

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

<p>IN THE MATTER OF IDAHO POWER COMPANY'S PETITION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY</p>	<p>Docket: PCN 5</p> <p>Opening Brief Intervenor Susan Geer representing Whitetail Forest LLC and Glass Hill State Natural Area</p>
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Date: May 15, 2023

Susan Geer, Intervenor

**906 Penn Ave
La Grande, OR 97850
susanmgeer@gmail.com**

1 **Introduction**

2 In Opening testimony, Intervenor Susan Geer, representing Whitetail Forest LLC and Glass Hill
3 State Natural Area, presented four arguments, with supporting testimony of expert witness
4 Michael McAllister:

5 1. Of the Union County alternatives, the Morgan Lake route has the highest quality and
6 quantity of native habitat, rare organisms, and priority plant communities.

7

8 2. Viable better alternatives to the Morgan Lake route exist

9

10 3. Development of the Morgan Lake route is not compatible with the greatest public good or
11 the least private injury.

12

13 4. The Morgan Lake route was developed through fraud and deceit on the part of Idaho
14 Power

15 Subsequently there have been Reply (Idaho Power), Rebuttal (Ms. Geer), and Surrebuttal (Idaho
16 Power) testimonies which further delve into the details, yet at the end of the day these statements
17 remain true.

18

19 **Applicable Rules**

20 Oregon statutes state that OPUC must find the route to be justified in the public interest:

21 ORS 758.015(2) begins:

22 The commission shall give notice and hold a public hearing on such petition. The
23 commission, in addition to considering facts presented at such hearing, shall make the

1 commission's own investigation to determine the necessity, safety, practicability and
2 **justification in the public interest** (emphasis added) for the proposed transmission line and shall
3 enter an order accordingly.

4 In addition, the route must be **justified as compared with alternatives** (emphasis added). OAR
5 860-025-0035 states:

6 (d) Whether petitioner has justified construction of the proposed transmission line as in
7 the public interest, as compared with feasible alternatives for meeting the identified need
8 (emphasis added) considering the public benefits and costs of the project, as they relate to the
9 interests in land proposed to be condemned, petitioner's existing facilities and equipment,
10 petitioner's Oregon customers, and other considerations that may be relevant to the public
11 interest. Other such considerations include, but are not limited to, the benefits and costs to other
12 Oregon utilities, their customers, and all Oregonians, the value of connections to regional and
13 inter-regional electricity grids and to a petitioner's non-Oregon service territories, and all
14 Oregonians.

15 Furthermore, in ORS 35.235 the condemner must locate the route with the "**greatest public good**
16 **and least private injury**" (emphasis added):

17 (2)

18 The resolution or ordinance of a public condemner is presumptive evidence of the public
19 necessity of the proposed use, that the property is necessary therefor and that the proposed use,
20 improvement, or project is planned or located in a manner which will be **most compatible with**
21 **the greatest public good and the least private injury**.

22 (3)

1 The commencement of an action to condemn property by a private condemner creates a
2 disputable presumption of the necessity of the proposed use, that the property is necessary
3 therefor and that the proposed use, improvement, or project is planned or located in a manner
4 which will be *most compatible with the greatest public good and the least private injury*.

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6 **Ms. Geer's Arguments**

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8 **Of the Union County alternatives, the Morgan Lake route has the highest quality and**
9 **quantity of native habitat, rare organisms, and priority plant communities.**

- 10
11 a. Morgan Lake route bisects Glass Hill State Natural Area, home of highest quality and
12 quantity of native habitat, rare organisms, and priority plant communities, AND privately
13 owned but open to the public for non-motorized nature-oriented activities.

14 As a State Natural Area, Glass Hill Natural Area, like other State Natural Areas, is important in
15 preserving element occurrences of rare plants and animals, as well as plant associations which
16 are not protected elsewhere in the state. I believe the ALJ and EFSC erred in their interpretation
17 of Energy Facility Siting Council (EFSC) Rule OAR 345-022-0040 as of 2020 which, although
18 worded in a very confusing way, clearly was meant to protect all State Natural Areas. The
19 wording of that existing rule was so ambiguous that a rule-making process was started by the
20 EFSC. As a result of the initiation of rulemaking, Idaho Power entered an ex parte
21 communication to the Judge Webster Greene, who ruled that Petitioners could file responses.
22 Susan Geer 100/Exhibit 101 contains the filing and responses. Others and I argued this point in
23 public comments submitted during the preliminary phase of Protected Areas Rulemaking process

1 (Susan Geer 100/Exhibit 102). Scenic Area and Recreation Area rulemaking was lumped with
2 the Protected Area rulemaking. None of these rules had been updated for quite some time. The
3 fact is that Glass Hill State Natural Area meets all the criteria and is in fact a State Natural Area.
4 It makes no sense to exclude a State Natural Area from protection, especially as, it is my
5 understanding that once a transmission line is built, the same right of way and access roads are
6 then subject to future unknown additional developments.

7 Morgan Lake route includes the highest elevation and has a series of moist meadows, while the
8 Agency-preferred route is on dry ridges and the Mill Creek route is lower and does not contain
9 the quantity and quality of habitat the Morgan Lake route has. Morgan Lake route bisects Glass
10 Hill State Natural Area. Over half of the property has been under conservation easement with
11 Rocky Mountain Elk Foundation since 2001 (Geer 100/Exhibit 107). When Dr. Rice acquired
12 the property, it was towards a lifelong dream to conserve 2000 acres for native plants and
13 animals. Dr. Rice's 2022 letter concerning Protected Areas rulemaking expresses his vision for
14 the land (Geer 100/Exhibit 108). At this point there has been no development, livestock grazing,
15 or commercial logging for well over 20 years. The property contains three major wet meadow
16 systems; the highest and most pristine is the 36-acre Winn Meadows. In 2011, botanist Dr.
17 Antell inventoried the meadow (*Vegetation of Winn Meadows*, Geer 100/Exhibit 109). In the
18 Introduction she recognizes the botanical richness and pristine unroaded quality of the montane
19 meadow, together with its value as part of a corridor of undisturbed native habitat. The property
20 is bounded to the west by Rebarrow Experimental Forest (EOU) and to the east by ODFW
21 foothills property that connects to the Ladd Marsh Wildlife area. This corridor was called "the
22 Miracle Mile" in communication between ODFW and Rocky Mountain Elk Foundation when
23 RMEF acquired the Foothills property and eventually transferred it to ODFW. A 2001 article in

