

*Q. What Is Your Name and Business Address?*

A. Paul Penhallegon

Washington State Department of Natural Resources  
Agricultural Resources Division  
P.O. Box 47061  
Olympia, WA 98504-7061

*Q. Where Are You Employed and What Is Your Job Title?*

A. Washington State Department of Natural Resources  
Noxious Weed Program Manager

*Q. What Is Your Educational Background?*

A. Paul Penhallegon, B.S., M.S., J.D.

Bachelor of Science - Horticulture (an agricultural science)  
Master of Science - Agricultural Economics (agribusiness management)  
Juris Doctorate - Law

*Q. Will You Please Summarize Your Professional Experience?*

A. With the Department of Natural Resources:

Twelve years with DNR  
One year as Acting Division Manager for Agricultural Resources  
Five years as Natural Resource Assistant Manager  
(Career Executive and Washington Management Service)  
- Agricultural and Upland Resources  
- Division Budget and Operations  
- Statewide Land Transactions

- Upland and Aquatic Noxious Weeds

One year as Southeast Region Program Specialist

- managed Upland Leasing program

Two years in field positions as Agricultural Land Manager

Three years in staff position as Agricultural Land Manager

In the agricultural workplace:

Eighteen years as orchard owner and operator

Operated up to 35 acres of orchard (now only 10 acres)

Thirty-one years experience in agriculture

*Q. What Is The Subject Matter Of Your Testimony?*

A. Invasive plant species infestation of ground disturbed by placement of the pipeline, in relation to State-owned, DNR managed, agricultural land. Also, the impacts of the pipeline project on DNR agricultural (including grazing) leases.

*Q. Have You Reviewed The Material Submitted By Olympic Pipe Line Company (OPL)?*

A. Yes. I have reviewed EFSEC Application No. 96-1 of Olympic Pipe Line Company for the Cross Cascade Pipeline Project, the Draft Environmental Impact Statement for the Cross Cascade Pipeline, the map atlas of land appearing to be affected, and the reports of Dames and Moore on Noxious Weeds for the Cross Cascades Pipeline Project for King, Snohomish, Kittitas, Grant, Adams, and Franklin Counties.

*Q. Did OPL Adequately Address Your Weed Management Concerns With Regard To Their Proposed Work On State-Owned, DNR Managed, Land?*

Pre-filed Testimony of Paul Penhallegon  
Exhibit PP

A. No.

*Q. Will You Please Elaborate On Your Concerns?*

A. Yes. First, I would like to preface my remarks by stating that my current position with DNR focuses my attention on the impacts of noxious weeds to all State-owned, DNR managed, lands. Invasive and deleterious plant species are impacting the entire country. Local weed boards are responsible for enforcing state and local weed laws, which require a minimum level of control to be done by landowners. DNR desires to do, and be seen doing, more than the required minimum. DNR has long been recognized as a national leader in innovative and proactive natural resource management. So, with regard to weed control on state land, it is DNR's goal and intention to be aggressive in encouraging our lessees and permit holders to do more than is legally required in the control of noxious weeds; we want a healthy ecosystem; we want eradication of every weed that is practical, and prevention and control of weeds in every situation. Where DNR has no one using the property, then the agency pursues the same weed management strategies that we expect of our lessees and permit holders.

In their various documents, OPL mentions their desire to minimize the spread of invasive species and they have general mitigation plans, yet they do not go far enough; nor are they specific enough to meet DNR's requirement that all users of DNR-managed lands adhere to DNR's mandate to preserve, protect and perpetuate the natural resources that they will be specifically impacting. See RCW 79.01.295. As a manager of lands held in trust for the benefit of various beneficiaries, DNR has a fiduciary responsibility to

1) manage the various trust properties as a prudent person, exercising the same

- care and skill as an ordinary person dealing with their own property;
- 2) not divert assets to benefit others, at the expense of the trust beneficiaries, without adequate compensation;
  - 3) make trust property productive without unduly favoring present beneficiaries over future beneficiaries; and,
  - 4) manage the trust assets so as not to foreclose future options as a result of today's decisions.

