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September 20, 2019

FOREST IN CRISIS: LG&E'S EMPLOY TO DESTROY KENTUCKY WILDLIFE

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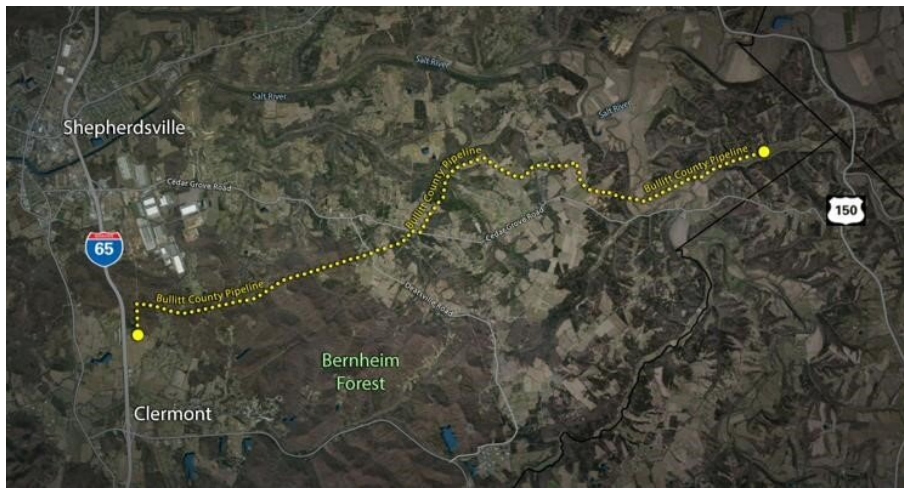
BY: NICHOLAS WRIGHT

How much damage could a 12-inch natural gas pipeline possibly do? To answer this question, one can look to Kentucky's backyard. On August 1, 2019 an LG&E natural gas pipeline ignited in Lincoln County Kentucky.[i]The explosion resulted in one death and the destruction of 20 acres of land.[ii]This tragedy is one of the reasons why the Bernheim Arboretum and Research forest is fighting the construction of an LG&E natural gas line that would pass through its land. [iii]The Bernheim Arboretum and Research forest is a 16,000 acre stretch of land in Kentucky that has over 250,000 visitors each year.[iv]The Cedar Grove Wildlife corridor has become the focal point of a dispute between the Bernheim Arboretum and Research forest and LG&E, a Louisville utility company.[v]

The Cedar Grove corridor is a stretch of land within the Bernheim forest that serves as a wildlife corridor, allowing wildlife to move between key habitats.[vi]LG&E wants to build a pipeline in this corridor to meet the growing needs of nearby Bullitt County.[vii]In order to meet Bullitt county's needs, LG&E would need to establish a 50-foot-wide easement that would run three quarter miles through the Cedar grove corridor.[viii]

While LG&E claims that they have taken steps to ensure that the pipeline's path is the least intrusive path on the environment, Bernheim adamantly disagrees.[ix]One of the main arguments against LG&E's path is the significant adverse impact that the current path will create on the environment. [x]First, the path would pass through Glade Cress, which is a federally threatened species that does not grow elsewhere.[xi]The pipeline would also threaten the habitats of other rare and endangered species of bats and snails.[xii]On top of that, there are over 250 of other species that would be impacted by the disruptive nature of the pipeline.[xiii]





Credit: <https://www.courier-journal.com/story/news/local/bullitt/2019/07/11/lg-e-may-force-bernheim-forest-allow-pipeline-its-land/1677695001>

LG&E has already reached out to the Bernheim Arboretum and Research forest, but the Bernheim group claims that even if they wanted to grant an easement to LG&E, which they do not, they would be prohibited by the deed which specifically restricts the grant of an easement for a natural gas pipeline.^[xiv] While it seems like an easement will not be granted, LG&E have taken steps to acquire the easement through eminent domain.^[xv] In Kentucky, natural gas providers can bring forth condemnation actions in order to construct and maintain a natural gas pipeline if the pipeline is for public service and the natural gas provider has taken a good faith effort in negotiating an easement.^[xvi] Statutory authority establishes that the carrying of natural gas through pipelines to service the public is for public use.^[xvii] Therefore, the condemnation action would have to be fought on the second prong, a claim that LG&E did not act in good faith.

The argument that LG&E has not acted in good faith is exactly what Bernheim is alleging.^[xviii] Bernheim has taken action by filing a complaint against LG&E.^[xix] The complaint alleges that in order to hide information from the public, LG&E did not follow typical procedures necessary for the construction of a new pipeline. ^[xx] It is alleged that LG&E did not apply to the Kentucky Public Service Commission for a certificate stating that the new pipeline would be safe, reliable, and necessary.^[xxi] LG&E argues that such an application was unnecessary in this case because the proposed pipeline is an extension, and not a new pipeline.^[xxii] Bernheim argues in the complaint that the certificate is necessary in this case, and that the certification process would have given the public more information and notice of the utility company's plans.^[xxiii]

With important wildlife on the line, and recent history showing the extreme adverse impact that a natural gas pipeline can have on the surrounding environment, the biggest question is why doesn't LG&E find a better route for the proposed pipeline? The answer to this question might be obvious when one notes that LG&E has already purchased 85% of the easements required for their pipeline, with one of the last holdouts being the Bernheim Arboretum and Research forest.^[xxiv]

- [i] Jessie Cohen, *Pipeline pushback: Bernheim leaders react to Lincoln County explosion in light of possible construction*, WHAS11 (Aug. 3, 2019, 11:47 PM), <https://www.whas11.com/article/news/local/pipeline-pushback-bernheim-leaders-react-to-lincoln-county-explosion-in-light-of-possible-construction/417-d902503c-0324-4fe3-9fbe-42582e0befdb>.
- [ii] *Id.*
- [iii] *Id.*
- [iv] *History*, Bernheim Arboretum and Research Forest, <https://bernheim.org/learn/history/>.
- [v] *Id.*
- [vi] Ryan Velzer, *Bernheim Arboretum Battles For Conservation Over Growth In Pipeline Feud*, WFPL (June 18, 2019), <https://wfpl.org/bernheim-arboretum-battles-for-conservation-over-growth-in-pipeline-feud/>.
- [vii] *Id.*
- [viii] Danielle Grady, *Progress vs. Preservation in LG&E vs. Bernheim*, Leoweekly (May 29, 2019), <https://www.leoweekly.com/2019/05/progress-vs-preservation/>.
- [ix] *Id.*
- [x] *Id.*
- [xi] Velzer, *supra* note 6.
- [xii] *Id.*
- [xiii] *Id.*
- [xiv] *Id.*
- [xv] Marcus Green, *LG&E sues to condemn Bernheim, other Bullitt County land sought for gas pipeline*, WDRB (Jul 31, 2019), https://www.wdrb.com/in-depth/lge-e-sues-to-condemn-bernheim-other-bullitt-county-land/article_0ed3ca16-b312-11e9-869e-8f65c9c3516b.html.
- [xvi] Ky. Rev. Stat. Ann. § 278.502 (West 1992).
- [xvii] Ky. Rev. Stat. Ann. § 278.470 (West 1942).
- [xviii] Ryan Velzer, *Bernheim Alleges LG&E Hid Information About Gas Pipeline From Public*, WFPL (Aug. 8, 2019), <https://wfpl.org/bernheim-alleges-lge-hid-information-about-gas-pipeline-from-public/>.
- [xix] *Id.*
- [xx] *Id.*
- [xxi] *Id.*
- [xxii] *Id.*
- [xxiii] *Id.*
- [xxiv] Green, *supra* note 15.

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