

124 FERC ¶ 61,217
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

North Baja Pipeline, LLC

Docket No. CP08-152-000

ORDER ISSUING A PRESIDENTIAL PERMIT, A CERTIFICATE AND
AUTHORIZATION UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued September 2, 2008)

1. On April 15, 2008, North Baja Pipeline, LLC (North Baja) filed an application¹ pursuant to sections 3 and 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking authorization to: (i) construct and operate its Yuma Lateral Pipeline Project (Yuma Lateral); and (ii) amend its existing Presidential Permit to allow the construction of new pipeline facilities at the United States/Mexico border. The purpose of the project is to import natural gas, including re-vaporized liquefied natural gas (LNG), from Mexico to serve an expansion of the Yucca Power Plant located near Yuma, Arizona. North Baja proposes to provide service on the Yuma Lateral pursuant to new incremental LAT-1 service under Rate Schedule FTS-1.

2. For the reasons discussed below, the Commission will issue the requested authorizations and approve North Baja's proposal to charge incremental rates for service on the Yuma Lateral, subject to the conditions contained herein. However, because the new border crossing facilities are not connected to North Baja's existing facilities, including those at the international border, we will issue a new Presidential Permit in Docket No. CP08-152-000, rather than amending North Baja's existing Presidential Permit as proposed by North Baja in Docket No. CP01-23-006.²

¹ North Baja filed a supplement to its application on April 18, 2008 which corrected minor errors in Exhibits K, N, and P. North Baja also provided a detailed description of the facilities for which it was seeking a Presidential Permit.

² North Baja's original Presidential Permit was issued in *North Baja Pipeline, LLC*, 98 FERC ¶ 61,020 (2002) and amended in *North Baja Pipeline, LLC*, 121 FERC ¶ 61,010 (2007).

I. Background and Proposal

3. North Baja is a limited liability company formed under the laws of the State of Delaware and is a wholly-owned, indirect subsidiary of TransCanada PipeLines Ltd. North Baja is a natural gas company as defined by section 2(6) of the NGA and is in the business of transporting natural gas in interstate commerce, within the jurisdiction of the Commission. North Baja currently operates a 79.8-mile interstate natural gas pipeline extending from an interconnection with the interstate pipeline facilities of El Paso Natural Gas Company (El Paso) near Ehrenberg, Arizona through southeastern California to a point on the Mexico/California border located between Yuma, Arizona and Mexicali, Mexico, where the pipeline connects with Gasoducto Bajanorte, S. de R.L. de C.V. (Gasoducto Bajanorte), a pipeline owned by Sempra Energy and located in northern Mexico. North Baja is the United States portion of the international North Baja/Gasoducto Bajanorte Pipeline Project. The North Baja and Gasoducto Bajanorte pipelines were constructed in 2002 for the purpose of transporting natural gas to Mexico, primarily to serve gas-fired electric generation facilities. Subsequently, in 2007 the Commission authorized North Baja to construct facilities necessary to expand the capacity of the pipeline and accommodate bi-directional flow.³ The purpose of the expansion was to allow shippers to import re-vaporized LNG from a newly constructed LNG import terminal in Mexico.

4. In this proceeding, North Baja proposes to construct and operate the Yuma Lateral, which is not physically connected to North Baja's existing pipeline system, to provide transportation service for Arizona Public Service Company (APSC) to the Yucca Power Plant located near Yuma, Arizona. The Yuma Lateral project consists of: (i) a new interconnection with Gasoducto Bajanorte at the United States/Mexico border near Yuma, Arizona;⁴ (ii) a 3.27-mile, 12-inch diameter pipeline extending from the new interconnection with Gasoducto Bajanorte to the proposed Yucca Power Plant; and (iii) the Yuma #1 Delivery Meter Station and Pig Receiver located at the terminus of the Yuma Lateral to serve the Yucca Power Plant. North Baja estimates that the proposed facilities will cost \$8,627,113. Once the Yuma Lateral is in service the Yucca Power Plant will have access to both re-vaporized LNG from Mexico directly through the Gasoducto Bajanorte system and from domestic sources via North Baja's existing system and the Gasoducto Bajanorte system.