Relative to all land that is touched by OPL, there are significant risks that OPL will precipitate an explosion of invasive plant species along their work corridor. Every disturbance of the soil gives the weed seeds that lie dormant therein prime opportunity to germinate and out compete native plants for water and nutrients. Many weed seeds can live for ten to twenty years in the soil, and, when presented with an opportunity, spring into action to establish themselves and then spread across the landscape. As an example, some of the most opportunistic weeds of recent years have been members of the Knapweed (*Centaurea*) family. Spotted Knapweed can produce 25,000 seeds per plant and the seeds remain viable in the soil for more than ten years. Russian Knapweed causes "chewing disease" in horses (as does its cousin, Yellow Starthistle); roots from one plant can grow out and down 23 feet; and one plant can produce six to twenty-seven new plants (that spring from root shoots) per square foot. This family of invasive plants grows under a wide range of environmental conditions, and covers the land in an exponential growth pattern. Knapweeds are just some of the dozens of equally deleterious invader species which thrive in Washington State, and which will have a very high likelihood of invading any of the sites disturbed by OPL.

Weeds compete with crops, poison or injure people and livestock, reduce forage

for wildlife and cattle, create fire hazards, and reduce recreational enjoyment of land because of thorns, allergies, or ugliness. Some weeds threaten waterways, shorelands, wetlands and many native plant communities and ecosystems. Weed control efforts within Washington State annually cost hundreds of millions of dollars; DNR alone spends close to one million dollars, and DNR lessees annually spend tens of millions. In addition to the money spent to control weeds, it is estimated that weeds cause a loss of 24% of Washington's gross agricultural product each year; this comes to untold billions of dollars in lost revenue. The spread of invasive plant species is at an all-time high in the West; OPL should not be allowed to be a contributor to the problem. DNR has the above-noted fiduciary responsibility to see that the land it manages does not become denigrated; massive soil disturbance such as will take place with the laying of a major pipeline, as proposed by OPL, has an exceptionally high risk of causing a serious invasion of noxious weeds. It will take a significant effort on the part of OPL to put the landscape back into an ecological condition that is stable and at least as good as it was before OPL's disturbance of the soil and vegetation.

As codified in RCW 79.01.295, House Bill 1309 mandated DNR's wise stewardship of state lands. DNR is charged with preserving, protecting and perpetuating the lands DNR manages for the long-term benefit of all present and future trust beneficiaries. Any degradation of state land by weed infestations is in direct contradiction to DNR's mandate and management goals. DNR requires users of DNR managed land to mitigate damage to the land, therefore DNR recommends that OPL be required to do likewise, and mitigate as follows:

- a) Any soil that is disturbed by OPL should be rehabilitated and revegetated as soon as practical (immediately, but recognizing that it will take time

and good weather); this means placed back into at least its original condition, having been timely planted/seeded to approved species of vegetation (it will probably be one to three years before any site will be stable and again have mature species of vegetation established and have all of the niches filled in). OPL should be responsible for seeing that all impacted sites are brought up to a vegetative condition that is better than before OPL came on site; otherwise, there will be negative impacts to the trust. Native grasses and forbs are preferred for revegetation, but non-native species may be used which provide equal or greater long-term benefits to fish and wildlife, as per DNR Resource Management Plans. DNR unit managers, range specialists and USDA technical experts should determine what species are appropriate and acceptable. While re-seeding is the initial activity, it is the *establishment* of the new vegetation that is critical, since re-seeding can have setbacks and failure; thus, OPL should be required to re-seed as many times as it takes to get complete and mature revegetation at each site. It is DNR's strong desire that, after the impacts of the pipeline have healed, there will be a seamless land surface that is in better vegetative condition than before the pipeline went through the area, otherwise, the trust will potentially be under-compensated for the negative impacts of the pipeline; new or uncontrolled weed infestations are expensive to manage.

