NEPA PG&E L-109 NPS EA doc. comments.

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Hereafter:

EA=Pacific Gas & Electric Gas Pipeline L-109 Replacement Project Environmental Assessment – February 2016.

SFPUC lands=The L-109 segments that traverse CCSF lands managed by the SFPUC and encompasses approximately 23,000 acres of the San Francisco Peninsula within San Mateo County.

NPS=the EA document prepared for the U.S. Department of the Interior, National Park Service, Golden Gate National Recreation Area by Blue Rock Services, 802 Montgomery Street San Francisco, California 94133

SFPUC CEQA MND= CEQA document produced by SFPUC for the exact same L-109 project in October 2015, whose replies to public comments have not been published to date.

1.) **EA ILLEGAL BECAUSE PROJECT IS SEGMENTED or PIECEMEALED.**
EA is inadequate and illegal because this document has "segmented" or "piecemealed" where the 4.7 mile section in San Mateo County within the CCSF watershed property is a small segment of a much longer PG&E gas pipeline replacement project that runs for about 30 miles from San Francisco, through San Mateo County and into Santa Clara County, and the ancient L-109 line must be replaced more or less at the same time. Figure 1.1 of the NPS EA has a map that shows most of the L-109 line that is going to be replaced.

The entire length of L-109 could be considered an "ancient" pipeline because it dates from 1931-2, and is currently about 50% beyond its life expectancy, and is among the oldest that still in constant use in the USA. As a former State licensed water treatment operator for 20 years, any pipe older than 1940 would be considered "ancient" and would need to be replaced ASAP, because of the high possibilities of failure of anywhere along its entire length.

According to a 2012 report at http://www.ingaa.org/file.aspx?id=19307 only 4% of the gas pipelines still in use in the USA are this old or older, and only 12% of the pipelines in the USA, were installed prior to 1950. And the report states that external corrosion is one cause for the failure of older gas pipelines and they need to be replaced, because the "oldest pipelines were installed with no coating, and that the use of cathodic protection did not become common until the 1940s and 1950s." The drop off in modern pipelines failures due to external corrosion, "probably is the result of the advent of the use of high-technology coatings such as fusion-bonded epoxy in use since the 1970s and the application of cathodic protection early in the life of the pipeline."

The other reason why PG&E will replace this 1930s pipeline as a whole project, is that there is a higher failure in the components of these ancient pipelines, especially those put in before 1950. According to the report listed above, "Prior to 1950, fabricated fittings were more likely to have not been made according to ASME standards and some older valve bodies were made from cast iron or cast steel rather than from forged steel."

Also PG&E is going for safety reasons to replace this L-109 pipeline as a whole project, because in addition to the external corrosion and the potential of failure of components like valves, according to the above report, older and ancient pipes like this one, have a much higher failure rate, according to the report, than newer pipes, due to flaws in the body of the pipe, the seam welds, and the stress corrosion cracking.

2.) **IMPROPER SEGMENTATION or "PIECEMEALING" of the L-109 project**. The NPS EA is inadequate because a full EIR has not been written for the entire length of this pipeline that is being replaced in a piecemeal fashion.

The Woodside 1.7 mile section in San Mateo County was replaced in 2014-2015, without a single CEQA or NEPA document filed, even though the project destroyed pristine serpentine grasslands that contained five Special Status plants including one of the only two-dozen populations of the Listed Marin Dwarf flax that exist.

No Certificate of EXEMPTION from environmental review, no Categorical Exemptions filed, no Declared Emergency exclusion, No Emergency Project exclusion, no Planning study, no General Rule exclusion, no Ministerial exclusion, no Non-Physical exclusion, no On-going project exclusion, no Statutory exemption, and no Other Exclusions, and no Caltrans permit to do the revegetation mitigation, no notice that five Special Status plants and rare serpentine grasslands were going to be destroyed, and still (as of April 10, 2016) no bond posted for Caltrans in case of revegetation failure, and no USACE permit was obtained to cross the three wetlands with the project.

