



Oregon

Kate Brown, Governor

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January 21, 2020*

State Land Board

Ms. Natalie Eades
Jordan Cove LNG
111 SW 5th Ave, Suite 1100
Portland, OR 97204
Via Email: NEades@pembina.com

Kate Brown
Governor

Bev Clarno
Secretary of State

Subject: Response to January 16, 2020, Extension for Time to Review Permit

Tobias Read
State Treasurer

Dear Ms. Eades:

I am in receipt of your letter dated January 16, 2020, wherein you requested an extension from January 31, 2020, to March 31, 2020, for the Department to make a decision on the Jordan Cove Energy Project's (JCEP) removal-fill permit application number 60697-RF.

In your letter you cite the following factors as a need for the extension: 1) more time is needed to file JCEP's Clean Water Act Section 401 application with DEQ, which you say "will not be finalized until late this month;" and, 2) JCEP is awaiting comments from the Department's attorney on JCEP's draft bonding agreement and non-disclosure agreement regarding your commercial customers.

In the second paragraph of the letter you state that you are concerned the current deadline of January 31, 2020, "will not provide enough time to finalize the outstanding items noted above, *among others*, and subsequently allow the Department sufficient time to incorporate them into its review and permitting decision." [Emphasis added.]

You correctly cited OAR 141-085-0560(6)(b) in your letter requesting an extension: "The permit decision deadline may be extended beyond 90 calendar days when the applicant and the Department agree to an extension." In this case, the Department does not agree to an extension and is therefore denying your request. My reasons are set out below.

As you know, the present removal-fill permit application was filed with the Department on November 3, 2017. The Department determined the application was incomplete November 30, 2017, and agreed to extend deadline for resubmittal of a revised application to April 30, 2018. We subsequently agreed to extend the resubmittal deadline to May 18, 2018. We received a revised removal-fill permit application on May 10, 2018. On June 4, 2018, JCEP requested the Department suspend its review of the revised application and change the application status to "awaiting revision."

**A corrected copy was provided on January 22, 2019. The original incorrectly stated the date of the Jan. 16, 2020 conversation as Jan. 16, 2019. Additionally, mitigation plans are compensatory, not comprehensive. Those edits are reflected in this document.*

On August 24, 2018, JCEP requested that the "awaiting revision" application status continue, and that the resubmittal deadline be extended to November 30, 2018. The Department agreed. On November 7, 2018, the Department received another revised removal-fill application. We conducted a completeness review and determined the application was sufficiently complete to be circulated for public review and comment. On December 6, 2018, the public comment period was opened and remained open until February 3, 2019.

During the public comment period, the Department held five public hearings around the state: Klamath Falls, Central Point, Canyonville, Coos Bay, and Salem. More than 2,000 people are estimated to have attended those hearings. The Department received more than 49,000 comments during the entire public comment period.

The Department was required to provide JCEP with a removal-fill permit application decision by March 5, 2019. Due to the volume of public comments, the Department requested an extension to September 20, 2019. JCEP agreed.

The Department completed its review of the public comments and sent our Public Review issues letter to JCEP on April 10, 2019. JCEP submitted its initial response to the April 10 letter on May 9, 2019. The Department met with JCEP on July 10, 2019, to review that response.

On September 4, 2019, the Department received JCEP responses to public comments. JCEP indicated that a second response to public comments would be forthcoming on October 20, 2019. We received only partial responses in several communications after October 20, 2019.

On September 13, 2019, JCEP requested an extension to January 31, 2020. The Department agreed by letter of the same date to the extension.

On October 7, 2019, DSL staff Bob Lobdell and I met with Harry Anderson and Mike Koski from Pembina to discuss concerns regarding delineation issues. We reviewed the letter I sent to Mayor Benetti and the Coos Bay City Council on October 7, 2019, indicating that a removal-fill permit for JCEP could not be issued without an affirmative Land Use Compatibility Statement (LUCS) from each of the local jurisdictions in which the removal-fill activity will occur. I also hand-delivered a letter to Mr. Koski regarding the items upon which the Department could hypothetically consider conditioning a removal-fill permit, as well as those items we could not. We also reviewed and discussed the decision deadline of January 31, 2020.