- b) It is a virtual certainty that weeds will creep into the revegetated sites. Weeds are natural invaders; when left unmanaged they spread rapidly,

unceasingly and silently. They will thrive under the most stark and adverse conditions. Weeds will try to choke out desirable plants, and destroy the native ecosystem; an example of this is, again, the knapweeds. The *Centaurea* family is allelopathic, meaning it exudes substances which negatively impact the germination and/or growth of nearby unrelated plants. Thus, OPL should be required to eradicate all weeds that appear within the right of way. Prevention will be the best tool; OPL has already stated their intention to minimize soil disturbance, sterilize their equipment before it moves from place to place, and immediately revegetate the right of way area. But, this will not stop the ongoing invasion of weeds. So, OPL should be required to survey all sites on a regular basis. For the first five years, OPL should be required to have their people physically walk the ground and identify all weeds and undesirable plants; once in the spring, once in the summer and again in the fall; this is the best way to catch weed invasions early and make eradication a fairly simple matter. OPL should be required to immediately eradicate all weeds that are present within the right of way.

Inasmuch as all state agencies are mandated (RCW 17.10.145) to utilize the principles of Integrated Pest Management that are identified in RCW 17.15, OPL should be required to follow the same regulations. To recap the general requirement of the statute: they will use a coordinated decision-making and action process that considers all pest management methods and strategies, and applies them in an environmentally and

economically sound manner to meet their objectives. After year five, OPL should also be required to survey the sites annually to detect the presence of any weed species, and then act immediately to eradicate them, for so long as they hold a right of way. OPL should be required to report annually to DNR, any lessee, and the right of way manager, if EFSEC has jurisdiction over state land, with very specific information on their findings and actions. The goal is to have no weeds present within the OPL right of way; without appropriate monitoring and detection efforts, there is a very high likelihood that invasive species will go unnoticed until they have multiplied into a serious and expensive problem. Prevention is the goal; but, since it is impossible to prevent all weeds from infesting any area, let alone a highly disturbed site such as the pipeline right of way, early detection is critical to increase the success, and decrease the cost, of ongoing weed control.

- c) By way of general caveat, any roadway that is constructed or used by OPL will become more of an attractive nuisance (to neighbors, hunters, hikers, bikers, RV enthusiasts, the general public, etc.) due to OPL's presence and activity; curiosity and open space draw people like a magnet, especially to public land (and particularly DNR managed public land). This will result in additional soil disturbance and the spread of more weeds and weed seed. OPL should be required to use the same techniques to prevent, identify, and eradicate weeds, as well as doing revegetation and continual monitoring, on all access roads which are upon DNR managed state land

(and, it is a strong recommendation for all land), and for ten feet on each side of all access roads, in the same manner as they do on the pipeline right of way.

- d) While jurisdiction is questionable, the expectation of adjoining landowners has been made very clear to DNR field people over the years that DNR's neighbors expect the agency to control any weed that gets away from DNR managed land and spreads onto their land; they consider it to be a sort of vegetative trespass and a very unneighborly thing to allow. Therefore, if any weed gets started on roads accessing the pipeline, or on the pipeline right of way, and appears that it has spread onto the adjacent land, OPL should be required to immediately eradicate the weed in all locations where it has spread.

*Q. Did OPL Adequately Address Your Agricultural Land Management Concerns With Regard To Their Proposed Work On State-Owned, DNR Managed, Land?*

A. No.

*Q. Will You Please Explain DNR's Management Of The Potentially Impacted Agricultural Lands?*

A. As explained earlier, DNR manages State-owned land as fiduciary for various trust

beneficiaries. Many of the lands on the eastern side of the state are used and leased for agricultural purposes, either to grow crops or for grazing of animals. Some of these lands also have higher and better uses that are being planned for in the future; often agriculture is only a current use that utilizes the asset, while growth, infrastructure or time prepares the site for other higher valued opportunities. Every five years, DNR land managers review the current and future potential use of each lease and parcel, and take appropriate action to prepare the land to take advantage of future market options.