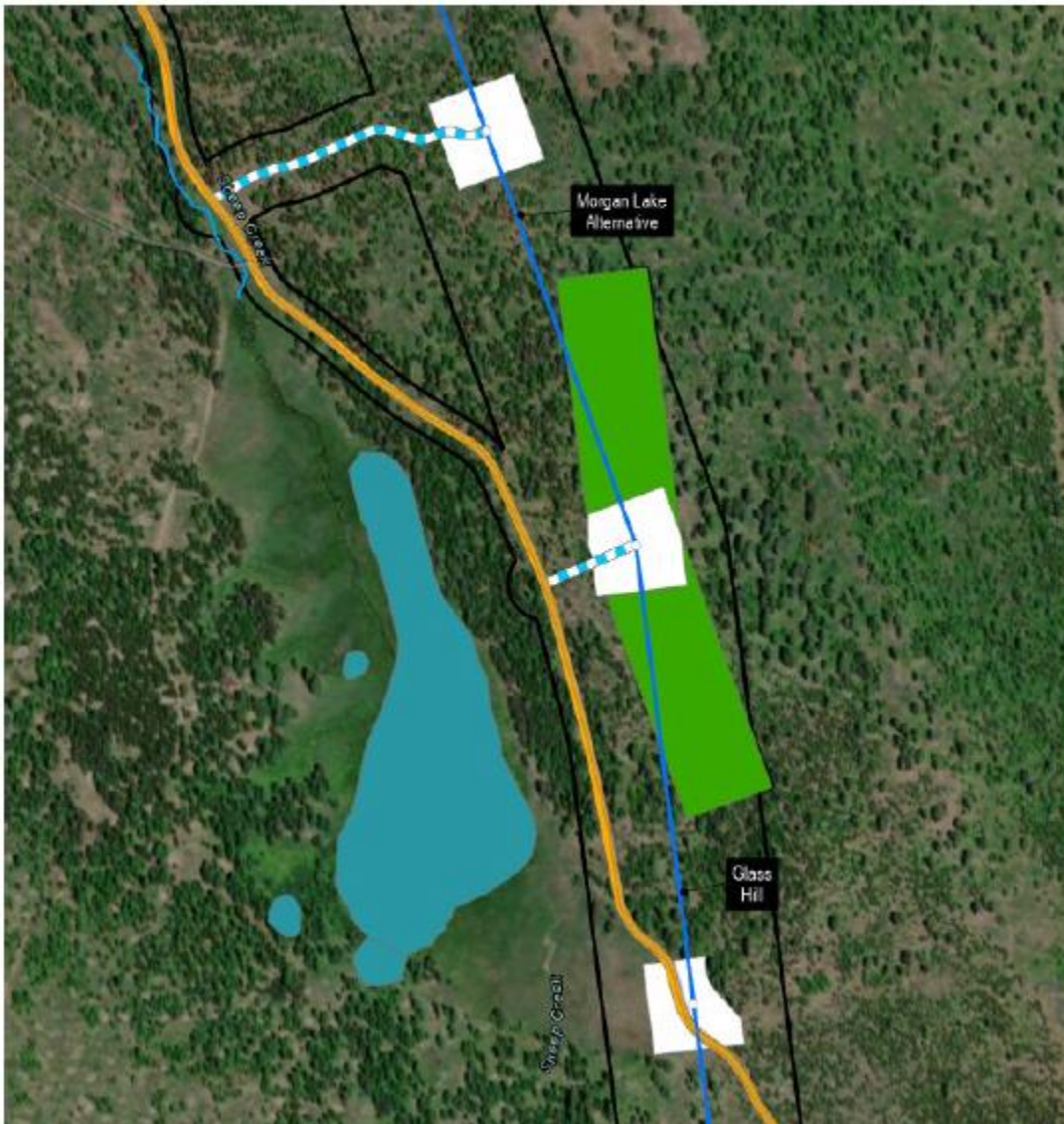
1 the *La Grande Observer* celebrated the win for wildlife, the public good, and public access and
2 learning (Geer 100/Exhibit 110). In 2019 the Rice property was dedicated as a State Natural
3 Area. Over half of the Rice property is under the 2001 conservation easement, including the
4 Winn Meadows and Bushnell Meadows; Dr. Rice is currently working with Blue Mountain Land
5 Trust to get a conservation easement funded for the remaining acres. In my testimony for issue
6 SR-5, a contested case with the EFSC (Geer 100/Exhibit 111), I elaborated on why Glass Hill
7 Natural Area deserves protection. Documents recognizing the Registration and Designation of
8 Rice Glass Hill State Natural Area are in Geer 100/Exhibits 112 and 113.

9 In Reply (Idaho Power 1400), Mr. Ottenlips claims the Project would not impact Winn meadow
10 because “no Project component is within the NWI-mapped wetland feature”. In Rebuttal, Ms.
11 Geer (Geer 200/ Geer p.6) points out Mr. Ottenlips’ answer is only true of direct impacts i.e.
12 ground disturbance. The “improvement” of the 50-year-old logging road at the headwaters of
13 Sheep Creek/ north end of Winn meadow could well change the hydrology of that area, creating
14 serious indirect impacts; these impacts extend to introduction and increased movement of
15 invasive species along the road and into the meadow. The “improved” road could attract trespass
16 vehicles to go “mudding” in the meadow.

17 Furthermore, clearcutting a 250-foot-wide swath through the forest east of Winn meadows and
18 only 100 to 200 feet away would change the character of the entire area and introduce numerous
19 indirect and cumulative impacts. One is the barrier effect, prohibiting movement for wildlife
20 such as pine martens which will not cross a non-forested area. Complete and permanent
21 elimination of forest canopy would cause a shift in the plant community. Currently that area is a
22 cool mesic forest dominated by lodgepole pine and grand fir with an understory of grouse

1 huckleberry and twinflower, with an array of forest wildlife living there. It is likely such a
2 drastic shift in conditions would promote large stands of invasives.
3 Mr. Ottenlips focuses only on the mapped wetland feature at Winn meadows, presumably
4 because he is only doing a desktop exercise in GIS. This focus does a great disservice to the
5 integrity of Glass Hill State Natural Area, where native plants and animals have been
6 undisturbed for well over 20 years. Figure 2 from Ottenlips (Idaho Power 1400) demonstrates
7 just how extreme the impact of the Project would be on this currently pristine 37 acre wetland.

