, and aquatic—that may be harmed by the construction,

[109] POD at 63.

[110] MFSA Application at 112.

operation, and reclamation of the project. As noted in the MFSA Application, "Wildlife habitats along the proposed route consists of cropland, native prairie, sagebrush grasslands, range or pastureland, forest lands, riparian woodland, wetlands, and aquatic and riverine habitats."[111] These habitats support numerous species, some of which are listed as endangered or threatened under the Endangered Species Act, warranting the highest level of protection. But regardless of their status, BLM and DEQ must thoroughly evaluate the impacts to all affected species and their habitats which, in some cases, could be significant.

The Bridger Pipeline would harm wildlife through:

- Habitat loss, alteration, and fragmentation;
- Direct mortality during construction and operation;
- Indirect mortality from stress or avoidance of feeding due to construction/operation noise, monitoring overflights by helicopters or small aircraft, and heightened human activity;
- Reduced reproductive success stemming from exposure to noise and vibration and increased human presence during construction and operation; and
- Lower survival or reproduction because of diminished forage availability or reduced cover.

These impacts begin with the first phases of pipeline construction, and many persist through the operational and reclamation phases, and beyond. BLM and DEQ must disclose all such impacts and require mitigation to avoid and minimize harm.

1. *Endangered and Threatened Species*

The pipeline would pose acute risks to several endangered and threatened species, including the piping plover, whooping crane; northern long-eared bat, pallid sturgeon, and Preble's Meadow Jumping Mouse.[112] In addition to complying with section 7 and section 9 of the Endangered Species Act, BLM and DEQ must thoroughly evaluate the potential impacts to these imperiled species in its environmental review.

[111] MFSA Application at 128.

[112] Additionally, the pipeline would affect species *proposed* for listing as threatened or endangered: the Suckley's cuckoo bumble bee, monarch butterfly, western regal fritillary, and tri-colored bat. The specific discussion that follows addresses only listed species. However, BLM and DEQ must also thoroughly analyze and mitigate impacts to these other species.

a. Piping Plover

The piping plover is a small shorebird that nests on sandy beaches, alkali flats, and river sandbars throughout North America. The U.S. Fish and Wildlife listed the Northern Great Plains population of piping plover as threatened under the Endangered Species Act more than 40 years ago,[113] and their population remains precarious.

Piping plovers in the Northern Great Plains population breed and nest in limited areas of the Canada and Western U.S. In the United States, the Northern Great Plains population's key piping plover breeding habitat occurs in Montana, North and South Dakota, and Nebraska. There are four local populations within the Northern Great Plains region, which interact and function as a metapopulation.[114] Two of the four critical breeding populations—U.S. Alkaline Lakes (North Dakota and Montana) and Northern Rivers (Missouri River system on Fort Peck Lake, Montana to Pierre, South Dakota)—appear to overlap with the areas impacted by the Bridger Pipeline preferred route.[115]

[113] Endangered and Threatened Wildlife and Plants; Determination of Endangered and Threatened Status for the Piping Plover, 50 Fed. Reg. 50726 (Dec. 11, 1985).

[114] Ex. 28, U.S. Fish and Wildlife Serv., Piping Plover 5-Year Review: Summary and Evaluation at 67–68 (Mar. 2020).

[115] Status Review at 69.

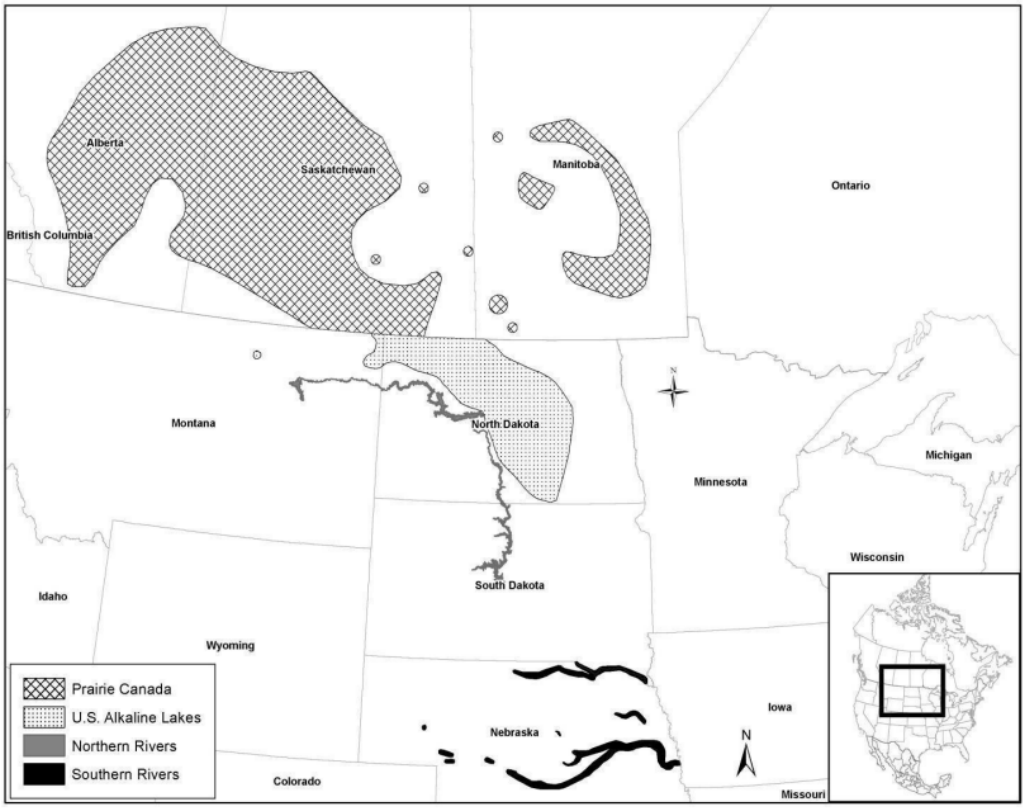


**Figure NGP1.** Map depicting the four primary geographical management regions encompassing the local breeding populations of the NGP piping plover metapopulation.

The current status of the Northern Great Plains piping plover metapopulation is not definitively understood, as population surveys have proven difficult.[116] However, the U.S. Fish and Wildlife Service in its most recent five-year status review for the species affirmed that it remains threatened.[117] Population estimates for breeding plovers in the Alkali Lakes Management Region, which is relatively more stable than other local populations, has averaged approximately 750 adults since 1994, with lower estimates in more recent years.[118] Population estimates for breeding plovers in the Northern Rivers population have averaged

[116] Status Review at 79–80.

[117] Status Review at 97.

[118] Status Review at 73–75. Approximately 20 to 30 percent of Northern Great Plains piping plovers nest in the alkaline lakes area, and in years of low metapopulation abundance (below 1,500), this population makes up more than half of the total metapopulation. Status Review at 74–84.

around 800 adults in recent years.[119] Piping plovers in the Alkali Lakes and Northern Rivers populations continue to face significant threats due to oil and gas development, agricultural development, modification of river flows (Northern Rivers population only), human disturbance.[120] Further, "[c]limate change has the potential to be a severe threat to the species."[121]

The FWS designated critical habitat for the piping plover Northern Great Plains breeding population in 2002.[122] The Endangered Species Act defines critical habitat as: 1) the areas within the species occupied (at the time of listing) range that exhibit biological features that are "essential to the conservation of the species" and "may require special management considerations or protection;" and 2) areas outside the species' occupied range that are "essential for the conservation of the species."[123] In Montana, the critical habitat designation for piping plovers includes 20 alkali lakes and wetlands located in Sheridan County, the Missouri River in Montana starting at Wolf Point, the Bowdoin National Wildlife Refuge in Phillips County, and the Fort Peck Reservoir.[124] Consequently, the piping plover's breeding habitat in Montana that is in the pipeline's pathway is critically important to the population's survival.

Because the pipeline would intersect populations of breeding piping plovers in Montana, both within and outside of critical habitat areas, BLM and DEQ must thoroughly analyze the resulting harm to the species and alternatives/mitigation to

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[119] Status Review at 73.

[120] Ex. 29, Draft Recovery Plan at 27–28.

[121] Draft Recovery Plan at 45–46.

[122] Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northern Great Plains Breeding Population of the Piping Plover, 67 Fed. Reg. 57638 (Sept. 11, 2002) (codified at 50 C.F.R. § 17.95). "The Nebraska portion of the critical habitat was vacated by U.S. District Court on October 13, 2005 due to incomplete economic analysis. The affected areas include: the portion of the Missouri River adjacent+ to Nebraska counties; Loup; Niobrara, Elkhorn, and Platte Rivers. Note that the court's decision did not address the biological importance of those areas, only the economic analysis." Draft Recovery Plan at 49.

[123] 16 U.S.C. § 1532(5)(A).

[124] 67 Fed. Reg. at 57682–89. The nesting season begins in late March to early April, and breeding activities—including courtship flights, nest bowl scraping, territorial interactions, egg laying, incubating, and chick rearing—occurs through the summer. Piping plovers begin migrating to their southern wintering habitat from mid-July through early September. *Id.* at 57641. Thus, while protections for the piping plover's breeding habitat are important year-round, the birds are present in the area only throughout spring to the end of summer.

avoid that harm. Among other threats, potential water pollution from spills, human presence, noise and vibration, potential dewatering from trenching and drilling, stream channel modification, removal and changes of vegetation, and increased predator presence all present *increased* threats to this already imperiled population.

b. Whooping Crane

The pipeline also would cross important migratory habitat of the whooping crane, "one of the rarest and most intensively monitored bird species in North America."[125] The whooping crane was one of the original species listed under the 1967 precursor to the Endangered Species Act and was included on the endangered list as one of the first species protected when Congress enacted the Act in 1973.[126] This status applies across its range in the United States.

The Aransas Wood Buffalo Population of whooping cranes is the only natural, self-sustaining population in existence, and it migrates between its breeding grounds in Alberta, Canada's Wood Buffalo National Park and its wintering grounds on the Texas Gulf Coast at Aransas National Wildlife Refuge. The whooping crane relies on a chain of wetlands throughout the Great Plains for resting and feeding during its long migration. This includes sites in the Prairie Pothole region of Eastern Montana, particularly in the Medicine Lake National Wildlife Refuge.[127]

BLM and DEQ must evaluate threats to whooping crane migration habitat due to the pipeline's construction and operation. Among other things, the MFSA application notes that the preferred route "would intersect multiple wetland easements administered by" the U.S. Fish and Wildlife Service, but failed to describe specific measures to protect these habitats.[128] On the contrary, the application discloses "[p]otential modifications in wetland productivity because of modifications to surface and subsurface flow patterns from pipeline construction."[129]

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[125] Ex. 30, K. McAbee and J. Conkin, Whooping Crane Status, 2023 Breeding Seadon to 2024 Spring Migration, at 1 (Feb. 2025), https://www.fws.gov/sites/default/files/documents/2025-04/2023-2024-whcr-recovery-activities-report-final-with-appendices_8.pdf.

[126] 32 Fed. Reg. 4001 (Mar. 11, 1967).

[127] Ex. 31, U.S. Fish & Wildlife Serv., International Recovery Plan, Whooping Crane, Third Revision (2006); Ex. 32, Mont. Natural Heritage Prog and Fish, Wildlife & Parks, Mont. Field Guide: Whooping Crane (retrieved Apr. 23, 2026), https://fieldguide.mt.gov/speciesDetail.aspx?elcode=ABNMK01030.

[128] MFSA Application at 132.

[129] *Id.* at 127.

This is the result of destruction of wetland vegetation; backfilling and draining; and "[c]onstruction through prairie pothole areas [that] could affect the water retaining substrate in these wetlands and result in *permanent* alterations to their water holding capacity."[130] Pollution from spills, vibration, noise, and lighting during construction and operation could further diminish the usability of Montana whooping crane migration habitat.

Notably, it is impossible for BLM or DEQ to fully evaluate the potential harm to whooping cranes based on the current information provided by Bridger. Whooping cranes are harmed by the electric power lines[131] and Bridger admits that proposed pump stations will require the installation of electric utility lines.[132] However, Bridger has not yet determined the placement of those temporary or permanent utility lines.[133]

In addition to evaluating the potential harm to whooping cranes and their habitat, BLM and DEQ must identify alternatives and mitigation measures to avoid that harm, including by avoiding any disturbance of wetland/pothole habitat in Eastern Montana that is crucial to the population's migration success.

c. Northern Long-eared Bat

The northern long-eared bat, listed as an endangered species in 2022, also occurs along the pipeline's pathway and would face harm from the project.[134] Eastern Montana and Wyoming represent the western extent of the species' range in the U.S.[135] Due primarily to disease (white nose syndrome), the northern long-eared bat population has experienced declines of 97–100 percent across 79 percent of the species' range.[136] Other threats include wind energy-related mortality, climate change variables, and habitat loss.[137]

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[130] *Id.* at 128.

[131] Ex. 92, Stehn, Thomas V. and Wassenich, Tom, Whooping Crane Collisions with Power Lines: An Issue Paper at 2 (2008).

[132] MFSA Application at 12.

[133] *Id.* at 12.

[134] Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, 87 Fed. Reg. 73488 (Nov. 30, 2022).

[135] *Id.* at 73491.

[136] *Id.* at 73498.

[137] *Id.*

Given the increasing prevalence of white nose syndrome throughout the bat's range, it is essential to avoid or minimize to the maximum extent further stressors to the species, including habitat loss from pipeline construction, tree removal, noise, and increased human presence that could exacerbate disease spread. BLM and DEQ evaluate impacts from the pipeline's construction and operation on the northern long-eared bat and its habitat along and adjacent to the proposed pipeline routes and adopt alternatives and mitigation that avoids those harmful impacts.

d. Pallid Sturgeon

As the MFSA application discloses, endangered pallid sturgeon occupy waterways that would be affected by the pipeline. Pallid sturgeon were listed as endangered in 1990,[138] and their abundance has only declined since then. "An estimated 125 wild Pallid Sturgeon remain in the Missouri River downstream of Fort Peck Dam to the headwaters of Lake Sakakawea including the lower Yellowstone River."[139] The entire pallid sturgeon population in the Missouri "remains neither self-sustaining nor viable."[140]

The pipeline would cross both the Missouri and Yellowstone rivers in reaches that are important to pallid sturgeon spawning. "In general, Pallid Sturgeon reside in the Missouri River downstream from the confluence of the Missouri and Yellowstone rivers during fall and winter months. As discharge increases in the spring, adult Pallid Sturgeon respond by migrating upstream. Typically, radio-tagged adult Pallid Sturgeon migrate into the unregulated Yellowstone River to spawn."[141]

BLM and DEQ must thoroughly evaluate the pipeline's impacts to pallid sturgeon and its important habitat in the Missouri and Yellowstone rivers, and ensure those impacts are avoided.

e. Preble's Meadow Jumping Mouse

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[138] Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Pallid Sturgeon, 55 Fed. Reg. 36641 (Sep. 6, 1990).

[139] Ex. 33, U.S. Fish & Wildlife Serv., Pallid Sturgeon Recovery Plan, First Revision, at 4 (Jan. 29, 2014), https://ecos.fws.gov/docs/recovery_plan/Pallid%20Sturgeon%20Recovery%20Plan%20First%20Revision%20signed%20version%20012914_3.pdf.

[140] *Id.*

[141] *Id.* at 12 (citations omitted); *see also id.* at 15 (describing spawning in the Yellowstone River).

BLM and DEQ must also analyze and avoid the pipeline's impacts to the Preble's meadow jumping mouse, a threatened species.[142] Although the pipeline route does not overlap with the species' designated critical habitat, it would impact the mouse's range in southeastern Wyoming, including in Platte and Goshen counties. The mouse typically inhabits heavily vegetated riparian habitats, which have declined due to human development, grazing, alluvial sand and gravel extraction, water diversion, and the spread of noxious weeds.[143] These harms could be exacerbated by the pipeline's construction and operation, including through disturbance of riparian areas, further spread of noxious weeds, and potential spills.

In addition to consulting with the U.S. Fish and Wildlife Service, BLM and DEQ must satisfy their independent obligations to fully analyze the pipeline's potential harms to the Preble's meadow jumping mouse.

*2. Other wildlife*

In addition to impacts on endangered and threatened species, BLM must evaluate and prevent harm to other species, including sage grouse, migratory birds, and others.

a. Greater Sage Grouse

Greater sage grouse once numbered in the millions across the western United States, but the bird's populations have plummeted in recent decades.[144] In 2015, BLM developed conservation plans to protect important sage-grouse habitat on public lands in ten western states.[145] The Miles City RMP for greater sage grouse identified energy development, mining, and infrastructure as threats to sage grouse in the Powder River Basin.[146] In December 2017, however, BLM issued an Instruction Memorandum (IM), which "re-interpreted" the prioritization

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[142] Endangered and Threatened Wildlife and Plants; Final Rule to List the Preble's Meadow Jumping Mouse as a Threatened Species, 63 Fed. Reg. 26517 (May 13, 1998).

[143] *Id.* at 26517, 26525.

[144] *See Sage Grouse Numbers in West Continue to Decline After Federal Protection Rejection*, AP (Sept. 13, 2019), https://www.cpr.org/2019/09/13/sage-grouse-numbers-in-west-continue-to-decline-after-federal-protection-rejection/.

[145] *See, e.g.*, U.S. Dep't of the Interior, Bureau of Land Mgmt., *Greater Sage-Grouse Plan Implementation: Rangewide Monitoring Report for 2015–2020* (Oct. 2021), https://www.blm.gov/sites/default/files/docs/2022-08/GRSG%20Plan%20Imp.pdf.

[146] *Id.* at viii.

requirement to effectively eliminate it.[147] Under that policy reversal, BLM leased millions of acres of greater sage grouse habitat for drilling in Montana, Wyoming, and other states. In 2020, the U.S. District Court in Montana invalidated the IM as violating the terms of the 2015 sage-grouse plans,[148] and, the Ninth Circuit affirmed.[149] In December 2025, BLM issued amendments that eliminate or weaken numerous provisions of the 2015 Plans, drawing multiple legal challenges.[150] Regardless of BLM's current, ineffective management framework,[151] the agencies must fully evaluate harm from the pipeline to sage grouse and their habitat.

While BLM's management prescriptions have fluctuated, the plight of the greater sage grouse has only worsened. The species remains in decline, with populations diminishing by 13% across eastern Wyoming and Montana.[152] Those declines have largely resulted from loss and fragmentation of the sagebrush steppe habitat on which the grouse rely. "Sage-grouse depend on large areas of contiguous sagebrush to meet all seasonal habitat requirements."[153] Studies have "emphasize[d] the landscape nature of the species," finding that migratory populations of the grouse may use areas exceeding 1,000 square miles (667,185 acres).[154] This habitat, however, is one of the most imperiled ecosystems in North America. Indeed, "[t]he U.S. is losing 700,000 acres of core sagebrush annually, primarily due to ecological transitions caused by cheatgrass and conifer expansion and resultant fires into sagebrush rangelands."[155]

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[147] *See* U.S. Dep't of the Interior, Bureau of Land Mgmt., *Implementation of Greater Sage-Grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Prioritization Objective* (Dec. 27, 2017).

[148] *Mont. Wildlife Fed'n v. Bernhardt*, No. CV-18-69-GF-BMM, 2020 WL 2615631, at *1, *12 (D. Mont. May 22, 2020), *aff'd in part, rev'd in part and remanded sub nom. Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1 (9th Cir. 2025).

[149] *See Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1 (9th Cir. 2025).

[150] *See, e.g., Mont. Wildlife Fed'n et al. v. Burgum, et al.,* No. CV-26-133-GF-JTI (D. Mont. Mar. 26, 2026).

[151] *See* Ex. 34, T. Remington, Assessment of Bureau of Land Management Proposed 2024–2025 Amendments to Greater Sage Grouse Plans (2025).

[152] Ex. 35, B. Prochazka et al., U.S. Geol. Survey, Range-wide Population Trend Analysis for Greater Sage-Grouse (Centrocercus urophasianus)—Updated 1960–2024, at 16 (Dec. 1, 2025), https://pubs.usgs.gov/dr/1217/dr1217.pdf.

[153] Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List Greater Sage-Grouse (Centrocercus urophasianus) as an Endangered or Threatened Species, 80 Fed. Reg. 59858, 59866 (Oct. 2, 2015).

[154] *Id.*

[155] Ex. 34, T. Remington (2025) at 3.

Notably, the destruction of sage brush habitat from pipeline construction may not be fully remediated even after the project area is reclaimed. As the U.S. Department of State disclosed in its environmental review for the similar Keystone XL project: "[s]ubsequent revegetation may not provide habitat features comparable to pre-project conditions. … Sagebrush often does not quickly become established on disturbed sites, especially if these sites are seeded with grasses and other species that more-rapidly germinate and grow."[156] And "[l]oss of shrublands and wooded habitats would be long term (5 to 20 years) in reclaimed areas of the construction ROW."[157]

While the greater sage grouse is imperiled throughout its range, Wyoming and Montana are the key states for future conservation of the species.[158] Impacts to the greater sage grouse from oil and gas infrastructure, including pipelines and their associated infrastructure, have been widely documented.[159] Therefore, "[t]he best available scientific information establishes that buffers around leks should keep infrastructure sites at a distance of several miles to avoid or minimize impacts."[160] Notably, however, "the cumulative effect of development may extend across the landscape many kilometers (>10 km [6.2 miles]) beyond the immediately affected areas."[161]

BLM and DEQ must robustly evaluate the harm to the greater sage grouse from the proposed pipeline, including whether current BLM management prescriptions are insufficient in light of the best available science on the threats to the species. To the extent the pipeline is permitted, the agencies must ensure adequate buffers, appropriate weed control and fire mitigation, and other measures to minimize harm to this precarious species in its important Montana and Wyoming habitat.

b. Migratory Birds

The migratory bird treaty act (MBTA) implements protections for all native migratory game and non-game birds with exceptions for the control of species that cause damage to agricultural or other interests. The MBTA prohibits the take of any migratory bird, part, nest, egg or product. Take, as defined in the MBTA,

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[156] Ex. 36, Keystone FEIS at 3.8-1–2.

[157] *Id.* at 3.8-2.

[158] Ex. 34, T. Remington (2025) at 3.

[159] *See id.* at 6–7.

[160] *Id.* at 7–8.

[161] *Id.* at 8 (citation omitted).

includes by any means or in any manner any attempt at hunting, pursuing, wounding, killing, possessing, or transporting any migratory bird, nest, egg, or part thereof. Similarly, the Bald and Golden Eagle Protection Act.[162] That law prevents disturbance of eagles, which includes "actions that agitate or bother eagles to a degree likely to cause injury, reduce productivity by substantially interfering with breeding, feeding, or sheltering, or result in nest abandonment."[163]

The project has the potential to take migratory birds, including bald and golden eagles, through construction-related impacts to migratory bird feeding and breeding habitats, loss of habitat and fragmentation of habitat areas, and impacts associated with power lines needed for the project, including increased risk of collision as well as predation from the increase in raptor nesting.[164]

BLM and DEQ must fully analyze the potential impacts to migratory birds, and, at a minimum, identify alternatives and mitigation to minimize harm to migratory birds.

c. Terrestrial Species

Among the numerous potentially affected species are large game (elk, mule deer, white-tailed deer, pronghorn, and moose), small game, and nongame species that use portions of the project's impact area for both summer and winter range.[165] For these species, BLM and DEQ first must ensure accurate baseline information, collected through surveys lasting more than a year to ensure that information is collected across all seasons, and ideally more than two years to account for environmental variability. In their effects analyses, BLM and DEQ must evaluate impacts from pipeline construction and operation. Wildlife monitoring must continue during operational and reclamation phases to monitor impacts.

The construction phase would include road building, vehicle traffic, increased human presence, noise, vibration, lighting, vegetation and soil removal. Many of these same impacts would continue into the project's operation and reclamation. For terrestrial species, construction activities could create barriers to wildlife movements, facilitation of predator movements, reduction of safe habitat, spread of noxious weeds and invasive plants, and other problems. For waterfowl and game

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[162] 16 U.S.C. § 668–668d.

[163] 50 C.F.R. § 22.6.

[164] *See* Paul A. Johnsgard, Wings Over the Great Plains: Bird Migrations in the Central Flyway (2012), http://digitalcommons.unl.edu/zeabook/13 ("Judging from available regional, state and local information, nearly 400 species of 50 avian families regularly use the Central Flyway during their migrations.").

[165] *Id.* at 129–32.

birds, habitat loss, degradation, and fragmentation would occur until vegetation is reestablished, and even then, the spread of weeds and invasive species could continue to degrade habitat.

d. Aquatic species

If constructed, the pipeline would also impact aquatic species (i.e., fish and invertebrates) present in perennial rivers, streams, ponds, and lakes.[166] For aquatic species, pipeline construction activities, along with operation and reclamation, pose risks of sedimentation in streams; vibration; and spills of hazardous materials, petroleum products, and crude oil.

The MFSA Application asserts that the use of horizontal directional drilling (HDD) to bury the pipeline beneath larger rivers will successfully protect most "special status species."[167] But Bridger proposes HDD for only a fraction of the water crossings the Application, leaving smaller streams and wetlands open to the greater harms of open-cut trenching. As the MFSA Application concedes, this practice "will result in alteration of bottom substrates, temporary increased sedimentation, and possible removal of riparian vegetation."[168] While Bridger suggests that "the degree of impact will depend upon whether important fish spawning or rearing habitat is altered" and speculates that "impacts could range from several weeks to several years, depending on the life stages that are affected and whether future spawning will be affected."[169] DEQ and BLM must do more, and not only analyze the foreseeable impacts to aquatic species from the pipeline's construction and operation, but it must also identify mitigation measures and alternatives to avoid and minimize these impacts.

## D. The EIS Must Evaluate Impacts on Land, Vegetation, and Soil.

BLM and DEQ must thoroughly evaluate the projects impacts on land, vegetation, and soil along the pipeline's path, including the increased soil temperatures over the pipeline, the increased risk of soil subsidence and instability, and the difficulty in revegetating the pipeline right-of-way in drought conditions. Relatedly, BLM and DEQ must thoroughly evaluate the projects impacts to land, vegetation, and soil due to drought.

BLM and DEQ must thoroughly evaluate and disclose the project's potential impacts to vegetation, including agricultural areas, forest areas, grassland areas,

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[166] MFSA Application at 131.

[167] *Id.* at 167.

[168] *Id.*

[169] *Id.*

and wetlands or riparian areas,[170] including those caused by clearing, grading, trench excavation, temporary loss of vegetative cover, soil stockpiling, and equipment traffic, such as impacts to grassland and rangeland communities from the clearing of herbaceous vegetation, localized soil compaction, reduction in vegetative cover and increases in erosion, susceptibility to weed colonization, and reduced forage production. BLM and DEQ must also thoroughly evaluate the project's potential impacts, both temporary and permanent, to woody areas caused by pipeline construction.

BLM and DEQ must thoroughly evaluate the potential for the introduction and spread of noxious and invasive plant species as a result of the project, and evaluate whether appropriate controls are in place to ensure that construction traffic, topsoil handling, and the movement of materials does not transport weed seed areas between work areas into previously unaffected lands.

The Bridger Pipeline would cross a diverse range of soil conditions. BLM and DEQ must evaluate the project's potential impact on soils. For example, in Wyoming, the Bridger Pipeline would cross areas of sensitive soils that are susceptible to degradation from surface disturbance.[171]

### E. The EIS Must Evaluate the Pipeline's Contribution to Climate Change.

Climate change is not a distant threat; it is our reality. The climate crisis is "unequivocally caused by greenhouse gas emissions from human activities—primarily burning fossil fuels."[172] A recent report from the Intergovernmental Panel on Climate Change (IPCC) stated: "[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land."[173] According to the IPCC, "[w]idespread and rapid changes in the atmosphere, ocean, cryosphere, and biosphere have occurred."[174] Carbon dioxide concentrations in the atmosphere "have increased by more than 47%" since 1850.[175] While harm from current levels of atmospheric greenhouse gases are already being felt in the U.S. and across the globe, dramatic reductions in greenhouse gas emissions are essential to avert the worst-case climate

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[170] *Id.* at 104.