3.) **EA IS ILLEGAL UNDER NEPA, BECAUSE L-109 PROJECT HAS BEEN SEGMENTED.** This PG&E project has been segmented to avoid writing a full EIR for the entire L-109 project, and a segment was done without any CEQA document being filed, for the portion in Mountain View in 2012:" Within the City of Mountain View we are both replacing pipeline and hydrostatically/strength testing a section of pipeline. Approximately 1.2 miles of Line 109 is being replaced and approximately 1.4 miles of Line 109 is being strength tested in 2012…Approximately 6,440 feet of the total 7,466 feet of Line 109 pipeline being replaced in 2012 in the City of Mountain View was installed prior to 1970, with 5,619 feet installed in 1936. Note that the original installation of Line 109 was in 1936." (http://patch.com/california/mountainview/q-a-pg-e-begins-pipeline-109-replacement-june-22)

NEPA requires that federal agencies consider the environmental consequences of their decisions before they act, and to prepare a detailed statement of major federal actions significantly affecting the quality of the human environment. (2 U.S.C.S. 4332).

This statement must address the environmental impact of a proposed action, the unavoidable environment impacts if the action is approved, alternatives to the proposed action, the relationship between short and long-term effects, and any irreversible commitment of sources if the proposed action is implemented.

There is also a question, which is addressed later in these comments, that this EA is inadequate because NPS does not have any legal nexus in writing the EA, because the projects is not entirely or partly financed by a Federal agency where there is some Federal control over the subsequent use of the Federal funds. (40 C.F.R. § 1508.18.)

However, when a federal action is divided and analyzed into smaller separate components it is known as "segmentation." West Chicago, Ill. v. U.S. Nuclear Reg.y Comm'n., 701 F.2d at 650 (7th Cir. 1983).

4.) **EA IS ILLEGAL UNDER NEPA, because it piecemeals the PG&E L-109 project.** When an agency intentionally attempts to circumvent NEPA by dividing a federal action into smaller components in order to allow those smaller components to avoid studying the overall impacts of the single project then "improper segmentation" has occurred (*O'Reilly v. U.S. Army Corp. Engineers,* 950 F.2d 1129 (5 Cir. 2007). Thus, it is unlawful for agencies to evade their responsibilities under NEPA by artificially dividing a major federal action into smaller components, each without significant impact. To permit non-comprehensive consideration of a project divisible into smaller parts, each of which taken alone does not have a significant impact, but which taken as a whole has significant impact, would provide a clear loophole in NEPA. (Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294 (D.C. Cir. 1987).)

5.) **EA IS INADEQUATE BECAUSE IT PASSES THE TEST THAT "IMPROPER SEGMENTATION" HAS OCCURRED**. In order to provide additional clarity on the issue, the courts have developed a four-factor test to determine whether improper segmentation has occurred. These factors include whether the proposed segment: (1) has logical termini; (2) has substantial independent utility; (3) does not foreclose the opportunity to consider alternatives; and (4) does not irretrievably commit federal funds for closely related projects. (Piedmont Heights Civic Club, Inc. v. Moreland, 637 F.2d 430 (5th Cir. 1981); Swain v. Brinegar, 542 F.2d 364 (7th Cir. 1976)). While all factors have a modest weight, the analysis of a projects independent utility is the primary focus and the key factor in deciding most improper segmentation cases. First, the project must have a "Logical termini" for project development is defined as (1) rational end points for a transportation improvement, and (2) rational end points for a review of the environmental impacts. (U.S. Dept. of Trans. Federal Highway Admin., NEPA and Transportation Decisions, available at http://environment.fhwa.dot.gov/projdev/tdmtermini.asp.).

6.) **EA IS INADEQUATE BECAUSE IT VIOLATES THE COURT RULING AGAINST PIPELINE PROJECT SEGMENTATION.** On June 6, 2014, in Delaware

Riverkeeper Network v. Federal Energy Regulatory Commission (the "Tennessee Gas" case), the U.S. Court of Appeals for the D.C. Circuit ruled that the FERC violated the National Environmental Policy Act (NEPA) by improperly "segmenting" its NEPA analysis of a four-part upgrade to Tennessee Gas Pipeline's 300 Line System. The Tennessee Gas 300 Line connects the booming gas fields of western Pennsylvania to gas-hungry locations in the northeastern U.S. The court held that FERC's NEPA review needed to consider the project in its entirety, not on a segment-by-segment basis. The Tennessee Gas decision has important ramifications for the U.S. pipeline industry and other industries that construct complex multiphased projects that are subject to NEPA. NEPA is often triggered by a federal agency's approval or funding of major construction activity, as was the case here.

