

FIVE WAYS THAT OREGON CAN VETO LNG TERMINALS

Oregon has the authority to reject the Bradwood Landing LNG terminal. The state veto is so strong that a Washington D.C. law firm that represents the LNG industry stated, “*there is no case to date where a project has been successfully executed in the face of firm state opposition.*”¹ Below are the top 5 ways for Oregon to veto LNG, any one of which will halt the project.²

1. Refuse to lease state land for the LNG terminal

Oregon may deny Bradwood Landing’s application to lease state-owned submerged lands for both the terminal and the pipelines. Oregon’s denial of the lease will halt the project. The State can only grant the easement lease if “the department determines that the easement or right of way would be *in the public interest.*”³ Likewise, the Oregon Constitution requires that the State shall manage lands to obtain the *greatest benefit for the people of this state.*”⁴ This “public interest” determination gives Oregon tremendous discretion to deny the lease of State lands.



Farmers oppose LNG pipelines and use of eminent domain

2. Deny the Clean Water Act 401 certification

Section 401 prohibits FERC from permitting any project unless Oregon signs a “401 certification” that finds the project in compliance with State water quality standards. Oregon’s water quality standards require protection of salmon, fishing, navigation, and other uses designated under state law. OAR 340-041-0101. Oregon may deny the 401 certification, and thus halt the project, because the LNG terminal and tankers harm the designated uses of salmon, fishing, and navigation.



Fishermen protest LNG at Bradwood site

Agency scientists already recognized that the proposed 58 acres of dredging, extensive wetland fill, and the incursion of LNG traffic will harm threatened and endangered salmon. ODFW stated, “Significant fish habitat will be lost and mitigation is not adequate.”⁵ In addition, the project will harm the designated use of fishing, which is highly protected in Oregon.⁶ The LNG tankers have a 500-yard exclusion zone that will, according to ODFW, “be very disruptive to commercial and recreational fishing

¹ Dweck, Jacob, et. al. LNG litigation after the Energy Policy Act of 2005: State powers in LNG terminal siting, Energy Law Journal, 27, 473, 475, 498.

² This document is specific to the proposed Bradwood Landing terminal and pipeline, but the legal analysis applies to all LNG terminals and pipelines in Oregon.

³ ORS 270.165.

⁴ Oregon Constitution, Section 5.

⁵ Oregon preliminary comments on Draft Environmental Impact Statement at 4.

⁶ See, e.g. OAR 141-085-0029 (a project may not “interfere with the *paramount public policy* of this state to preserve the use of its waters for navigation, fishing, and public recreation.”) (emphasis added).

boats.”⁷ The 401 certification is a powerful way for Oregon to protect salmon and fishermen, and reject the LNG terminal. Even though the Energy Policy Act of 2005 attempted to reduce state power, Congress expressly retained a state’s right to deny permits under the Clean Water Act, the Clean Air Act, and the Coastal Zone Management Act (CZMA).⁸

3. Deny the Coastal Zone Management Act certification

Oregon also retains veto power under the CZMA, which prohibits FERC from issuing a license unless Oregon decides that the project complies with the Oregon Coastal Management Plan (OCMP). The OCMP includes the: 1) Statewide Planning Goals; 2) local land use regulations; and 3) other state authority. The LNG terminal, proposed in a traditional fishing area deemed critical for salmon, is inconsistent with the Planning Goals and local regulations that protect the estuary. In addition, the OCMP incorporates state authority under the Removal-Fill law, which requires that the LNG terminal be “consistent with the protection, conservation, and *best use of the water resources of this state.*”⁹ Oregon has great discretion to determine that LNG is not the best use of the Columbia River estuary, and veto the project.

4. Deny the water right

Oregon can stop the LNG terminal by denying the water right needed for operation. For each water right application, Oregon must conduct a “public interest” determination, which evaluates the effects of the LNG terminal on threatened species, water quality, fish and wildlife, and recreation.¹⁰ The LNG terminal is not in the public interest because it will harm threatened salmon, degrade water quality, and block access to traditional fishing areas. Similar to the lease, the “public interest” determination provides Oregon tremendous discretion to deny the water rights permit.

5. Require a needs assessment

Oregon can veto the project because there is no demonstrated need for LNG. Governor Kulongoski recently demanded that FERC conduct a needs assessment. Oregon law requires this needs assessment prior to Oregon granting approval. Specifically, Goal 16 prohibits dredging unless “*a need (i.e., a substantial public benefit) is demonstrated* and the use or alteration does not unreasonably interfere with public trust rights.”¹¹ Furthermore, the Removal-Fill Law requires Oregon to consider “*the public need for the project including the social, economic or other public benefits.*”¹² Goal 16 and the Removal-Fill law are part of the OCMP, which gives Oregon full authority to veto the project.



Hundreds of citizens rally against LNG in Salem

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⁷ Oregon comments on Draft Environmental Impact Statement, Dec. 13, 2007 at 33.

⁸ 15 U.S.C § 717b(d).

⁹ *Id.* (emphasis added).

¹⁰ OAR 690-310-0120; -0140.

¹¹ Statewide Planning Goal 16.

¹² OAR 141-085-0029(3)(a).