Q. *Will You Please Identify The State-Owned, DNR Managed, Agricultural (Including Grazing) Lands That OPL Proposes To Cross? Will You Please Do So By Stating The Legal Description, Current Agreement Number and Current Lessee, if any, Trust Beneficiary, Current Use, Planned Future Use, and Improvements On Each Of These Parcels?*

A. Yes. They are as follows:

(a) Legal Section 16, Township 19N, Range 17E (*Map Atlas Legend & Data Sources, pg. 43*)

Agreement No. 10-056851

Pre-filed Testimony of Paul Penhallegon  
Exhibit PP

Lessee(s)	Gordon Tang
Portions:	W1/2, NW1/4NE1/4, E1/2NE1/4, SW1/4NE1/4, W1/2SE1/4
Trust Beneficiary	Common School, Indemnity and Escheat
Current Use	Grazing
Future Use	Residential
Improvement(s)	Fence and Communication site building
(b) Legal	Section 16, Township 19N, Range 17E ( <i>Map Atlas Legend &amp; Data Sources, pg. 43</i> )
Agreement No.	10-060374
Lessee(s)	Hartivg Roseburg, Jr.
Portions:	E1/2SE1/2, E1/2NE1/4, SW1/4NE1/4, W1/2SE1/4
Trust Beneficiary	Common School, Indemnity and Escheat
Current Use	Grazing
Future Use	Residential
Improvement(s)	Fence, Pole Corral and Load Chute
(c) Legal	Section 24, Township 19N, Range 17E ( <i>Map Atlas Legend &amp; Data Sources, pg. 45</i> )
Agreement No.	10-A57362
Lessee(s)	Pat Burke
Portions:	All of Section
Trust Beneficiary	Common School, Indemnity and Escheat
Current Use	Grazing
Future Use	Residential

- |     |                   |  |
|-----|-------------------|--|
|     | Improvement(s)    | Fence  |
| (d) | Legal             | Section 22, Township 19N, Range 17E ( <i>Map Atlas Legend &amp; Data Sources, pg. 44</i> ) |
|     | Agreement No.     | 10-060348  |
|     | Lessee(s)         | Charles C. Ballard   |
|     | Portions:         | E1/2, E1/2NW1/4, NW1/4NW1/4, SW1/4SW1/4  |
|     | Trust Beneficiary | Common School, Indemnity and Escheat   |
|     | Current Use       | Grazing  |
|     | Future Use        | Residential  |
|     | Improvement(s)    | Fence  |
| (e) | Legal             | Section 22, Township 19N, Range 18E ( <i>Map Atlas Legend Data Sources, pg. 47</i> )       |
|     | Agreement No.     | 10-060349  |
|     | Lessee(s)         | Nelson-Gelbvieh  |
|     | Portions:         | W1/2   |
|     | Trust Beneficiary | Common School, Indemnity and Escheat   |
|     | Current Use       | Grazing  |
|     | Future Use        | Residential  |
|     | Improvement(s)    | Fence  |
| (f) | Legal             | Section 26, Township 19N, Range 18E ( <i>Map Atlas Legend &amp; Data Sources, pg.</i>      |

	Agreement No.	10-057328
	Lessee(s)	Milton Femrite and Tracy Femrite
	Portions:	E1/2E1/2, NW1/4NW1/4
	Trust Beneficiary	Common School, Indemnity and Escheat
	Current Use	Grazing
	Future Use	Residential
	Improvement(s)	Fence
(g)	Legal	Section 16, Township 17N, Range 20E ( <i>Map Atlas Legend &amp; Data Sources, pg. 54</i> )
	Agreement No.	10-057752
	Lessee(s)	Michael J. Alberg
	Portions:	NE1/4NE1/4, NW1/4NE1/4, SE1/4NE1/4
	Trust Beneficiary	Common School, Indemnity and Escheat
	Current Use	Grazing
	Future Use	Residential
	Improvement(s)	None
(h)	Legal	Section 22, Township 17N, Range 21E ( <i>Map Atlas Legend &amp; Data Sources, pg. 57</i> )
	Agreement No.	10-A68915
	Lessee(s)	Donald S. Gerard