Where projects subject to NEPA entail segments that 1) overlap in time, and 2) are functionally, physically and financially interrelated, agencies must review the environmental impacts of the project as a whole, rather than treating each segment in a separate NEPA document.

Applying this "segmentation" doctrine, the Tennessee Gas opinion found that FERC should not have separately evaluated a part of the larger pipeline project. The result could be more time-consuming and costly NEPA reviews of pipeline and other long-line construction projects that require federal approvals subject to NEPA.

Background

Between 2010 and 2013, four pipeline upgrades were constructed along the entire eastern leg of the 300 Line. Tennessee Gas submitted and ultimately received FERC approval for all four upgrades as separate projects. FERC found that each segment was a stand-alone project and decided to review each of the four projects individually for NEPA purposes. Under this approach, the FERC concluded that no single segment warranted the preparation of an environmental impact statement (EIS).

An EIS, in contrast to the simpler environmental assessment used in this case by the FERC, can significantly complicate and lengthen the overall NEPA review process. The FERC clearly wanted to avoid this kind of delay in bringing needed natural gas to the Northeast.

Environmental organizations challenged the third FERC certification for Tennessee Gas' 300 Line upgrade (the "Northeast project") claiming that it was improper for the FERC to consider that segment in its NEPA review separately from the other three segments, one of which was already under construction and the other two pending before the FERC. A primary focus of the petitioners was the degree of ecological fragmentation caused by the project. The Northeast project upgrade involved the clearing of 265 acres of forest, whereas the entire project entailed the clearing of 628 acres.

After their NEPA objections were rejected by the FERC, the environmental groups petitioned the D.C. Circuit for review in 2013. In its June 6, 2014, opinion, a three-judge

panel of the D.C. Circuit ruled that a federal agency impermissibly "segments" NEPA review when it divides "connected, cumulative or similar" federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.

The court held that the segmentation approach used by the FERC in this case violated NEPA. The court went on to hold that this improper segmentation prevented the FERC from providing any "meaningful analysis of the cumulative impact" of the overall eastern leg upgrade project, a separate violation of the NEPA.

Significance of the Decision

The Tennessee Gas opinion marks the first time that the D.C. Circuit has fully applied NEPA's segmentation policy to a pipeline project. Most of the court's NEPA segmentation cases have dealt with highways and rail lines, and generally hold that segments of linear infrastructure must have "independent utility and "logical termini" if they are to be treated in separate NEPA documents.

The court gave considerable deference to the applicable NEPA regulations on segmentation (40 CFR §1508.25) noting that the FERC's brief did not attempt to square its position with these regulations. The applicable NEPA regulations make it clear that federal agencies must consider the effect of "connected actions" and "similar actions" when carrying out their responsibilities under the NEPA. The regulation defines actions as being "connected" if they trigger other actions, cannot proceed without previous or simultaneous actions, or are interdependent parts of a larger action and depend on the larger action for their justification. Id.

The court found that all four segments were connected and similar, emphasizing the fact that all four segments of the Line 300 upgrade overlapped in time. In summary, the court concluded that all four upgrades were "physically, functionally and financially connected and interdependent," thus warranting a single NEPA analysis. The case was remanded to the FERC, which will now have to decide how to apply the decision to a project that is already near completion.

Addressing the "independent utility" test, the FERC sought to defend its segmentation approach by arguing that each of the four segments was tied to separate gas delivery contracts for the increased volume of gas that the upgrade would provide. This led FERC to contend that each segment had substantial independent utility so as to justify segmentation. The court rejected this line of argument, citing record evidence that the four segments were financially interdependent, i.e., the first segment made the other segments less costly.

The FERC also attempted to turn the "logical termini" test on its head, arguing that since it was unable to identify any particular "logical termini" for any of the four segments, it was free to segment the four projects according to the applicant's business considerations. The court likewise rejected this line of argument, under which FERC

could just as easily have broken its environmental review of the pipeline into one-mile, or even one-foot, segments. Accordingly, the court reasoned that the absence of logical termini along the eastern leg of the 300 Line compelled NEPA review of the Line (and hence the four upgrades) as a single interdependent project, not as four separate projects.