[171] *Id.* at 110.

[172] Ex. 37, U.S. Glob. Change Rsch. Program, *Fifth National Climate Assessment* at 1-13 (2023).

[173] Ex. 38, IPCC, *Climate Change 2023 Synthesis Report, Summary for Policymakers* at 5 (2023).

[174] *Id.*

[175] Ex. 37, *Fifth National Climate Assessment* at 2-5.

change scenario. As the International Energy Agency reports, emissions from oil and gas operations must be reduced by approximately 60 percent between now and 2030 to achieve "net zero" emissions by 2050.[176]

BLM and DEQ must fully evaluate the climate-change consequences of the pipeline, including from the production and combustion of the crude directly enabled by the project. To the extent the pipeline carries tar sands crude, the agencies' "hard look" must evaluate the particularly damaging nature of that fuel. And the agencies' evaluation must consider the baseline of already severe environmental, health, and safety consequences of current levels of greenhouse gas emissions, caused largely by the extraction, transportation, and burning of fossil fuels. And because the impacts of permitting the Bridger Pipeline are significant, BLM must examine them in an EIS. BLM's analysis of the effects of its action also must consider actions that are interrelated or interdependent, including the transportation and combustion of other petroleum products and coal.[177]

1. <u>BLM and DEQ Are Obligated to Evaluate and Avoid Climate-Related Harm.</u>

BLM and DEQ must evaluate the significant climate-change consequences of permitting the pipeline. BLM's obligations stem not just from NEPA, but also from the Federal Land Management and Policy Act (FLPMA) and Mineral Leasing Act (MLA), discussed below, which requires BLM to manage public lands in a manner that protects the public interest.[178] More specifically, FLMPA requires BLM to manage public lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values."[179] BLM is also required to "take[] into account the long-term needs of future generations for renewable and nonrenewable resources" when making decisions about the use of public lands.[180] Crucially, BLM may deny right-of-way and temporary-use applications under the circumstances apparent on the face of the pipeline application, i.e., the proposed use would not serve the public interest, or would have serious environmental consequences that cannot be

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[176] Ex. 39, Int'l Energy Agency, Emissions from Oil and Gas Operations in Net Zero Transitions, A World Energy Outlook Special Report on the Oil and Gas Industry and COP28 (May 3, 2023), https://www.iea.org/reports/emissions-from-oil-and-gas-operations-in-net-zero-transitions.

[177] 50 C.F.R. § 402.14(g)(3)–(4); *id.* § 402.02.

[178] 43 C.F.R. § 2804.26(a) (Under FLPMA right of way application may be denied if "the proposed use would not be in the public interest"); 43 C.F.R. § 2884.23(a) (same for the MLA).

[179] 43 U.S.C. § 1701(a)(8).

[180] *Id.* § 1702(c).

mitigated.[181]

Furthermore, in addition to managing public lands for the public interest, BLM is required to "take any action necessary to prevent unnecessary or undue degradation of the lands" and "minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved."[182] Therefore, BLM must account for how the agency will prevent "unnecessary or undue degradation" of lands affected by the pipeline —which host habitats for sensitive species—in light of the fact that those public lands are already facing compounding environmental stressors from climate change.

DEQ's obligations are even broader. The agency has previously evaluated the foreseeable direct, indirect, and cumulative climate-change effects of its energy-infrastructure permitting decisions under MEPA.[183] Under MFSA, DEQ must "ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils."[184] DEQ may only issue a certification under MFSA if it determines "that the facility will serve the public interest," considering, among other things, "the effects of the proposed facility on the public health, welfare, and safety."[185] More fundamentally, Montana's Constitution compels the state to "maintain and improve a clean and healthful environment in Montana for present and future generations,"[186] including by protecting a stable climate.[187]

BLM and DEQ must therefore assess how permitting the pipeline, and thus opening a market for tar sands that otherwise may not be mined, would impact future generations and protect the quality of natural resources and the environment.

2. Permitting the Pipeline Would Cause Significant Climate Harm.

Permitting the proposed pipeline would lead to direct emissions of climate-harming greenhouse gases, as well as upstream and downstream emissions that

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[181] 43 C.F.R. §§ 2804.26(a), 2884.23(a).

[182] 43 U.S.C. §§ 1732(b), (d)(2)(A).

[183] Ex. 40, Mont. Dep't of Env't Quality, Final Env't Impact Statement for the Highwood Generating Station at 3-44–46, 4-53–54, 5-11–15 (Jan. 2007).

[184] Mont. Code Ann. § 75-20-102(6)(a).

[185] *Id.* § 75-20-301(1)(f), (2)(d).

[186] Mont. Const. art. IX § 1(1).

[187] *Held v. State*, 2024 MT 312, ¶ 30, 419 Mont. 403, 560 P.3d 1235.

result from the pipeline. Bridger asserts that "[t]he Project's need is supported primarily by transportation capacity considerations."[188] Indeed, pipeline capacity appears to be a key constraint on new tar sands mining and crude oil production in Canada.[189] Accordingly, building new pipeline capacity for Canadian exports could cause new tar sands or crude production and consumption.

Globally, CO2 emissions from oil and gas are substantial. In 2022, greenhouse gas emissions from the production, transport, and processing of oil and gas accounted for just under 15 percent of total energy-related greenhouse gas emissions, while the end use of oil and gas (typically, through combustion) results in an additional 40 percent of emissions. Thus, oil and gas account for more than half of global energy-sector climate-harming pollution, with oil reflecting the greater portion of these emissions.[190]

While current emissions from the oil and gas industries, broadly, undermine the world's climate and energy security goals, Canadian tar sands crude is a uniquely damaging resource. Canadian tar sands crude "emit an estimated 17% more GHGs on a life-cycle basis than the average barrel of crude oil refined in the United States."[191] The reason lies in the nature of the resource itself. Tar sands are not liquid oil; they are a semi-solid mixture of sand, clay, water, and a substance called bitumen. Turning this into gasoline or diesel requires a massive input of energy at every single step:

First, extracting crude from tar sands is difficult. For shallow deposits, it involves strip-mining vast landscapes, using colossal machinery to move millions of tons of earth.[192] For deeper deposits, the industry must inject vast quantities of high-pressure steam—generated by burning enormous amounts of natural gas—

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[188] MFSA Application at 2.

[189] Ex. 41, Oil Sands Magazine, Pipeline Egress Outlook to 2030 – 2026 Edition (Dec. 11, 2025), https://www.oilsandsmagazine.com/market-insights/2025/12/11/pipeline-egress-outlook-to-2030-2026-edition; Ex. 42, S&P Global, Canadian Oil Sands Production Expected to Reach All-time Highs this Year Despite Lower Oil Prices (Jun. 24, 2025), https://www.prnewswire.com/news-releases/canadian-oil-sands-production-expected-to-reach-all-time-highs-this-year-despite-lower-oil-prices-302488676.html.

[190] Ex. 39, Int'l Energy Agency (May 3, 2023).

[191] Ex. 43, Congressional Res. Serv., Canadian Oil Sands: Life-Cycle Assessments of Greenhouse Gas Emissions at 2 (Dec. 30, 2014), https://www.everycrsreport.com/files/20141230_R42537_61f147a81fd7aef354aa07d1e3043d2994ee8806.pdf.

[192] *Id.* at 5; *see also* Ex. 20, Natural Res. Def. Council, Setting the Record Straight: Lifecycle Emissions of Tar Sands at 3–5 (Nov. 2010).

underground just to heat the bitumen enough to make it flow to the surface.[193] This is an energy-intensive process just to get the raw material out of the ground.

Second, the raw bitumen is not refinery-ready. It is too thick to flow through a pipeline and is laden with impurities. It must be "upgraded" in an energy-heavy process that uses high heat, pressure, and hydrogen—again, produced from natural gas—to transform it into a synthetic crude.[194] This "upgrading" stage consumes a staggering amount of energy before the product even reaches a refinery.

One telling metric of tar sands' climate footprint is the Energy Return on Investment (EROI). Globally, the EROI estimates for petroleum range from 18 to 35 barrels produced for every one barrel *used* in the extraction and upgrading processes. By comparison, Canadian tars sands produce only 3.2 to 8 barrels per day of crude (depending on whether extraction is through mining or in situ processes) for every barrel consumed for production.[195] This means a disproportionate amount of energy is consumed to create the tar sands fuel than conventional crude.

BLM and DEQ must fully evaluate the significant direct, upstream, and downstream greenhouse gas emissions and resulting climate consequences of permitting the Bridger Pipeline. And to the extent the pipeline may carry tar sands crude, BLM and DEQ must account for that fuel's substantially higher greenhouse gases.

3. The Effects of Climate Change are Already Far-Reaching and Expected to Intensify.

To ensure transparency and informed decision making, BLM and DEQ must evaluate the pipeline's climate impacts against the already-destructive baseline of current levels of atmospheric greenhouse gases and climate change.

The global community has agreed that climate change should be limited to 2°C in order to avoid the most dangerous impacts of climate change. In December 2015, the world community, including the United States, agreed to limit "the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and

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[193] Ex. 43, Congressional Res. Serv. at 5, 19 (2014); Ex. 20, Natural Res. Def. Council at 3–5 (2010).

[194] Ex. 43, Congressional Res. Serv. at 19–20 (2014).

[195] Ex. 44, Wang, K. et al., Energies, *Energy Return on Investment of Canadian Oil Sands Extraction from 2009 to 2015* (May 2, 2017), https://www.mdpi.com/1996-1073/10/5/614.

impacts of climate change" under the Paris Agreement.[196] The global commitment to these limits were subsequently affirmed at COP 26, COP 27, COP 28, and COP 29. To maintain a chance of limiting global temperatures to even 2°C will require immediate and significant emissions reductions.[197]

In 2018, the IPCC released a dire report quantifying the damage that would occur if the world continues to allow the climate to warm beyond 1.5°C to 2°C above pre-industrial levels. According to the IPCC, human activities have already caused approximately 1.0°C of global warming above pre-industrial levels.[198] The world is on track to reach 1.5°C of warming between 2030 and 2052 if emissions continue at current rates.[199] A world with 2°C of warming above pre-industrial levels would experience more extreme weather, sea level rise, biodiversity loss, poor health outcomes, food insecurity, and drought.[200]

To avoid some of the most severe impacts, limiting warming to 1.5°C above pre-industrial levels would require global carbon dioxide emissions to be reduced by at least forty-five percent from global 2010 levels by 2030 and net-zero by 2050.[201] Such reductions would require a "rapid and far-reaching" emissions reduction across all sectors of the economy that is "unprecedented in terms of scale."[202] In the scenarios modeled by the IPCC to limit warming to 1.5°C, clean energy supplies seventy to eighty-five percent of global electricity demand by 2050, while reliance on oil is sharply reduced.[203]

To avoid the most extreme consequences of climate change and reach the targets under the Paris Agreement and in line with the IPCC 1.5°C report, BLM and DEQ must take action to reduce fossil fuel emissions at a rapid pace. This analysis must also address the potential of incremental emissions leading to tipping points or exceeding critical thresholds of greenhouse gas emissions.

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[196] Adoption of the Paris Agreement, art. 2.1(a) (2015) FCCC/CP/2015/L.9, http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf.

[197] Ex. 45 United Nations Env't Programme, *Emissions Gap Report 2024* (2024), https://doi.org/10.59117/20.500.11822/46404.

[198] Ex. 38, IPCC, *Climate Change 2023 Synthesis Report, Summary for Policymakers* (2023).

[199] *Id.*

[200] *See id.* at 7–9.

[201] *Id.* at 14.

[202] *Id.* at 15.

[203] *Id.* at 14.

According to the Fifth National Climate Assessment, "[t]he effects of human-caused climate change are already far-reaching and worsening across every region of the United States."[204] "The impacts of climate change increase with warming and warming is *virtually certain* to continue if emissions of carbon dioxide do not reach net zero . . . . While there are still uncertainties about how the planet will react to rapid warming and catastrophic future scenarios that cannot be ruled out, the future is largely in human hands."[205]

The grim and catastrophic impacts of unabated climate change are summarized well in the IPCC's Technical Summary for the Sixth Assessment Report.[206]

> Climate change has altered marine, terrestrial and freshwater ecosystems all around the world (very high confidence). Effects have been experienced earlier, are more widespread and with further reaching consequences than anticipated (medium confidence). Biological responses including changes in physiology, growth, abundances, geographic placement and shifting seasonal timing are often not sufficient to cope with recent climate change (very high confidence). Climate change has caused local species losses, increases in disease (high confidence), mass mortality events of plants and animals (very high confidence), resulting in the first climate driven extinctions (medium confidence), ecosystem restructuring, increases in areas burned by wildfire (high confidence), and declines in key ecosystem services (high confidence). Climate-driven impacts on ecosystems have caused measurable economic and livelihood losses and altered cultural practices and recreational activities around the world (high confidence).[207]
>
> Human communities, especially Indigenous Peoples and those more directly reliant on the environment for subsistence, are already negatively impacted by the loss of ecosystem functions, replacement of endemic species, and regime shifts across landscapes and seascapes (high confidence). Indigenous knowledge contains unique information sources about past changes and potential solutions to present issues (medium confidence). Tangible heritage such as traditional harvesting

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[204] Ex. 37, *Fifth Nat'l Climate Assessment* at 1-5.

[205] *Id.* at 2-21 (emphasis in original).

[206] Ex. 47, IPCC, *Technical Summary for the Working Group II Sixth Assessment Report* (2022).

[207] *Id.* at TS-9.

sites or species and archaeological and cultural heritage sites, and intangible heritage such as festivals and rites associated with nature-based activities, endemic knowledge and unique insights about plants and animals, are being lost (high confidence). As 80% of the world's remaining biodiversity is on Indigenous homelands, these losses have cascading impacts on cultural and linguistic diversity and Indigenous knowledge systems, food security, health, and livelihoods, often with irreparable damages and consequences (medium evidence, high agreement). Cultural losses threaten adaptive capacity and may accumulate into intergenerational trauma and irrevocable losses of sense of belonging, valued cultural practices, identity and home (medium confidence).[208]

Widespread and severe loss and damage to human and natural systems are being driven by human-induced climate changes increasing the frequency and/or intensity and/or duration of extreme weather events, including droughts, wildfires, terrestrial and marine heatwaves, cyclones (high confidence), and flood (low confidence). Extremes are surpassing the resilience of some ecological and human systems, and challenging the adaptation capacities of others, including impacts with irreversible consequences (high confidence). Vulnerable people and human systems, and climate sensitive species and ecosystems, are most at risk (very high confidence).[209]

Climate-related extremes have affected the productivity of agricultural, forestry and fishery sectors (high confidence). Droughts, floods, wildfires and marine heatwaves contribute to reduced food availability and increased food prices, threatening food security, nutrition, and livelihoods of millions of people across regions (high confidence). Extreme events caused economic losses in forest productivity and crops and livestock farming, including losses in wheat production in 2012, 2016, 2018, with the severity of impacts from extreme heat and drought tripling over last 50 years in Europe (high confidence) Forests were impacted by extreme heat and drought impacting timber sales for example in Europe (high confidence) Marine heatwaves, including well-documented events along the west coast of North America (2013–2016) and east coast of Australia

[208] *Id.* at TS-10.

[209] *Id.* at TS-13.

(2015–2016, 2016–2017 and 2020) have caused the collapse of regional fisheries and aquaculture (high confidence.) Human populations exposed to extreme weather and climate events are at risk of food insecurity with lower diversity in diets, leading to malnutrition and increasing the risk of disease (high confidence).[210]

Extreme climatic events have been observed in all inhabited regions, with many regions experiencing unprecedented consequences, particularly when multiple hazards occur in the same time or space (very high confidence). Since AR5, the impacts of climate change and extreme weather events such as wildfires, extreme heat, cyclones, storms, and floods have adversely affected or caused loss and damage to human health; shelter; displacement; incomes and livelihoods; security; and inequality (high confidence). Over 20 million people have been internally displaced annually by weather-related extreme events since 2008, with storms and floods the most common drivers (high confidence). Climate-related extreme events are followed by negative impacts on mental health, wellbeing, life satisfaction, happiness, cognitive performance, and aggression in exposed populations (very high confidence).[211]

Climate change is already stressing food and forestry systems, with negative consequences for livelihoods, food security and nutrition of hundreds of millions of people, especially in low and midlatitudes (high confidence). The global food system is failing to address food insecurity and malnutrition in an environmentally sustainable way.[212]

Currently, roughly half of the world's population are experiencing severe water scarcity for at least one month per year due to climatic and other factors (medium confidence). Water insecurity is manifested through climate-induced water scarcity and hazards and is further exacerbated due to inadequate water governance (high confidence). Extreme events and underlying vulnerabilities have intensified the societal impacts of droughts and floods and have negatively impacted agriculture, energy production and increased the incidence of water-borne diseases. Economic and societal impacts of water

[210] *Id.* at TS-13.

[211] *Id.* at TS-14.

[212] *Id.* at TS-15.

insecurity are more pronounced in low-income countries than in the middle- and high-income ones (high confidence).[213]

Without urgent and ambitious emissions reductions, more terrestrial, marine and freshwater species and ecosystems face conditions that approach or exceed the limits of their historical experience (very high confidence). Threats to species and ecosystems in oceans, coastal regions, and on land, particularly in biodiversity hotspots, present a global risk that will increase with every additional tenth of a degree of warming (high confidence). The transformation of terrestrial and ocean/coastal ecosystems and loss of biodiversity, exacerbated by pollution, habitat fragmentation and land-use changes, will threaten livelihoods and food security (high confidence).[214]

Climate change will increasingly add pressure on food production systems, undermining food security (high confidence). With every increment of warming, exposure to climate hazards will grow substantially (high confidence), and adverse impacts on all food sectors will become prevalent, further stressing food security (high confidence). Regional disparity in risks to food security will grow with warming levels, increasing poverty traps, particularly in regions characterized by a high level of human vulnerability (high confidence).[215]

Water-related risks are projected to increase at all warming levels with risks being proportionally lower at 1.5°C than higher degrees of warming (high confidence). Regions and populations with higher exposure and vulnerability are projected to face greater risks than others (medium confidence). Projected changes in water cycle, water quality, cryosphere changes, drought and flood will negatively impact natural and human systems (high confidence).[216]

Climate change will increase the number of deaths and the global burden of noncommunicable and infectious diseases (high confidence). Over 9 million climate-related deaths per year are projected by the end of the century, under a high emissions scenario and accounting for population growth, economic

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[213] *Id.*

[214] *Id.* at TS-23.

[215] *Id.* at TS-26.

[216] *Id.* at TS-30.

development, and adaptation. Health risks will be differentiated by gender, age, income, social status and region (high confidence).[217]

Migration patterns due to climate change are difficult to project as they depend on patterns of population growth, adaptive capacity of exposed populations, and socioeconomic development and migration policies (high confidence). In many regions, the frequency and/or severity of floods, extreme storms, and droughts is projected to increase in coming decades, especially under high-emissions scenarios, raising future risk of displacement in the most exposed areas (high confidence). Under all global warming levels, some regions that are presently densely populated will become unsafe or uninhabitable with movement from these regions occurring autonomously or through planned relocation (high confidence).[218]

Warming pathways which imply a temporary temperature increase over "well below 2°C above pre-industrial" for multi-decadal time spans imply severe risks and irreversible impacts in many natural and human systems (e.g. glacier melt, loss of coral reefs, loss of human lives due to heat) even if the temperature goals are reached later (high confidence).[219]

There is increasing evidence on limits to adaptation which result from the interaction of adaptation constraints and the speed of change (high confidence). In some natural systems, hard limits have been reached (high confidence) and more will be reached beyond 1.5°C (medium confidence). Surpassing such hard, evolutionary limits cause local species extinctions and displacements if suitable habitats exist (high confidence). Otherwise, species existence is at very high risk (high confidence). In human, managed and natural systems soft limits are already being experienced (high confidence). Financial constraints are key determinants of adaptation limits in human and managed systems, particularly in low-income settings (high confidence), while in natural systems key determinants for

[217] *Id.* at TS-33.

[218] *Id.* at TS-34.

[219] *Id.* at TS-42.

limits are inherent traits of the species or ecosystem (very high confidence).[220]

Limits to adaptation will be reached in more systems, including, for example, coastal communities, water security, agricultural production, and human health, as global warming increases (medium confidence). Hard limits beginning at 1.5°C are also projected for coastal communities reliant on nature-based coastal protection (medium confidence). Adaptation to address risks of heat stress, heat mortality and reduced capacities for outdoor work for humans, face soft and hard limits across regions become significantly more severe at 1.5°C, and are particularly relevant for regions with warm climates (high confidence). Beginning at 3°C, hard limits are projected for water management measures, leading to decreased water quality and availability, negative impacts on health and well-being, economic losses in water and energy dependent sectors and potential migration of communities (medium confidence). Soft and hard limits for agricultural production are related to water availability and the uptake and effectiveness of climate-resilient crops which are constrained by socio-economic and political challenges (medium confidence). In terms of settlements, limits to adaptation are often most pronounced in smaller and rapidly.[221]

Indigenous Peoples and disadvantaged groups such as low-income households and ethnic minorities, are especially adversely affected by maladaptation, which often deprives them of food and livelihoods and reinforces and entrenches existing inequalities (high confidence). Rights-based approaches to adaptation, participatory methodologies and inclusion of local and Indigenous knowledge combined with informed consent deliver mechanisms to avoid these pitfalls (medium confidence). Adaptation solutions benefit from engagement with Indigenous and marginalized groups, solve past equity and justice issues and offer novel approaches (medium confidence). Indigenous knowledge is a powerful tool to assess interlinked ecosystem functions across terrestrial, marine and freshwater systems, bypassing siloed approaches and sectoral problems (high confidence). Lastly, engagement with Indigenous knowledge and marginalized groups often offers an intergenerational context for

[220] *Id.* at TS-57.

[221] *Id.*

> adaptation solutions, needed to avoid maladaptation (high confidence).[222]

These impacts—including extinction, loss of food security, loss of water security, extreme weather, communities becoming uninhabitable, and natural and human systems being stressed past the point of adaptation—are momentous and should be acknowledged and disclosed in the agencies' analysis. This is especially the case since these impacts are expected to be felt most acutely by Indigenous communities, rural communities, and communities with limited financial resources.

The U.S. Global Change Research Program's Fifth National Climate Assessment discusses the impacts of climate change on hydrology in the Northern Great Plains. Climate change does not simply alter precipitation, it is driving more severe drought and causing increased evapotranspiration.[223]

Increased temperatures are causing deceased snowpack, affecting irrigation, causing increased aridity, and likely will cause increased pressure on groundwater: "Decreasing snowpack will alter surface water availability for irrigation and may increase pressure on groundwater resources. Overall aridity has increased and is projected to continue to do so because of increases in potential evapotranspiration."[224] Higher temperatures are causing more evaporation, which is also decreasing stream flows: "Increases in evaporative demand (the loss of water from Earth's surface to the atmosphere … ) have decreased runoff efficiencies, meaning that less rain and melted snow end up reaching the streams that feed the Colorado River."[225]

Drought is also expected to increase. As the Northern Great Plains assessment explained, "[p]rojected warming is expected to increase evapotranspiration …, which may lead to drier soils later in the growing season."[226] While future droughts are predicted to be more frequent and severe, already, "[r]ecent droughts in the upper Missouri River basin between 2000 and 2010 were the most severe in the instrumental record, and flash droughts are a growing concern."[227] Recent research shows that soil moisture globally and in the

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[222] *Id.* at TS-59.

[223] Ex. 48, U.S. Glob. Change Rsch. Program, *Northern Great Plains*, *in Fifth National Climate Assessment* 25-8 [hereinafter Northern Great Plains].

[224] *Id.* at 25-9.

[225] *Id.*

[226] *Id.* at 25-11.

[227] *Id.*

Great Plains has declined dramatically over the past two decades, supporting the analyses of the IPCC and the National Climate Assessment.[228]

Climate change impacts to water quantity will also affect water quality:

> Excess contributions of nutrients, such as nitrogen and phosphorus from agricultural runoff or point sources such as wastewater treatment plants, can cause water quality issues, which are expected to be exacerbated by climate change. Nutrient loads (the total amount of a nutrient transported past a single location over a set period of time) can increase after droughts, when sediment is flushed in subsequent runoff events. Nutrient runoff from agricultural land spikes after heavy rain and contributes to harmful algal blooms and transport of nutrients to the Gulf of Mexico (KM 25.5). Climate change has long been hypothesized as a driver of harmful algal blooms; supporting these hypotheses with observations has been challenging because of gaps in monitoring, lack of long-term algae data, and changes in laboratory and remote-sensing methods.[229]

Wildfire risk in the region will also increase because of climate change. "Driven by increased temperature and decreased relative humidity, fire potential in this region is projected to increase under future climate change … . Increase evapotranspiration and drought risk raise the probability of large fire occurrence."[230]

In addition, climate change will drive further biodiversity losses. "The region is a hotspot for grassland bird diversity and encompasses the entire breeding season range for many of the most vulnerable species; based on projections under a scenario with 5.4°F (3.0°C) warming above preindustrial levels, more than 80% of grassland bird species will be vulnerable to climate-related threats during the breeding season."[231]

There is ample science assessing the impacts of climate change in Montana and Greater Yellowstone region. According to the Montana Climate Assessment:

> Annual average temperatures, including daily minimums, maximums, and averages, have risen across the state between

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[228] Ex. 49, Seo et al., *Abrupt Sea Level Rise and Earth's Gradual Pole Shift Reveal Permanent Hydrological Regime Changes in the 21st Century*, Science (Mar. 2025).

[229] *Id.*

[230] Ex. 48, *Northern Great Plains* at 25-13.

[231] *Id.* at 25-15.

1950 and 2015. The increases range between 2.0-3.0°F (1.1-1.7°C) during this period.[232]

Despite no historical changes in average annual precipitation between 1950 and 2015, there have been changes in average seasonal precipitation over the same period. Average winter precipitation decreased by 0.9 inches (2.3 cm), which can largely be attributed to natural variability and an increase in El Niño events, especially in the western and central parts of the state. A significant increase in spring precipitation (1.3-2.0 inches [3.3-5.1 cm]) also occurred during this period for the eastern part of the state.[233]

Montana is projected to continue to warm in all geographic locations, seasons, and under all emission scenarios throughout the 21st century. By mid century, Montana temperatures are projected to increase by approximately 4.5-6.0°F (2.5-3.3°C) depending on the emission scenario. By the end-of-century, Montana temperatures are projected to increase 5.6-9.8°F (3.1-5.4°C) depending on the emission scenario. These state-level changes are larger than the average changes projected globally and nationally.[234]

Across the state, precipitation is projected to increase in winter, spring, and fall; precipitation is projected to decrease in summer. The largest increases are expected to occur during spring in the southern part of the state. The largest decreases are expected to occur during summer in the central and southern parts of the state.[235]

Montana's snowpack has declined over the observational record (i.e., since the 1930s) in mountains west and east of the Continental Divide; this decline has been most pronounced since the 1980s.[236]

Groundwater demand will likely increase as elevated temperatures and changing seasonal availability of traditional

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[232] Ex. 50, Cathy Whitlock et al., *2017 Montana Climate Assessment*, Mont. St. Univ., Univ. of Mont., Mont. Inst. on Ecosystems at xxvi (2017).

[233] *Id.* at xxvii.

[234] *Id.*

[235] *Id.* at xxviii.

[236] *Id.* at xxxii.