On November 12, 2019, the Department provided a letter to JCEP outlining the remaining issues to resolve public comments. On November 14, 2019, the Department met at length with JCEP and its representatives to discuss that letter.

On December 5, 2019, JCEP submitted a letter responding to the Department's November 12, 2019, letter. The Department and JCEP representatives again met at length on December 12, 2019. I sent a letter to JCEP following the meeting summarizing what needed to be done to update information on the Joint Permit Application form. I requested those updates be provided by January 2, 2020. An email was

received January 3, 2020, that provided the Department with updated impact tables and figures but did not adequately address all outstanding issues.

On December 18, 2019, the Department received an email and letter attachment from you that did not satisfactorily answer the outstanding questions. The letter also contained incorrect assumptions about agreements between agencies regarding a mitigation plan the Department has not yet received.

Over the next several weeks, several emails provided only partial responses to outstanding questions.

On the evening of January 15, 2020, the Department received an extensive, very specific 18-page letter from the Oregon Department of Fish and Wildlife (ODFW) outlining several outstanding issues. ODFW states in their letter that "At this time, it is difficult for ODFW to provide an updated comprehensive review when the most current information has only been provided in a piece-meal fashion." The JCEP letter and email of December 18, 2019, stated that state agencies were in agreement on these issues; in contrast, the ODFW letter indicates that these issues have not been resolved.

On January 16, 2020, I received a call from Mike Koski. Mr. Koski outlined the request for an extension to March 31, 2020, indicating additional time was needed to finalize the Section 401 application to DEQ. Mr. Koski noted JCEP was unable to file the application on January 14, but they were working hard with DEQ staff and anticipated a mid-February submittal.

I subsequently contacted DEQ Director Richard Whitman for additional information regarding current status of the JCEP 401 application. Director Whitman indicated DEQ staff had been prepared to receive the application on January 14 and had been notified a short time before that JCEP was not ready to file. I also asked Director Whitman how long it would take for DEQ to review an application for completeness once it was received, and he said at least 4-6 weeks. Director Whitman provided additional information regarding his concerns in a follow-up email.

That brings us to the present letter of January 16, 2020, requesting an extension to March 31, 2020. In addition to indicating more time is needed for the Section 401 permit application, the letter indicates JCEP is awaiting the non-disclosure agreement (NDA) and draft bonding agreements from DSL counsel. Our counsel has indicated to me the letter of credit draft is acceptable, and that emails indicate your counsel was to provide the first draft of the NDA; he has not done so. There is still time for you to do that.

Please be aware the Department has not yet received requested critical information regarding the eel grass Compensatory Wetland Mitigation plan, the Kentuck Compensatory Wetland Mitigation issues raised by ODFW, the analysis of temporary impacts to wetlands and waters, the stream mitigation to resolve ODFW's comments, the protection instruments and bonding for the mitigation sites, and the updated LUCS from Coos Bay, North Bend and Coos County, among other issues. Mr. Koski indicated the LUCS had been secured and would be provided by mail; the Department has yet to receive them.

The Department has long worked with JCEP in establishing reasonable timelines for submission and review of the removal-fill permit application. My staff and I have clearly and regularly communicated

regarding the remaining information needed, making ourselves available for numerous phone calls and meetings and engaging in regular email correspondence.

I previously indicated in September and December the possibility of revisiting the January 31, 2020, decision timeline. However, the Department has not received timely and sufficient information to address all outstanding questions. Therefore, we will make a decision on January 31, 2020, based on the record in front of us.

Sincerely,



Vicki L. Walker, Director
Oregon Department of State Lands

Cc: Mike Koski, Pembina
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Sen. Betsy Johnson
Sen. Arnie Roblan
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Director Jim Rue, Oregon Department of Land Conservation and Development
Director Curt Melcher, Oregon Department of Fish and Wildlife
Director Janine Benner, Oregon Department of Energy
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