The Tennessee Gas decision has important ramifications for all projects subject to NEPA that are constructed in phases or segments that are related to each other in time and place. To support a segmented approach to NEPA review, the agency and the project proponent will need to marshal convincing evidence that each segment has independent utility and logical termini, and can stand on its own even if the other segments are not constructed.

Because oil and gas projects are often developed in phases, the decision will have particular relevance for that industry. In short, projects that seek to segment the environmental analysis in separate NEPA documents for business or schedule reasons are now more likely to be challenged by environmental groups who will cite to the Tennessee Gas decision to argue for assessments of impacts in a single NEPA analysis. (Reference = TENN. GAS RULING)

7.) **EA INADEQUATE BECAUSE CUMULATIVE EFFECTS NOT ADDRESS ON THE EMPACTS FOR THE ENTIRE L-109 pipeline replacement project.** Under Cumulative Effect in the EA, only a list of previous projects are listed, but no mention of the environmental destruction that has occurred, and will likely to occur for the SFPUC section, as well as the future foreseeable future replacement of the section going over San Bruno Mountain through that rare plant and Endangered Listed Critical Habitat.

CEQ regulations, as part of an environmental analysis, require federal agencies to conduct a NEPA analysis of the direct, indirect, or cumulative impacts or effect of a major federal action. A "cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. The scope of this review includes evaluating both federal and non-federal agencies undertakings to determine whether an individually minor impact of a single project could, when combined with other activities, result in a significant impact. (40 C.F.R. § 1508.7). The cumulative impact could result from a "direct effect" 38which occurs at the same place or time as the implementation of a proposed action. These effects are those that are typically easily identified in a NEPA analysis-whether in an EIS or EA.

8.) **NO DETAILS ON MITIGATION AND RESTORATION.** EA is inadequate because it does not outline the details on how the mitigation for the destruction to the rare native serpentine grassland is going to proceed, nor does it have any details on how the ten Special Status plants including the Federally and State Listed Species, are going to be restored to pre-construction conditions after their populations are destroyed.

9.) **MITIGATION TECHNIQUES CURRENTLY DO NOT EXIST FOR THIS PROJECT, so EA is not legally "ripe" to submit to the public, until successful**

mitigation techniques are invented. The project only promises that some sort of plan will be developed in the future, e.g. 2.2.2 "A site-specific Vegetation Restoration Plan would be developed in coordination with the SFPUC and the appropriate resource agencies." And at 2.2.15 Site Restoration "A post-construction erosion control and vegetation restoration plan would be developed to guide restoration activities in environmentally sensitive areas. This plan would provide discussions of soil composition, local native seed collection and distribution, erosion control, and monitoring."

Not admitting that no mitigation techniques currently exist for this project, or for the destruction of the resources in the previous section of L-109 and L-132 in the same habitat, is pulling the wool over the eyes of the public, that the intentional destruction public resources are not honestly being reviewed by this EA document.

10.) **NO MITIGATION ENFORCEMENT or PG&E BOND IN CASE OF MITIGATION FAILURE.** For the mentioned in the Cumulative Effects for the L-109 section of the project that run across Caltrans land, at "3.4.1.12 2014 PG&E: L-109 Farm Hill Segment Replacement PG&E replaced an existing segment of L-109, known has the Farm Hill segment," Caltrans has no confidence that PGF&E can restore the Caltrans land back to pre-construction conditions, has required PG&E to post a $10 million bond in case of revegetation failure.

If the same amount of bond were required by SFPUC from PG&E in case of failure for the revegetation of the serpentine grasslands and the ten Special Status plants would mean that a $40 million bond would be necessary. Lacking any bond, the EA does not have any provisions for enforcement of the mitigation measures needed to bring the rare natural resources back to pre-construction conditions.

11.) MITIGATION FAILURE AT TWO OTHER PG&E PIPELINE PROJECTS in San Mateo County in last two years in the exact same serpentine grassland habitats. The EA lists these two projects at **3.4 CUMULATIVE EFFECTS ANALYSIS METHOD and under the Past Actions list**

3.4.1.11 2014 PG&E: L-132 Edgewood Preserve - Pipeline Safety Enhancement Plan where PG&E replaced an elbow in Gas Line 132. The replacement involved mowing, digging, and subsequent restoration of two small plots near the western kiosk.