> surface-water sources (e.g., dry stock water ponds or inability of canal systems to deliver water in a timely manner) force water users to seek alternatives.[237]
>
> Multi-year and decadal-scale droughts have been, and will continue to be, a natural feature of Montana's climate [high agreement, robust evidence]; rising temperatures will likely exacerbate drought when and where it occurs.[238]

Climate change will also increase health risks, primarily through increased periods of extreme heat, reduced air quality from wildfire smoke, and "more unexpected climate-related weather events (i.e., climate surprises), including rapid spring snowmelt and flooding, severe summer drought, and more extreme storms."[239] These risks pose disproportionate threats to vulnerable individuals, such as those "with existing chronic physical and mental health conditions, as well as individuals who are very young, very old, or pregnant. Montana's at-risk populations include those exposed to prolonged heat and smoke, living in poverty, having limited access to health services, and/or lacking adequate health insurance."[240] Further, climate change "reduc[es] the availability of wild game, fish, and many subsistence, ceremonial, and medicinal plants, which threatens food security, community health, and cultural well-being, particularly for tribal communities."[241] Additionally, "[i]ncreased stress and increased mental illness are under recognized but serious health consequences of climate change."[242]

These local climate reports echo many of the same projected impacts from the IPCC and the U.S. Global Change Research Program: it is unequivocally clear that the region already is experiencing environmental impacts from a changing climate and those impacts will continue without a rapid reduction in greenhouse gas emissions. BLM and DEQ must assess the combined impacts of climate change and the new oil production, transportation, and combustion from the proposed pipeline.

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[237] *Id.*

[238] *Id.*

[239] Ex. 51, Alexandra Adams et al., *Climate Change and Human Health in Montana: A Special Report of the Montana Climate Assessment*, Mont. St. Univ. Inst. on Ecosystems, Ctr. for Am. Indian & Rural Health Equity at xix (Jan. 2021).

[240] *Id.*

[241] *Id.*

[242] *Id.*

4. BLM and DEQ Should Use Available Tools Such as the Social Cost of Greenhouse Gases to Analyze and Disclose the Significance of Emissions.

In their assessment of pipeline, BLM and DEQ should employ the best available tool to assess the significance of the project's climate effects: the social cost of greenhouse gases (SC-GHG). The SC-GHG is the single most scientifically accepted and widespread methodology for *quantifying* climate change impacts.[243] The SC-GHG "reflects the net social cost of emitting, or the net social benefit of reducing emissions of, one metric ton of greenhouse gases in a given year,"[244] enabling decisionmakers and the public to readily understand the scope of the project's climate impacts and contextualize them against other effects.

Federal agencies began developing estimates of the social cost of greenhouse gases based on then-available literature.[245] In 2009, the White House convened the first Interagency Working Group on the Social Cost of Carbon (Working Group)[246] to ensure that the federal government used consistent, scientifically rigorous values to estimate climate damages. The Working Group released climate-damage estimates in 2010, updated them in 2013, updated their presentation and technical documentation in 2016, and readopted them on an interim basis in 2021.[247] The Working Group based these estimates on three independent and widely used climate-economic models, known as integrated assessment models.[248]

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[243] Although the Interagency Working Group that established the SC-GHG was disbanded through Executive Order No. 14154 § 6(b), 90 Fed. Reg. 8353 (Jan. 29, 2025), this does not affect Interior's obligations to take a hard look at climate impacts under NEPA using high-quality scientific methods.

[244] Ex. 53, Office of Mgmt. & Budget, *Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act: Fiscal Year 2023*, at 20 (2024), https://bidenwhitehouse.archives.gov/wp-content/uploads/2025/01/FY23-Benefit-Cost-Report.pdf.

[245] Notably, in the George W. Bush Administration, EPA endorsed the use of a climate-damage value that captures the total damages from a ton of emissions, regardless of whether those damages occur inside or outside the United States, using discount rates of two to three percent. Ex. 54, U.S. Env't Prot. Agency, *Technical Support Document on Benefits of Reducing GHG Emissions* at 13 (2008).

[246] This group later changed its name to the Interagency Working Group on the Social Cost of Greenhouse Gases.

[247] Ex. 55, Interagency Working Grp. on Soc. Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide* at 2 (2021) [hereinafter 2021 TSD].

[248] *Id.* at 2–3.

The Working Group long recognized that its valuations likely understated the true value of climate damages because they omitted many key climate impacts.[249] Starting in 2010, it therefore noted the importance of updating the SC-GHG over time "to reflect increasing knowledge of the science and economics of climate impacts."[250] In 2016, the National Academies largely endorsed the Working Group's approach.[251] In 2017, it provided recommendations for improvement and called for future updates consistent with those recommendations.[252]

Since the Working Group last substantively updated its climate-damage estimates in 2016, there have been many developments in the economic and scientific literature on the proper valuation of climate damages.[253] The National Center for Environmental Economics (NCEE), a division of the Environmental Protection Agency, sought to fill this analytical gap through updated SC-GHG estimates. That update sought to reflect the recommendations of the National Academies, along with other recent updates in science and economics. EPA released draft estimates in December 2022 through a technical report from NCEE.[254] Following publication, those draft estimates underwent public comment and expert

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[249] *Id.* at 31.

[250] Ex. 56, Interagency Working Grp. on Soc. Cost of Carbon, *Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis* at 1 (2010) [hereinafter 2010 TSD].

[251] Nat'l Acads. of Scis., Eng'g & Med., *Assessment of Approaches to Updating the Social Cost of Carbon: Phase 1 Report on a Near-Term Update* (2016).

[252] Nat'l Acads. of Scis., Eng'g & Med., *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide* 2 (2017). Rather than address those recommendations, however, President Trump disbanded the Working Group in 2017 and withdrew its technical support documents. Exec. Order No. 13,783 §§ 5(b)–(c), 82 Fed. Reg. 16,093, 16,095–96 (Mar. 28, 2017); *see also* U.S. Gov't Accountability Off., *Social Cost of Carbon: Identifying a Federal Entity to Address the National Academies' Recommendations Could Strengthen Regulatory Analysis GAO-20-254* (2020) (stating that the federal government under the first Trump administration "ha[d] no plans to address the recommendations of the National Academies").

[253] *See, e.g.*, U.S. Env't Prot. Agency, *Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances* at 46 fig.2.3.1 (2023) (showing a surge in research that was not incorporated into the Working Group's estimates) [hereinafter Greenhouse Gas Report].

[254] *See* U.S. Env't Prot. Agency, *EPA External Review Draft of Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances* (2022).

peer review.

Numerous departments, including Interior, and agencies, including BLM, have used the SC-GHG to contextualize and assess the significance of climate impacts in NEPA reviews. Interior has used the SC-GHG on many occasions in recent years in NEPA reviews.

In 2021, an Interior secretarial order recognized that the SC-GHG provides "a useful measure to assess the climate impacts of GHG emission changes for Federal proposed actions, in addition to rulemakings," as it can serve as "an essential tool to quantify the costs and benefits associated with a proposed action's GHG emissions and relevant to the choice among different alternatives being considered."[255] Following that memorandum, the agency used the SC-GHG repeatedly in NEPA analysis, including for Bureau of Land Management and Bureau of Ocean Energy Management fossil-fuel leasing and management decisions.[256] After the October 2024 memorandum discussed above, the agency began applying EPA's updated SC-GHG estimates in its NEPA reviews.[257]

The Council on Environmental Quality (CEQ) has also previously endorsed the use of the SC-GHG in NEPA analysis.[258] In a 2023 guidance document, CEQ explained that the SC-GHG "can assist agencies and the public in assessing the significance of climate impacts."[259] CEQ also explained that the SC-GHG "provides an appropriate and valuable metric that gives decision makers and the public useful information and context about a proposed action's climate effects even if no other costs or benefits are monetized, because metric tons of GHGs can be difficult to

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[255] U.S. Dep't of the Interior, Secretarial Order No. 3399 § 5(b), Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process (Apr. 16, 2021).

[256] *E.g.* Bureau of Ocean Energy Mgmt., *2024–2029 National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program* 5-24–5-25 (2023) (calculating the climate costs of offshore leasing program); Bureau of Land Mgmt., *Willow Master Development Plan: Supplemental Environmental Impact Statement* 46–52 (2023).

[257] *E.g.* Bureau of Land Mgmt., *Coastal Plain Oil and Gas Leasing Program Supplemental Environmental Impact Statement* G-3 tbl.G-1 (2024) (calculating climate costs of future potential development using EPA SC-GHG estimates).

[258] National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196, 1198 (Jan. 9, 2023).

[259] *Id.* at 1202–03.

understand and assess the significance of in the abstract."[260]

The SC-GHG enables decisionmakers to rationally consider climate impacts in a manner that satisfies NEPA's requirements. Disregarding the SC-GHG risks violating NEPA, particularly if the agency does not otherwise assess climate effects in a way that rationally brings those effects to bear on the agency's decisions.

When a project or plan has climate consequences that must be assessed under NEPA, monetizing climate damage fulfills an agency's legal obligations under NEPA in ways that simple quantification of tons of greenhouse gas emissions cannot. Such an analysis must be added to the meaningful qualitative discussion addressed above, and is particularly critical in this instance, given the agencies' failure on that front. NEPA requires "hard look" consideration of the environmental effects of major federal government actions. The U.S. Supreme Court has called the disclosure of impacts the "key requirement of NEPA," and held that agencies must "consider and disclose the *actual environmental effects*" of a proposed project in a way that "brings those effects to bear on [the agency's] decisions."[261]

The tons of greenhouse gases emitted by a project are not the "actual environmental effects" under NEPA. Merely listing the quantity of emissions is insufficient if the agency "does not reveal the meaning of those impacts in terms of human health or other environmental values," since "it is not releases of [pollution] that Congress wanted disclosed" but rather "the effects, or environmental significance, of those releases."[262] In other words, the actual effects and relevant factors that must be analyzed and disclosed to the public are the incremental climate impacts caused by a project's greenhouse gas emissions, including: property lost or damaged by sea-level rise; changes in energy demand; lost productivity and other impacts to agriculture; and human health impacts, including cardiovascular and respiratory mortality from heat-related illnesses, changing disease vectors like malaria and dengue fever, increased diarrhea, and changes in associated pollution. These impacts are all included to some degree in the different assessment models used by the Working Group and EPA in developing their SC-GHG estimates.[263]

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[260] *Id.* at 1202.

[261] *Baltimore Gas & Elec. Co.*, 462 U.S. at 96 (emphasis added).

[262] *NRDC v. NRC*, 685 F.2d 459, 486–87 (D.C. Cir. 1982), *rev'd on other grounds*, *Baltimore Gas & Elec. Co.*, 462 U.S. at 106–07.

[263] For a description of what is included in the Working Group's integrated assessment models, *see* 2010 TSD at 6–8, 29–33. For a description of what is included in the EPA integrated assessment models, *see* Ex. 52, Greenhouse Gas Report at 47–62.

By quantifying climate damages using the SC-GHG, the agencies can satisfy NEPA's legal obligations and statutory goals to assess the incremental and actual effects bearing on the public interest. The social cost of greenhouse gases methodology calculates how the emission of an additional unit of greenhouse gases affects atmospheric greenhouse concentrations, how that change in atmospheric concentrations changes temperature, and how that change in temperature incrementally contributes to the above list of economic damages, including property damages, energy demand effects, lost agricultural productivity, human mortality and morbidity, lost ecosystem services and non-market amenities, and so forth.[264] The SC-GHG therefore captures the factors that actually affect public welfare and assesses the degree of impact to each factor, in ways that just estimating the volume of emissions cannot.

NEPA and MEPA require agencies to provide sufficient informational context on environmental impacts. The SC-GHG provides that context, allowing decisionmakers and the public "to translate climate impacts into the more accessible metric of dollars, allow decision makers and the public to make comparisons, help evaluate the significance of an action's climate change effects, and better understand the tradeoffs associated with an action and its alternatives."[265]

Although NEPA and MEPA may not always require a full and formal cost-benefit analysis, agencies must assess beneficial and adverse effects in a balanced and reasonable manner.[266] Some courts have warned, for example, that an agency cannot selectively monetize benefits in support of its decision while refusing to

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[264] 2010 TSD at 5.

[265] 88 Fed. Reg. 1,196, 1,198 (Jan. 9, 2023).

[266] *Sierra Club v. Sigler*, 695 F.2d 957, 978–79 (5th Cir. 1983) (holding that NEPA "mandates at least a broad, informal cost-benefit analysis," and so agencies must "fully and accurately" and "objectively" assess environmental, economic, and technical costs); *Chelsea Neighborhood Ass'ns v. U.S. Postal Serv.*, 516 F.2d 378, 386 (2d Cir. 1975) ("NEPA, in effect, requires a broadly defined cost-benefit analysis of major federal activities."); *Calvert Cliffs' Coordinating Comm. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1113 (D.C. Cir. 1971) ("NEPA mandates a rather finely tuned and 'systematic' balancing analysis" of "environmental costs" against "economic and technical benefits").

monetize the costs of its action.[267]

In one case, for instance, the U.S. District Court for the District of Colorado found that it was "arbitrary and capricious to quantify the *benefits* of the lease modifications and then explain that a similar analysis of the *costs* was impossible when such an analysis was in fact possible."[268] The court explained that, to support a decision on coal mining activity, the agencies had "weighed several specific economic benefits—coal recovered, payroll, associated purchases of supplies and services, and royalties"—but arbitrarily failed to monetize climate costs using the SC-GHG.[269] Similarly, in another case, the U.S. District Court for the District of Montana held an environmental assessment to be arbitrary and capricious because it quantified the benefits of action (such as employment payroll, tax revenue, and royalties) while failing to use the SC-GHG to quantify the climate costs.[270]

These two decisions follow a broader line of case law in which courts find it arbitrary and capricious to apply inconsistent protocols for analyzing some effects compared to others, especially when the inconsistency obscures some of the most significant effects. For example, in *Center for Biological Diversity v. National Highway Traffic Safety Administration*, the U.S. Court of Appeals for the Ninth Circuit ruled that, because the agency had monetized other uncertain costs and benefits of its vehicle fuel efficiency standard—like traffic congestion and noise costs—its "decision not to monetize the benefit of carbon emissions reduction was arbitrary and capricious."[271] More generally, when an agency bases a decision on cost-benefit analysis, it is arbitrary to "put a thumb on the scale" of the analysis.[272] Similarly, the U.S. Court of Appeals for the D.C. Circuit has criticized agencies for

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[267] *High Country Conservation Advocs. v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1191 (D. Colo. 2014); *accord Mont. Env't Info. Ctr. v. Off. of Surface Mining* (*MEIC*), 274 F. Supp. 3d 1074, 1094–99 (D. Mont. 2017) (holding it was arbitrary for the agency to quantify benefits in an EIS while failing to use the social cost of carbon to quantify costs).

[268] *High Country Conservation Advocs. v. U.S. Forest Serv.*, 52 F. Supp. 3d at 1191.

[269] *Id.* at 1190.

[270] *MEIC*, 274 F. Supp. 3d at 1094–99 (holding that it was arbitrary to imply that there would be zero effects from greenhouse gas emissions). In a recent case from the Northern District of California, moreover, the court found that it violated NEPA for an agency to monetize economic benefits while only accounting for a slim fraction of global climate damages. *California v. Bernhardt*, 472 F. Supp. 3d 573, 623 (N.D. Cal. 2020) ("It is arbitrary for an agency to quantify an action's benefits while ignoring its costs where tools exist to calculate those costs.").

[271] 538 F.3d 1172, 1203 (9th Cir. 2008).

[272] *Id.* at 1198.

"inconsistently and opportunistically fram[ing] the costs and benefits of the rule [and] fail[ing] adequately to quantify the certain costs or to explain why those costs could not be quantified."[273]

As discussed in this letter, the SC-GHG presents a readily available tool to monetize the effects of greenhouse gas emissions based on peer-reviewed inputs and widely accepted assumptions. Agencies are every bit as capable of monetizing climate damage as they are of monetizing socioeconomic impacts. It is thus arbitrary to monetize social and economic benefits in a NEPA analysis while refusing to monetize climate costs.

Using the SC-GHG in NEPA analysis is preferable for another reason: It captures the fact that the climate damage generated by each additional ton of greenhouse gas emissions depends on the background concentration of greenhouse gases in the global atmosphere. Once emitted, greenhouse gases can linger in the atmosphere for centuries, building up the concentration of radiative-forcing pollution and affecting the climate in cumulative, non-linear ways. As physical and economic systems become increasingly stressed by climate change, each marginal additional ton of emissions has a greater, non-linear impact. The climate damage generated by a given amount of greenhouse gas pollution is therefore a function not just of the pollution's total volume but also the year of emission, and with every passing year an additional ton of emissions inflicts greater damage.[274]

A "hard look" requires more than simply stating the amount of emissions.[275] The proposed action's contribution to climate change must be evaluated in a meaningful context, which cannot be centered in statements that emissions from the proposed action represent only a small fraction of global, national, or regional emissions. Such analyses do no more than attempt to minimize the actual effect of such actions and their associated emissions.

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[273] *Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148–49 (D.C. Cir. 2011); *see also Johnston v. Davis*, 698 F.2d 1088, 1094–95 (10th Cir. 1983) (remanding an environmental impact statement because "unrealistic[]" assumptions are "misleading in the context of an EIS, and result in an unreasonable comparison of alternatives to the proposed project").

[274] Ex. 52, Greenhouse Gas Report at 78 (explaining that the SC-GHG grows over time); 2010 TSD at 35 (same).

[275] *See Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1198–1204 (9th Cir., 2008); Bernhardt, 472 F. Supp. 3d at 623; *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 687 F. Supp. 3d 1053, 1077 (D. Mont. 2023).

Importantly, the SC-GHG metric is not solely an economic analysis, but rather, it is a tool that allows agencies to meet their statutory obligation to describe a project's incremental environmental harm that is otherwise difficult to quantify. Indeed, the Interior Department is no stranger to the use of this tool, which its agencies have regularly employed in the context of decisionmaking both nationally and within the Montana/Dakotas field office.[276] Finally, the agencies must adopt an appropriate scope of analysis for direct effects that fully captures the reasonably foreseeable consequences of the proposed action's GHG emissions.[277]

Given the agencies' "hard look" obligations under NEPA and MEPA, and their statutory and constitutional obligations to prevent unnecessary or undue degradation of public lands and resources, the agencies should use the SC-GHG in its analysis of whether and how it could permit the Bridger Pipeline consistent with those obligations.

### F. The EIS Must Evaluate Air Quality Impacts.

BLM and DEQ must evaluate all potential sources of air pollution from the pipeline's construction, operation, and maintenance. Bridger's POD discloses only the potential for operational emissions from its pump states and fugitive releases from above-ground releases, but asserts these emissions will be negligible and will not impact federal lands.[278] Rather than rely on Bridger's representation, BLM and DEQ must undertake a rigorous and independent investigation of the project's potential air pollution.

During the construction phase, heavy equipment operations and land disturbance activities generate air pollution. Diesel-powered machinery such as excavators, bulldozers, welding equipment, and transport trucks emit particulate matter (PM2.5 and PM10), nitrogen oxides, sulfur dioxide, carbon monoxide, and volatile organic compounds (VOCs). Additionally, the extensive earth-moving activities required for trenching and grading create substantial fugitive dust emissions, which are further exacerbated by vehicle movement on unpaved access roads and wind erosion from cleared vegetation. Welding operations and the application of protective pipeline coatings also release metal oxide fumes and VOCs into the atmosphere during this phase.

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[276] *See, e.g.*, U.S. Dep't of the Interior, Bureau of Land Mgmt., *Protest Resolution Report for Miles City Field Office Final SEIS and Resource Management Plan Amendment*, at 4–5 (Nov. 2024), https://www.blm.gov/sites/default/files/docs/2024-11/MilesCity_FSEIS_PRMPA_Protest%20Report.pdf.

[277] *See* National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196 (Jan. 9, 2023).

[278] POD at 93.

Once operational, the pipeline would continue to impact air quality. Bridger states that it will use electric pump stations, which would minimize combustion emissions from these sources. BLM and DEQ should ensure that this measure is adopted as an enforceable commitment in any project approval. In addition to combustion emissions, above-ground pipeline infrastructure would release fugitive emissions, particularly climate-harming methane, from valves, flanges, seals, and storage facilities at terminals. Routine maintenance activities such as flaring during pressure relief, pipeline pigging operations, and equipment servicing also contribute periodic emissions.

Serious air quality concerns could also arise from leak or spill events, which can release volatile crude oil components including hazardous BTEX compounds (benzene, toluene, ethylbenzene, and xylene) and hydrogen sulfide.

Cumulatively, these operational emissions contribute to ground-level ozone formation, regional air quality degradation, and climate change through greenhouse gas releases.

In addition to analyzing these sources of air pollution, DEQ and BLM must ensure that Bridger adopts appropriate pollution-control measures and a rigorous monitoring and reporting program that provides for timely detection and repair of emission sources.

### G. The EIS Must Evaluate Impacts on Health and Safety.

BLM and DEQ must evaluate the potential harms to human health from the pipeline. BLM and DEQ must consider potential harms from all types of crude oil, including especially tar sands oil. Additionally, BLM and DEQ must evaluate the potential safety issues that will arise from the construction, operation, maintenance, and decommissioning of the proposed pipeline. Again, without disclosure of the type of crude oil that will be transported, BLM and DEQ must consider the potential safety issues that might arise from all types of crude oil that the pipeline may carry, including diluted bitumen.

BLM and DEQ must consider and disclose the short-term and long-term potential harm to human health associated with caused by potential spills, leaks, and ruptures from the proposed pipeline.[279] BLM and DEQ must consider both the potential short-term health to residents living in the impact zone from a potential

[279] Ex. 57, Eykelbosh, A., Short- and long-term health impacts of marine and terrestrial oil spills (August 2014) https://www.vch.ca/sites/default/files/import/documents/VCH-health-impacts-oil-spill.pdf.

spill, leak, or rupture, along with the potential harms to workers engaged in clean-up.[280] The potential harms to clean-up workers include both acute physical injuries and respiratory symptoms (cough, wheezing, breathlessness), gastrointestinal symptoms (nausea and vomiting), and irritated eyes and throats.[281]

BLM and DEQ must also consider the mental health impacts of oil spills on individuals, families, and communities.[282] Importantly, BLM and DEQ's analysis should take into account that direct contact with spilled oil is not necessary to observe mental health impacts.[283] BLM and DEQ must specifically consider the mental health impacts of oil spills on children—for example, children, especially girls, living close to the impact zone during the Heibei Spirit spill showed elevated symptoms of depression.[284] Harms from oil spills are not theoretical: a pipeline owned by Bridger's parent company has already spilled oil into the Yellowstone River.[285]

The potential harm to human health caused by the upstream oil extraction that will be facilitated by the proposed pipeline is an additional important consideration. When doing so, BLM and DEQ must evaluate the harms to soil, water, and air, which in turn can harm human health.[286] Upstream oil extraction can also cause health risks, including cancer, liver damage, immunodeficiency, and neurological symptoms.[287] To fully evaluate the potential harm to human health, BLM and DEQ must consider and disclose the chemical mixtures associated with the facilitated upstream oil extraction.[288]

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[280] *Id.*

[281] Ex. 58, Eykelbosh, A., Health Effects of Oil Spills and Implications for Public Health Planning and Research (November 2014) https://ncceh.ca/sites/default/files/Health_Effects_Oil_Spills_Nov_2014.pdf.

[282] *Id.*

[283] *Id.*

[284] *Id.*

[285] Ex. 3, State of Montana, Programmatic Damage Assessment and Restoration Plan and Environmental Assessment for the Bridger Pipeline 2015 Yellowstone River Oil Spill (July 2023); *see also supra,* Section II.A.

[286] Ex. 59, Johnston, J., et al, Impact of Upstream Oil Extraction and Environmental Public Health: A Review of the Evidence (March 20, 2019) https://pmc.ncbi.nlm.nih.gov/articles/PMC6344296/pdf/nihms-1516367.pdf.

[287] *Id.*

[288] *Id.*

BLM and DEQ must evaluate safety concerns associated with the pipeline. BLM and DEQ must closely evaluate the project's compliance with pipeline safety standards and the proposed project's monitoring plan. Further, BLM and DEQ must evaluate the unique safety hazards posed by the remote location of the proposed pipeline, in terms of clean up response, mobilization, and effectiveness of overall response. Further, BLM and DEQ must evaluate the risk of spills, leaks, and ruptures from construction defects, material deficiencies, environmental stresses, incorrect operations, and weld failures, which were factors in multiple failures of the Keystone Pipeline from 2014 to 2025.[289] When completing this analysis, BLM and DEQ must evaluate these concerns for all types of crude oil—again, because Bridger does not specify the type of crude oil that will be carried by the pipeline. Finally, BLM and DEQ must evaluate the proposed mitigation measures to account for these potential harms.

### H. The EIS Must Evaluate Impacts on Cultural Resources.

The proposed project crosses territory with a rich archaeological, cultural and historical significance to Indian Tribal Nations, U.S., and local state residents. Residents of the states of Montana, Wyoming, North Dakota and South Dakota share a rich culture that is rooted in a shared history, resourcefulness, freedom, and community interdependence. This shared history and culture is evident in the shared territory, cultural resources, and historic properties. BLM and DEQ must honor this history and culture—and satisfy its NEPA and MEPA obligations—by fully analyzing the pipeline's potential to destroy or degrade cultural resources, with guidance and consultation from affected tribes.[290]

#### 1. Impact on State Cultural Resources.

The project will impact non-tribal cultural resources of historical importance Under MFSA-2 Section 3.2(1)(d) through (f), the project must consider if the project will have significant impacts on nationally and state protected areas, and address mitigation measures. Bridger's POD acknowledges that the pipeline will cross the path of the Lewis and Clark National Historic Trail.[291] The project detailed an avoidance plan, which includes preliminary avoidance and minimization commitments, as well as consultation plans with Montana and Wyoming SHPOs "to

[289] Ex. 66, Pipeline Safety: Information on Keystone Accidents and DOT Oversight, Accessible Version, United States Government Accountability Office: Report to Congressional Requesters (July 2021).

[290] BLM's tribal consultation obligations under the National Historic Preservation Act and other statutes are described below, Sect. VI.

[291] POD at 83.

ensure the protection of significant historical and archaeological sites."[292] BLM and DEQ must thoroughly document and avoid these potential impacts, as well as evaluate and avoid impacts to other potential cultural and historical resources.

While the MFSA Application states that the "proposed route does not cross any national wilderness areas or designated primitive areas," or Indian Reservations or Tribal Trust lands,"[293] the agency must nonetheless engage with Tribal Nations to assess impacts on cultural resources and historic properties.[294]

2. Impact on Tribal Cultural Resources.

While the proposed project will not cross any Indian Reservation or Tribal Trust lands, BLM's cultural impact studies must be thorough and robust. The BLM must fully consider the impact of the pipeline and associated infrastructure on tribal cultural resources and historic properties because "frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes."[295] BLM and Bridger are still developing the programmatic agreement (PA) that will provide the framework for protecting cultural resources.[296] BLM and DEQ must ensure that affected Tribes are meaningfully consulted in the development of the PA and afford the public an opportunity to comment.

While BLM and DEQ must satisfy their obligations to analyze impacts to *all* tribal cultural resources affected by the pipeline, this comment identifies the following potentially significant and foreseeable cultural impacts that the pipeline may affect.

**i. The Fort Peck Indian Reservation**

The project POD and MSFA application do not provide a comprehensive tribal consultation engagement and implementation plan with the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. All three proposed Options traverse through traditional and modern tribal lands of the Assiniboine and Sioux Tribes: Option 1 treks to the north of the reservation, Option 2 to the south, and Option 3 through the Fort Peck Indian Reservation. BLM must establish a tribal consultation plan to meet NHPA standards, which includes a comprehensive study

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[292] *Id.*

[293] MSFA Application at 50.

[294] *See infra* Sect. VI.

[295] 36 CFR § 800.2(c)(2)(ii)(D).

[296] POD at 83, 93.

of cultural and cultural resource impacts in and around the Fort Peck Indian Reservation. The BLM's PA must include this.

### ii. Warrior Trail Highway

The pipeline crosses the "Warrior Trail Highway," which was designated by the Montana State legislature in 2007 to promote tourism, honor the region's history, and recognize the path that both the U.S. Army and the Lakota, Cheyenne, and Arapaho Tribal Nations trekked during the Great Sioux War of 1876. M.C.A. 60-1-214. The eastern end of the Warrior Trail Highway begins at the Little Bighorn National Monument, at exit 510 at Interstate 90, and runs along U.S. Highway 212, ending at the Wyoming border. The trail, however, continues through the states of Wyoming and South Dakota, ending at the Black Hills. The path comprises numerous local, Tribal, state, and national landmarks and places.