Figure 2. Project Features in Proximity to Winn Meadow/NWI Delineated Wetland



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b. Morgan Lake route causes impacts to plants and animals of Twin Lake, a high-quality wetland that is part of Morgan Lake City Park.

One valuable feature on the Morgan Lake route is the fragile and unique wetland of Twin Lake (aka Little Morgan Lake), the subject of a recent article by Dr. Karen Antell (Geer 100/Exhibit 104). Dr. Antell was inspired to write it after reading another article describing the ecological importance and special nature of undisturbed ponds, the fact that they have the least protections of any type of wetland and decrying worldwide threats to them Why Scientists are Rallying to Save Ponds (Geer 100/Exhibit 105). Twin Lake has established nesting sites for bald eagles, osprey, and celebrated return last year of the sandhill cranes, and Columbia spotted frogs have spawned there. Further information on the history and character of Twin Lake is found in a memo written in 2017 by Wildlife biologist Michael McAllister in response to a City of La Grande call for information (Geer 100/Exhibit 106). McAllister points out the recognition in the Oregon Conservation Strategy of Twin Lake, as a persistent emergent wetland with both submerged and floating plants, as well as the unique waterfowl nesting community. It is one of the premier birding locations in Northeast Oregon.

When asked how Morgan Lake Alternative would impact Twin Lake, Mr. Ottenlips incorrectly Replies (Idaho Power 1400) “No. No Project component is located within Morgan Lake Park, and as a result no component of the Morgan Lake Alternative will directly impact Twin Lake.” This is a mis-leading response. When I visited Twin Lake in 2021 and observed survey markers presumably placed there by Idaho Power/Tetra Tech, they were within the City Park boundary. Perhaps Ottenlips or the survey team was confused as I explain in Rebuttal (Geer 200/ Geer p.5) or perhaps Idaho Power has now slightly shifted their route to be just outside the Park boundary.

1 The fence line was placed up in the rocks by Mr. Williams, presumably to avoid the wet hillside
2 and allow his cattle to drink from the spring. There is an occurrence of the rare plant *Trifolium*
3 *douglasii*, Douglas clover. There may also be rare sedges.

4 Mr. Ottenlips uses the term “directly impact”. With his background in NEPA, we can assume he
5 knows that terminology. In NEPA, a “direct” impact is immediate. For example, bulldozing the
6 wetland plants would be a direct impact. In addition to these “direct” impacts, the proximity of the
7 project to Twin Lake wetlands would have profound indirect and cumulative impacts. The obvious
8 indirect impacts would be introduction of invasive species, disruption to the wildlife due to noise
9 and corona, the “barrier” effect wherein wildlife are hesitant to cross a de-forested area, and
10 increased mortality to the birds and bats which are found at Twin Lake in higher density than
11 anywhere else in the surrounding area.

12 As stated in Ms. Geer’s Rebuttal (Geer/200), if we assume that the project boundary would instead
13 stop at the property line, the Twin Lake wetlands would still be impacted. The project would be
14 about 125 feet from the lake itself. This southwest side of the lake has a rocky rim above the lake
15 with dense mature trees and shrubs that provide nesting habitat for numerous bird species,
16 including the bald eagle, among others. A steep slope drops to the southwest, and this is where
17 the B2H project proposes to construct. The hillside is wet, with a spring emerging. It has various
18 habitats because it is a combination of rocky spots and wet moist areas of both obligate and
19 facultative wetland plant species. Wetlands are defined by the presence of wetlands plants. In
20 the National Wetland Plant List, used to define wetlands, obligate plants are those which always
21 occur in wetland soils and facultative-wet plants nearly always occur in wetland soils.

1 Note that Mr. Ottenlips did not survey the project area boundary adjacent to Twin Lake himself.
2 The entire basis for his assertion that the Morgan Lake alternative would not impact Twin Lakes
3 Wetland is that it would not be located within the Park boundary.

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5 c. Of the Union County alternatives, Morgan Lake route would clear cut the greatest number
6 of forested acres.

7 BLM FEIS Chapter 3.2.3, 3.3.3, and Table S, S-11.

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9 d. Morgan Lake route impacts habitat of Federal Species of Concern: Douglas clover, white-
10 headed woodpecker, and Columbia spotted frog, as well as bald eagles and sand hill cranes.

11 Three Federal Species of Concern have been recorded in the Glass Hill Natural Area adjacent to
12 Morgan Lake Route in past years. More recently, in August 2022 myself and Paula Brooks, retired
13 botanist, spent a day surveying Winn Meadows to document the Douglas clover more fully. We
14 found it was more extensive than previously thought, and it may be the largest occurrence in
15 Oregon. The clover is highly concentrated in the moister parts of the meadow. The survey and
16 occurrence information have been submitted to ORBIC. In November 2021 I observed what I
17 believe was a fisher on the Glass Hill Natural Area near a spring. Camera traps set by the USFWS
18 in spring 2022 did not record any; At this time wildlife biologist Michael McAllister has set up
19 camera traps in likely places, but we hear that capturing fisher on camera can take years. Fisher
20 have not been seen in Northeast Oregon since the 1960s, so it would be an important find. Other
21 than that, those of us with the most interest in the flora and fauna of the area have been pre-
22 occupied with the EFSC contested case process, in addition to working full time in our careers so
23 we have not conducted the surveys we otherwise would have done.

1
2 Sandhill cranes and bald eagles nest at Twin Lake and are protected under the Migratory Bird
3 Treaty Act (USFWS) and eagles additionally are protected under Bald and Golden Eagle
4 Protection Act. With regards to bald eagles, Mr. Ottenlips (Idaho Power 1400) attempts to console,
5 saying, “The site certificate for the Project requires the Company to comply with specific temporal
6 and spatial restrictions during construction which will ensure that construction of the Project does
7 not disturb nesting bald eagles”. While I am glad to hear that Idaho Power does not intend to
8 disturb nesting eagles during construction, this does nothing to alleviate the increased chances for
9 mortality with the proximity of the power line, nor the disturbance from ongoing noise and corona
10 the line would bring. Mr. Ottenlips makes mention of no other wildlife, presumably because he
11 did no surveys.