3.4.1.12 2014 PG&E: L-109 Farm Hill Segment Replacement, PG&E replaced an existing segment of L-109, known has the Farm Hill segment. However, the EA under this Cumulative Effects section is inadequate, because it fails to mention that the mitigation/restoration back to pre-construction vegetation conditions have been failures so far for those two projects.

12.) **ALTERNATIVE TO TRENCHING for the entire length of L-109 running through the serpentine or across all of the ten Special Status Species is not mentioned in the EA**, like sleeves or boring, to leave rare plants undisturbed, like the boring instead of trenching that was done on the Santa Clara County portion of the replacement for the L-109 two to three years ago, so causes the EA to be inadequate in exploring alternatives.

13.) **RARENESS OF HABITAT BEING DESTROYED BY PROPOSED PROJECT NOT BEING DISCLOSED TO PUBLIC.** The overall rareness of the serpentine grasslands and the concentration of the ten Special Status plants into this very small area. "Covering only 1% of California's landscapes, serpentine grasslands contain 10% of California's endemic plant species." (Univ. of Color. Boulder). The grassland habitats that the entire L-109 cross through, probably have more rare plant per square kilometer than any other place on the planet, so empty promises of restoration does not build confidence with the public, that PG&E knows what they are doing when they destroy these rare habitats.

14.) **INABILITY TO SUCCESSFULLY RESTORE THE RARE HABITAT plus PG&E's RECENT PAST FAILURES TO RESTORE SERPENTINE HABITAT NOT DISCLOSED TO PUBLIC in the EA**. So promises made in the EA to be able to restore double the number of Special Status plants, plus four times the area of serpentine grasslands that has already been destroyed by PG&E in the last two years, any future promises without specifics for the public to review in the EA, is a fraud designed to be able to continue to destroy those rare resources. The EA and the project should be honest with the public, and admit that PG&E does not want to spend the money necessary to invent the successful methods needed to be able to restore the serpentine grasslands or any of the ten Special Status plants back to pre-construction conditions?

15.) **NPS DOES NOT HAVE ADEQUATE LEGAL NEXUS to be a lead for an NEPA EA this project.** Under NEPA, the Council on Environmental Quality (CEQ) was created, to assist in the development of the nations policies to meet the purposes of NEPA. (42 USC 4343-44) CEQ promulgated regulations establishing the NEPA environmental review process.(40 C.F.R. Parts 1500 to 1508.) The CEQ regulations provide that **a federal agency may only be required to complete the NEPA review process when its involvement in a project is sufficient to constitute a "major federal action."** 40 C.F.R. § 1508.18.

NPS should not be offering the public a competing NEPA document when a CEQA document was already prepared by the property owner, the SFPUC, for exactly the same project in 2015? When the SFPUC filed a CEQA MND that has been put on hold because it seems to a reasonable person, that PG&E cannot adequately answer the comments submitted by the State Fish & Wildlife concerning the lack of mitigation technologies, to bring the rare plant communities back to pre-construction conditions.

NPS does not have any legal nexus in being the lead agency and preparing an EA, because a lead agency is making the decision whether to grant a permit or approve

construction of a project, and there are no permit from NPS involved with this project.

16.) **NPS SHOULD NOT BE THE AGENCY WRITING ANY ENVIRONEMTAL DOCUMENTS FOR THIS PROJECT.** Lands within the Watershed are protected by the CDFW as the San Francisco State Fish and Game Refuge. The Refuge is currently under review by CDFW and the State of California for possible elimination as instructed by California SB 1166 (2008).

The Watershed is one of thirteen protected areas in the San Francisco Bay area that form the UNESCO GGBR. "The biosphere reserve is organized under an association with three councils, which are responsible for management, science and education projects" (UNESCO 2002). Additional cooperation with stakeholders and partners for research, education and outreach, and land management has been facilitated as a result of the formation of the GGBR and activities, although unidentified, are expected to continue.