The project's POD does not mention the Warrior Trail Highway and how the project and pipeline will have significant impacts on the cultures of Indian Tribal nations and communities along the trail. The BLM PA states that it is in development, but the PA must include an impact analysis of the Warrior Trail Highway.

### iii. Lesser-known cultural sites and historic properties

BLM also must consider identified and unidentified cultural sites and historic properties along its proposed path through Fallon and Carter Counties of Montana and Crook, Weston, and Niobrara Counties of Wyoming. These areas are known to be pre-reservation hunting grounds and identified in the 1868 Fort Laramie Treaty as "unceded Indian territory," which are shared lands across Tribal Nations. The area's significance to Tribal hunting extends far back into history, evidenced in tribal oral traditions and affirmed by sites like the Vore Buffalo Jump in Sundance, Wyoming. BLM must, at a minimum, make a good faith effort to identify and protect identified and unidentified cultural sites that are significant to Tribal Nations. This should also be included in BLM's PA.

The agencies must also consider the project's impact on lesser-known cultural sites and historic properties. This area is known to have numerous identified and unidentified man-made stone and earth structures that were constructed as antelope and deer hunting pits or corrals. These man-made pits or drives are smaller but similar in utility to buffalo jumps and thoroughly described in numerous documented sources including ethnographic, anthropologic, and historic studies, as well as in tribal lore and oral tradition.[297] They are classified as

[297] Ex., 60, Sundstrum, L., *Cheyenne Pronghorn Procurement and Ceremony*, 45 Plains Anthropologist, 119–132 (2000).

"ceremonial" hunting structures, primarily used by the Cheyenne Indians before the establishment of reservations.

BLM has not disclosed a comprehensive consultation plan to conduct field studies to properly survey identified and unidentified sites. The disruption and destruction of such structures would be detrimental to the culture and ceremonial/religious practices and beliefs of modern Cheyenne and Arapaho Indians. BLM must conduct a thorough cultural impact study in consultation with the Northern Cheyenne Tribe of Montana, the Northern Arapaho Tribe of Wyoming, and the Southern Cheyenne and Arapaho Tribes of Oklahoma. Yet, the BLM PA is in development according to the project POD.

### iv. Unidentified burial, cultural, and religious sites and trails

Before the establishment of the "Warrior Trail Highway," and before the Great Sioux War of 1876, Tribal Nations such as the Cheyenne and Arapaho frequently traveled the route along Highway 212 to and from the Black Hills for annual sacred pilgrimages to sacred sites like Devil's Tower National Monument and Bear Butte State Park, located in Sturgis, South Dakota. This path is likely comprised of numerous sites that could be villages, ceremonial camp sites, and burial sites. While the Bridger project's MFSA Application includes a section on "Historical and Archaeological Resources," it does not include plans to survey pre-reservation Tribal cultural and religious sites in consultation with Tribal Nations. This path is still utilized today by modern Cheyenne, Arapaho, and Lakota people in annual sacred pilgrimages to the Black Hills. The BLM PA, though still in development, should include the path, its significance, and evaluate and avoid the project's impact.

The pipeline and associated infrastructure would likely disrupt ceremonial and religious practices of the Northern Cheyenne people because the pipeline will cross Highway 212, which is the path of the annual Fort Robinson Outbreak Spiritual Healing Run. The Run was established approximately 30 years ago to commemorate the 1879 Northern Cheyenne escape from imprisonment at Fort Robinson, Nebraska and their trek to what is now Busby, Montana. The Run commences every January 8th—14th and involves numerous traditional spiritual and cultural leaders who conduct ceremonies and religious activities throughout the Run. The Run has become an integral part of modern Cheyenne religious beliefs and spiritual practices. Here, the project should engage in robust consultation because the pipeline will impact past, present, and future participants of Fort Robinson Outbreak Spiritual Healing Run.

## I. The EIS Must Evaluate Environmental Justice Impacts.

BLM and DEQ must address the pipeline's environmental justice impacts. Environmental justice addresses the disproportionate share of negative

environmental consequences that some communities face, often majority black, brown, and Indigenous communities, due to environmental policies and permitting decisions.[298] If constructed, the pipeline and associated infrastructure could exacerbate environmental burdens for environmental justice communities. In their environmental review, BLM and DEQ must identify such communities and analyze the direct, indirect, and cumulative effects on these communities. Crucially, the agencies must meaningfully engage Tribal communities in this analysis to ensure harmful impacts are fully considered and avoided.

While the President and executive agencies have rescinded executive orders and regulations that had expressly identified federal agencies' environmental justice commitments, the agencies still must honor those commitments because they inhere in BLM's and DEQ's legal obligations in considering the pipeline.[299]

The policy set forth in NEPA is clear that "all Americans" are ensured

> safe, healthful, productive, and esthetically and culturally pleasing 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] … preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice[.][300]

Further, in enacting NEPA, "Congress recognize[d] that each person should enjoy a healthful environment."[301]

Similar to NEPA, Montana's constitution guarantees that *every* Montanan enjoys the right to a "clean and healthful environment."[302] And further, "[t]he state

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[298] *See* WE ACT for Environmental Justice, What is Environmental Justice?, https://weact.org/about/what-is-ej/.

[299] The Council on Environmental Quality's NEPA regulations recognized that a NEPA effects analysis must include "disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative," as well as "effects on Tribal resources and climate change-related effects." 40 C.F.R. § 1508.1(i)(4) (2025) (rescinded).

[300] 42 U.S.C. § 4331(b)(2)-(4).

[301] *Id.* § 4331(c).

[302] Mont. Const. art. II § 3.

and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations."[303]

BLM and DEQ cannot ensure that all people enjoy a healthy environment while ignoring that the pipeline will likely harm Tribal communities that rely on the Project area. The agencies must consider the impact on these communities from the range of existing and future burdens to their environmental health, safety, and cultural exercise.

The pipeline's potential impacts to Tribes are numerous and could add to the harmful impacts of past and current federal and state policies and permitting decisions. As discussed above, the pipeline poses numerous potential impacts to waterways, wildlife, and cultural resources important to tribal members. The agencies must thoroughly evaluate these impacts in light of the cumulative baseline of cultural harm from previous and existing oil and gas infrastructure in the area.

Additionally, the pipeline poses risks to the safety and security of tribal members. It is well-documented that pipeline construction projects attract workers from outside an existing community, which in turn increases the rates of assault, rape, and homicide.[304] Human trafficking, sex trafficking, and Missing and Murdered Indigenous Women all impact tribal communities facing an influx of energy workers. BLM and DEQ should assess and disclose the effectiveness of Missing and Murdered Indigenous Women and human trafficking prevention programs implemented by Enbridge and other pipeline companies, and develop a plan to successfully to protect tribal communities against such harms.[305]

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[303] Mont. Const. art. IX § 1(1).

[304] Ex. 61, *Violence from Extractive Industry 'Man Camps' Endangers Indigenous Women and Children*, Univ. of Colo. Boulder (Jan. 29, 2020), https://www.colorado.edu/program/tallgrass/2020/01/29/violence-extractive-industry-man-camps-endangers-indigenous-women-and-children; Ex. 62, Stern, J. *Pipeline of Violence: The Oil Industry and Missing and Murdered Indigenous Women*, Immigr. & Hum. Rts. L. Rev. (May 28, 2021), https://lawblogs.uc.edu/ihrlr/2021/05/28/pipeline-of-violence-the-oil-industry-and-missing-and-murdered-indigenous-women/.

[305] *See* https://www.enbridge.com/projects-and-infrastructure/public-awareness/indigenous. The Bay Mills Indian Community and others note that Enbridge's plan is not adequate. *See* Bay Mills Indian Cmty, Comments on the Draft Environmental Impact Statement for the Line 5 Tunnel Project, 51–53 (June 30, 2025), https://earthjustice.org/wp-content/uploads/2025/07/2025.06.30-bmic-comments-on-draft-eis-final.pdf.

### J. The EIS Must Evaluate Impacts to Recreation.

BLM and DEQ must evaluate the project's potential harm to the public's use of public lands, including lands within the Lewis and Clark Special Resource Management Area ("Lewis and Clark SRMA"),[306] the Bitter Creek Wilderness Study Area, the Medicine Lake National Wildlife Refuge, and the Custer National Forest.[307] BLM and DEQ must evaluate the project's potential impacts to the use of public lands, including for hunting, fishing, hiking, wildlife viewing, camping, horseback riding, and sightseeing, as well as outfitted recreational use.[308] Bridger admits that a "detailed evaluation of recreation settings, access routes, outfitter operations, and potential impacts to nearby designated recreation areas" has not yet been completed and apparently "will be conducted during the NEPA/MEPA process."[309]

BLM and DEQ must also evaluate the project's potential impacts to recreation more broadly, including reduced trail integrity in recreational areas, access to recreational areas, and impacts to the historical integrity of the public lands crossed by the pipeline, the visitor experience, and interpretive opportunities.

### K. The EIS Must Evaluate Economic Impacts.

BLM and DEQ must evaluate the potential economic harm that may be caused by the proposed pipeline.

First, BLM and DEQ must evaluate the potential economic harm on the climate from the proposed pipeline using the social cost of greenhouse gases, a widely accepted tool. When doing so, BLM and DEQ must evaluate the potential harms associated with climate change that will be exacerbated by the proposed pipeline and the upstream development necessary to feed it.[310] Without monetizing the climate harms from the potential project, BLM and DEQ would not be able to accurately and adequately discuss the potential economic impacts of the project.

Second, BLM and DEQ must consider the potential economic harm associated with pipeline leaks, spills, and ruptures, like when Bridger's parent company's pipeline spilled into the Yellowstone River in 2015. Such costs are high.

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[306] MFSA Application at 79.

[307] *Id.* at 99.

[308] *Id.* at 78.

[309] *Id.*

[310] *See supra* Sect. II.E.

In September 2013, a farmer in Tioga, North Dakota, discovered crude oil bubbling out of his field—all told, the Tesoro High Plains Pipeline released 882,000 gallons of crude oil.[311] Total cleanup costs are expected to be as high as $60 million.[312] Notably, the Tesoro High Plains Pipeline was a 6-inch steel pipeline,[313] far smaller than the proposed pipeline here.

In July 2010, a 30-inch pipeline belonging to Enbridge ruptured near Marshall, Michigan and spilled more than 800,000 gallons of diluted bitumen, also referred to as tar sands oil, into a tributary creek of the Kalamazoo River. Three years later, there was reportedly more than 100,000 gallons of oil still on the bottom of the river.[314] By 2016, the company estimated the total cost for the cleanup at $1.2 billion.[315]

Relatedly, BLM and DEQ must consider the potential economic harm from the type of oil that the proposed pipeline will carry. Bridger does not expressly state what type of crude oil the pipeline will carry in its application materials, so BLM and DEQ must evaluate potential harms caused by all types of crude, including tar sands crude oil.

The type of oil carried by the pipeline matters for this analysis because spills of tar sands oil result in years of harm and are costly to clean up. In March 2013, the Pegasus pipeline carrying tar sands oil from Canada ruptured in Mayflower, Arkansas, and released 134,000 gallons of oil.[316] According to initial estimates, the spill of tar sands oil caused $57 million in damage to private property and other costs associated with clean-up were estimated to be $91 million.[317]

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[311] Ex. 63, Synapse Energy Economics, Economic Impacts of Completing the Dakota Access Pipeline, 13 (Feb. 1, 2017).

[312] *Id.*

[313] *Id.*

[314] Ex. 64, Smith, L., 3 years and nearly $1 billion later, cleanup of Kalamazoo River oil spill continues (July 25, 2013) https://www.michiganpublic.org/environment-science/2013-07-25/3-years-and-nearly-1-billion-later-cleanup-of-kalamazoo-river-oil-spill-continues.

[315] Ex. 65, Volcovici, V., U.S., Enbridge reach $177 million pipeline spill settlement (July 20, 2016) https://www.reuters.com/article/business/us-enbridge-reach-177-million-pipeline-spill-settlement-idUSKCN1001S4/.

[316] Ex. 63, Synapse Energy Economics, Economic Impacts of Completing the Dakota Access Pipeline, 13 (Feb. 1, 2017).

[317] *Id.*

Third, BLM and DEQ must consider the proposed pipeline's economic impact on individuals and family farming corporations whose homes, farms, or other businesses may be adversely impacted. Such impacts that BLM and DEQ must consider include: reduced property value, temporary or permanent loss of productivity by ranches and farms, and depressive effects on tourism and recreation-focused businesses, like local fishing guides.

### L. The EIS Must Evaluate Cumulative Impacts.

BLM and DEQ must evaluate the project's cumulative impacts, meaning the incremental impacts of the pipeline and all of its associated infrastructure, when considered in addition to other past, present, and reasonably foreseeable future actions.[318] Although NEPA regulations specifically addressing cumulative impacts have been rescinded, evaluating the impacts of a proposed action within the context of existing and foreseeable effects in the same area yields "a realistic evaluation of the total impacts" and ensures that an EIS does not impermissibly "isolate a proposed project, viewing it in a vacuum."[319] Thus, evaluating the pipeline's cumulative impacts in the context of past and future actions is essential to BLM's fundamental NEPA obligation to analyze the "reasonably foreseeable environmental effects."[320] Further, DEQ's MEPA regulations require the agency to evaluate cumulative impacts,[321] which include "the collective impacts on Montana's environment of the proposed action when considered in conjunction with other past, present, and future actions related to the proposed action by location or generic type."[322]

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[318] *See* 40 C.F.R. § 1508.7 (2022) (rescinded); *see also Oregon Natural Res. Council Fund v. Brong*, 492 F.3d 1120, 1132–33 (9th Cir. 2007) ("One of the specific requirements under NEPA is that an agency must consider the effects of the proposed action in the context of all relevant circumstances, such that where 'several actions have a cumulative … environmental effect, this consequence must be considered ….") (quoting *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1378 (9th Cir. 1998)).

[319] *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 342 (D.C. Cir. 2002).

[320] 42 U.S.C § 4332(C)(i).

[321] Admin. R. Mont. 17.4.617 (requiring EIS to include "primary, secondary, and cumulative impacts"); Admin. R. Mont. 17.4.608 (requiring agencies to evaluate individual and cumulative impacts in determining significance); *see also Held v. State*, 2024 MT 312, ¶ 67, 419 Mont. 403, 560 P.3d 1235 (rejecting State's argument that "the public need not be informed of the potentially catastrophic cumulative impacts from its action" under MEPA and the State's fundamental constitutional framework).

[322] Mont. Code Ann. § 75-1-220(5).

Under these legal frameworks, BLM and DEQ must evaluate the combined effect of the direct and indirect environmental consequences of the pipeline and its associated infrastructure, as well as the cumulative effect of other pipelines or projects with similar environmental harms.

The pipeline and its associated infrastructure, if constructed, would cause a host of environmental harms that are collectively significant. In addition to these direct effects, the construction of the pipeline would almost certainly expand crude mining and/or drilling in Canada.[323] And once both pipelines are built operating, it would further expand the impacts of refining and combusting the crude. While these impacts are "indirect" effects of the pipeline project, they may equally be considered "cumulative" effects and, in any event, must be analyzed.

Further, Bridger recently conceded that in addition to the Bridger Pipeline, a "partner … will build a subsequent line and get that to either Cushing, Oklahoma or down to the Gulf Coast so that U.S. refineries can take advantage of that oil."[324] This aligns with the Applicant's "purpose and need" to supply crude to U.S. refineries and "downstream markets."[325] This partner pipeline, like the Bridger Pipeline, requires federal right-of-way authorizations from BLM and water crossing permits from the Army Corps of Engineers. In other words, the partner pipeline is not a separate project; it is instead and integral component to fulfilling the stated purpose of the Bridger Pipeline. BLM must not obscure the project's environmental effects by segmenting its consideration of the entire pipeline length into smaller fragments. The effects of the partner pipeline are, at a minimum, indirect and cumulative effects that must be considered in the instant review.

The cumulative impacts analysis also must consider impacts from related or similar energy infrastructure projects, including other pipelines and their associated infrastructure. This includes impacts from the recently completed Enbridge Line 3 Replacement in 2021 and the Trans Mountain Expansion Project in

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[323] *See supra*, Sect. II.E (climate change), explaining that current transportation constraints may limit Canadian crude development.

[324] Desroches, K., Leadership along the Hi-Line react to Canadian oil sands pipeline, Yellowstone Public Radio (Apr. 30, 2026), https://www.ypradio.org/energy/2026-04-30/leadership-along-the-hi-line-react-to-canadian-oil-sands-pipeline.

[325] NOI, 91 Fed. Reg. at 16218.

2024,[326] and Enbridge's forthcoming "Mainline Optimization" project.[327]

At a minimum, the cumulative impacts analysis should include impacts from increased crude oil production and associated infrastructure, such as: water consumption;[328] regional air quality impacts;[329] lifetime greenhouse gas emissions; increased generation and management of produced water and other oil and gas waste streams;[330] impacts to surface and groundwater resources;[331] and production greenhouse gas emissions.[332]

## III. BLM AND DEQ MUST THOROUGHLY EVALUATE PROJECT ALTERNATIVES.

BLM and DEQ must evaluate a slate of alternatives to the proposed pipeline, not limited to the proposed alternatives offered by Bridger, and including scenarios where there would be no new pipeline through eastern Montana and Wyoming.

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[326] *See* Ex. 87, Canadian Ass'n of Petroleum Producers, Canadian Oil and Gas Export Infrastructure (Oct. 2025), https://www.capp.ca/wp-content/uploads/2025/11/Canadian-Oil-and-Gas-Export-Infrastructure-October-17-2025.pdf.

[327] *See* Ex. 41, Oil Sands Magazine, Pipeline Egress Outlook to 2030 – 2026 Edition.

[328] Ex. 88, Grant, J. et al., Oilsands extraction uses large amounts of water, despite recycling efforts, Pembina Inst. (2013), https://www.jstor.org/stable/resrep00190.13; Ex. 89, Alberta Wilderness Ass'n, Joint News Release: Alberta's oil sands reported massive 12 percent increase in water use per barrel (Jan. 15, 2026), https://www.albertawilderness.ca/joint-news-release-albertas-oil-sands-reported-massive-12-increase-in-water-use-per-barrel/.

[329] Ex. 90, Ku, I. et al., Air quality impacts from the development of unconventional oil and gas well pads: Air toxics and other volatile organic compounds, Atmospheric Env't 317 (2024), https://www.sciencedirect.com/science/article/pii/S1352231023006131; He, M. et al, Total organic carbon measurements reveal major gaps in petrochemical emissions reporting, Science (Jan. 26, 2024), https://www.science.org/doi/epdf/10.1126/science.adj6233.

[330] Oil and gas development generates substantial volumes of wastewater and other waste streams requiring transport, storage, treatment, and disposal. As development increases, so too does the infrastructure required to manage these wastes, along with the associated environmental risks, including spills and contamination.

[331] *See supra* Sect. II.B.

[332] *See supra* Sect. II.E.

NEPA requires consideration of alternatives to BLM's approval of the project.[333] In addition to the no-action alternative, BLM and DEQ must evaluate alternatives to the project that would have a lesser impact, such as a lower capacity pipeline. To adequately evaluate alternatives, including a no-action alternative, BLM and DEQ must define the project's purpose and need in sufficiently broad terms to avoid making their selection of Bridger's preferred alternative inevitable. Bridger is incorrect that the only appropriate alternatives are those that align exactly with the company's narrow definition of the project's purpose. BLM and DEQ must undertake a detailed and reasoned assessment of other potential alternatives that might render the project unnecessary. BLM and DEQ must also consider potential alternative construction methods and mitigation measures.

The "no action" alternative analysis by BLM and DEQ must be robust. BLM and DEQ must fully evaluate the following:

- The existing production capacity of crude oil from the Alberta and Saskatchewan provinces in Canada;
- The existing pipeline capacity of Enbridge's Express Pipeline and Platte Pipeline, including Enbridge's plans to add additional capacity to that system and additional expansion potential, that currently transfer crude oil to Guernsey, Wyoming, and further;
- The existing pipeline capacity available to carry crude oil from Guernsey, Wyoming, to Cushing, Oklahoma, Wood River, Illinois, and Patoka, Illinois;
- The existing pipeline capacity of the Seaway Pipeline, the Marketlink Pipeline, the ETCOP Pipeline, and the Capline Pipeline, to carry crude oil from the Midwest (PADD 2) to the Gulf Coast (PADD 3); and
- The existing capacity of refiners to process crude oil in the Midwest (PADD 2) and the Gulf Coast (PADD 3).

A full analysis of these five capacity issues is necessary to understand whether there is a market need for the undisclosed type of crude oil that may be transported by the proposed pipeline, as claimed by BLM's NOI. For example, reporting suggests that Enbridge has plans to complete a 430,000-barrel-a-day expansion, which must be evaluated for its own concerns, to "support Western Canadian

[333] *See* 42 U.S.C. § 4332(C)(iii).

production growth."[334] BLM and DEQ must evaluate these capacity issues in order to make a reasonable determination regarding alternatives to the construction of the proposed pipeline. Clearly, such an analysis is impossible to complete without knowing what type of crude oil the proposed pipeline is intended to carry, which further demonstrates why BLM and DEQ should, at minimum, pause this process until Bridger discloses that information.

With this context, Bridger's definition of a "no action" alternative in the Plan of Development is exceedingly deficient. BLM and DEQ must ensure that any rejection of the no-action alternative is based on accurate and complete information. Bridger states that it "eliminated" the no action alternative from further consideration because "a route that completely avoids BLM-administered lands is not feasible."[335] BLM's and DEQ's evaluation of the no action alternative cannot be so limited.

DEQ has a separate and critical obligation to evaluate a no-build alternative. Under MFSA, DEQ must consider and include in their application an evaluation of alternatives including but not limited to the no action or no-build alternatives. ARM 17.20.1311. The MFSA Application evaluates two no-build alternatives, indicating that transportation of crude oil would rely on existing infrastructures: railroad and truck.[336] Bridger fails to identify and evaluate the no-build alternative that may exist with respect to utilizing existing pipeline capacity. DEQ's analysis cannot be so limited.

Further, Bridger raises environmental concerns about emissions and the dangers of spills and fires associated with rail and truck transportation alternatives, the company does not address the proven environmental risks associated with oil pipelines. For example, since 2015 the Keystone Pipeline ruptured and spilled over one million gallons of crude oil throughout the country, costing over $700 million in cleanup and damages.[337] While the project's MFSA Application highlights the 2015 Yellowstone River Spill Response to indicate improvements in its pipeline systems, it fails to address that nationwide, it is common for oil pipelines to regularly fail resulting in pipeline oil spills in varying

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[334] Ex. 80, Enbridge, Leadoff Hitter (November 19, 2025) https://www.enbridge.com/stories/2025/november/southern-illinois-connector-mlo-430000-bpd-new-capacity-canadian-oil-production-growth.

[335] POD at 18.

[336] MFSA Application at 39–40.

[337] Ex. 67, Press Release: Pipeline Safety Trust, "Keystone Pipeline Ruptures and Spills Unknown Amount of Crude Oil Near Fort Ransom, North Dakota" (April 7, 2025).

amounts.[338] DEQ should evaluate these environmental and economic concerns in its no-build alternatives.

There are other, independent issues that BLM and DEQ must evaluate when considering alternatives to the proposed pipeline.

First, there is no established need for the proposed pipeline to operate,[339] there is no "Energy Emergency,"[340] and neither BLM or DEQ have a reasonable basis to identify an economic need for the proposed pipeline when Bridger does not disclose the type of crude oil that might be carried.

Second, even if there was a need for the undisclosed type of crude oil that may be transported by the proposed pipeline, BLM and DEQ must evaluate whether there is a need for that undisclosed type of crude oil to travel through a new pipeline in Montana and Wyoming. BLM and DEQ must fully consider alternatives to this project in the form of reliance on existing pipelines or transfer by truck or by rail. The agencies must additionally evaluate whether any domestic need for transportation fuels could be met through cleaner, sustainable alternatives, including through the development of electric vehicle infrastructure or fuel efficiency standards.

Finally, if the Assiniboine and Sioux Tribes of the Fort Peck Reservation do not affirmatively support routing of the pipeline through the Fort Peck Reservation, BLM and DEQ should reject Bridger's proposed Major Route Alternative Option 3 out right.

## IV. BLM MAY NOT RELY ON ILLEGITIMATE "EMERGENCY" PROCEDURES IN ITS PROJECT EVALUATION.

In reviewing the pipeline application, BLM must engage in robust environmental review and consultation under NEPA, the ESA, and the Clean Water Act. BLM's suggestion that it "*may*" issue a draft environmental impact statement (EIS) for public review and comment,[341] raises the concern that BLM may bypass important procedural safeguards. To the extent BLM intends to rely on Executive Order 14156—which declared, with no factual support, a "national emergency"

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[338] Ex. 66, Pipeline Safety: Information on Keystone Accidents and DOT Oversight, Accessible Version, United States Government Accountability Office: Report to Congressional Requesters (July 2021).

[339] *See supra* Sect. I.

[340] *See infra* Sect. IV.A.

[341] Scoping Notice, 91 Fed. Reg. at 16219 (emphasis added).

based on "insufficient energy production"—it would be arbitrary and unlawful.[342] First, it would be unlawful because there is no energy emergency. Second, the emergency provisions upon which BLM would rely are unlawful. And third, there is no justification that the Bridger Pipeline is needed to alleviate a national energy emergency, even if there was one.

### A. There is No Energy Emergency.

On January 20, 2025, President Trump issued Executive Order 14156, "Declaring a National Energy Emergency."[343] This Order alleged that "precariously inadequate and intermittent energy supply, and an increasingly unreliable grid" pose threats to the military, economy, and working Americans.[344] "An affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation."[345] The basis of the supposed emergency is that "energy" production in the United States is "too inadequate to meet our Nation's needs."[346]

No "energy emergency" exists in the United States. Neither the President in his declaration, nor BLM in its adoption of emergency procedures, presented data to demonstrate that the United States is not producing enough energy to meet its domestic needs. Available data supports the opposite conclusion:

- In March 2024, the U.S. Energy Information Agency ("EIA") reported that the "United States produce[d] more crude oil than any country, ever."[347]
- The EIA predicts that the United States will continue producing record quantities of crude oil and natural gas through at least

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[342] The President's unsubstantiated declaration made pursuant to the National Emergencies Act ("NEA"), 50 U.S.C. § 1601 *et seq*., that directs federal agencies to invoke emergency procedures where an emergency does not exist is itself unlawful. *See* 50 U.S.C. §§ 1621(a), 1631.

[343] 90 Fed. Reg. 8433 (Jan. 20, 2025).

[344] *Id.* § 1.

[345] *Id.*

[346] *Id.*

[347] E. Kreil, *United States Produces More Crude Oil Than Any Country, Ever*, U.S. Energy Info. Admin. (Mar. 11, 2024), https://www.eia.gov/todayinenergy/detail.php?id=61545; *see also* M. Francis, *In 2024, the United States Produced More Energy Than Ever Before*, U.S. Energy Info. Admin. (June 9, 2025), https://www.eia.gov/todayinenergy/detail.php?id=65445.

2027.[348]

- The United States exports surplus energy because its production is at an all-time high. Before President Trump took office, the U.S. was already producing more oil and gas than at any other time in the nation's history.[349] In 2024, the United States "shattered" records with more than 4.8 billion barrels of crude oil produced.[350] Production increased to nearly 5 billion barrels in 2025.[351]

- In 2024, United States exports of crude oil reached record levels of 4.1 million barrels per day.[352]

- For several years, the United States has been the world's largest gas exporter.[353]

- The U.S. Strategic Petroleum Reserve currently holds "approximately 125 days (more than 4 months) of U.S. crude oil net imports," exceeding the 90 days of import protection required by the International Energy Agency.[354]

- Recent increases in natural gas prices are consistent with

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[348] U.S. Energy Info. Admin., *Short-Term Energy Outlook* (June 10, 2025), https://www.eia.gov/outlooks/steo/data/browser.