Portions:	NE1/2NE1/4, SW1/4NE1/4, N1/2NW1/4, SE1/4NW1/4, NE1/4SW1/4, NW1/4SE1/4
Trust Beneficiary	Common School, Indemnity and Escheat
Current Use	Grazing
Future Use	Recreational
Improvement(s)	Fence
(i) Legal	Section 20, Township 17N, Range 22E ( <i>Map Atlas Legend &amp; Data Sources, pg. 59</i> )
Agreement No.	10- 068916
Lessee(s)	Donald S. Gerard
Portions:	All of Section
Trust Beneficiary	Common School, Indemnity and Escheat
Current Use	Grazing
Future Use	Recreational
Improvement(s)	Fence
(j) Legal	Section 16, Township 16N, Range 26E ( <i>Map Atlas Legend &amp; Data Sources, pg. 73</i> )
Agreement No.	10-056966
Lessee(s)	Donald J. Stewart
Portions:	All, except that portion lying north of Hwy. 26
Trust Beneficiary	Common School, Indemnity and Escheat
Current Use	Grazing
Future Use	Commercial
Improvement(s)	Fence

- (k) Legal Section 36, Township 16N, Range 27E (*Map Atlas Legend & Data Sources, pg. 78*)
- Agreement No. 12-A59875
- Lessee(s) DM Ranches
- Portions: Lying northeasterly of the northeasterly line of the R/W for State Rd. No. 26
- Trust Beneficiary Common School, Indemnity and Escheat
- Current Use Irrigated Agricultural
- Future Use Commercial
- Improvement(s) Fence
- (l) Legal Section 36, Township 16N, Range 27E (*Map Atlas Legend & Data Sources, pg. 78*)
- Agreement No. 10-A59874
- Lessee(s) Phil Michel
- Portions: W1/2SW1/4, SE1/4SW1/4
- Trust Beneficiary Common School, Indemnity and Escheat
- Current Use Grazing
- Future Use Grazing
- Improvement(s) Fence
- (m) Legal Section 16, Township 15N, Range 28E (*Map Atlas Legend & Data Sources, pg. 80*)
- Agreement No. 10-058433
- Lessee(s) David Newman
- Portions: Lying south of southerly boundary of an easement for right

	of way for county road
Trust Beneficiary	Common School, Indemnity and Escheat
Current Use	Grazing
Future Use	Orchard
Improvement(s)	Fence

Potential Areas

(n)	Legal	Section 36, Township 12N, Range 29E ( <i>Map Atlas Legend &amp; Data Sources, pg. 91</i> )
	Agreement No.	12-A63302
	Lessee(s)	Rocking "E" Ranch
	Portions:	NW1/4, NW1/4NE1/4, S1/2NW1/4, N1/2S1/2, SE1/4SW1/4
	Trust Beneficiary	Common School, Indemnity and Escheat
	Current Use	Irrigated Agricultural
	Future Use	Irrigated Agricultural
	Improvement(s)	Fence; Center Pivot 1,250' and Pad Center of Section; Center Pivot 635' and Pad; 2,540' 12", 10" and 6" Mainline; Canal Turnout and Pipe; Electrical Panel NE Corner
(o)	Legal	Section 16, Township 16N, Range 25E ( <i>Map Atlas Legend &amp; Data Sources, pg. 70</i> )
	Agreement No.	10-060383
	Lessee(s)	Donald J. Stewart
	Portions:	S1/2, NE1/4, NW1/4
	Trust Beneficiary	Common School, Indemnity and Escheat

	Current Use	Grazing
	Future Use	Grazing
	Improvement(s)	Fence
(p)	Legal	Section 16, Township 16N, Range 24E ( <i>Map Atlas Legend &amp; Data Sources, pg. 67</i> )
	Agreement No.	12-063292
	Lessee(s)	Dave Eilers
	Portions:	All of Section
	Trust Beneficiary	Common School, Indemnity and Escheat
	Current Use	Irrigated Agricultural
	Future Use	Irrigated Agricultural
	Improvement(s)	Circles NE4 and SE4; 3,633 feet Mainline E2; Electrical Panel and Underground wiring; Well in SE4