So the SFPUC 2015 CEQA MND and this NPS EA have made a major legal error in having the wrong agencies be the leads for writing the environmental documents. The proper future document should be a full EIR written by the State of California Fish & Wildlife as the lead, with the document covering the entire L-109 pipeline route.

17.) **VEGERATION SURVEYS of 10 SPECIES STATUS PLANTS and of the SERPENTINE GRASSLANDS are inadequate in the EA**, to determine exactly what preconstruction vegetation conditions exist, and no pre-construction foot-by-foot survey data is presented to the public, that would be absolutely necessary in order to judge that adequate restoration has been achieved after construction.

It is my 40-year professional experience that native plants in a serpentine grassland grow in a mosaic with 100 or more species present, and they each grow in particular locations within that grassland, based on soil, aspect, moisture, the amount of serpentine rock, soil nutrients, etc. and each species are not like checkers on a checkerboard that can be moved around at will—instead they are puzzle pieces and each piece has its own place, that cannot be shifted more than 5-10 feet in any direction. For example, you cannot plant a tidy tip population in a goldfield site and vise-versa, and expect them to thrive over time.

18.) **RECENT PG&E ENVIRONMENTAL DESTRUCTION BY PG&E OF SAN MATEO COUNTY SERPENTINE GRASSLAND HABITATS, RAISES A RED FLAG TO NOT ALLOW ANY MORE DESTRUCTION OF RARE HABITATS.** This L-109 PG&E pipeline project is known it will intentionally destroy more of the same rare serpentine grassland habitat, and that the failure of the mitigation measures in the L-109 Farm Hills portion and L-132 elbow portion, should stop the consideration of any CEQA or NEPA documents for this rare natural resource destruction.

No more destruction of a single square foot of this rare habitat, until PG&E can prove that they have invented the successful mitigation measures that can replant the already destroyed native grassland populations, back to pre-construction conditions.

This NEPA document and the CEQA document written for the L-109 through the SFPUC lands must legally be shelved. PG&E could use the Woodside portion of the L-109 1.7 mile stretch that was destroyed in 2014-2015, as one big 1.8 million square foot test plot, and get those Serpentine and Danthonia wetland grassland habitats back to their 95% native pre-construction cover?

19.) **EA VIOLATES NEPA BY WRITING THE EA INSTEAD OF A FULL EIR ON THE ENTIRE L-109 PIPELINE.** If you follow the flow-chart for NEPA, the question is asked, will the project effects be environmentally potentially significant. If yes, and if you are destroying the rarest plant community in California that contains ten Special Status plants, then obviously then under NEPA you MUST File a Notice to prepare an Environmental Impact Statement (EIS) and conduct "scoping", and during the scoping process the public can identify subjects to be studied in the EIS.

However, if it is unclear that the project will cause significant environmental impacts, then an agency can file an Environmental Assessment (EA). But that is not the situation in the grassland habitats of the SFPUC that PG&E is proposing to destroy.

A full EIR or EIS must be written, and the scoping process conducted, because it is well know since Europeans settled California and botanists started looking at the plant communities here, that the serpentine grassland habitat is a very special, rare and sensitive habitat, that nobody currently knows how to mitigate damages done to it, and bring it back to pre-construction conditions. NEPA requires preparation of an EIS for federal actions that may "significantly" affect the quality of the human environment. An EIS will include information on how a project will affect the environment and public health, discuss "alternatives" to the project and consider all practical "mitigation".

20.) **NO PRACTICAL OR EFFECTIVE "MITIGATION" CURRENTLY EXISTS TO RESORE THE DESTROYED GRASSLANDS AND SPECIAL STATUS PLANTS, BACK TO PRE-CONSTRUCTION CONDITIONS**. Therefore, the project is illegal under both CEQA and NEPA, and must be shelved until PG&E can prove they have successful mitigation project that were able to restore the serpentine grasslands already destroyed with the Woodside portion of the L-109 project, and the L-132 elbow project at Edgewood Preserve.

21.) **EA IS ILLEGAL UNDER NEPA, BECAUSE NPS IS NOT COMLPLYING WITH NEPA *TO THE FULLEST EXTENT POSSIBLE*,** because NPS failed to file a full EIR on the entire length of the L-109 project.