[349] Kreil, E., *United States Produces More Crude Oil Than Any Country, Ever*, U.S. Energy Info. Admin. (Mar. 11, 2024), https://www.eia.gov/todayinenergy/detail.php?id=61545.

[350] Ex. 68, U.S. Energy Info. Admin., Petroleum & Other Liquids, Crude Oil Production (Mar. 31, 2026), https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_a.htm; Ex. 70, Rapier, R., *U.S. Oil Production Shattered Records Again in 2024*, OilPrice.com (Dec. 26, 2024), https://oilprice.com/Energy/Crude-Oil/US-Oil-Production-Shattered-Records-Again-in- 2024.html.

[351] Ex. 68, U.S. Energy Info. Admin., Petroleum & Other Liquids, Crude Oil Production (Mar. 31, 2026), https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_a.htm.

[352] Ex. 69, U.S. Dep't of Energy, U.S. crude oil exports reached a new record in 2024 (Apr. 10, 2025), https://www.eia.gov/todayinenergy/detail.php?id=64964.

[353] U.S. Energy Info. Admin., Ten years after first Sabine Pass cargo, U.S. LNG exports are still on the rise (Feb. 24, 2026), https://www.eia.gov/todayinenergy/detail.php?id=67224.

[354] U.S. Dep't of Energy, *SPR Quick Facts*, http://www.energy.gov/ceser/spr-quick-facts (last visited April 28, 2026).

projections by the U.S. Department of Energy, which cited increased and record liquified natural gas exports. The Department explained that "dramatically increasing [natural gas] exports [will] generate wealth for the owners of export facilities and create jobs across the natural gas supply chain," but will "increase wholesale domestic natural gas prices by over 30%."[355] Recently, the Energy Information Administration projected net U.S. natural gas exports (i.e., exports minus imports) will rise by 18 percent in 2026 and another 10 percent in 2027, when gas exports are expected to reach 20.5 billion cubic feet per day.[356] Disruptions in LNG transport through the Strait of Hormuz have increased demand for U.S. exports.[357]

- More than a year after the President's energy-emergency declaration, the Administration initiated a war against Iran. The war has resulted in attacks on energy restructure and the closure of the Strait of Hormuz, and consequently has reduced production and disrupted the transport of oil produced in Middle Eastern countries. These events have constricted global oil supply and increased oil and gas prices. However, the U.S. is relatively insulated from domestic shortages, where imports from the Middle East Gulf amounted to 8 percent of 2025 U.S. crude oil imports.[358] Further, "strong U.S. inventories and plans to release crude oil from the Strategic Petroleum Reserve helped limit [West Texas Intermediate] price increases.[359]

- While production capacity is high and expected to remain steady, demand for transportation fuels is expected to decrease. The Rhodium Group, a leading independent energy research firm, found

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[355] U.S. Dep't of Energy, Statement of U.S. Sec'y of Energy Jennifer Granholm (Dec. 17, 2024), https://www.energy.gov/sites/default/files/2024-12/Statement%20from%20U.S.%20Secretary%20of%20Energy%20Jennifer%20M.%20Granholm%20on%20Updated%20Final%20Analyses_12.17.2024.pdf.

[356] Ex. 71, U.S. Energy Info. Admin., U.S. natural gas exports to grow nearly 30% by 2027 as LNG facilities ramp up (Apr. 16, 2026), https://www.eia.gov/todayinenergy/detail.php?id=67484.

[357] *Id.*

[358] Ex. 72, U.S. Energy Info. Admin., The Middle East Gulf was source for 8% of 2025 U.S. crude oil imports (Apr. 6, 2026), https://www.eia.gov/todayinenergy/detail.php?id=67407.

[359] Ex. 73, U.S. Energy Info. Admin., Crude oil and petroleum product prices increased sharply in the first quarter of 2026 (Apr. 7, 2026), https://www.eia.gov/todayinenergy/detail.php?id=67424.

> that by 2027, "demand for transportation fuels (which accounts for about 70 percent of U.S. petroleum consumption) will be 8 to 12 percent below 2019 levels, and that by 2030, demand will be 10 to 15 percent below 2019 levels."[360] The Energy Information Administration explains that decreasing gasoline consumption is due to increasing fuel efficiency.[361]

In summary, the high volume of fossil fuel production and the availability of reserves in the United States negate any claim of an energy emergency.

Further, although there is an expected modest increase of 1–3 percent in domestic electricity demand in 2026, the fastest growing sources of electricity production are renewables, especially solar and battery storage.[362] Not only are these sources of energy excluded from Exec. Order 14,156,[363] but the Administration has actively suppressed their development.[364]

As demonstrated by the Administration's actions to thwart renewable energy generation, there is no domestic energy emergency in the United States, immediately threatening life, property, or resources. The opposite is true: energy markets are oversupplied, which is expected to result in reduced prices for oil and coal for the foreseeable future. The United States is currently exporting near record

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[360] Kubiak, L., et al., NRDC, *The Case Against New Offshore Oil and Gas Leasing on the Outer Continental Shelf*, at 2 (May 2022), https://www.nrdc.org/sites/default/files/case-against-new-offshore-oil-gas-leasing-ocs-ib.pdf (citing data from the Rhodium Group).

[361] Ex. 74, U.S. Energy Info. Admin., Increasing fuel efficiency leads to decreasing gasoline consumption (Apr. 10, 2026), https://www.eia.gov/todayinenergy/detail.php?id=67426.

[362] U.S. Energy Info. Admin., Solar power generation drives electricity generation growth over the next two years (Jan. 16, 2026), https://www.eia.gov/todayinenergy/detail.php?id=67005.

[363] *See* Exec. Order 14156 § 8(a) (defining "energy" or "energy resources" to mean "crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals.").

[364] *See* Presidential Memorandum on Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects (Jan. 20, 2025) (vacated on Dec. 15, 2025); Interior Order No. 3438 (Aug. 1, 2025) (deeming wind and solar energy "highly inefficient" projects that "may unnecessarily and unduly degrade Federal lands").

amounts of oil, and coal exports are only limited by low prices caused by the combination of oversupplied markets and cheaper energy alternatives. The U.S. extracts more fossil fuels than it uses.

In short, while the Administration may favor greater production and burning of fossil fuels, there is no emergency to justify this policy choice.

### B. BLM's Cannot Rely on Unlawful Emergency Review Procedures.

Not only is the "energy emergency" pure fiction, but also, BLM cannot rely on emergency provisions for the Bridger Pipeline review because they are inconsistent with NEPA and the definitions of an emergency found in BLM's NEPA regulations, as well as regulations implementing the Endangered Species Act, National Historic Preservation Act, and the Clean Water Act. Even if the declared "energy emergency" had a factual basis, which it does not, it would not constitute the type of urgent and unexpected event necessitating immediate action that could justify bypassing statutory and regulatory processes. These processes, including public notice and comment, are designed to ensure that agencies are informed of the environmental and cultural consequences of their decisions before they are made. They must be followed here.

In reliance on the fictional "energy emergency," Interior adopted "alternative arrangements" to comply with NEPA to expedite "the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources."[365] The procedures constrict environmental review timelines and authorize agencies to forego public comment on a draft environmental impact statement. Concurrently, Interior adopted alternative procedures for expedited consultation to comply with section 7 of the Endangered Species Act[366] and section 106 of the National Historic Preservation Act.[367] The U.S. Army Corps of Engineers similarly adopted emergency procedures for complying with Section 404 of the

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[365] Ex. 75, Dep't of the Interior, Alternative Arrangements for NEPA Compliance (Apr. 23, 2026), https://www.doi.gov/sites/default/files/documents/2025-04/alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed_1.pdf.

[366] Ex. 76, Dep't of the Interior, Alternative Arrangements for Informal Section 7 Consultation (Apr. 23, 2026), https://www.doi.gov/sites/default/files/documents/2025-04/alternative-procedures-section-7-consultation-2025-04-23-signed_1.pdf.

[367] Ex. 77, Dep't of the Interior, Emergency Process for Section 106 Compliance (Apr. 23, 2026), https://www.doi.gov/sites/default/files/documents/2025-04/alternative-procedures-section-106-compliance-2025-04-23-signed_1.pdf.

Clean Water Act.[368]

Although Congress granted agencies some flexibility in implementing NEPA, it also directed that agencies use "all practicable means" in cooperation with the public to fulfill NEPA's objectives:

> It is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.[369]

Accordingly, Congress directed that agencies, "to *the fullest extent possible* ... shall ... identify and develop methods and procedures, in consultation with the Council on Environmental Quality … which will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations."[370] NEPA further mandates that national laws and policies be construed to further NEPA's goals of environmental protection: "The Congress authorizes and directs that, *to the fullest extent possibl*e: … the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter [NEPA]."[371]

Two months after NEPA's enactment, President Nixon issued an Executive Order directing agencies to develop procedures for public involvement to carry out

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[368] Ex. 78, U.S. Army Corps of Eng'rs, Omaha Dist., Special Public Notice for Special Emergency Processing Procedures Under E.O. 14156 in Montana, Nebraska, North Dakota, South Dakota, and Wyoming for Section 10 Rivers and Harbors Act and Section 404 Clean Water Act Permits (Apr. 7, 2025), https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll15/id/8798.

[369] 42 U.S.C. § 4331(a); *see also id* § 4331(b) (establishing the Federal Government's "continuing responsibility" to "use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may … fulfill the responsibilities of each generation as trustee of the environment for succeeding generations," among other objectives).

[370] *Id.* § 4332(2)(B) (emphasis added).

[371] *Id.* § 4332(1).

NEPA's environmental objectives:

> Consonant with Title I of the National Environmental Policy Act of 1969 ..., the heads of Federal agencies shall ... [d]evelop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action.[372]

Executive Order 11514 remains in effect today.

Interior's NEPA procedures must comply with the statute and Executive Order 11514. To that end, Interior promulgated NEPA regulations in 2008, with a purposed to "highlight opportunities for public engagement and input in the NEPA process," thereby "allow[ing] the public to more easily participate in the NEPA process."[373] Interior's 2008 rulemaking required that: "A bureau must seek comment from the public as part of the … notice of availability for a draft environmental impact statement,"[374] and "must request comments from … persons or organizations who may be interested or affected," among other entities.[375]

On July 3, 2025, Interior replaced most of its NEPA regulations with procedures in a "handbook."[376] The handbook supplants the requirement that agencies solicit public comments on draft environmental impact statements with a statement that agencies "may" do so.[377] Interior's rescission of its NEPA regulations have been challenged as inconsistent with the statute and the Administrative Procedures Act.

Among the handful of NEPA regulations that Interior did not repeal were

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[372] Executive Order 11514, *Protection and Enhancement of Environmental Quality*, 35 Fed. Reg. 4247, § 2(b) (Mar. 5, 1970) (emphasis added).

[373] 73 Fed. Reg. 61292, 61292–93 (Oct. 15, 2008).

[374] 43 C.F.R. § 46.435(a).

[375] *Id.* § 46.435(b)(4).

[376] Interior repealed the regulations in an interim final rule, promulgated July 3, 2025, and finalized February 24, 2026. 91 Fed. Reg. 8738 (Feb. 24, 2026).

[377] 516 DM 1 – U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures § 2.1, https://www.doi.gov/media/document/doi-nepa-handbook.

"provisions relating to emergency responses to ensure that DOI can respond timely to any such event and to avoid any confusion regarding the continued validity of this already-established provision for action in emergency situations."[378] Interior's rules also allow it to adopt "alternative arrangements" that allow deviations from its NEPA regulations during emergencies. This provision applies only if the designated Interior Responsible Official "determines that an emergency exists that makes it necessary to take actions to address imminent threats to life, property, or important natural, cultural, or historic resources before preparing an environmental document or documenting the use of a categorical exclusion in accordance with the provisions in this chapter."[379]

The authority is highly circumscribed, applying only to "those actions necessary to control the immediate impacts of the emergency that are urgently needed to address imminent threats to life, property, or important natural, cultural, or historic resources."[380] In these limited circumstances, the Responsible Official must "consider the probable environmental consequences of these actions [taken in response to an emergency] and consider taking steps to mitigate reasonably foreseeable adverse environmental impacts to the extent practicable."[381]

The regulations further require the Responsible Official to "document in writing the determination that an emergency exists and describe the responsive actions taken at the time the emergency exists."[382] If further emergency actions are required and preclude preparation of an environmental document, the Responsible Official must "consult with [Interior's] Office of Environmental Policy and Compliance about alternative arrangements for NEPA compliance."[383] The "alternative arrangements shall apply only to the proposed actions necessary to control the immediate actions in response and related to the emergency … and must be documented."[384]

Although the regulations provide no definition for the term "emergency," Interior's contemporaneous understanding at the time of its enactment was that it should be limited to "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action," and that it authorized "immediate actions to control

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[378] 91 Fed. Reg. at 8738.

[379] 43 C.F.R. § 46.150.

[380] *Id.* § 46.150(a).

[381] *Id.*

[382] *Id.* § 46.150(b).

[383] *Id.* § 46.150(c).

[384] *Id.*

the immediate impacts of an emergency to mitigate harm to life, property, or important natural or cultural resources."[385] Thus, alternative NEPA arrangements for emergency response apply in "narrow" circumstances that involve "sudden, unanticipated events,"[386] rather than the misconceived impressions or policy choices of a particular administration.

Other statutory and regulatory schemes are similar. Endangered Species Act regulations authorize agencies to bypass certain procedural requirements only in situations involving "bona fide" emergencies,[387] including "acts of God, disasters, casualties, national defense or security."[388] Thus, "under the ESA framework, emergency consultation is intended to be the exception, not the rule [and] is meant for unexpected exigencies."[389] Regulations implementing the National Historic Preservation Act authorize alternative procedures to comply with section 106 in "emergency situations," in response to "immediate threats to life or property" or within 30 days after the formal declaration of a disaster or emergency by the President or the Governor of a State.[390] The Clean Water Act also contemplates emergency action only to stop further harm of imminent and substantial endangerment to the health or welfare of a person or for emergency reconstruction

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[385] 73 Fed. Reg. 61292, 61301 (Oct. 15, 2008).

[386] *NRDC v. Winter*, 527 F. Supp. 2d 1216, 1229 (C.D. Cal. 2008).

[387] *See* 51 Fed. Reg. 19938 (June 3, 1986) (the preamble to the Federal Register notice in which 50 C.F.R. § 402.05(a) was published reinforcing that it was intended for situations involving "bona fide" emergencies in which the standard consultation process was impossible).

[388] 50 C.F.R. § 402.05(a); *see also Friends of Merrymeeting Bay v. U.S. Dep't of Com.*, 810 F. Supp. 2d 320, 329 (D. Me. 2011) (finding that it would be arbitrary and capricious for National Marine Fisheries Service to approve the use of emergency consultation without evidence "that the need for repair of [a dam that year] was unexpected and that delaying the repair would cause at least a potential loss of property"); *Wash. Toxics Coal. v. U.S. Dep't of Interior, Fish & Wildlife Serv.*, 457 F. Supp. 2d 1158, 1195 (W.D. Wash. 2006) ("The overwhelming impression conveyed by [the ESA regulation's] examples of 'emergency' and by the general-purpose ordinary language meaning of 'emergency' itself includes the element of surprise and unexpectedness.").

[389] *Forest Serv. Emps. for Env't Ethics v. U.S. Forest Serv.*, 397 F. Supp. 2d 1241, 1257 (D. Mont. 2005)

[390] 36 C.F.R. § 800.12(a), (d).

activities.[391] The Army Corps of Engineers' regulations reflect the same definition of an emergency, allowing for emergency permitting procedures when necessary to avoid "an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship."[392]

None of the statutes and regulations at issue would authorize the agency's reliance on emergency procedures in response to the President's declaration of an energy emergency, which in addition to being counter factual, does not present any immediate threat to life or property that could justify bypassing regulatory safeguards.

### C. Even if There Was an Emergency, the Bridger Pipeline is Not Necessary to Address It.

There is no justification for expediting the permitting of a years-long pipeline construction project, particularly where there is no indication that the pipeline, once it is built, would alleviate the fictional domestic energy emergency claimed in Executive Order 14156.

First, the mining, transport, and refining of crude oil—particularly tar sands crude—is an energy intensive process, meaning that it would contribute to the fossil

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[391] 33 U.S.C. §§ 1364(a), 1344(f), 1323(a); *see also Rsrv. Mining Co. v. Env't Prot. Agency*, 514 F.2d 492, 537 (8th Cir. 1975) (finding the EPA's use of its emergency powers under the CWA unreasonable "[i]n the absence of an imminent hazard to health or welfare"); *Swinomish Indian Tribal Cmty. v. Skagit Cnty. Dike Dist. No. 22*, 618 F. Supp. 2d 1262, 1268 (W.D. Wash. 2008) (finding that "[a county dike district's] actions cannot be considered 'emergency reconstruction'" when the district had been aware of issues with tidegates for months before taking action to repair them); *Am. Whitewater v. U.S. Army Corps of Eng'rs*, No. 24-CV-00284, 2025 WL 1142311, at *1 n.1 (W.D.N.C. Mar. 20, 2025) (emergency reconstruction of damaged rail lines was justified under the CWA in response to damage caused by Hurricane Helene, "one of the most devastating storms in North Carolina history").

[392] 33 C.F.R. § 325.2(e)(4); *see La. Env't Action Network v. U.S. Army Corps of Eng'rs*, No. 06- cv-2020, 2006 WL 8456327, at *5 (E.D. La. Apr. 27, 2006) (finding the Corps properly identified an emergency situation when Hurricane Katrina "created conditions requiring immediate action to prevent irreparable damage to the environment and serious threats to life or safety").

fuel and energy shortage claimed by the President's emergency declaration.[393] By contrast, improving energy and fuel efficiency, reliance on renewable energy sources, and even other "conventional" fuels are far better strategies for addressing an energy emergency than importing Alberta tar sands.

Second, there is no evidence that the Bridger Pipeline is urgently needed to bring Canadian tar sands or crude oil into the U.S. The Application asserts that "[a]vailable industry analysis indicates that pipeline capacity in the northern Rockies and Western Canada can *periodically* approach full utilization, creating conditions in which additional takeaway capacity *may* support system reliability and market access."[394] Unsupported claims that pipeline capacity is periodically constrained is insufficient to demonstrate that the Bridger Pipeline would constitute an urgent action needed "to address imminent threats to life, property, or important natural, cultural, or historic resources."[395]

Finally, the U.S. is a net exporter of petroleum products, including the gasoline, diesel fuel, and jet fuel that are the most common end products of the crude oil and tar sands refining processes.[396] Importing petroleum only to export it again cannot possibly address a *domestic* energy emergency.

For all these reasons, BLM cannot evade essential procedural safeguards of the federal environmental statutes—including NEPA's requirement for public participation—in reliance on President Trump's declaration of a completely fictional "energy emergency," or on agencies' illegitimate implementation of alternative procedures that shortcut processes essential to protect the environment.

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[393] *See* Ex. 43, Congressional Res. Serv., Canadian Oil Sands: Life-Cycle Assessments of Greenhouse Gas Emissions at 2 (Dec. 30, 2014), https://www.everycrsreport.com/files/20141230_R42537_61f147a81fd7aef354aa07d1e3043d2994ee8806.pdf; *see also supra,* Section II.E.2 (discussing the pipeline's climate change impacts).

[394] MFSA Application at 2 (emphasis added).

[395] 43 C.F.R. § 46.150. Further, construction of the Bridger Pipeline would be just one step toward bring tar sands to U.S. refineries. To the extent that the pipeline is deemed important for alleviating a domestic energy emergency, BLM must consider the *additional* pipeline capacity from Guernsey, Wyoming to refineries in the Gulf and Oklahoma an essential component of the project.

[396] Ex. 79, U.S. Energy Info. Admin., Oil and petroleum products explained: Oil imports and exports (Jan. 19, 2024), https://www.eia.gov/energyexplained/oil-and-petroleum-products/imports-and-exports.php.

## V. BLM MUST COMPLY WITH THE MINERAL LEASING ACT AND FEDERAL LAND POLICY AND MANAGEMENT ACT.

BLM must ensure compliance with the Mineral Leasing Act (MLA) and the Federal Land Policy and Management Act (FLPMA) in its review of the pipeline right-of-way application.

The MLA governs the issuance of right of ways and temporary use permits for oil pipelines.[397] In addition to requiring compliance with NEPA, the MLA also requires BLM to implement additional environmental protection measures.[398] Where, as here, a project has the potential to significantly impact the environment, the applicant must submit a "plan of construction, operation, and rehabilitation."[399] BLM must then issue regulations or impose stipulations that include: (a) requirements for restoration, revegetation, and curtailment of erosion; (b) requirements to insure that the project will not violate air and water quality standards; (c) requirements designed to control or prevent damage to the environment (including damage to fish and wildlife habitat), damage to public or private property, and hazards to public health and safety; and (d) requirements to protect the interests of individuals living in the vicinity who rely on the natural resources of the area for subsistence purposes.[400] BLM must also impose requirements on the project's operation that will ensure worker safety and "protect the public from sudden ruptures and slow degradation of the pipeline."[401] Finally, BLM must ensure that the proposed use is consistent with existing land use plans.[402]

FLPMA authorizes BLM to grant rights of way for a pipeline's ancillary facilities, including roads and electrical power generation, transmission, and distribution systems.[403] As with the MLA, rights of way granted under FLPMA

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[397] 30 U.S.C. § 185(a).

[398] *Id.* § 185(h).

[399] *Id.* § 185(h)(2).

[400] *Id.*; 43 C.F.R. § 2885.11; *see also id.* § 2881.2 ("It is BLM's objective to grant rights-of-way … in a manner that: (a) Protects the natural resources associated with public lands and adjacent lands … [and] (b) Prevents unnecessary or undue degradation to public lands ….").

[401] 30 U.S.C. § 185(g).

[402] *See* 43 C.F.R. § 2884.23(a) (referencing consistency with "the purpose for which BLM or other Federal agencies manage the lands" as a relevant concern); *id.* § 2884.21 (instructing BLM to determine whether the proposed use complies with applicable federal and state laws, regulations, and local ordinances).

[403] 30 U.S.C. § 185(g).

must comply with all applicable NEPA requirements,[404] and projects that may have a significant impact on the environment must include a "plan of construction, operation, and rehabilitation."[405] BLM must then impose terms and conditions that: (a) minimize damage to scenic and esthetic values, fish and wildlife habitat, and otherwise protect the environment; (b) require compliance with applicable air and water quality standards; (c) efficiently manage the lands subject to the right of way and protect other lawful users of adjacent lands; (d) protect lives and property; (e) protect the interests of individuals living in the area who rely on local resources for subsistence purposes; and (f) otherwise protect the public interest.[406] BLM also may only grant right of way for the route that will cause least damage to the environment, including by considering whether an applicant can use an existing right-of-way corridor and by drawing right-of-way boundaries so as to avoid "unnecessary damage to the environment."[407] Consistent with these statutory requirements, "[i]t is BLM's objective to grant rights-of-way," if at all "in a manner that: (a) Protects the natural resources associated with public lands and adjacent lands, … [and] (b) Prevents unnecessary or undue degradation to public lands …."[408]

Crucially, BLM may deny right-of-way and temporary-use applications under the circumstances apparent on the face of the pipeline application, i.e., the proposed use would not serve the public interest, or would have serious environmental consequences that cannot be mitigated.[409] And even if BLM chooses to grant an application, it may prohibit the applicant from constructing or operating the project until certain stipulations and conditions are met.[410] As discussed throughout these comments and exhibits, the pipeline would have substantial harmful effects on the environment, which BLM must carefully consider as part of its NEPA analysis. By transporting vast quantities of tar sands crude oil each day, the Bridger Pipeline would accelerate climate change. Construction and operation of the pipeline would harm species and their habitats, including federally protected species. The risk of

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[404] *See id.* § 1764(c) (stating that all rights of way must be issued consistent with applicable law)

[405] *Id.* § 1764(d)

[406] *Id.* § 1765; 43 C.F.R. § 2805.12; *Trout Unlimited v. U.S. Dep't of Agric.*, 320 F. Supp. 2d 1090, 1108 (D. Colo. 2004) ("FLPMA requires all land-use authorizations to contain terms and conditions which will protect resources and the environment.").

[407] 43 U.S.C. §§ 1763, 1764(a), 1765(b).

[408] 43 C.F.R. § 2801.2.

[409] *Id.* §§ 2804.26(a), 2884.23(a).

[410] *See id.* § 2886.10.

oil spills also poses significant threats to the land and water along the pipeline route, as well as to the people and species that depend on those resources.

In light of these serious environmental consequences" BLM must deny the right-of-way applications for the pipeline and its ancillary facilities under the MLA and FLPMA. If BLM grants the pipeline application—and it should not, given the substantial harms discussed in these comments—it must impose terms and conditions that adequately protect the environment, the surrounding areas, and public health and safety, as dictated by both statutes.[411]

## VI. BLM MUST COMPLY WITH THE NATIONAL HISTORIC PRESERVATION ACT AND ANTIQUITIES ACT, INCLUDING BY ENGAGING IN ROBUST GOVERNMENT-TO-GOVERNMENT CONSULTATION WITH AFFECTED TRIBES.

BLM must comply with the National Historic Preservation Act (NHPA). "Congress enacted the [NHPA] in 1966 to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony."[412] The statute "declares that the preservation of irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans."[413] The NHPA has been characterized as a "stop, look, and listen" statute: it requires agencies to fully consider the effects of its actions on historic, cultural, and sacred sites.[414] Section 106 of the NHPA requires that prior to issuance of any federal funding, permit, or license, agencies must take into consideration the effects of that "undertaking" on historic properties.[415] Agencies "must complete the section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license."[416]

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[411] *See Trout Unlimited*, 320 F. Supp. 2d at 1108-09 (holding that agency's failure to impose terms and conditions that minimize environmental degradation, as required by FLPMA, is arbitrary and capricious).

[412] *CTIA-Wireless Ass'n v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (citing 16 U.S.C. § 470-1(1)). In 2014, Congress recodified the NHPA at 54 U.S.C. §§ 3001001–307108.

[413] 54 U.S.C. § 306102.

[414] *See, e.g.*, *Te-Moak Tribe of W. Shoshone v. Nevada v. U.S. Dep't of Interior*, 608 F.3d 592, 606 (9th Cir. 2010).

[415] 54 U.S.C. § 306108.

[416] 36 C.F.R. § 800.1.

Under the NHPA, agencies must identify and evaluate historic properties affected by their actions. Historic properties include "prehistoric sites, buildings, structures, or objects, artifacts, and records.[417] Section 106—the heart of the NHPA's protective framework—requires agencies to consult on the impact of actions with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), Tribal Nations, and the public.[418] Agencies must initiate early planning to consider a broad range of alternatives in the planning process to comply with the NHPA.[419] Further, agencies must develop and evaluate these alternatives to resolve—by avoiding, minimizing, or mitigating—adverse impacts on historical properties.[420]

While the POD suggests that Bridger and BLM have taken the first steps toward NHPA compliance, more is required. Bridger has conceded in its POD that the pipeline would impact historic properties, and identified BLM as the lead federal agency for NHPA compliance.[421] Bridger states in its POD that the BLM is "developing" a Programmatic Agreement (PA) with SHPOs, federal and state agencies, Bridger, Tribes, and communities which will include management and consultation frameworks.[422] Until the PA is developed and disclosed, the public cannot comment on whether it may satisfy NHPA standards. Bridger's incomplete government-to-government consultation efforts, likewise, render commenting on compliance challenging.

In reviewing the proposed pipeline, BLM must adhere to the Section 106 consultation requirements, BLM's trust obligations to Tribal Nations, and take necessary steps to identify and avoid impermissible harm to historic sites and

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[417] 54 U.S.C. § 300308.

[418] *Id.* § 306108.