12
13 e. Morgan Lake route is likely habitat for a newly discovered species of *Pyrrocomma*, unique
14 to the area.

15 My Public Comment to PCN5 (Geer 100/Exhibit 103) discusses the discovery of a new species
16 of goldenweed (*Pyrrocomma*). In the grasslands around Morgan and Twin Lakes, I noticed a
17 goldenweed that reminded me of the rare plant *Pyrrocomma scaberula*, a relict species of prairie
18 remnants found only in isolated parcels on the south edge of the Palouse. I could not quite get
19 this taxon to key to that species using the new Flora of the Pacific Northwest (Flora), so retired
20 botanist Paula Brooks and I made collections, then I sent specimens to Dr. David Giblin, the lead
21 author of the Flora, in both 2021 and 2022. When Dr. Giblin had a chance to study them, he
22 emailed saying he thought they were an undescribed species (Geer/Exhibit 115) and we agreed to
23 work together in describing it.

1 My concern is, this is an undescribed rare species that has no legal protection and there is going
2 to be potential habitat on the Morgan Lake route. Obviously, It was not included in the surveys
3 done by contractors. In my opinion the importance of the grasslands around Morgan Lake is
4 almost completely unappreciated. These are relictual mid-elevation grasslands of the southern
5 edge of the Palouse. Very little remains of the native plants of the Palouse since most have long
6 since been plowed under. These communities should be described and added to ORBIC's list of
7 priority plant communities, but they are so rare in Oregon that the Natural Areas Plan (Geer
8 100/Exhibit 114) does not even recognize their presence in Oregon at the southern edge of the
9 Palouse.

10

11 f. Morgan Lake route impacts a large stand of *Asclepias fascicularis*, necessary food of the
12 monarch butterfly a Federal Candidate species.

13

14 In December 2020, the USFWS made a final decision about the monarchs' protection: "warranted
15 but precluded" — meaning that although its scientists found that they needed Endangered Species
16 Act protection, that protection was being postponed indefinitely, with no safeguards for the species
17 in the meantime. The monarch is still declining. With the monarch population well below the
18 threshold at which government scientists predict the migration could collapse, in March 2020 more
19 than 100 environmental groups called on Congress to significantly increase funding to \$100
20 million per year to help conserve monarch butterflies and their habitat.

21 Morgan Lake route crosses a special south-facing hillslope where the largest occurrence of narrow-
22 leaf milkweed (*Asclepias fascicularis*) in Union County grows. The milkweed species itself is
23 much less common than it once was. Far rarer is the monarch butterfly, *Danaus plexippus*, which

1 I documented there in 2016 and 2017 for the non-profit called Journey North. As stated in my
2 Opening testimony (Geer 100), I was collecting seeds for a USFS effort to make re-seeding with
3 milkweed part of our restoration program. Narrow-leaf milkweed has proved to be preferred by
4 monarchs over the more common showy milkweed, and caterpillars grow faster when they eat it.
5 This hillslope full of narrow-leaf milkweed is important for monarchs on their journey.

6 -----

7 **Viable better alternatives to the Morgan Lake route exist.**

- 8 a. Least destructive options are microgrids, an underground direct current line along an
9 interstate, or the Central Oregon ROW

10 All the following are better alternatives than the Morgan Lake alternative:

11 In my public comment on PCN 5, (Susan Geer 100/Exhibit 103), I discuss three alternatives, not
12 necessarily routes, that would have much less environmental impact than either the Mill Creek or
13 Morgan Lake routes. These can be summarized as: 1. Decentralized microgrids, 2. An
14 underground direct current line along the interstate or railroad right of way, and 3. Use the
15 federal corridor known as Central Oregon ROW. Combinations of these alternatives may also be
16 viable. These are the least environmentally destructive options. Microgrids would impact much
17 less of the landscape and would be more flexible in their placement, a DC line along the
18 interstate or railroad would be confined to an existing area of impact, and the federal corridor has
19 already been analyzed.

- 20 b. Least harmful of the four routes included in the Federal NEPA process is the Glass Hill
21 alternative.

22

- 1 Table 1 (Geer 200/Geer 19-28, Michael McAllister’s Rebuttal testimony) Timeline of B2H
- 2 Routes:

Date	Name of Route	History
2008	Idaho Power’s Original Proposed Route, newly identified as the Glass Hill Route by (Colburn) Idaho Power in 2023	Proposed by Idaho Power. This was the NEPA Agency Preferred Alternative in the DEIS (2014), analyzed by the BLM
2010	Glass Hill Alternative	Developed through Idaho Power’s Public Advisory Team (PAT) process. 2017 NEPA Agency Preferred and Environmentally preferred alternative in the BLM FEIS and USFS FEIS
2/27/2015	Morgan Lake Alternative (the current B2H Proposed Route)	Proposed by Idaho Power to accommodate a single large landowner. Route not shared with other landowners, the Glass Hill Coalition, or the Union County B2H Advisory Committee until late 2015. Never fully analyzed by the BLM/NEPA review process.
2/28/2015	230 kV Route	Proposed by landowners making up the Glass Hill Coalition. The objective was to move B2H off Glass Hill entirely. Their proposal sites B2H along the existing 230kV line into La Grande where it would turn west and follow the old Oregon Trail and Gekeler Lane.
3/2016	Mill Creek Alternative	Modification of 230 kV route by Union County Planner Scott Hartell, by request of Union County Commission, so that the route could be situated outside of La Grande city limits. Subsequently, it was not supported by La Grande residents, or Union County Advisory Committee because of its impact on the local viewshed just above town. Not fully analyzed by the BLM/NEPA review process.