22.) **EA IS ILLEGAL UNDER NEPA BECAUSE NPS DID NOT develop a reviewable environmental record** for the purposes of a threshold determination under §102(2)(C). Before a threshold determination of significance is made, the NPS must give notice to the public of the proposed major federal action and an opportunity to submit relevant facts which might bear upon the agency's threshold decision. (*Hanley v. Kleindienst*, 471 F.2d 823 (2d Cir. 1972), *cert. denied*, 412 U.S. 908 (1973)).

23.) **EA IS ILLEGAL UNDER NEPA BECAUSE THE CUMULATIVE EFFECTS OF ALL OF THE ENVIRONMENTAL IMPACTS OF THE ENTIRE L-109 PROJECT ROUTE IS NOT BEING CONSIDERED.** The NPS EA only looks at the environmental impacts of the SFPUC watershed portion, which is only a very small part of a much larger project which is both inevitable and foreseeable, and portions have already been completed without any NEPA or CEQA review, destroying rare and Species Status plants.

Any NEPA document is required to consider all connected or cumulative *actions* together in the same comprehensive EIS (*see* 40 CFR § 1508.25(a), with the requirement to assess the cumulative *impacts* of the proposal and other reasonably foreseeable future actions (*see* 40 CFR §§ 1508.7, 1508.8, and 1508.25(c)).

The "foreseeable future actions" will be the replacement of the rest of the 1930s L-109 pipeline from Redwood City to San Francisco. And this EA is illegal because it did not consider the past actions of PG&E causing significant environmental damages when replacing the southern portion of L-109 (40 CFR § 1508.7.).

24.) **EA IS ILLEGAL BECAUSE THE PUBLIC IS NOT INFORMED OF POSSIBLE CONSEQUENCES OF THE PROPSED ACTIONS, IN THAT IT IS CURRENTLY IMPOSSIBLE TO SUCCESSFULLY MITIGATE THE DAMAGES TO THE SERPENTINE GRASSLANDS NOR ANY OF THE TEN SPECIES STATUS PLANTS.** Section 1502.28 requires that EISs be "readable"—and courts have invalidated EIS on that ground. NPS has a duty to provide the public with comprehensive information regarding environmental consequences of a proposed action and to do so in a readily understandable and honest manner.

NPS gives no choice of alternatives and analysis of cumulative risks of the environmental damage is inadequate.

25.) **EA IS INADEQUATE BECAUSE PUBLIC IS UNINFORMED AS TO THE MITIGATION PLAN**. Even though NEPA does not impose a substantive duty on agencies to mitigate adverse environmental effects or to include in an EIS a fully developed mitigation plan, since no mitigation technologies currently exist to restore the serpentine grasslands or any of the ten Special Status plants to pre-construction conditions which is the California State environmental laws requirements, the project must be shelved until those successful ecological restoration mitigation technologies have been invented and shown to work in test plots first.

26.) **PG&E FAILURE TO ACT IN GOOD FAITH, regarding the rare habitat they are proposing to destroy.** PG&E has known for at least a half century or more, that their L-109 pipeline is situated within this very rare and very sensitive environmental habitat. Plus PG&E should have reasonably known for several decades that they are overdue to replace the L-109 line.

So to a reasonable person, PG&E has had many decades within which to conduct test plots of the ten Special Status plants, and test plots of the serpentine grassland species, in order to invent the successful ecological restoration processes to bring the construction areas back to pre-construction conditions? I am alleging that this is intentional and willful negligence on the part of PG&E, and they need to invent those successful restoration technologies first, before disturbing another square foot of this rare and sensitive habitat.

REFERENCES:

--CITIZENS TOOLBOK –Cases affecting the National Environmental Policy Act (NEPA) NPLnews.com

--ILLEGAL TO "SEGMENT" THESE PUBLIC PROCESSES – West Coast Action. http://westcoastactionalliance.org/wp-content/uploads/2015/05/E.-Veenendaal-NEPA-Segmentation.pdf

--NEPA TOOLKIT – Defend your air, NRDC .

--Pike County Courier—Court: FERC acted rashly in pipeline decision.

--TENN. GAS RULING. http://www.law360.com/articles/552297/how-the-tennessee-gas-ruling-impacts-pipeline-projects