[419] 36 C.F.R. § 800.1(c).

[420] *Id.* § 800.6(a).

[421] POD at 83.

[422] POD at 93.

Tribal cultural resources from the pipeline.[423]

### A. The Section 106 Consultation Process.

Under Section 106 of NHPA, agencies must first make a "reasonable and good faith effort" to appropriately identify historic sites, which can include "background research, consultation, oral history, interviews, sample field investigation, and field survey."[424]

Direct and meaningful government-to-government consultation is fundamental to BLM's NHPA compliance. The BLM Manual on Tribal Relations sets a standard to conduct "mutual, open, and direct two-way communication in good faith to secure meaningful and timely participation in the decision making process, as allowed by law."[425] The BLM judges the adequacy of its NHPA tribal consultation practices based on several factors and provides guidelines for achieving sufficient consultation.[426] The volume of letters, meetings, or reports provided to tribes is "not enough." BLM managers must consider:

(1) Scope and complexity of proposed land use action;
(2) Availability of alternatives that would reduce or eliminate potential harm or disruption;
(3) Completeness and appropriateness of the list of Indian tribes and individuals with whom consultation has already been documented;
(4) Nature of issues raised;
(5) Intensity of concern expressed;
(6) Legal requirements posed by treaties, if applicable;
(7) Potential to resolve issues through further discussions; and

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[423] In addition to its obligations under the NHPA, BLM must comply with the Antiquities Act, which protects "ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic and scientific interests" located on federal lands. 43 C.F.R. § 3. Similarly, the Historic Sites Act protects and preserves for public use historic sites, buildings and objects of national significance. 16 U.S.C. §§ 461-467. The Archaeological and Historic Preservation Act preserves "historic and archeological data which might otherwise be irreparably lost or destroyed" resulting from federal projects or federally licensed activities. 16 U.S.C. § 469.

[424] 36 C.F.R. § 800.4(b)(1).

[425] Bureau of Land Management Manual 1780: Improving and Sustaining BLM-Tribal Relations (P) (Release 1-1708, Dec. 15, 2016), https://www.blm.gov/sites/blm.gov/files/uploads/MS%201780.pdf, Glossary, at C.

[426] BLM Manual 1780, Appendix 2: Judging the Adequacy of Tribal Consultation. A2-1

(8) Need for further consultation.

In response to Interior Board of Land Appeals' and Federal district and appeals court cases, BLM identified best practices for tribal consultation, including:[427]

(1) A pattern of numerous and repeated efforts to engage in consultation through various means of communication even when the tribe did not respond;
(2) A pattern of regularly scheduled consultation meetings with tribes;
(3) Early engagement to allow maximum contribution from tribes, when the agency has the maximum flexibility and before any alternatives have been finalized;
(4) Communications through a variety of mediums, including face-to-face meetings, telephone conference calls, notices, shared documents, field trips, and site visits;
(5) Direct involvement of BLM line officers and elected tribal officials in consultation;
(6) An engagement with tribes that allows for a reasonable opportunity to identify their concerns, provide input on the projects effects, and participate in resolving any adverse effects;
(7) The opportunity for tribes to conduct on-site inspection of projects and potentially affected resources;
(8) Documentation that the agency obtained and considered tribal input and that final decisions took that input into account; and
(9) Continuation of dialogue after initial authorizations and the involvement of tribes in monitoring, mitigation, and reclamation activities.

BLM also identified "fatal flaws" in tribal consultation.[428] These include:

(1) Initiation of consultation with tribes late in the planning/decision process;
(2) Failure to fully share all relevant information with tribes;
(3) Meetings and communications that were of an informational nature rather than two-way communication designed to obtain and consider tribal views and recommendations; and
(4) Consultations restricted to individual tribal members or meetings limited only to BLM and tribal staff, rather than government-to-government consultation between elected tribal representatives and the designated representatives of the United States.

Federal agencies are required to engage in Tribal consultation even if the project is not on Indian reservation lands or trust lands because "frequently historic

[427] *Id.* at A2-2.

[428] *Id.* at A2-2–A.2-3.

properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes."[429] Further, consultation with only one tribe does not relieve the agency's obligation to consult with other tribes that attach a property as cultural or religious significance.[430] Tribes must be afforded a reasonable and adequate opportunity for consultation, which means they are "aware of the proposal, had the ability to study it with care, and provide extensive comments about the proposal and its potential cumulative impact."[431]

The BLM Manual on Identifying and Evaluating Cultural Resources, identifies three classes of surveys that can be used to help identify historic and cultural resources.[432] Class I relies primarily on all reasonably available cultural resource data.[433] Class II also includes field surveying and sampling employing a statistically based sample survey method.[434] Class III— the most common type of survey—is an intensive, professionally designed survey involving managers and specialists.[435] The BLM Manual determines that a class III intensive survey is required when a proposed undertaking substantially disturbs the land surface, affects the integrity of cultural properties, or alters the "traditional use of known properties with traditional cultural or religious importance to an Indian tribe."[436]

The BLM must make a reasonable and good faith effort to identify "traditional cultural places" (TCPs), or historic properties of "cultural and religious significance"[437] A TCP is a place of "significance to a living community because of its association with cultural beliefs, customs, or practices that are rooted in the community's history and that are important in maintaining the community's

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[429] 36 C.F.R. § 800.2.

[430] *Quechan Tribe of Fort Yuma Indian Rsrv. v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1112 (S.D. Cal. 2010).

[431] *See generally Concerned Citizens and Retired Miners Coal. v. U.S. Forest Serv.*, 279 F.Supp.3d 898, 916 (D. Ariz. 2017).

[432] Bureau of Land Mgmt. Manual 8110: Identifying and Evaluating Cultural Resources. (Release 8–73, Dec. 3, 2004), http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.23101.File.dat/8110.pdf.

[433] BLM Manual 8110.2.21.A.1.

[434] *Id.* 8110.2.21.B.1.

[435] *Id.* 8110.2.21.C.1, C.3.

[436] *Id.* 8110.22.A.

[437] 54 U.S.C. § 306108.

cultural identity."[438] A TCP a historical property eligible for listing in the National Register of Historic Places because it must meet the criteria for listing under NHPA.[439]

The BLM must identify historic properties, determine eligibility, assess impacts, and identify adverse effects and mitigate them in consultation with Tribal Nations.[440] Section 106 of NHPA requires agencies to commence consultation with federally recognized tribes early in the planning process to provide them with a reasonable opportunity to advise and evaluate in identifying properties, articulate views, and participate in the resolution of adverse effects. The Ninth Circuit affirms that the procedural provision of Section 106 requires agencies to meet specific consultation standards in identifying TCPs.[441] Accordingly, the BLM should meet the following:

(i) make a reasonable and good faith effort to identify historic properties;[442]
(ii) determine if they are eligible for listing on the National Register based on criteria for evaluation;[443]
(iii) assess the effects of the undertaking on eligible historic properties;[444]
(iv) determine if the effects will be adverse;[445]
(v) avoid, minimize, or mitigate adverse impacts.[446]

The Ninth Circuit found agencies in violation of Section 106 of NHPA if they do not conduct tribal consultations or considerations of historic sites before making federal decisions.[447]

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[438] National Park Service, *Identifying, Evaluating, and Documenting Traditional Cultural Places National Register Bulletin* 1 (2024), at 27, https://parkplanning.nps.gov/document.cfm?parkID=442&projectID=107663&documentID=141175.

[439] *Id.* at 19.

[440] 54 U.S.C. § 302706(b).

[441] *See Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999) (per curiam).

[442] 36 C.F.R. § 800.4(b).

[443] 36 C.F.R. § 60.4.

[444] 36 C.F.R. §§ 800.4(c), 800.5, 800.9(a).

[445] 36 C.F.R. §§ 800.5(c), 800.9(b).

[446] 36 C.F.R. §§ 800.8(e), 800.9(c).

[447] *See Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 787 (9th Cir. 2006).

Agencies must consult with tribal nations to properly identify TCPs throughout the construction of a project, which can be outlined in programmatic agreements that address NHPA obligations.[448] Mitigation of adverse impacts must be sufficient to preserve a property's significant historic features. Agencies must mitigate adverse effects by adequately considering cumulative impacts of an undertaking and alternatives to the project."[449]

To implement agencies' NHPA obligations, the Advisory Council on Historic Preservation ("Advisory Council") and agencies negotiate programmatic agreements (PAs) that govern the implementation of an undertaking or alternatives.[450] These are statutorily authorized negotiated agreements that outline agency obligations to comply with Section 106.[451] PAs address a project's potential adverse effects on historic properties, consultation procedures, interested parties, including Tribal nations, and consider their input in determining the eligibility of properties for inclusion on the National Register of Historic Places.[452] PAs evaluate undertakings, identify properties, determine effects and adverse impacts, and propose alternatives to protect historic properties.[453] PAs also set forth conditions that must be met before construction can be authorized, such as ensuring that adverse effects to historic properties are avoided, minimized, or mitigated.[454]

The National Programmatic Agreement ("National PA"), under advisory and consultation with the Advisory Council, charges the BLM with managing public lands to "protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values."[455]

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[448] *See Tohono O'odham Nation v. United States Dep't of the Interior*, 138 F.4th 1189, 1203 (9th Cir. 2025) (holding that plaintiffs raised a plausible claim that an agency violated its NHPA obligations under the PA and their claim is reviewable under the APA).

[449] *See Muckleshoot Indian Tribe*, 177 F.3d at 815.

[450] 36 C.F.R. § 800.14(b).

[451] Bureau of Land Management Manual 8100: The Foundations for Managing Cultural Resources, Glossary, at 6. (Release 8–72, Dec. 3, 2004), https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual8100.pdf.

[452] 36 C.F.R. § 800.14(b).

[453] BLM Manual 8100.05A, at 9.

[454] 36 C.F.R. § 800.14(b).

[455] Programmatic Agreement Among the Bureau of Land Management, The Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which BLM Will Meet Its

Under the National PA, the BLM must comply NHPA and FLPMA provisions when "a proposed land use might have an effect on a nationally significant cultural property or would involve interstate and/or interagency coordination."[456] The National PA does not apply to tribal lands, but the BLM is required to consult with Tribal Nations, THPOs, or appropriate tribal officials and SHPOs and the Advisory Council for proposed BLM undertakings on tribal lands.[457] Further, statewide PAs are incorporated into BLM and SHPO protocols, consistent with the National PA provisions.[458]

Agencies can pursue a "project PA" when an agency cannot fully determine how an undertaking may impact historic properties, the location of the properties, or their significance and character.[459] In these circumstances, agencies must comply with the PA to comply with the NHPA.[460]

### B. The BLM Must Engage in Tribal Consultation Under the Federal Trust Doctrine.

In addition to BLM's NHPA obligations, the obligation of federal agencies to consult with Indian tribes arises from the U.S.'s trust responsibility and the government-to-government relationship between federally recognized Tribal Nations and the federal government.[461] This trust responsibility is not discretionary; it is a binding legal and fiduciary duty requiring federal agencies to engage in meaningful, timely, and good-faith consultation whenever proposed actions may affect Tribal land, treaty rights, cultural resources, or other protected interests. The trust doctrine is reinforced through a comprehensive framework of treaties, statues, regulations, and executive directives that establish a fiduciary obligation to protect tribal lands, resources, and sovereignty. Collectively, they require federal agencies to identify, consider, and incorporate Tribal interests into

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Responsibilities Under the National Historic Preservation Act, BLM Manual 8100.05.A. Appendix 13, at 1.

[456] *Id.* 8100.09.B.2.

[457] *Id.* 8100.05A, at 3.

[458] *Id.* 8100.05A, at 9.

[459] 36 C.F.R. § 800.14(b)(3).

[460] *Id.* § 800.14(b)(2)(iii).

[461] *See Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16 (1831) (holding that tribal nations are "domestic dependent nations" whose relationship to the federal government resembles that of a ward to his guardian, and seek protection); *see also, e.g., Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942) (finding that the government must act with moral obligations of the highest responsibility and trust).

decision-making processes.[462]

Tribal consultation is reinforced by the trust doctrine, specifically through Exec. Order on Consultation and Coordination with Indian Tribal Governments[463] and the Presidential Memorandum on Tribal Consultation.[464] The trust doctrine establishes a clear mandate that agencies must engage in early, continuous, and substantive consultation with affected Tribal Nations. Consultation must occur before any commitment to disrupt resources and must be done with respect to Tribal sovereignty.

Bridger mischaracterizes the relationship between tribes and the U.S. government when it states: "the interactions between the native population and the expanding Euro American groups…directly resulted in multiple treaties between the US government and various tribal entities, which in a way, now shape the manner in which some 12,000 years of history must now be addressed.[465] The BLM must engage in tribal consultation under the principles of the federal trust doctrine and respect tribal sovereignty.

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[462] NHPA section 106 implements the government's "minimum fiduciary" duties to Tribal Nations and thus a violation of this generally applicable statute constitutes a violation of the trust obligation. *Pit River Tribe,* 469 F.3d at 788 (finding that agencies violated their duties under NEPA and NHPA and their "fiduciary duty to the Pit River Indian Tribe by failing to complete" and EIS before extending a project). The trust doctrine is also implemented in the intersection of NHPA with regulations in the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001, the American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996, as expressed in 36 C.F.R. § 800.2(4), and possibly the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000.

[463] Exec. Order 13175 (Nov. 6, 2000), Consultation and Coordination with Indian Tribal Governments, https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments.

[464] 65 Fed. Reg. 67249 (Nov. 9, 2000); Presidential Memorandum on Tribal Consultation: Memorandum for the Heads of Executive Departments and Agencies (Nov. 5, 2009), https://obamawhitehouse.archives.gov/the-press-office/memorandum-tribal-consultation-signed-president.

[465] MFSA Application, at 83.

### C. BLM Must Establish Thorough and Lawful Procedures for Complying with the NHPA and Other Statutory Obligations.

Given the important tribal cultural interests at stake with the pipeline,[466] compliance with NHPA section 106 and BLM's trust obligations to tribes is critical. At this project stage, BLM has not yet explained how it will meet its NHPA and tribal trust obligations, and Bridger in its POD and MFSA Application fails to adequately describe these obligations.

At a minimum, the pipeline's large scale and potentially significant impacts to tribal cultural resources mandate a Class III survey rather than any foreshortened cultural resources review is essential here. Bridger does not state in its POD or MFSA Application if BLM conducted background research, consultations, oral histories, interviews, sample field investigations, and field surveys to identify historic sites. Bridger does not adequately provide details that the BLM will make reasonable and good faith efforts to identify historic sites using the survey methods in the BLM Manual. Bridger should provide a comprehensive consultation plan that meets the "reasonable and good faith effort" standards to identify historic sites, especially in consultation with tribal nations.

Further, crucial details about requisite tribal consultation are unknown. Although Bridger states it "initiated informal consultations with" THPOs, it does not provide a detailed plan explaining how the BLM will, in a reasonable and good faith effort, engage in tribal consultation, which should include plans to hold meetings with appropriate tribal government officials and with communities in public forums, and how it will secure the appropriate support, approvals, and consent through tribal council legislation, memorandums of understanding, executive orders, or contracts.[467]

Bridger's NHPA consultation efforts with Tribal Nations presented in its POD and MSFA Application are insufficient. Bridger does, however, recognize the responsibility for the lead agency to conduct meaningful government-to-government consultation to ensure that Tribal Nations have "meaningful input in the environmental and cultural review of the Project to determine whether the Project may affect properties or sites of religious or cultural importance."[468] The Bridger POD also indicates it will also "initiate early communications" with THPOs "to share project details and identify areas of potential concern.[469] However, Bridger's

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[466] *See supra*, Sect. II.H.2 (discussing cultural resource impacts).

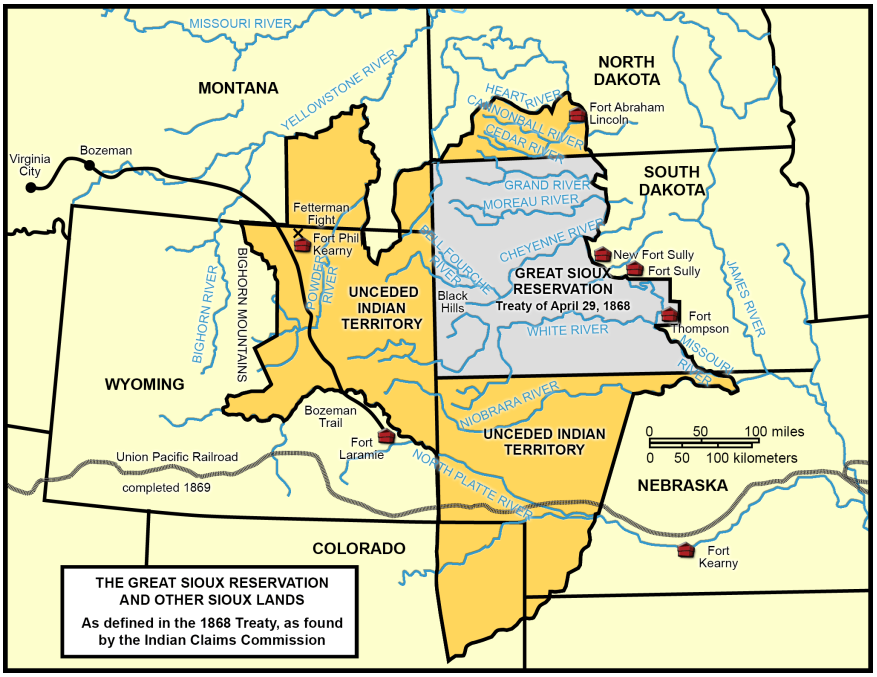
[467] MFSA Application, at 52.

[468] POD at 83-84.

[469] *Id.* at 83.

effort are insufficient, given the apparent one-year timeline for project review, and a comprehensive tribal consultation plan that meets specific goals to identify and evaluate TCPs and identify, assess, and mitigate adverse effects is absent. Furthermore, it does not adequately consider cumulative impacts on TCPs and alternatives to the project.

Tribal consultation must at a minimum include tribes with "unceded Indian territory" guaranteed to all Tribal Nations that signed the 1868 Fort Laramie Treaty, which the pipeline would cross: the Lakota/Dakota/Nakota (Great Sioux Nation), Cheyenne, Arapaho, Crow, Assiniboine, Mandan/Hidatsa/Arikara.[470] The modern successors retain collective and shared hunting, fishing, and gathering rights to the unceded territory. They may also have historic sites and TCPs in the area.[471]




[470] This territory was first designated in the 1851 Fort Laramie Treaty as part of the Great Sioux Nation reservation, which also included the Cheyenne and Arapaho. *See* Map of Fort Laramie Treaty of 1868. State Historical Society of North Dakota. Treaties of Fort Laramie, 1851-1868, https://www.ndstudies.gov/gr8/content/unit-iii-waves-development-1861-1920/lesson-4-alliances-and-conflicts/topic-2-defending-lakota-homelands/section-3-treaties-fort-laramie-1851-1868.

[471] See Ex. 91 , Optimized 1851 and 1868 Fort Laramie Treaty Map, Smithsonian Institution. 18th Annual Report of the Bureau of American Ethnology, Washington, GPO (1899).

Bridger has correctly identified several Tribal Nations that may be impacted, but it has not yet engaged in meaningful discussion, nor does it appear that BLM has engaged in meaningful consultation. Bridger states that it initiated early outreach to Tribal governments in October of 2025, and in December 2025 it sent letters to the Northern Cheyenne Tribe, Fort Peck Assiniboine & Sioux Tribes, Mandan, Hidatsa & Arikara Nation, Standing Rock Sioux Tribe, Crow Tribe, Cheyenne River Sioux Tribe, and "numerous others."[472] Bridger also states that it "initiated informal consultation" with THPOs in "February–March 2026 through virtual and in-person meetings," with the Fort Peck Assiniboine & Sioux Tribes, Mandan, Hidatsa & Arikara Nation, Standing Rock Sioux Tribe, Crow Tribe, Eastern Shoshone, Northern Arapaho, and additional Tribal Nations.[473]

These initial outreach efforts are insufficient and much of the feedback was limited to "agricultural operations, grazing access, potential land fragmentation, and interest in using existing utility corridors where feasible."[474] This does not meet the standards set by NHPA. And, importantly, outreach by Bridger cannot substitute for government-to-government outreach by BLM.

The BLM must reasonably and in good faith, engage in meaningful tribal consultation with all the identified Tribal Nations that have vested treaty rights, historical properties, TCPs, and ongoing ceremonial and religious practices in the project's route.[475] The BLM must establish a comprehensive tribal consultation plan to meet the standards in Section 106 of NHPA by addressing how it will engage in meaningful tribal consultation to identify and evaluate historic sites and TCPs and identify, assess, and mitigate impacts in consultation with tribes.

## VII. BLM MUST COMPLY WITH THE ENDANGERED SPECIES ACT.

The Endangered Species Act (ESA) "is 'the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.' It represents a commitment 'to halt and reverse the trend toward species extinction, whatever the

[472] MFSA Application at 52.

[473] *Id.*

[474] *Id.*

[475] *See supra*, Section II.H.2 (discussing impacts on tribal cultural resources on and near Fort Peck Indian Reservation lands, the Warrior Trial Highway, ceremonial hunting structures, the Fort Robinson Outbreak Spiritual Healing Run path, and other unidentified cultural historic sites).

cost.'"[476] To that end, section 7(a)(2) of the Act imposes on federal agencies such as BLM a duty to ensure that actions they authorize or carry out are not likely to jeopardize endangered or threatened species or destroy or adversely modify critical habitat designated for such species.[477] An agency action "jeopardize[s]" a protected species if it "reasonably would be expected, directly or indirectly," to reduce appreciably the species' likelihood of survival and recovery "by reducing the reproduction, numbers, or distribution of that species."[478]

Before undertaking or authorizing an action that may affect ESA-listed species or their critical habitat—such as the Bridger Pipeline—BLM must consult with the U.S. Fish and Wildlife Service (FWS).[479] The formal consultation process culminates in FWS's issuance of a biological opinion, reflecting FWS's determination—based on "the best scientific and commercial data available"—of whether the proposed action will jeopardize a listed species or destroy or adversely modify designated critical habitat.[480] In making that determination, FWS must "consider[ ] the relevant factors and articulate[ ] a rational connection between the facts found and the choice made."[481]

If FWS concludes that a proposed action is likely to jeopardize a listed species, the action may not proceed.[482] FWS must determine whether "reasonable and prudent alternatives" exist that would avoid jeopardy.[483] If FWS concludes that implementing a proposed action (or a reasonable and prudent alternative) will not jeopardize a protected species but will nevertheless result in "take" of such species, the agency must issue an incidental take statement with its biological opinion.[484] Under the ESA, "take" means "to harass, harm, pursue, hunt, shoot, wound, kill,

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[476] *Ctr. for Biological Diversity v. Zinke*, 900 F.3d 1053, 1059 (9th Cir. 2018) (quoting *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180, 184 (1978)) (internal citation omitted)).

[477] 16 U.S.C. § 1536(a)(2).

[478] 50 C.F.R. § 402.02; *see Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 524 F.3d 917, 932 (9th Cir. 2008).

[479] *See* 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.01(b). The process may begin with informal consultation with FWS to determine whether a proposed action may affect a listed species.

[480] 16 U.S.C. §§ 1536(a)(2), (b)(3)(A); *see* 50 C.F.R. § 402.14.

[481] *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 698 F.3d 1101, 1121 (9th Cir. 2012) (quotation omitted).

[482] *See* 16 U.S.C. § 1536(a)(2).

[483] *Id.* § 1536(b)(3)(A).

[484] 50 C.F.R. § 402.14(i)(1).

trap, capture, or collect" a protected species "or to attempt to engage in any such conduct."[485] Sections 9 and 10 of the ESA prohibit the taking of endangered species unless specifically authorized in an incidental take statement.[486]

Where activities have the potential to adversely impact listed species, those impacts must be addressed "at the earliest possible time," in order to avoid delay, and ensure that impacts are avoided, and opportunities for mitigation are not overlooked.[487]

The threshold for effects that trigger ESA section 7 consultation is low, and is met when an action "may affect" threatened or endangered species and their critical habitat.[488] The "may affect" standard is broadly interpreted, and includes proposed actions that may indirectly affect listed species, and regardless of whether a species or habitat occurs on BLM lands.[489]

ESA regulations define "effects of the action" as:

> [A]ll consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action but that are not part of the action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action. Environmental baseline refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed

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[485] 16 U.S.C. § 1532(19).

[486] *Id.* §§ 1538(a)(1)(B), 1539.

[487] *See* 50 C.F.R. §§ 402.14(a), (g)(8).

[488] 50 C.F.R. § 402.14(a); *see also W. Watersheds Project v. Kraayenbrink,* 632 F.3d 472, 498 (9th Cir. 2011) (citation omitted) (describing "may affect" threshold); *Pac. Rivers Council v. Shepard*, No. 03:11-CV-00442-HU, 2011 WL 7562961, at *9 (D. Or. Sept. 29, 2011), *report and recommendation adopted as modified*, No. 03:11-CV-442-HU, 2012 WL 950032 (D. Or. Mar. 20, 2012)) (affirming "how low the threshold is for triggering such consultation").

[489] BLM Manual MS-6840.1F1a.

> Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. The impacts to listed species or designated critical habitat from Federal agency activities or existing Federal agency facilities that are not within the agency's discretion to modify are part of the environmental baseline. [490]

The ESA effects analysis must consider "other activities that are caused by the proposed action but that are not part of the action," including effects that "occur later in time" and "outside the immediate area involved in the action." Thus, BLM and FWS must consider not only the pipeline's direct effects; the agencies must also evaluate and avoid the effects of transport, combustion and disposal activities, and other indirect effects of crude oil production.[491] The Services have clarified that "[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement."[492]

ESA consultation applies "to all actions in which there is discretionary Federal involvement or control."[493] More specifically, "[s]ection 7(a)(2) consultation is required so long as a federal agency has 'some discretion' to take action for the benefit of a protected species."[494] These standards must guide BLM's analysis.

## VIII. THE ARMY CORPS OF ENGINEERS MUST COMPLY WITH THE CLEAN WATER ACT.

In addition to the obligations of BLM as the lead federal agency for NEPA purposes, the Army Corps of Engineers (Corps) has significant responsibility as the lead permitting agency for construction activities that involve dredging and filling of U.S. wetlands and waterways. Those responsibilities arising under the federal Clean Water Act (CWA). Importantly, the Corps must evaluate the Bridger Pipeline

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[490] 50 C.F.R. § 402.02 (defining "effects of the action").

[491] *See id.*; *see also* 50 C.F.R. § 402.14(g)(3)–(4) (obligation to consider cumulative effects).

[492] Final Rule, Interagency Cooperation Endangered Species Act of 1973, as Amended, 51 Fed. Reg. 19,926, 19,949 (June 3, 1986).

[493] 50 C.F.R. § 402.03.

[494] *NRDC v. Jewell*, 749 F.3d 776, 779, 784 (9th Cir. 2014) (*en banc*) ("Whether an agency must consult does not turn on the degree of discretion that the agency exercises regarding the action in question, but on whether the agency has any discretion to act in a manner beneficial to a protected species or its habitat.").

under the individual CWA 404 permitting program rather than the nationwide permit program, as discussed below.

## A. Background

### 1. Clean Water Act Section 404 Permitting

The CWA was enacted by Congress in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[495] To achieve this goal, section 404 of the CWA prohibits the discharge of any pollutant, including dredged spoil or other fill material, into navigable waters unless authorized by a permit.[496]

Section 404 of the CWA gives the Corps primary responsibility for permitting construction activities that involve dredge and fill of U.S. waters.[497] The Corps oversees the 404 permit process and must comply with guidelines promulgated by the U.S. Environmental Protection Agency ("EPA"), which are incorporated into the Corps' own regulations.[498] The underlying intent behind the guidelines is that dredged or fill material should not be discharged if it will result in an unacceptable impact on the aquatic ecosystem.[499] The Corps' regulations also require that destruction of wetlands is to be avoided to the extent practicable.[500] These guidelines contain several specific provisions that are applicable to Nationwide Permit (NWP) 12.