1 Four routes were eventually mentioned in the final EIS' (BLM FEIS 2017, USFS FEIS 2018):
2 IPC Proposed route (now termed Glass Hill route), and Glass Hill alternative (selected as the
3 agency preferred route) were included throughout the process, while Mill Creek and Morgan
4 Lake alternatives were added later. Of these, the Glass Hill alternative, also known as the "NEPA
5 route", was also considered the environmentally preferred alternative by the BLM and selected in
6 the BLM and USFS Records of Decision (RODs) of 2017 and 2018. Morgan Lake and Mill
7 Creek alternatives were mentioned only in a cursory way.

8 Despite these other viable Alternatives, Idaho Power made their Application for Site Certificate
9 (ASC) in 2018 to the Energy Facility Siting Council (EFSC) with only two Alternatives: the
10 "Mill Creek route" and the "Morgan Lake route". Both of those are more impactful than either
11 the Glass Hill route (original Idaho Power proposed route) or the Glass Hill alternative (NEPA
12 route). Mill Creek route goes just outside the edge of town and would be very obviously visible
13 and impact quite a few residences. Morgan Lake route not quite as close to town, but still very
14 close, and is the most environmentally impactful. It directly affects several residences,
15 particularly with noise levels, and furthermore affects the experience of many people enjoying
16 nature and recreating most obviously at Morgan Lake Park and Glass Hill State Natural Area, but
17 also near the mouth of Ladd Canyon and at Spring Creek Recreation Area. Most germane to my
18 expertise, the Morgan Lake route is the most environmentally harmful route suggested; the
19 resources under threat are of higher quality and more importance to the state of Oregon and the
20 people of Oregon, than those found on either the Mill Creek or Glass Hill routes.

21

22 **Development of the Morgan Lake route is not compatible with the greatest public good or**
23 **the least private injury.**

1 a. Morgan Lake route affects more than twice as many private landowners as Glass Hill
2 route or Glass Hill alternative. It affects 13 different private landowners, while Glass Hill
3 alternative and Glass Hill route each affect only 6 private landowners. Mill Creek route
4 affects 18 private landowners, but it was never seriously considered.

5
6 b. Morgan Lake route affects more people overall than either Glass Hill alternative or Glass
7 Hill route because it is right next to Morgan Lake City Park and bisects Glass Hill
8 Natural Area – both very popular with the public.

9 Glass Hill route and Glass Hill alternative do not affect public parks or areas much used by the
10 public. Conversely, Morgan Lake City Park is advertised by the County and teeming with
11 visitors in the summertime, both local and nonlocal, while Glass Hill Natural Area is known by
12 word of mouth among locals for non-motorized nature-based recreation and is closest to town.
13 While Morgan Lake route has apparently been slightly shifted to avoid actually crossing City
14 Park land, the presence of and noise from the towers, as well as their effects on bird life.

15
16 c. Mill Creek and Morgan Lake routes are both closer to town and worse for most people in
17 Union County; the City of La Grande and Union County both issued that response.

18 *A La Grande Observer* article outlined the City's negative response, and a Proclamation was
19 issued by the Mayor asking that the B2H proposal be withdrawn, or failing that, the Glass Hill
20 route be re-instated as the only route to be considered in the La Grande area (Geer 100/Exhibits
21 117 and 118). county

1 d. By impacting a State Natural Area, Morgan Lake route impacts an area important to all
2 Oregonians.

3 As time goes on, the importance of natural areas has become more and more apparent. Natural
4 Areas benefit all Oregonians through learning, quality time in nature, preservation for future
5 generation. The goals for the Natural Areas program (Natural Areas Plan 2020. Geer 100/
6 Exhibit 114) exemplify their value: “Natural Areas protect many high-quality native ecosystems
7 and rare plant and animal species. Valued for teaching and scientific research, Natural Areas
8 provide a relatively undisturbed setting in which to study native ecosystems and species.
9 Research projects on these sites provide important answers to statewide land management
10 questions. Native forests, grasslands, tide pools, bogs, and sagebrush steppe are a few of the
11 diverse ecosystem types protected in Oregon’s Natural Areas, as are many of Oregon’s rarest
12 plants and animals”.

13 Just as important as the very high-quality habitat of Morgan Lake Park, particularly Twin Lake,
14 and the Glass Hill State Natural Area, are the connectivity of these areas to other high quality
15 habitat patches through habitat that may not be ideal but is still important for the overall survival
16 of species, termed the conservation matrix in a pivotal article by Franklin and Lindenmayer 2009
17 (Geer 100/Exhibit 116). Such a situation exists for the landscape around the Morgan Lake route.

18
19 **The Morgan Lake route was developed through fraud and deceit on the part of Idaho**

20 **Power**

21 a. Idaho Power incorrectly says Morgan Lake route was “BLM developed in
22 response to comments” and, “in response to local landowners”. In truth, Morgan

1 Lake route was introduced to Idaho Power by a single landowner without input
2 from any group

3 There was a lot of confusion and secrecy surrounding the introduction and development of the
4 Morgan Lake route. The lateness of the introduction and certainty by most people that a federal
5 Record of Decision is the final word, the wording in certain documents by Idaho Power, the lack
6 of very much notification and the wording in notification from Idaho Power to landowners, are
7 all part of the confusion.

8 Expert witness Michael McAllister sent a Memo to the PCN 5 Docket on January 6, 2023(Geer
9 100/Exhibit 121) explaining, “The Morgan Lake Alternative (per IPC’s application/ASC) was
10 developed by one landowner late in the BLM’s NEPA process. He proposed the Morgan Lake
11 Alternative to IPC by letter and this route first appeared in the FEIS, along with the newly
12 created Mill Creek Route, after comments closed in the DEIS. Neither were selected by the
13 BLM. The BLM did not allow for public comment of the FEIS; there was no public notice or
14 opportunity for comment on the two Union County routes. IPC manipulated these two routes
15 (which were not selected during the EIS process), as the only two routes for Union County in
16 their application at ODOE/EFSC; and then they shepherded the Morgan Lake Alternative to final
17 approval for the certificate. The only explanation given by IPC about their creation of the
18 Morgan Lake Alternative is that they were ‘working with landowners.’ That single landowner
19 has since sold the property.”

20
21 Geer 100/Exhibit 123/McAllister Attachment 4 is a letter forwarded to Michael McAllister from
22 landowner Brad Allen clearly showing the origin of the Morgan Lake route. It is a February 2015

1 letter from Idaho Power thanking a single large landowner for his “idea” for a route that avoids
2 bisecting his land.