*Q. Will You Please Elaborate On Your Concerns Regarding OPL's Proposed Work On State-Owned, DNR Managed, Agricultural Land?*

A. OPL states that the impacts of construction on agricultural activities are considered minor because of the short and temporary duration of construction. OPL does not appreciate the limitations that DNR's lessees and other users have with regard to their annual operations. Therefore, staff within DNR's agricultural program have identified several potential impacts to agricultural lands that must be addressed in light of DNR's contractual obligations and fiduciary duty to future generations of trust beneficiaries. DNR leases authorize additional uses that do not negatively impact the authorized use under an existing lease or other use authorization; if there will be impacts to the leasehold

or other property interest, DNR is contractually obligated to mitigate; OPL should be required to assume the same responsibility. In addition to preserving, protecting and perpetuating the natural resources, OPL should also be required to satisfy the needs, contractual rights, and reasonable expectations of each lessee and the various trusts, as follows:

- a) *Irrigated Agricultural or Potential Irrigated Agricultural Land:* Where there are existing, prior users of DNR managed irrigated agricultural land, OPL should be required to make compensation to the lessee and the state for any interference, interruption, damage to irrigation infrastructure, and loss of present and future productivity and revenue. Where DNR has land held in trust that has the potential to be used as irrigated agricultural land, OPL should be required to compensate the trust land account for the lost revenue, in perpetuity, for OPL's superseding use, in an amount that adequately compensates the trust. Otherwise, the trust beneficiaries will be under-compensated for lost future value, and DNR will fail to provide intergenerational equity (which is DNR's duty as a fiduciary).
  
- b) *Grazing and Rangeland:* Adequate communication, planning and compensation should predate any intended disruption of cattle grazing, to fulfill contractual obligations to a lessee (so he can afford to purchase replacement range or feed and be in a position to have his cattle out of the area where OPL will be working). Range science strongly recommends that complete restoration take place before cattle are returned to a pasture, to protect the delicate reseeded plants that have been growing from trampling by the hooves of cattle (as indicated earlier in the weed section, it may take one to three years for vegetation to grow and mature on

a site so that all of the niches are filled, the soil is stable and the plants are sufficiently mature and stabilized to be able to handle the trauma of cattle grazing without suffering biological shock or setback, or being more susceptible to invasion by weeds).

A cattle rancher's need to utilize the grass on a certain fenced range may exist for only a few weeks each year; it is part of an annual scenario of moving cattle from one range to another, several times a year, following the green-up of the grass. A rancher must know months in advance if his normal range area is not going to be available for use, since alternative arrangements must be made well in advance (assuming a substitute range can be found, if not, confined feeding may be the only alternative). As a matter of general concern, it is imperative that OPL understand and be responsive to the fact that a breach of a fenced-in range area, where cattle are present, either within or without, for even one minute, can cause disaster for a rancher and his cattle. Therefore, it is recommended that OPL be restricted from accessing an enclosed pasture with cattle present.

Thus, while OPL is working on rangeland within any fenced area, grazing will not be practicable, and it is recommended that OPL be required to pay compensation to the range operator for the cost of finding and using other grazing land during scoping, construction and rehabilitation of the affected land. As mentioned above, it is to be expected that, due to the time that it takes for new vegetation to become established, mature and stabilize, it may be several years before the area disturbed by the pipeline is again ready and appropriate for grazing. OPL should be required to fence cattle out of their pipeline corridor for 2-3 years, while work is being done and while the landscape is being stabilized

and revegetated. It will take several years for the disturbed ground to be fully rehabilitated and suitable for the impacts of returned cattle grazing. Even under the best of conditions, a range operator will need compensation for inconvenience and lost grazing forage, until historic amounts of forage are again available. Of course, it is imperative, for the safety of the cattle, and to avoid unnecessary liability, that all gates remain closed at all times cattle are nearby. OPL has already agreed that any damage to fencing material will be immediately repaired and/or replaced by OPL.

