



## NORTHWEST PROPERTY RIGHTS COALITION

January 30, 2009

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Subject:** Palomar Gas Transmission, LLC, Docket No. CP09-35-000

Dear Ms. Bose,

The following discussion addresses Palomar's *Agricultural Construction Management and Recovery Plan*.

**Bold** indicates new language.

We feel that it is an unnecessary burden on land owners to have to appeal for compensation after a foreseeable loss in productivity. Farming is a precarious enough endeavor.

### 4.3 Determining Construction-Related Damages

4.3b

**The landowner and/or tenant will be compensated on March 1<sup>st</sup> of each year for the estimated loss of production for as many years or parts of years that construction continues.**

**Compensation shall not be limited to only the acreage directly affected, but at the landowner's sole determination, all land made inconvenient to nurture and harvest.**

**On each following March 1<sup>st</sup> he landowner and/or tenant will be further compensated for 100 percent of the reasonable amount of additional damages caused to crops as a result of the construction activities during the prior year of construction.**

4.3 e

Palomar's plan that "Post-construction claims for damages or crop deficiencies will be assessed on an individual basis by Palomar or their agents and will be evaluated in a timely manner following notification of such damages or deficiencies from the landowner and/or tenant" is too vague, and one-sided placing the burden of proof on the landowner.

We suggest specific times to respond such as 30-days and the addition of the following language:

**The entire reduction of production in any field in which construction related activities took place shall be presumed to be entirely attributable to the pipeline construction.**

4.6b

**Palomar will construct temporary fences and gates across the construction area, as deemed necessary by the landowner or Palomar.**

#### **4.9 Construction in Wet Conditions**

a) Palomar will attempt to schedule construction activities to avoid the wettest times of the year. On excessively wet agricultural soils, Palomar will restrict certain construction activities such as the operation of heavy equipment, as feasible; or will take other appropriate action such as use of mats or other wetland construction techniques, so that soil productivity is preserved or so that soil productivity can be restored.

We request a more objective standard for “excessively wet agricultural soils”

**a) Palomar will curtail construction activities at the wettest times of the year. On excessively wet agricultural soils [those soils that...], Palomar will restrict certain construction activities such as the operation of heavy equipment; or will take other appropriate action such as use of mats or other wetland construction techniques, so that soil productivity is preserved.**

#### **4.19 Weed Control**

Many landowners, while not certified organic, nonetheless employ sustainable or “no spray” techniques. Palomar’s plan will force those landowners to seek organic protections contemplated later in this section. Instead, we request Palomar create a “NO SPRAY” or similar category or allow any landowner to avail themselves of the Organic regimen.

#### **Prohibited Substances**

**At landowner request the property shall be designated “NO SPRAY” and shall be treated as if it were , Organic Agricultural Land. No herbicides, pesticides, fertilizers, or seed will be applied unless requested and approved by the Landowner. Likewise, no refueling, fuel or lubricant storage, or routine equipment maintenance will be allowed.**

**Equipment will be checked prior to entry to make sure that fuel, hydraulic, and lubrication systems are in good working order before working on NO SPRAY lands. In the event that a mechanical problem develops during construction within NO SPRAY Land, the construction contractor will make the necessary repairs at the point of the problem, rather than moving the equipment off the right-of-way before undertaking repairs.**

Sincerely

Marc Auerbach,  
Chair