3

4 Idaho Power puts a different spin on the story in various documents, concerning the origin of the
5 Morgan Lake route. This appears to be a distraction technique. In ApASC Attachment B, 2017
6 Siting Study 2 Pages 9-10, 3.2.3.34 (Geer 100/Exhibit 123/McAllister Attachment 3), the section
7 labeled “IPC’s Morgan Lake Alternative” states, “The Morgan Lake Alternative was *developed*
8 *by IPC with input from local landowners* (emphasis added).” Expert witness McAllister points
9 out that “this is a gross misrepresentation of nearly 10 years of landowner “inputs” and
10 participation in the NEPA and EFSC processes.”

11

12 Later, in Reply testimony (Idaho Power 600/Colburn 38) Mr. Colburn says:

13 “Following the Draft EIS and prior to BLM issuing its final decision, BLM released a map
14 of the alternative routes BLM developed in response to the comments received on the Draft
15 EIS. Those new routes included the Morgan Lake Alternative and the Mill Creek
16 Alternative:”

17 Mr. Colburn is wrong. The BLM did not develop either of the routes. The landowner Brad
18 Allen gave the “idea” for the Morgan Lake Alternative to Idaho Power. Union County Planner
19 Scott Hartell, urged by the County B2H Committee and under the direction of County
20 Commissioners, came up with the Mill Creek Alternative (Geer 200/Geer 10).

21

22 Finally, on December 8, 2022 a more truthful statement emerged. In ‘Staff Topic ‘page 4 of
23 Idaho Power Company Supplemental notes to the December 8, 2022, Workshop Presentation,

1 Docket PCN 5(Geer 100/Exhibit 119): “The Morgan Lake Alternative was developed ----- in
2 response to a request made by *one* of the affected landowners (emphasis added) during the
3 federal NEPA process to locate the route closer to the border of their property rather than
4 bisecting it.”

5

6 b. Idaho Power promoted the lies that Glass Hill Coalition existed as an organized
7 group, and that it formed to oppose Glass Hill alternative.

8

9 Idaho Power’s Mitch Colburn (Idaho Power 600/Colburn 38) promotes this misinformation:

10 “Glass Hill Alternative was confronted with substantial backlash from the affected
11 landowners and other interested parties, some of whom formed the Glass Hill Coalition
12 specifically to challenge that route. The CTUIR also expressed disfavor for the Glass Hill
13 Alternative due to impacts to cultural resources, stating: ‘The proposed route should be
14 selected rather than the Glass Hill Alternative. Both alternatives will have impacts, but the
15 proposed route introduces fewer new effects’. Union County, on the other hand, requested
16 that the Project be located as close to the existing 230-kV line as possible.

17 These parties voiced their concerns in their comments on the Draft EIS”.

18

19 The Glass Hill Coalition did not form “specifically to challenge the Glass Hill Alternative”.

20 What landowners on Glass Hill had in common is, they wanted the B2H completely off Glass
21 Hill and nowhere near Morgan Lake. A few Glass Hill landowners held a meeting on February
22 28, 2015 at the old bus station, to raise support for a route following the existing 230kV line.

23 Geer 200/Exhibit 2 is a handout circulated at that meeting. Expert witness Michael McAllister

1 was there, and signed a petition circulated for that cause. There appears to be no further action
2 or organization as a group beyond that date. Letters dated after that time are signed by the same
3 one to three “members” who represent themselves as “the Glass Hill Coalition” yet Ms. Geer and
4 Mr. McAllister have not found anyone beyond the letter writers is represented.

5
6 Union County’s request was not “on the other hand”; it was a direct result of landowners asking
7 for a route co-located with the 230 kV line, not just “as close to the 230kV line as possible”.
8 Also, the Union County Advisory Committee did not form until after the DEIS came out (Geer
9 200/Geer p.10).

10 c. Idaho Power created confusion around names and locations of routes.

11
12 Expert witness Michael McAllister (Geer 100/Exhibit 123/McAllister p.3) says of IPC’s
13 Supplemental Siting Study on page 9, 3.2.3, Union County, Oregon,

14 “.. These pages clearly (mis) identify IPC’s Mill Creek Route as the BLM/FEIS/Agency
15 “Preferred Alternative”. In fact, it is not the BLM Agency Preferred Alternative and never
16 was. Furthermore, the Mill Creek Route was not evaluated through the BLM EIS process.

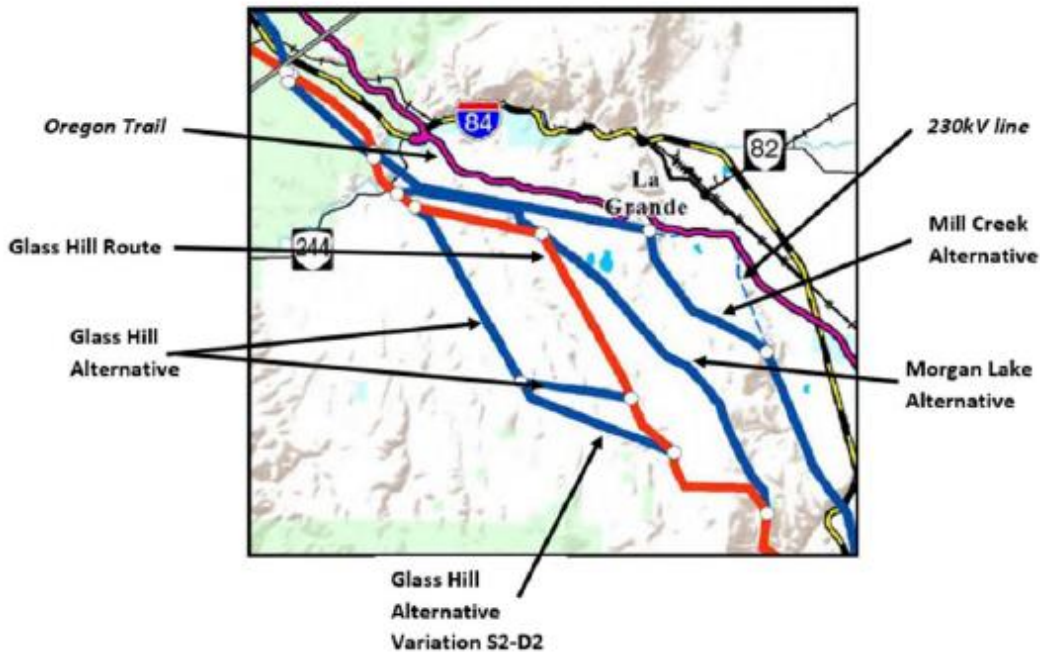
17 IPC mis-leads us regarding the origin and development of the Mill Creek route. In the
18 2017 Siting Study:

19 ‘In Union County, the Proposed Route includes portions of the Proposed Route that were
20 included in the Draft Amended pASC and the Mill Creek Route that was developed by the
21 BLM. In addition, the BLM also developed routes that collocated the Project with the
22 existing La Grande to Quartz 230-kV transmission Line. IPC also developed the Morgan
23 Lake Alternative to the Mill Creek Route.’”

1 Let it stand corrected: the BLM did not develop the Mill Creek Route, yet IPC represents
2 the route as the BLM/FEIS/Agency Preferred Alternative continuously in their ASC.
3 Idaho Power further mis-leads us by baldly denying the Preferred Route status of the Glass
4 Hill Alternative selected in the BLM and USFS Environmental Impact Statements (EISs)
5 of 2017 and 2018. ASC Exhibit B “Project Description” Page B-39, Table B-6 “Proposed
6 and Alternative Corridor Adjustments (macro changes) since Preliminary Application for
7 Site Certificate (February 2013)” (Geer 100/Exhibit 123/McAllister Attachment 2), states –
8 IPC Basis for Corridor Change is, “Glass Hill Alternative Corridor Segment was not
9 carried forward by BLM as the Agency Preferred Route.” The Glass Hill Alternative was
10 in fact brought forward in the BLM FEIS as the ‘Agency Preferred Route’ and identified as
11 the “Selected Route” in the USFS FEIS. The Glass Hill Alternative was thoroughly vetted
12 by Federal and State Agencies. In contrast, neither of the routes in Idaho Power’s ASC, the
13 Mill Creek, or the Morgan Lake route, were thoroughly vetted or fully analyzed.”

14
15 Confusion was sown in the Reply testimonies as well. Throughout their testimonies, Mr.
16 Ottenlips (Idaho Power /1400) and Mr. Colburn (Idaho Power/600) omit mention of the
17 “Proposed Route”. Colburn instead calls it “a variation of the Morgan Lake alternative” (Idaho
18 Power 600/Colburn 38). Mr. Colburn and Mr. Ottenlips further confuse the reader by newly
19 referring to it as “Glass Hill Route”. This is especially confusing because there is already a route
20 called Glass Hill Alternative. Throughout various document related to B2H, the words “route”
21 and “alternative” are used interchangeably. For example, in the quote from Mr. Ottenlips (Idaho
22 Power 1400/Ottenlips 6) above, he names “Mill Creek Route”, yet in his Figure 1 provided
23 below, it is “Mill Creek Alternative”.

1 Figure 1. Routes in Union County



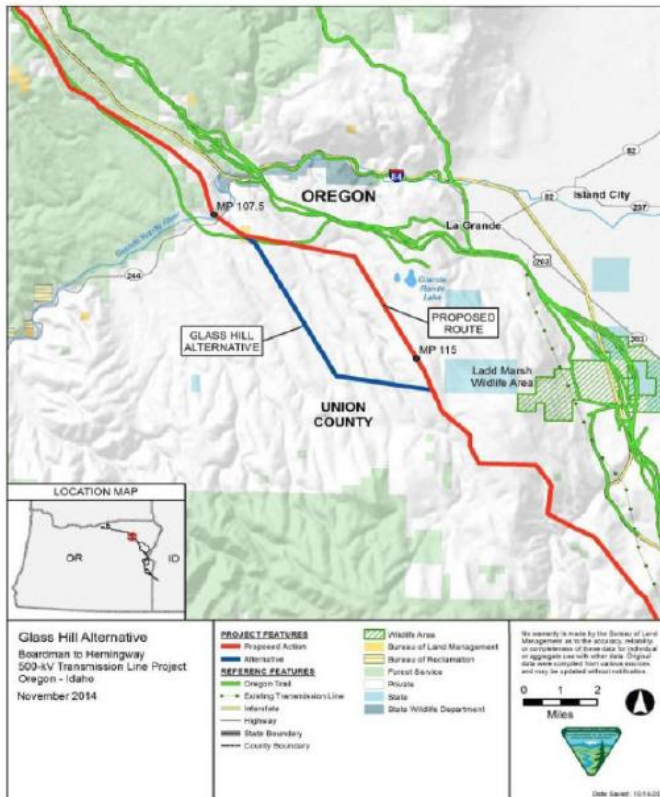
1

2 To further confuse matters, Mr. Colburn says (Idaho Power 600/Colburn 36):

3 “Idaho Power proposed two routes in the vicinity of La Grande: (1) a variation
4 of the Morgan Lake Alternative, which was considered the “Proposed Route” for BLM and
5 NEPA purposes; and (2) the Glass Hill Alternative. Those were the two routes considered
6 in BLM’s 2014 Draft Environmental Impact Statement (“EIS”), as shown in Figure 11,
7 below”.

8 (Note: this apparently refers to Figure 4 on the next page)

Figure 4 2014 Proposed Route ("Glass Hill Route") and Glass Hill Alternative



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11

Mr. Colburn is inaccurately calling the Morgan Lake Alternative a “variation of the Proposed route”. The name Morgan Lake Alternative had not been used yet. In fact, at that time, the Proposed Route was thought to be too close to Morgan Lake Park; the BLM points to one benefit of the Glass Hill Alternative as being further away from Morgan Lake Park than the Proposed Route.

d. Idaho Power failed to include either the NEPA route (Glass Hill alternative) or their original Proposed route (Glass Hill route) in their Application for Site Certificate, without explanation.

1 ORS 469.310 states policy is, “to establish in cooperation with the federal government a
2 comprehensive system for the siting, monitoring and regulating of the location, construction and
3 operation of all energy facilities in this state.” EFSC failed to follow policy when they issued a
4 Draft Proposed Order without asking IPC to include the Glass Hill or any other alternatives in
5 their application.