If DNR were overseeing and authorizing an additional use of already leased land, DNR would have two major concerns, one for the legal rights and contractual expectations of the lessee, and the other for the long-term health of the natural resource (it will take time to heal). Therefore, DNR recommends that there be a two-fold approach when OPL crosses DNR managed rangeland: the first goal should be to compensate the rancher/lessee fairly for all interruption and loss of value to his leasehold interest (he should have no additional expense or uncompensated inconvenience that OPL does not cover); the second goal should be to protect the long-term value of the natural resource by keeping people and animals out while it is healing from the effects of the laying of the pipeline (this means proper revegetation of the site and adequate rest before grazing it again). Since DNR is the landlord and the natural resource manager of the land, it is recommended that OPL be required to come to agreement with the lessee, the DNR Unit Manager, and a DNR Range Specialist, prior to soil disturbance, as to the agreed upon approach that will meet everyone's needs, and that they continue to work together until they all agree that the land has been fully rehabilitated and

is ready to go back into service without further ecological concerns for health or stability.

*Q. Are There Sites That Are of Particular Concern to You? What Recommendations Do You Have ?*

A. Yes. The legal descriptions are still somewhat unclear, however, based on what DNR has seen so far, DNR field people have concerns over the following parcels. These sites illustrate problems that should be resolved before approval is given to OPL to proceed:

a) Section 16, Township 16N, Range 24E (refer to Q.&A.#11, item (p))

Since there is active agricultural cultivation of this section, and deep cultivation penetrates the soil with steel implements to several feet of depth, the pipeline should be located along the south border of the section and buried a minimum of 7 feet in order to not interfere with farming practices. Should farming become impractical on any part of the parcel, then compensation for inconvenience to the farmer and compensation to the trust for loss of revenue to the trust beneficiaries would be in order.

b) Section 16, Township 15N, Range 28E (refer to Q.&A.#11, item (m))

This parcel has future potential for an orchard and the pipeline will reduce the number of acres that can be planted. The pipeline should be located along the north edge of the parcel and buried a minimum of 7 feet for minimum impact to farming operations. The future development of this property into orchard is part of an active management plan of DNR. Any portion that cannot be included in the planned orchard development because of encumbrance by the pipeline needs to be addressed prior to laying the pipeline; DNR, as fiduciary for the trust

beneficiaries, has the responsibility to see that the trust account is fully and fairly compensated for any use (and lost future revenue) attributable to OPL's pipeline.

- c) Section 16, Township 16N, Range 26E (refer to Q.&A.#11, item (j))

This parcel is located 3 miles east of Royal City and is in DNR's active management plan as a future commercial use site. The pipeline right of way will run along side of the highway and cut through the state land and eliminate most of the commercial potential for this parcel. This is because OPL will not want commercial traffic driving over the pipeline. To be valuable commercial property, free-flowing public access is critical; currently the site has the needed accessibility; if the OPL pipeline utilizes this land, then the value of the property for commercial use is greatly diminished. If the location of the pipeline cannot be changed, then it is the fiduciary responsibility of DNR to obtain adequate compensation to the trust (ultimately, to the beneficiaries of the trust) for lost future revenues, or to purchase suitable replacement land.

- d) Section 20, Township 17N, Range 22E (refer to Q.&A.#11, item (i));  
Section 22, Township 17N, Range 21E (refer to Q.&A.#11, item (h)); and,  
Section 16, Township 17N, Range 20E (refer to Q.&A.#11, item (g)).

In terms of natural resource preservation, protection, and perpetuation (DNR's responsibilities under RCW 79.10.295), these shrub steppe parcels will be significantly impacted if OPL does not incorporate and implement Washington State Department of Fish and Wildlife's (WDFW) regulations for construction where streams exist, as pertaining to DNR managed lands. DNR, as a conservator of public land, wants to make sure OPL, acting on state land, does everything possible to preserve, protect and perpetuate the natural resource values that are

present, just as DNR would do if they were laying a pipeline. DNR would follow WDFW guidelines, and, therefore, DNR strongly recommends that OPL be required to do the same.

I certify and declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge and belief.

SIGNED at Wenatchee, Washington, on this \_\_\_\_\_ day of February, 1999.

\_\_\_\_\_  
Paul Penhallegon