First, under the guidelines, "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences."[501] For an activity affecting a "special aquatic site," including a wetland, if it "does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (*i.e.*, is not 'water dependent'), practicable alternatives that do not

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[495] 33 U.S.C. § 1251(a).

[496] *Id.* § 1344.

[497] *Id.* § 1344.

[498] *Id.* § 1344(b)(1); 33 C.F.R. §§ 320.4(b)(4), 325.2(a)(6).

[499] 40 C.F.R. § 230.1(c).

[500] 33 C.F.R. § 320.4(r).

[501] 40 C.F.R. § 230.10(a).

involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise."[502]

Second, the guidelines prohibit any discharge which, among other things, "[c]auses or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard…."[503]

Third, the guidelines likewise specify that discharges shall not "cause or contribute to significant degradation of the waters of the United States," which could include "[s]ignificantly adverse effects" on: "human health or welfare"; "life stages of aquatic life and other wildlife dependent on aquatic ecosystems"; "aquatic ecosystem diversity, productivity, and stability"; or "recreational, aesthetic, and economic values."[504]

The Corps' regulations also prohibit the issuance of a section 404 permit that would not be in the public interest, as defined by the Corps' regulations.[505] Under this public interest review, the Corps must evaluate the "probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest."[506] Specifically, "[t]he benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments" – including adverse impacts to wetlands.[507] The Corps' regulations state that "the unnecessary alteration or destruction" of wetlands "should be discouraged as contrary to the public interest."[508]

Public participation plays an important role in CWA permitting decisions. The CWA provides in its general policy section that "public participation in the development … of any … program established by the Administrator … under this chapter shall be provided for, encouraged, and assisted by the Administrator … ."[509] Section 404 states: "The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites."[510] The applicable Corps regulations state: "[A]ny

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[502] *Id.* § 230.10(a)(3).

[503] *Id.* § 230.10(b)(1).

[504] *Id.* §§ 230.10(c).

[505] 33 C.F.R. §§ 320.4(a), 323.6(a).

[506] *Id.* § 320.4(a).

[507] *Id.*

[508] *Id.* § 320.4(b)(1).

[509] 33 U.S.C. § 1251(e).

[510] *Id.* § 1344(a).

person may request, in writing, ... that a public hearing be held .... Requests for a public hearing under this paragraph shall be granted, unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing."[511]

Ordinarily, permittees must apply for an individual permit pursuant to Section 404(a) for activities that will result in impacts to jurisdictional waters. Upon receipt of an application, the Corps provides an opportunity for public involvement as described above, considers whether the activity complies with the 404(b)(1) guidelines, weighs the public interest factors, and prepares a project-specific NEPA review.

An alternative to this individual permit process is the nationwide permit program, whereby the Corps can prospectively authorize an entire category of activities if it determines the activities would have only minimal effects. Specifically, section 404(e) allows the Corps to, "after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment."[512]

Projects authorized by NWPs do not need individual section 404 permits and do not go through the more comprehensive, site-specific environmental and public interest review individual 404 permits require, and no public comment period (or even notice) is provided.[513] NWPs can last up to five years, at which point they must be reissued or left to expire.[514]

The plain language of the CWA does not allow activities to be permitted if they cause more than minimal harm. Congress's use of the term "minimal" in the statute reveals that the law requires that permitted activities have a truly insignificant impact in order to qualify for general permitting.[515]

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[511] 33 C.F.R. § 327.4(b).

[512] 33 U.S.C. § 1344(e)(1).

[513] 33 C.F.R. § 323.3(a).

[514] 33 U.S.C. § 1344(e)(2); *see also* 33 C.F.R. § 330.5.

[515] *See* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/minimal (defining "minimal" as "relating to or being a minimum"); *id.*, https://www.merriam-webster.com/dictionary/minimum (defining "minimum" as "the least quantity assignable, admissible, or possible").

The decision to allow certain activities to proceed under a NWP has far-reaching consequences. While individual permits are issued on a case-by-case basis, and require public notice and comment, if a NWP applies then "the applicant needs merely to comply with its terms, and no further action by [the Corps] is necessary."[516] In contrast, for an individual permit the Corps must, among other things, examine all "practicable alternatives to the proposed discharge"; "[i]dentify and evaluate any special or critical characteristics of the candidate disposal site, and surrounding areas which might be affected by use of such site, related to their living communities or human uses;" make, document, and review "Factual Determinations" to determine whether the information in the project file is sufficient to provide the documentation required; and "[i]dentify appropriate and practicable changes to the project plan to minimize the environmental impact of the discharge …."[517]

NWPs require no public notice and are "designed to regulate with little, if any, delay or paperwork … ."[518] In most cases, projects meeting the specific terms and conditions of a NWP may be constructed without *any* notification to, or further review by, the Corps.[519] However, in certain cases the project proponent must submit a preconstruction notification (PCN) to the Corps' district engineers and hold off on construction until the district engineers verify that the project meets the NWP's terms and conditions–-though the Corps allows many projects to move forward after 45 days if the Corps has failed to respond to the PCN.[520] If a project does not qualify for a NWP, however, the district engineers must deny verification and instead review the project under section 404's individual permitting process.[521]

Importantly, the CWA does not *require* the Corps to authorize NWPs. To the contrary, the Corps has the authority to refuse to issue general permits completely and it has ample authority to condition them consistent with the overall purposes of the Act.[522]

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[516] 33 U.S.C. § 1344(a); 40 C.F.R. § 230.5(b).

[517] 40 C.F.R. § 230.5(c), (f), (g), (j).

[518] 33 C.F.R. § 330.1(b).

[519] *See id.* § 330.1(c), (e)(1).

[520] *See id.* §§ 330.1(e)(1), 330.6(a)(1).

[521] *See id.* § 330.6(a)(2).

[522] *See generally Nat'l Assn. of Home Builders v. U.S. Army Corps of Eng'rs*, 453 F.Supp. 2d. 116, 129 n.10 (D.D.C. 2006) (rejecting claim that Corps must "create a 'streamlined' system of general permits," and stating that "efficiency does not drive the creation of the NWP–-protecting the environment does").

2. Nationwide Permit 12

Nationwide Permit 12 (NWP 12) is a general §404(e) permit that the Corps uses to permit oil and gas pipelines and associated facilities. The Corps most recently reissued NWP 12, along with 58 other NWPs, on January 8, 2026.[523] Those NWPs took effect on March 15, 2026.[524]

NWP 12 may be used for such pipeline projects as long as any "single and complete project" would not result in more than a 1/2-acre of "loss of waters of the United States." [525] At first blush, that may seem like a relatively constrained scope, but that initial impression quickly disappears when one considers that the Corps has applied a nonsensical definition of "single and complete project": "For oil or natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization."[526] This loophole enables pipeline developers to build massive, controversial oil and gas pipelines with drastic impacts by artificially treating them as hundreds or even thousands of "single and complete" projects that each qualify under NWP 12, while avoiding the transparent project-level review that such projects clearly warrant.

The Corps prepared a "Decision Document" for NWP 12 when it previously reauthorized the permit, which purports to include the Corps' CWA and NEPA analyses for the entirely of the program.[527] That document estimates that the permit will be used approximately 3,680 times per year, totaling nearly 18,400 times over its planned five-year span.[528]

Importantly, the Corps' Decision Document is entirely lacking in factual information about the likely environmental impacts of NWP 12-authorized oil and gas pipelines. Instead, it contains a series of rote statements (which are repeated verbatim in other NWP's decision documents) about the nature and historical impacts of aquatic resources nationwide, and repeatedly asserts—without support—that Corps personnel will police the use of the permit to ensure that any harm to the environment will be minimal. Absent from this document is any attempt to look

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[523] Reissuance and Modification of Nationwide Permits, 91 Fed. Reg. 768, 772 (Jan. 8, 2026).

[524] *Id.*

[525] *Id.* at 788.

[526] *Id.* at 860.

[527] U.S. Army Corps of Eng'rs, Decision Document: Nationwide Permit 12 (2026).

[528] *Id.* at 25.

at prior use of the permit for oil and gas pipelines and to assess the environmental impact of such use, to test the Corps' assumptions that continued use of the permit will have a minimal impact. Similarly absent is any assessment of the success or failure of Corps' division and district engineers' efforts to ensure that specific activities authorized by the permit will be minimally harmful. And, critically, the document gives only a cursory discussion of numerous predictable harms from oil and gas pipelines (e.g., harms from ruptures and accidental releases) by erroneously claiming the Corps has no authority to consider those impacts.[529]

The Corps has used NWP 12 increasingly in recent years to approve pipelines that are hundreds and even thousands of miles long without any public notice or transparent environmental review process, and without regard to the length of the pipeline, the severity of its potential impacts to the environment, or the nature of the communities and natural areas through which it will pass. For example, in 2016 the Corps approved the 1,168-mile Dakota Access Pipeline through North Dakota, South Dakota, Iowa, and Illinois using NWP 12 (except for a single water crossing just outside the boundary of the Standing Rock Indian Reservation that required a separate permit). It also used NWP 12 to approve the 600-mile Flanagan South crude oil pipeline through 1,950 waterways in four states under NWP 12. Other noteworthy pipelines approved under NWP 12 in recent years include the Keystone XL oil pipeline, the Byhalia oil pipeline, the Mountain Valley gas pipeline, the Atlantic Coast gas pipeline, and the Permian Highway gas pipeline, although some of these pipelines ultimately applied for individual 404 permits and/or were cancelled.

### B. The Corps Cannot Use NWP 12 to Authorize the Bridger Pipeline

To date, the Corps has made no public announcement as to how it intends to proceed with the permitting process for the Bridger Pipeline. The POD acknowledges that a CWA 404 permit will be required, and states: "Coordination with USACE will be required to determine if the project would qualify for a Nationwide Permit and to determine if one permit can be issued for WY and MT or if permits will need to be issued for each state."[530] However, the MFSA application states that pipeline construction through wetlands "must comply, at a minimum, with USACE Section 404 Nationwide Permit (NWP) conditions."[531] As such, it appears likely the applicant will seek verification under NWP 12.

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[529] *Id.* at 22.

[530] POD, Appendix G at 6.

[531] MFSA Application at 128.

In any case, the Corps' use of NWP 12 to authorize the Bridger Pipeline would be entirely inappropriate, and would violate the CWA, the Corps' implementing regulations, the terms and conditions of NWP 12 itself, the ESA, and NEPA.

1. NWP 12 itself violates the CWA, NEPA, and ESA, and is therefore facially void.

As set forth in more detail in the attached comments, the Corps' reissuance of NWP 12 violated several bedrock environmental laws and is therefore invalid.[532] For example, the Corps failed to engage in programmatic consultation pursuant to the ESA before issuing the NWP package; failed to evaluate the direct, indirect, and cumulative impacts of NWP 12 activities as required by NEPA; and failed to ensure that NWP 12 activities will have only minimal effects on the environment. As such, NWP 12 is facially null and void, and cannot be used to authorize or verify the Bridger Pipeline.

2. The environmental impacts of the Bridger Pipeline exceed the "minimal effects" threshold.

Throughout the final rule reissuing NWP 12 and the NWP 12 Decision Document, the Corps emphasizes that upon receipt of PCNs for specific pipeline projects, district engineers must evaluate the project's impacts to determine whether the impacts would be minimal. That determination must include an examination of the cumulative effects of all water crossings along a linear pipeline project, including those water crossings that individually would not have triggered the PCN requirement.[533] If a DE determines that a pipeline project would have more than minimal effects, it must require the project to seek an individual CWA 404 permit.[534]

Because the POD does not contain a detailed project description, the full scope of impacts of the Bridger Pipeline (including but not limited to impacts to waterways) is not known. However, it is clear that by any metric, the impacts will be more than minimal.

The POD does not contain a table of water crossings or any description of the total number of water crossings along the pipeline route. However, it does indicate

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[532] Ex. 46, Ctr. for Biological Diversity et al., Comments on Proposal to Reissue and Modify Nationwide Permits; Docket Number COE-2025-0002 / RIN 0710-AB56 (July 18, 2025).

[533] General Condition 32(b)(4)(ii), 91 Fed. Reg. at 882.

[534] *See, e.g.,* 91 Fed. Reg. at 883.

that on the 58.7 miles of federal land alone, the pipeline would cross 151 rivers and streams and 96 wetlands. Applying that ratio (approximately 4.2 water crossings per mile), it is reasonable to assume the Bridger Pipeline will cross over 2,000 waterways along its 647-mile length. As set forth below, many of those water crossings are likely to be in close proximity to each other, which increases the likelihood of cumulative effects from construction (e.g., increased sedimentation, turbidity, streambank erosion, water quality impacts, habitat loss, etc.).[535]

3. The water crossings along the Projects are not "separate and distant."

Sierra Club and other commenters have long criticized NWP 12—and the Corps' arbitrary definition of "single and complete project" that allows hundreds or even thousands of water crossings along a pipeline to be authorized separately under NWP 12—as authorizing projects that have more than minimal environmental effects in violation of CWA 404(e). In response, the Corps justifies its approach by claiming—in fact, *assuming* without evidence-- that water crossings along linear projects are located at "separate and distant" locations, so as to result in no more than minimal cumulative effects.[536]

As commenters have pointed out, this is facially false, and NWP 12 should be invalidated on that basis alone. The Corps specifically refused to define what constitutes "separate and distant," explaining that "what constitutes separate and distant crossings can vary across the country…" and "is more appropriately determined by district engineers on a case-by-case basis."[537]

4. The Bridger Pipeline would be in close proximity to water supply intakes.

The Corps cannot use NWP 12 for the Bridger Pipeline because it appears to be in close proximity to public water supply intakes. General Condition 7 of the NWP package states:

> No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or

[535] *See supra,* Sect. II.B.6.

[536] *See, e.g.*, 91 Fed. Reg. at 772, 786, 860.

[537] *Id.* at 790.

adjacent bank stabilization.[538]

During the reissuance of the NWPs in 2025, commenters "questioned the effectiveness of this general condition, citing the lack of a definition of 'proximity', the perceived difficulty in accessing information on the location of water supply intakes, and the lack of a PCN requirement for some NWPs."[539] In response, the Corps declined to modify this general condition or clarify what "in the proximity" means. It explained:

> The term "proximity" should be applied using the commonly understood definition of the term ("very near, close" according to Merriam-Webster's Collegiate Dictionary, 10th edition). Therefore, the proposed NWP activity would have to be very near, or close to, the public water supply intake for general condition 7 to apply.[540]

Here, the POD states:

> The Project route crosses, or is adjacent to, private areas where municipal or agricultural water supply wells may exist. Although specific well locations on federal lands are not available for this assessment, the potential exists for groundwater wells to be affected by construction or operational activities, particularly in areas with shallow groundwater or near surface water bodies.[541]

Thus, although the specific well locations in relation to the Bridger Pipeline route are not available, the POD acknowledges that some will be close enough to be adversely affected to the Project. Pursuant to General Condition 7, the use of NWP 12 is therefore prohibited.

## IX. DEQ MUST COMPLY WITH THE MAJOR FACILITY SITING ACT.

Bridger Pipeline Expansion, LLC's MFSA Application is incomplete, the information it does contain is deficient, and Bridger's attempt to obtain a certificate is premature.

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[538] *Id.* at 876.

[539] *Id.* at 824.

[540] *Id.*

[541] POD at 63.

Unfortunately, the Application also indicates that DEQ has already put its finger on the scales in favor of an oil company over Montana's people and our wildlife and wild spaces. For example, without public notice or a hearing—both of which are required by rule and statute—DEQ has apparently already exempted Bridger from providing necessary information in its Application.

On April 1, 2026, DEQ issued a press release indicating that the agency would be "hosting a series of public meetings for a proposed 647-mile, 36-inch buried pipeline to transport about 550,000 barrels of crude oil daily from the Canadian border in Phillips County, Montana, to an existing terminal near Guernsey, Wyoming."[542] In part, DEQ's press release stated that the agency would be accepting written comments at one of four public meetings and that the "public comment period helps identify issues, potential impacts, and reasonable alternatives that should be considered in the MEPA document."[543] DEQ's press release did not include information regarding the public comment period, including when it began or when it would end.

### A. There are fundamental, structural problems with DEQ's MFSA process.

#### 1. DEQ's lack of clarity is preventing the public's meaningful participation in the MFSA process and depriving the public of critical information.

DEQ's lack of a publicly disclosed plan for how the agency will evaluate a project that will purportedly cost $4.5 million per mile to construct[544]—including how the public will be allowed to participate in that decision—has already deprived Montanans of the ability to meaningfully participate in the MFSA process.

Take, for example, DEQ's public notice of the instant comment period. DEQ says that public comments are being accepted, but for what purpose? BLM's project page indicates that this comment period is for public scoping but only "welcomes comments on the Plan of Development (POD) and all associated appendices."[545] But Bridger's submission to DEQ, the Application, is different than the POD and requires the inclusion of different information.

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[542] Ex. 81, Mont. Dep't of Env. Quality, BLM, Montana DEQ to Host Public Meetings for Proposed Bridger Pipeline (April 1, 2026).

[543] *Id.*

[544] MFSA Application at 50.

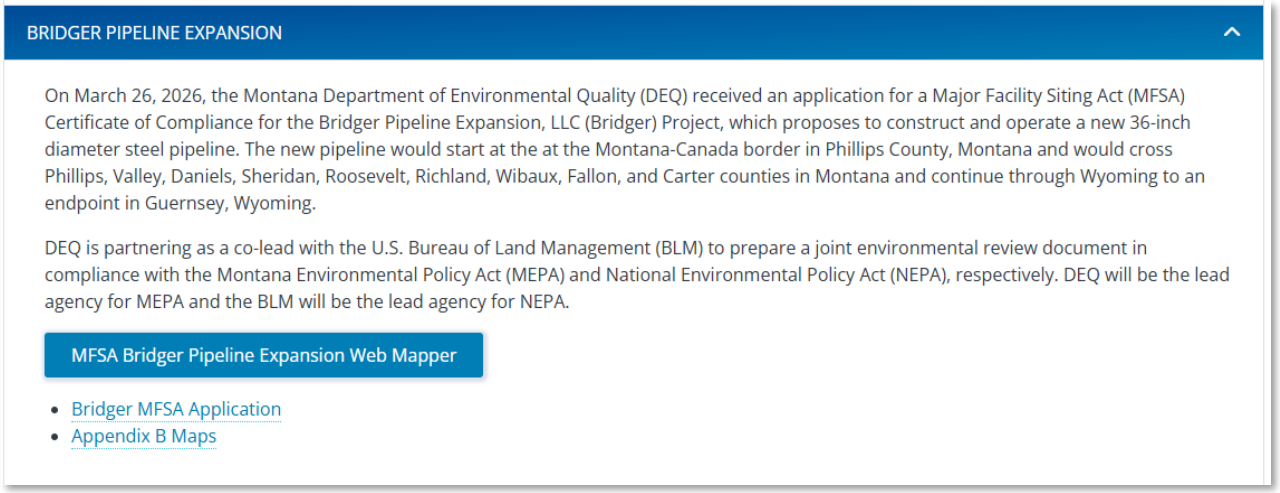
[545] Ex. 82, Bureau of Land Management, Bridger Pipeline Expansion Project (last accessed April 24, 2026) https://eplanning.blm.gov/Project-Home/?id=43C2E68C-E410-F111-8406-001DD8029ED0.

DEQ has been silent on the purpose of this public comment period as to the MFSA Process or the Application. DEQ's silence means that the public has not been provided a meaningful opportunity to participate in the comment period because we are left to guess at what comment the agency might be soliciting.

Further, the provisions of MFSA raise a concern that DEQ will attempt to use the instant comment period as the mechanism by which it completes the required "public review and comment" period prior to issuance of a preliminary decision.[546] To be clear, such a course of action would violate the Right to Know[547] and the Right to Participate[548] because (1) DEQ has not provided adequate notice that this comment period is for that purpose and (2) DEQ has not yet even made a decision as to whether the Application is complete or disclosed that decision to the public.

2. DEQ has failed to make Bridger's complete Application available to the public.

By statute, DEQ is required to make copies of the Application "available for public inspection."[549] DEQ's public facing information portal, accessible through https://deq.mt.gov/energy/assistance, states as follows:



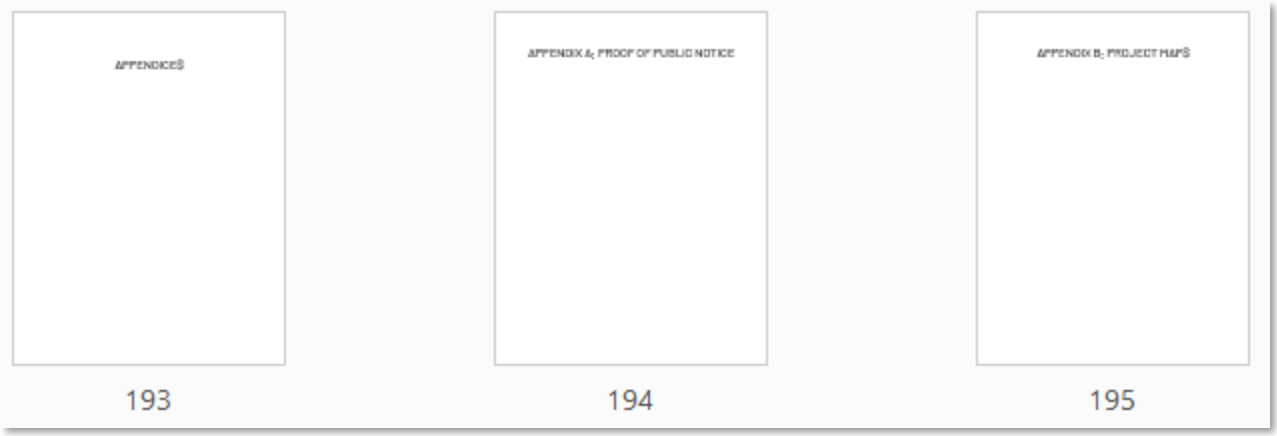

[546] Mont. Code Ann. § 75–20–216(3).

[547] Mont. Const. art. II § 9.

[548] *Id.* § 8.

[549] Mont. Code Ann. § 75–20–211(1)(b); *see also* Mont. Admin. R. 17.20.302(1).

As indicated, the agency provided links to two documents. The Bridger MFSA Application link led to the 195-page Application in PDF form but did not include any appendices (other than cover pages for the appendices):




The Appendix B Maps link led to a six-page PDF containing three maps. The Proof of Public Notice referenced in the Application[550] was not included in the materials published by DEQ. Without that document, the public is unable to determine whether Bridger complied with MFSA's public notice requirements.[551]

3. DEQ's decision to waive the requirements of various rules and case law without notice and opportunity to be heard violates the Montana Constitution.

The Application states that DEQ approved a "limited waiver" that allowed Bridger to omit "certain detailed baseline information for alternative routes at the time of application submittal, while committing to provide such information as requested during the review process."[552] The Application also describes the request as seeking "approval from [DEQ] to omit the requirement in Circular MFSA-2 for identification and full baseline-level analysis of at least three alternative locations."[553]

According to Bridger, DEQ decided that "omission of certain detailed information at the application stage is acceptable provided that Bridger supplies necessary baseline data and other relevant information as alternative routes are evaluated and if additional alternatives are identified during the environmental

[550] MFSA Application at v.

[551] Mont. Code Ann. § 75–20–211(4).

[552] MFSA Application at 42.

[553] *Id.* at 54.

review conducted pursuant to [MEPA.]"[554] As a result of DEQ's decision, Bridger stated that the "Application relies on [DEQ's] waiver with respect to the level of detail provided for certain alternative locations. Bridger has prepared a reconnaissance-level comparison of the principal corridor options sufficient for MFSA application submittal. Additional information regarding Options 2 and 3—including baseline data, engineering considerations, and environmental information—will be developed and provided as requested by [DEQ] during the MEPA review process."[555] The Application also states that, as a result of DEQ's waiver, "the descriptions [of route options] provide a corridor-scale characterization consistent with the MTDEQ-approved waiver."[556]

First, DEQ lacks authority to waive information required by MFSA absent compliance with the process set forth by statute.[557] But that process requires the agency to make a specific finding following a public hearing.[558] DEQ's decision to grant Bridger a waiver without following the required statutory process and issue the waiver without holding a public hearing violates MFSA and renders the granted waiver invalid.

Second, even if DEQ had complied with MFSA and had held a public hearing on Bridger's request for waiver, MFSA itself precludes the agency from granting any waiver regarding "consideration of alternatives or minimum adverse environmental impact for a facility" like the proposed pipeline.[559] As a result, even assuming a public hearing was held, DEQ's decision to grant Bridger a waiver violates MFSA.

Third, DEQ and Bridger also appear to have failed to follow the rule-based process that DEQ has developed for requests for waiver under MFSA. Before seeking a waiver, Bridger was required to provide an affidavit of service stating, in part, that "public notice of the request for waiver has been given" to "persons residing within the area in which any portion of the facility would be located if the waiver is granted."[560] Further, the notice of the waiver must be "given by publication of a display ad containing a summary description of the facility and a

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[554] *Id.* at 42.

[555] *Id.*

[556] *Id.* at 54.

[557] Mont. Code Ann. § 75-20-304(3).

[558] *Id.*

[559] *Id.* at § 75-20-304(5).

[560] Mont. Admin. R. 17.20.602(1).

summary of the contents of the request for waiver, once in each of three consecutive weeks in newspapers of general circulation in that area."[561]

With respect to waiver of "requirements relating to consideration of alternative sites pursuant to 75-20-304(3), MCA"—which is the waiver that Bridger sought and received here—DEQ's rules impose further, specific requirements. The waiver request contain information "satisfying" Mont. Code Ann. § 75-20-304(3)(d) and must include an analysis "indicating a net positive effect on the county economy" accompanied by "a discussion, with supporting data, of the size of the population influx resulting from direct and indirect employment associated with facility construction and operation, and the cost of providing services to the increased population."[562] That same discussion must also include a waiver request must also include:

> the facility's construction period and a portion of the facility's operational period adequate to address the following:
>
> (a) the county's capability to supply construction and operational labor to the proposed facility, supported by data on the existing labor force, the supply of skilled labor within the county to meet the job requirements of the facility, and present and projected unemployment rates;
>
> (b) effects on local businesses of the increased income resulting from the facility's payroll;
>
> (c) a fiscal analysis comparing increased tax revenue resulting from the facility with increased local expenditures necessitated by the population influx associated with the project, including the relative timing of expected expenditure requirements compared to expected tax increases, as determined by documented consultation with appropriate local government officials; and
>
> (d) economic impacts on residents resulting from changes in ambient environmental factors caused by the proposed facility.[563]

There are no indications that Bridger provided any such public notice. But even assuming Bridger did provide that notice, DEQ still failed to follow the procedures governing waiver set by its own rules.

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[561] *Id.*

[562] *Id.* at 17.20.605(1).

[563] *Id.*

Upon receipt of a complete request for waiver, like the one Bridger made by letter here, DEQ was required to "give notice and set a date for a hearing."[564] There is no indication that DEQ took any such action. It does not appear that DEQ issued notice, or that DEQ set a hearing.

DEQ's decision to violate both statute and rule and cut out public participation regarding Bridger's requested waiver violated the Right to Know,[565] and the Right to Participate,[566] Further, DEQ's failure to provide notice and set a hearing violated due process given the Right to a Clean and Healthful Environment[567] and the agency's obligation to "maintain and improve a clean and healthful environment in Montana for present and future generations."[568] "'[D]ue process is flexible and calls for such procedural protections as the particular situation demands.'"[569] Montana's environment enjoys constitutional protection.[570] When the government makes decisions that will impact Montanans' Right to a Clean and Healthful Environment, citizens have a right to notice and a reasonable opportunity to be heard—here, all that requires is for DEQ to comply with its own administrative rules.