6
7 Idaho Power contractor Michael Ottenlips’ Reply testimony was misleading because it omitted
8 IPC’s original Proposed Route. In summarizing his reply, Mr. Ottenlips (Idaho Power
9 1400/Ottenlips xx) says, “Idaho Power considered several potential routes through Union County
10 for the Project, including the Mill Creek Route, the Morgan Lake Alternative, and the Glass Hill
11 Alternative”. Mr. Ottenlips failed to mention the “Proposed route”, as well as variation S2-D2.

12
13 e. Idaho Power inaccurately portrayed equal opposition to Mill Creek, Morgan Lake,
14 and Glass Hill Alternatives, as they failed to mention Glass Hill route.

15
16 Mr. Colburn’s states (Idaho Power 600/ Colburn 43-44)

17 “In sum, there were organized landowners’ groups opposing the three main alternatives
18 under consideration (Mill Creek, Morgan Lake, and Glass Hill Alternative), and the local
19 government entities providing input into the process shifted their position along the way
20 as well. Another key stakeholder, the CTUIR, consistently provided comments opposing
21 the Glass Hill Alternative”.

22

1 Colburn's statement is misleading and over-simplified. It would be more accurate to say that the
2 Mill Creek and Morgan Lake Alternatives are the most unpopular, and it is easy to see why. Mill
3 Creek Alternative affects the largest number of people, while Morgan Lake affects the second
4 largest number plus is the least environmentally friendly. Glass Hill Alternative and the original
5 Proposed Alternative were of course opposed by the affected landowners. While the CTUIR
6 preferred the Proposed route to the Glass Hill Alternative, they never got a chance to weigh in on
7 the Mill Creek or Morgan Lake Alternatives because those were only included in the FEIS and
8 no comments were taken. Given the option, odds are they would prefer the original Proposed
9 route to Morgan Lake Alternative, due to natural resources.

10

11 f. Idaho Power maneuvered the application process so that Morgan Lake and Mill
12 Creek routes were never directly compared to Glass Hill route or Glass Hill
13 alternative.

14

15 On July 29, 2016, the Union County Boardman to Hemingway Advisory Committee
16 "recommended that the BLM initiate a Supplemental Environmental Impact Statement (EIS).
17 This supplemental EIS is needed because there are transmission route segments on two routes in
18 Union County that have not yet been analyzed by the BLM through the Draft EIS (DEIS)
19 process." (Geer 100/Exhibit 115). The BLM did not initiate a supplemental EIS. The "two
20 routes" were never analyzed in any detail; thus there was no cooperation between federal and
21 state processes. After decades of participating in the federal process, Idaho Power ignored the
22 BLM's decision when they initiated their ASC.

1 Idaho Power's placing so much importance on comments by "Glass Hill Coalition" is mysterious,
2 given the hundreds of other comments on the Draft EIS. The only legitimate reason Mr. Colburn
3 gives for Idaho Power not pursuing the Glass Hill Alternative is the CTUIR preference for the
4 Proposed Route. "The Company pursued the Morgan Lake Alternative because it was similar to
5 the Proposed Route" is a complete invention. The Morgan Lake Alternative is significantly closer
6 to town, right up against the City Park and impacting a State Natural Area beloved by many. Idaho
7 Power thinks that is outweighed by "minimizing the impacts to one affected landowner"?

8 Next, Mr. Colburn explains (Idaho Power 600/ Colburn 40):

9 "Idaho Power ultimately chose to pursue the Morgan Lake Alternative in its Petition for a
10 Certificate of Public Convenience and Necessity based on feedback received from the local
11 governmental entities, the City of La Grande and Union County, which stated a preference for
12 the Morgan Lake Alternative over the Mill Creek Alternative due to the latter's proximity to
13 the city. Specifically, the La Grande City Council, which represents more than 13,000
14 residents who are in close proximity to B2H, stated they object more to the Mill Creek
15 Alternative than the Morgan Lake Alternative".

16

17 The Mill Creek Alternative is such a losing proposition, being right at the edge of town, it is hard
18 to believe it got as far as it did. If it had been introduced earlier in the process, odds are it would
19 have been eliminated after the BLM Draft EIS. There was no real choice for local governmental
20 entities, once the reality of the Mill Creek Alternative sank in. Given only two choices, they had
21 to say Morgan Lake Alternative. It is deeply disturbing that the only other choice given by Idaho
22 Power was Morgan Lake Alternative.

23

1 Mayor Clements (Geer 100/Exhibit 118), the City Manager and City Council (Geer 200/Exhibit
2 2) and ultimately the County and B2H Advisory Committee, all agreed that the Mill Creek
3 Alternative and Morgan Lake Alternative were both worse choices than either the original Idaho
4 Power Proposed Route or the Glass Hill Alternative.

5

6 **Conclusion**

7 Morgan Lake route has the highest preservation value of the three routes that were analyzed at
8 various levels of completeness in the federal NEPA process. Placing the B2H line on the Morgan
9 Lake route goes against the public good, even more than the other three routes do. There are viable
10 alternatives to the Morgan Lake route, and the most obvious and expedient is the Agency-
11 preferred/NEPA/ Glass Hill route. Idaho Power's choice to exclude the Glass Hill route from their
12 ASC is founded upon the self-interest of one landowner that bought in during the development of
13 the FEIS and sold out with the Morgan Lake route in place. Their choice to misrepresent the
14 NEPA route demonstrates that Idaho Power's justification is fraudulent.

I hereby declare that the above statements are true to the best of my knowledge and belief, and I understand that they are made for use as evidence in administrative and court proceedings and are subject to penalty for perjury.

Dated this 15th day of May 2023.

s/ Susan Geer

Susan Geer

CERTIFICATE OF MAILING

On May 15, 2023, I certify that I filed the above Opening Brief with the Administrative Law Judge via the OPUC Filing Center, for the Docket # PCN-5, and to the following party as noted below.

/s/ Susan Geer

Susan Geer

Intervenor, PCN-5

By: Arrangement for hand delivery:

John C. Williams
PO Box 1384
La Grande, OR 97850