### B. Bridger's MFSA Application is incomplete and does not contain required information.

Montana statutes, administrative rules, and other agency documents obligate Bridger, as the applicant, to include a broad swath of information in its Application. DEQ is obligated by statute to ensure that the Application is complete and includes this required information, but DEQ is also obligated by Montana's Constitution to ensure that all required information is provided in order to comply with the agency's obligations under Mont. Const. art. IX § 1.

With this context, Bridger's Application is incomplete for at least eight reasons and should be rejected.

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[564] *Id.* at 17.20.606(2).

[565] Mont. Const. art. II § 9.

[566] *Id.* § 8.

[567] *Id.* § 3.

[568] Mont. Const. art. IX § 1(1).

[569] *Hert v. Montana High School Association*, 2026 MT 86, ¶ 30, __ Mont. __, __ P.3d __ (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972))

[570] Mont. Const. art. II § 3; *Held*, ¶ 30.

1. The Application does not contain statutorily required baseline data concerning the reasonable alternate locations.

As discussed above in Section IX.A.3, the Application relies and incorporates an invalid waiver and, as a result, is per se incomplete. Because neither Bridger nor DEQ has disclosed the precise scope of the waiver, it is unclear exactly what information Bridger has been wrongly exempted from providing. However, a review of the Application demonstrates that the waiver likely relates to, at minimum, the baseline information for alternative routes.[571]

DEQ cannot reasonably evaluate whether an application complies with MFSA, including whether the proposed pipeline is in the public interest, without complete baseline information for the preferred and alternative routes.

2. The Application does not contain information required by administrative rule specific to pipelines.

DEQ's administrative rules require applications for a pipeline facility to contain a specific evaluation of alternatives:

> An application for a pipeline facility must contain an evaluation of alternatives including, but not limited to, the use of alternative transportation modes, alternative starting points or destination points, alternative diameter pipe, alternative flow rates, alternative rates of pumping or compressing, alternative size, number and location of pump or compressor stations, alternative pump or compressor fuels and fuel sources, alternative pipe wall thickness and alternative pipe material, and the no action alternative. Service area utilities shall also evaluate alternate methods of meeting the need for the energy being transported.[572]

The Application does not appear to contain any evaluation of: (1) alternative flow rates, (2) alternative rates of pumping or compressing, (3) alternative size, number, and location of pump or compressor stations, (4) alternative pump or compressor fuels and fuel sources, and (5) alternative pipe wall thickness and alternative pipe material.

3. The Application does not contain sufficient information concerning road development.

A MFSA application must contain "a description of the types and sizes of roads needed to build and maintain the facility, an estimate of the road mileage and preliminary road locations required in addition to the right-of-way, if any, in order

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[571] *See e.g.*, MFSA Application at 42, 54.

[572] Mont. Admin. R. 17.20.1311(1).

to construct the facility on the applicant's preferred route or proposed location for an associated pipeline, and an estimate of how much the roads will be used."[573]

The Application does not include this required information. Specifically, the Application does not include an estimate of the road mileage that will be constructed or a description of preliminary road locations, nor does it appear to contain a complete description of the types and sizes of roads needed to build and maintain the pipeline.[574] Instead, the Application admits that Bridger does not yet have that information:

- "Project temporary and permanent access road routes have not been developed at this point in Project design."[575]
- "Additional temporary and permanent access routes will be identified and refined as the Project design advances."[576]
- "Upon completion of Project access road design and routing, an assessment of impacts to the areas identified in Section 6.2 (Circular MFSA-2 Sections 3.2(1)(d) and 3.4(1)) will be incorporated into the impact analyses presented in the following sections."[577]
- "Access road routing and design are continuing to be refined."[578]

4. The Application does not appear to contain sufficient information concerning Bridger's plan to salvage top soil.

As the Application acknowledges,[579] a MFSA application must include detailed information about the methods that will be used to salvage topsoil.[580] The Application does not appear to include information regarding "the width of the

[573] *Id.* at 17.20.1511(5).

[574] *See* MFSA Application at 30–31.

[575] *Id.* at 58.

[576] *Id.* at 31; *see also id.* at 23.

[577] *Id.* at 58.

[578] *Id.* at 68.

[579] *Id.* at v.

[580] Mont. Admin. R. 17.20.1511(4).

construction right-of-way where topsoil will be salvaged,"[581] or the "methods to be employed to remove coarse rock from surface soils following construction."[582]

5. The Application does not contain sufficient information concerning proposed and alternative methods of stream crossings.

A MFSA application must contain "a discussion of the proposed and alternative methods of stream crossings" including, "specification of equipment types," and "estimates of the scour depth supported by a discussion of the methods and calculations used to make the estimates."[583] The Application does not contain an estimate of the width and depth of trenching in the context of stream crossing, does not contain an estimate of the scour depth, and does not discuss the amount of ground disturbance adjacent to stream crossings. Instead, the Application states that Bridger either does not yet have that information or that the information will be determined later:

- "Trench dimensions will be finalized during detailed design to support safe pipe installation and proper backfill."[584]
- "Where required, site-specific hydraulic evaluations will be conducted to estimate potential scour depth, and pipeline cover will be designed to meet or exceed applicable engineering and regulatory standards."[585]
- "Final crossing methods, trench dimensions, scour depth calculations, and workspace requirements will be determined following completion of detailed environmental surveys, hydraulic analyses, geotechnical investigations, and coordination with applicable agencies."[586]

6. The Application does not contain sufficient information concerning the project's construction schedule and methods.

First, a MFSA application must contain "an estimate of the area of ground disturbance resulting from construction activities, including an estimate of mileage of flat terrain where no cut and fill excavation would be needed and estimates of mileage of terrain where cut and fill excavation to construct a level work pad would

[581] *Id.* at 17.20.1511(4)(a).

[582] *Id.* at 17.20.1511(4)(d).

[583] *Id.* at 17.20.1511(7).

[584] MFSA Application at 20.

[585] *Id.*

[586] *Id.*

be required."[587] Bridger's Application does not contain that required information. Instead, the Application states that "[a] comprehensive discussion and tabulation of ground disturbance across the Montana segment of the Project is being developed and will be provided in a subsequent application update or information filing, in coordination with MTDEQ and consistent with ARM 17.20.1511(3)."[588]

7. The Application does not contain sufficient information concerning the source of power for pump and compressor stations.

A MFSA application for construction of a pipeline must contain "a description of the source of power for pump and compressor stations and indicate on maps, in electronic format acceptable to the department, the proposed and alternative location of power supply lines for these stations."[589] The Application does not contain this information. Instead, the Application admits that "[s]ome Project pump stations may require installation of temporary or permanent utility lines to provide electrical or other infrastructure support" and states that "[t]he specific scope and timing of utility connections will be determined during final design and utility coordination, and all installation will be conducted to minimize impacts to the surrounding land and existing infrastructure."[590] Unsurprisingly, the Application also does not include the required maps.

8. The Application does not contain sufficient information regarding the proposed pipeline's leak detection systems.

A MFSA application must describe the "leak detection systems to be employed during operations including sensitivity of the leak detection system, the time necessary to shut down the facility in the event of a leak, and expected time necessary to respond to a leak."[591] The Application does not include the sensitivity of the leak detection system, the time necessary to shut down the proposed pipeline in the event of a leak, or the expected time necessary to respond to a leak. This information is critical to DEQ's evaluation of the project and determination regarding whether a certificate should be granted to allow construction of the proposed pipeline.

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[587] Mont. Admin. R. 17.20.1511(3).

[588] MFSA Application at 29.

[589] Mont. Admin. R. 17.20.1509(10).

[590] MFSA Application at 12.

[591] Mont. Admin. R. 17.20.1512(6).

### C. Bridger's MFSA Application is substantively deficient.

#### 1. The Application's discussion of the proposed pipeline's ability to withstand destructive natural phenomena is deficient.

A MFSA application must contain "a discussion of the ability of the proposed facility to withstand destructive natural phenomena such as mass movement, earthquakes, floods, icing conditions and high winds or accidents, a description of the environmental impacts and/or public safety problems resulting from facility failure due to natural phenomena and accidents, and a general discussion of measures proposed to reduce the problems."[592] The Application's discussion of whether the proposed pipeline will be able to withstand destructive natural phenomena is grossly deficient.[593] The Application does not address, at all, whether the proposed pipeline will be able to withstand floods—which is particularly concerning given that Bridger's parent company, Bridger Pipeline LLC, was responsible for an extraordinarily devastating oil spill in the Yellowstone River.[594] Instead, the Application simply says that flooding may occur so mitigation measures will be implemented—but that is not the same as a discussion of whether the proposed pipeline will be able to withstand a flood. In fact, DEQ's rules expressly separate a "general discussion of measures proposed to reduce the problems" from a discussion of the "ability of the proposed facility to withstand destructive natural phenomena."[595]

Further, the Application does not contain any analysis of the environmental impacts that may result from a failure of the proposed pipeline due to destructive natural phenomena, as required by Mont. Admin. R. 17.20.1512—a particularly egregious omission given Bridger's parent company's history in the region.

#### 2. The Application's discussion of the size and frequency of leaks that can be expected from the pipeline is deficient.

An MFSA application must "describe the size and frequency of leaks that can be expected over the life of the proposed project."[596] Bridger's Application fails to do so. Instead, the Application simply states that leaks are "rare," that they "would most likely be limited in volume[,]" and that the frequency of leaks would be

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[592] *Id.* at 17.20.1512(2).

[593] *See* MFSA Application at 33.

[594] *See* Ex. 3, State of Montana, Programmatic Damage Assessment and Restoration Plan and Environmental Assessment for the Bridger Pipeline 2015 Yellowstone River Oil Spill (July 2023).

[595] Mont. Admin. R. 17.20.1512(2).

[596] *Id.* at 17.20.1512(5).

"extremely low."[597] This discussion is deficient. DEQ should evaluate the Application's discussion concerning the size and frequency of leaks in light of the following:

First, a pipeline owned by Bridger spilled crude oil into the Yellowstone River in 2015.[598] Bridger paid $2 million to settle a lawsuit filed by the United States and the State of Montana to help recover natural resource damages from that pipeline spill.[599] Second, the Application's refusal to provide hard numbers concerning the estimated size and frequency of leaks renders DEQ unable to reasonably evaluate the proposed pipeline's safety and mitigation measures.

3. The Application's spill contingency plan is incomplete and per se deficient.

By rule, the Application was required to include a "detailed spill contingency plan" including "response procedures."[600] The Application's spill contingency plan is incomplete, at best. The Application speaks in broad generalities, describing containment and recovery equipment that "may" be used and the response procedures that "may" be employed.[601] Further, the Application kicks the can down the road, stating that "additional details *will be* provided in the Project-specific Spill Prevention, Control, and Countermeasure (SPCC) Plan" that, apparently, has not yet been submitted.[602] This level of information falls well short of complying with the rule.

At minimum, the Application's spill contingency plan is deficient because the Application does not specify the type of crude oil to be carried by the pipeline. Different types of crude oil should require different spill contingency plans. For example, if the proposed pipeline is intended to carry diluted bitumen (or dilbit) the

[597] MFSA Application at 35–36.

[598] *Id.* at 35.

[599] Ex. 83, U.S. Attorney's Office, Bridger Pipeline to pay $2 million to settle civil lawsuit over oil spill into Yellowstone River near Glendive (November 17, 2021) https://www.justice.gov/usao-mt/pr/bridger-pipeline-pay-2-million-settle-civil-lawsuit-over-oil-spill-yellowstone-river-near.

[600] Mont. Admin. R. 17.20.1512(7).

[601] MFSA Application at 38.

[602] *See id.* at 37 (emphasis added).

spill contingency plan must be different than if the proposed pipeline is intended to carry light crude oil.[603]

4. The Application does not appear to state when Bridger conducted field investigations.

As the Application acknowledges,[604] DEQ's rules require a MFSA application to include information regarding "when field investigations were conducted."[605] The Application does not contain such information. Instead, the Application contains repeated statements that Bridger will conduct field investigations as the project proceeds. These forward-looking statements reveal that the Application is incomplete. As the specific references to future field investigations included below make clear, these field investigations play a critical role in ensuring accurate and up to date information is included in the Application.

Further, as the statements below also make clear, the field investigations inform critical aspects of the Application, including the selection of the proposed route, the categorization of areas in the study corridor, potential harm to agricultural operations and grazing access, potential land fragmentation, the project's compliance with regulations and industry standards, the evaluation of alternative routes, mitigation measures, avoidance of critical habitat, and species-specific avoidance.

In short, without that rule-required minimum information included in the Application in the first instance, DEQ cannot make a reasoned decision regarding whether to issue the Certificate under the MFSA.

Specific forward-looking references to "field surveys" or "field investigation" including in the Application are as follows:

- "Although a proposed Project route has been identified, refinement of the alignment is expected to continue as additional engineering analyses, environmental reviews, field surveys, and landowner coordination are completed."[606]

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[603] *See generally*, Ex. 84, National Academy of Sciences, Engineering, and Medicine, Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response (2016), https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-10/Spills%20of%20Diluted%20Bitumen%20from%20Pipelines.pdf.

[604] MFSA Application at ii.

[605] Mont. Admin. R. 17.20.804(1).

[606] MFSA Application at 19.

- "Detailed descriptions of major route options are provided in ***Section 6.3.6*** through ***Section 6.3.8.*** Categorization of areas within the study corridor is described in ***Section 6.2***, and non-construction or design options are described in ***Section 5.1.*** These preliminary categorizations will continue to be refined through detailed environmental review, field investigations and engineering design."[607]

- "Feedback received to date has been primarily focused on agricultural operations, grazing access, potential land fragmentation, and interest in using existing utility corridors where feasible. These concerns were incorporated at a planning level into study area development to support continued refinement based on additional consultation, environmental review, and field investigations."[608]

- "Detailed engineering and environmental studies, including field surveys, geotechnical assessments, and site-specific design evaluations, will be conducted during subsequent project phases in coordination with MTDEQ. These studies will further refine the alignment within the study corridor, inform final facility siting, and ensure compliance with all applicable regulations and industry standards."[609]

- "Developing the proposed route and alternatives for the Project was guided by an iterative, multidisciplinary planning process. Preliminary factors considered in developing and screening route alternatives included Project objectives, conceptual control points, existing infrastructure, desktop analyses of environmental and cultural resources, and stakeholder considerations. These factors were used to develop and comparatively evaluate preliminary route alternatives and will continue to guide adjustments as additional data, including field surveys and engineering evaluations become available."[610]

- "Detailed field surveys, geotechnical evaluations, and refined engineering analyses will be completed in future project phases. These studies will further characterize potential impacts and inform final mitigation measures. Conceptual mitigation approaches and BMPs are discussed in ***Section 8: Mitigation Measures.***"[611]

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[607] *Id.* at 53.

[608] *Id.* at 52.

[609] *Id.* at 51.

[610] *Id.* at 53.

[611] *Id.* at 55.

- "Potential impacts may include short-term disturbance, habitat modification, or displacement during construction activities; however, these effects are expected to be minimized through Project design, construction practices, and adherence to applicable regulatory requirements. The Project has been sited to avoid designated critical habitat where practicable and to minimize disturbance to sensitive habitats. Further review, site-specific field studies, agency coordination, and incorporation of updated data will support refinement of the impact assessment and inform the development of species-specific avoidance, minimization, and mitigation measures."[612]

- "At this stage of Project development, impacts to SOC are expected to be limited and temporary. Additional review, field surveys, agency coordination, and incorporation of updated MTNHP data will be used to further refine where SOCs are located. As Project development progresses, this information will support refinement of the impact assessment and the identification of appropriate avoidance, minimization, and mitigation measures."[613]

5. The Application does not contain sufficient information to allow DEQ to make the findings required by the MFSA.

The Application is replete with admissions that Bridger has not yet compiled all of the information necessary for DEQ to make a decision on the Application. As the following statements from the Application make clear, this Application is not yet complete and this scoping process is premature. Specific statements demonstrating the information that Bridger still intends to develop as part of its MFSA Application are as follows:

- Bridger admits that a comprehensive list of the reports and calculations necessary to "demonstrate the adequacy, reliability, durability, and operational integrity of major Project components" is not yet available.[614]

- Bridger admits that the temporary and permanent access roads that would be built in connection with the project "have not been developed at this point in Project design."[615]

[612] *Id.* at 164.

[613] *Id.* at 166.

[614] *Id.* at 178.

[615] *Id.* at 58.

- Bridger admits that a "detailed evaluation of recreation settings, access routes, outfitter operations, and potential impacts to nearby designated recreation areas" has not yet occurred.[616]

- Bridger admits that it has not yet completed all of the analyses necessary to evaluate the pipeline routing options: "Accordingly, Bridger intends to provide supplemental information regarding routing options—including engineering feasibility, constructability considerations, and potential environmental effects—during the Application review process."[617]; "Preliminary information for Route Options 2 and 3 is included where available, and additional impact assessment for these alternatives will be supplemented in future submittals once remaining analyses are completed."[618]

- Bridger admits that "detailed aquatic resource data specific to individual alternative routes are not yet available."[619]

- Bridger admits that "detailed special status species data specific to some individual alternative routes are not yet available."[620]

### D. The Application does not provide sufficient information for DEQ to make a finding of need for the project.

Setting aside the incomplete nature of the Application, the information that Bridger does include is insufficient to "establish the basis of need" for the project.[621] By statute, the application must contain sufficient information for DEQ to determine the need for the proposed pipeline.[622] Bridger's Application fails to do so.

First, the need for the proposed pipeline must be evaluated consistent with the policy of MFSA. MFSA states that construction of a pipeline "may be necessary to meet the increasing need for electricity, energy, and other products."[623] The use of may, rather than shall, must be interpreted as requiring Bridger to demonstrate that the construction of the proposed pipeline is necessary to meet an increasing

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[616] *Id.* at 78.

[617] *Id.* at 42.

[618] *Id.* at 58.

[619] *Id.* at 156.

[620] *Id.* at 162.

[621] Mont. Admin. R. 17.20.1606(1); *see also* Mont. Code Ann. § 75-20-211(1)(a)(iii).

[622] Mont. Code Ann. § 75-20-211(1)(a)(iii).

[623] *Id.* § 75-20-102(4).

need. Bridger has not done so. For starters, Bridger has not identified the type of crude oil that will be carried by the proposed pipeline and, as a result, the Application contains insufficient information to demonstrate that the proposed pipeline is needed.

Further, it is the express purpose of MFSA to "ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils," "ensure consideration of socioeconomic impacts," "provide citizens with the opportunity to participate in facility siting decisions," and "establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."[624] At minimum, this requires DEQ to conclude that the construction of the proposed pipeline is consistent with the Right to a Clean and Healthful Environment,[625] the Right to Know,[626] and the Right to Participate.[627] For the reasons included in this comment, the Application and DEQ's process to date fall well short of that requirement.

On the merits, the Application presents five reasons why there is a need for the project, none of which are sufficiently developed to allow DEQ to make the requisite finding.

First, the Application states that the project is necessary to relieve transportation constraints citing Mont. Admin. R. 17.20.1606(1)(c).[628] But that rule expressly requires proof that "the facility has been identified to relieve a constraint or capacity issue between an energy resource, generation project, market or load center" and that "[t]he constraint or capacity issue(s) are based on existing, projected load or generation."[629]

Because the Application does not specify the type of crude oil carried by the pipeline, although it appears likely to be intended to carry tar sands oil, the Application cannot provide sufficient information for DEQ to determine whether it would relief a constraint or capacity issue in the existing crude oil market.

Further, the Application does not include any analysis of the Guernsey hub's capacity to accommodate the crude oil that would be carried by the proposed pipeline. Nor does the Application include any analysis of whether there is currently capacity in PADD 2 to move the crude oil transported from the Guernsey hub to

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[624] *Id.* § 75-20-102(4)(a)–(d).

[625] Mont. Const. art. II § 3.

[626] *Id.* § 9.

[627] *Id.* § 8.

[628] MFSA Application at 2.

[629] Mont. Admin. R. 17.20.1606(1)(c).

processing facilities through Cushing, OK, or Pakota, IL, or from there on to the Gulf Coast.

Second, the Application states the project is necessary because it provides "additional firm transportation capacity," citing to Mont. Admin. R. 17.20.1606(1)(i).[630] However, that rule specifically states that there may be a need for a project if "the facility would provide firm energy transfer capacity in a path that currently does not exist."[631] The Application fails to acknowledge the existence of Enbridge's Express Pipeline (Line 40), a 785-mile pipeline that transports crude oil from Hardisty, Alberta to Casper, Wyoming.[632] Enbridge's Express Pipeline then connects with Enbridge's Platte Pipeline (Line 41), that transports crude oil from Casper, Wyoming, to Guernsey, Wyoming, and beyond.[633] As a result, existing pipelines provide reportedly the same starting point and destination point of the proposed pipeline system.[634] For that reason, the information provided by the Application is insufficient for DEQ to determine that the pipeline would provide firm transportation capacity "in a path that currently does not exist."

Third, the Application states that "commercial support and market interest" demonstrates a need for the project.[635] However, that is not a basis for DEQ to find establish need under Mont. Admin. R. 17.20.1606 and, even if it were, the Application's general statements fall well short.

Fourth, the Application states that "common carrier considerations" support a finding of need, pursuant to Mont. Admin. R. 17.20.1606(1)(b).[636] But that rule states that the facility has been designated as a "common carrier" under Mont. Code Ann. § 69-13-101,[637] and the Application does not assert that the Bridger Pipeline Expansion Project or Bridger Pipeline Expansion, LLC meet that definition.

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[630] *Id.* at 2.

[631] Mont. Admin. R. 17.20.1606(1)(i).

[632] Ex. 85, Enbridge, Energy Infrastructure Assets at 9 (Feb. 12, 2026).

[633] *Id.* at 55.

[634] Ex. 86, RNB Energy, Four Sticks – Will More Pipeline Capacity Be Needed to Move Canadian Barrels from the Midcontinent to the Gulf Coast? (April 21, 2026) https://rbnenergy.com/daily-posts/blog/will-more-pipeline-capacity-be-needed-move-canadian-barrels-midcontinent-gulf.

[635] MFSA Application at 3.

[636] *Id.*

[637] Mont. Admin. R. 17.20.1606(1)(b).

Fifth, the Application states that "supplemental policy context" supports a finding of need, citing to Mont. Admin. R. 17.20.1606(1)(e).[638] But that rule states that requires that the facility "would fulfill a requirement or recommendation of a federal, state, local, or other governmental regulatory body, or is recommended through an independent system operator or regional transmission organization planning process or objective,"[639] and the Application does not contain any statement that the pipeline meets that criteria. Instead, the Application generally relies on Executive Order No. 14156, issued in 2025, which, for the reasons stated previously in this comment, is insufficient.

### E. The Application does not contain sufficient information to allow DEQ to make the required minimum adverse environmental impact finding.

By statute, DEQ must find that the project "minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives."[640] DEQ has supplemented this requirement by rule, and before a certificate may issue, the Department must find, in part:

- "that reasonable alternative locations for the facility were considered in selecting the final location, pursuant to Circular MFSA-2, section 3.0,"[641]
- "that the final location for the facility will result in less cumulative adverse environmental impact and economic cost than siting the facility in any reasonable alternative location,"[642]
- "any significant adverse environmental impacts affecting the environmental resources, qualities or characteristics for these areas have been identified"; "that reasonable mitigation for these significant adverse environmental impacts has been identified"; "that an acceptable mitigation plan based on the measures identified in (1)(a)(viii)(B), including environmental specifications, has been identified and will be included in conditions to the certificate"; and "that an acceptable monitoring plan, including a reclamation plan, has been identified, and will be included in conditions to the certificate."[643]

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[638] MFSA Application at 3.

[639] Mont. Admin. R. 17.20.1606(1)(e).

[640] Mont. Code Ann. § 75-20-301(1)(c).

[641] Mont. Admin. R. 17.20.1607(1)(a)(vi).

[642] *Id.* at 17.20.1607(1)(a)(vii).

[643] *Id.* at 17.20.1607(1)(a)(viii).

The Application does not provide sufficient information to allow DEQ to make these required findings, primarily because (1) it does not identify the specific type of crude oil that will be carried by the proposed pipeline, and (2) it does not contain a full analysis of the proposed alternative locations for the pipeline as a result of the invalid waiver granted by DEQ.

### F. DEQ must evaluate whether the project is in the public interest.

DEQ is statutorily required to find that the pipeline will serve the public interest before construction may begin on the project.[644] DEQ is also required, by rule, to consider the following factors when making that public interest finding: the basis of the need for the facility; the nature of the probable environmental impact; "the benefits to the applicant and the state resulting from the proposed facility;" "the effects of the economic activity resulting from the proposed facility:" "the effects of the proposed facility on the public health, welfare, and safety;" and "any other factors that it considers relevant."[645]

#### 1. DEQ's evaluation of whether the project is in the public interest must begin with whether the project is consistent with the requirements of Montana's Constitution.

But DEQ's evaluation of whether the project is in the public interest must not begin with the requirements of the statute, or the requirements of the rule. DEQ must begin, instead, with the requirements of Montana's Constitution. For the project to be in the public interest, DEQ must conclude that the project is consistent with the fundamental Right to a Clean and Healthful Environment found in Montana's Constitution[646] and in line with the government's constitutionally imposed obligation to "maintain and improve a clean and healthful environment in Montana for present and future generations."[647]

These constitutional provisions are intended to contain "the strongest environmental protection provision found in any state constitution" and are "both anticipatory and preventative."[648] These provisions prevent more than just "environmental degradation which can be conclusively linked to ill health or

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[644] Mont. Code Ann. § 75-20-301(1).

[645] *Id.* at § 75-20-301(2).

[646] Mont. Const. art. II § 3.

[647] Mont. Const. art. IX § 1.

[648] *Held*, ¶ 23 (citations and internal quotations omitted).

physical endangerment."[649] Taken together they require "adequate remedies for degradation of the environmental life support system," the prevention of "unreasonable degradation of natural resources,"[650] and that government actions are do not jeopardize "a stable climate system."[651]

Climate change is harming Montana's environmental life support systems right now, and climate change will harm that life support system with increasing severity for the foreseeable future.[652] DEQ must evaluate whether the project is in the public interest with these realities in mind.

2. If the project is consistent with Montana's Constitution, DEQ must thoroughly consider all relevant factors when evaluating whether the project is in the public interest.

DEQ must thoroughly evaluate, based on the information provided in the Application, the following factors when deciding whether the project is in the public interest: the basis of the need for the facility; the nature of the probable environmental impact; "the benefits to the applicant and the state resulting from the proposed facility;" "the effects of the economic activity resulting from the proposed facility:" "the effects of the proposed facility on the public health, welfare, and safety;" and "any other factors that it considers relevant."[653]

Again, the Application provides insufficient information to allow the agency to make an affirmative finding in favor of the project. The Application lacks sufficient information to establish the need for a facility, and the incomplete nature of the application makes it impossible for DEQ to decide that the project is in the public interest in terms of the nature of the probable environmental impact and the effects of the proposed facility on the public health, welfare, and safety.

## CONCLUSION

We expect that BLM, DEQ, and other agencies will comply in full with their obligations to thoroughly evaluate the high risks the Bridger Pipeline poses to the human communities and natural environments impacted by the proposal. In their review, BLM and DEQ must adhere to their fundamental obligations to disclose the

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[649] *Montana Env't Info. Ctr. v. Dep't of Env't Quality*, 1999 MT 248, ¶ 77, 296 Mont. 207, 230, 988 P.2d 1236, 1249

[650] *Id.*

[651] *Held*, ¶ 30.

[652] *Id.*

[653] Mont. Code Ann. § 75-20-301(2).

consequences of the project, allow for meaningful public engagement, and protect the public interest.

Sincerely,

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*On behalf of Honor the Earth, 350 Montana, Center for Biological Diversity, Families for a Livable Climate, Montana Environmental Information Center, Montana Health and Climate, Mountain Mamas, Red Medicine LLC, Sierra Club, Western Environmental Law Center, Western Organization of Resource Councils, Western Watersheds Project, Wild Montana, WildEarth Guardians, and Wyoming Outdoor Council*