5. North Baja has entered into a precedent agreement with APSC for a term of 15 years to provide up to 81,250 Dth per day of firm transportation capacity on the Yuma

³ The Commission also amended North Baja's Presidential Permit to reflect the new border facilities and the importation of natural gas.

⁴ Gasoducto Bajanorte will construct a 3.14-mile extension of its pipeline to interconnect with North Baja's Yuma Lateral.

Lateral to the Yucca Power Plant. North Baja proposes to provide service on the Yuma Lateral pursuant to new incremental LAT-1 service under Rate Schedule FTS-1. North Baja states that APSC has elected to pay a negotiated rate for service and will use the transportation capacity to provide fuel for a 96 MW expansion of the Yucca Power Plant.

II. Public Notice and Interventions

6. Notice of North Baja's application was published in the *Federal Register* on May 5, 2008 (73 Fed. Reg. 24,583). APSC, El Paso, Sempra LNG Marketing Corporation, Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, and Southwest Gas Corporation filed timely unopposed motions to intervene. Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's regulations.⁵ Imperial Irrigation District filed a late intervention. We will accept the late intervention as it will not delay or disrupt the proceeding. No protests or adverse comments were filed.

III. Discussion

7. Because North Baja's application pertains to facilities used to import natural gas and to transport natural gas in interstate commerce, the construction and operation of these facilities is subject to the jurisdiction of the Commission and the requirements of NGA sections 3 and 7.

A. Application of the Certificate Policy Statement

8. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how the Commission evaluates proposals for certificating major new construction.⁶ The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

⁵ 18 C.F.R. § 385.214 (2008).

⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order clarifying policy*, 90 FERC ¶ 61,128 (2000); *order clarifying policy*, 92 FERC ¶ 61,094 (2000) (Policy Statement).

9. Under this policy, the threshold requirement in establishing the public convenience and necessity for existing pipelines proposing expansion projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effect the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

10. North Baja's proposal to charge an incremental rate for service on the Yuma Lateral satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. All of the costs of the project will be borne by the shipper, APSC. Also the project will not adversely affect North Baja's existing customers, or other pipelines and their customers. The proposed facilities are designed to provide incremental service without degradation of service to North Baja's existing firm customers. In addition, there is no evidence that service on other pipelines will be displaced or bypassed. Finally, North Baja has designed the Yuma Lateral to minimize the impact on landowners and the environment by locating nearly the entire project on public lands.⁷ North Baja expects very limited, if any, use of eminent domain.

11. North Baja has entered into a long-term precedent agreement for 100 percent of the design capacity of the project. North Baja's proposal will provide transportation capacity necessary to serve an expansion of the Yucca Power Plant. Based on the benefits that North Baja's proposal will provide and the lack of adverse effects on existing customers, other pipelines, landowners, or communities, we find that approval of the Yuma Lateral is required by the public convenience and necessity.

B. Rate Proposal

12. North Baja seeks initial incremental transportation rates for its proposed LAT-1 service under Rate Schedule FTS-1 for its Yuma Lateral. The Yuma Lateral will be a separate stand-alone transmission line that is not connected to North Baja's existing mainline system. The Yuma Lateral will directly connect to Gasoducto Bajanorte at the international border at the Colorado River and serve the Yucca Power Plant.

⁷ The parts of the project not on public lands are located on two utility company parcels.

13. North Baja estimates the total cost of the Yuma Lateral to be \$8,627,113. North Baja's proposed initial recourse rates are designed using the straight-fixed variable (SFV) rate design and are based on an annual cost of service of \$1,744,799 and annual demand determinants of 975,000 Dth (81,250 Dth per day design capacity times 12), as shown in Exhibit N. The cost of service reflects a capital structure of 70 percent debt and 30 percent equity, and a 14 percent rate of return on equity, and reflects a 5 percent annual depreciation accrual rate. For LAT-1 firm service, North Baja proposes a reservation rate of \$1.78954 per Dth, a usage rate of \$0 per Dth, and a 100 percent load factor rate of \$0.058834/Dth.⁸ North Baja states that since there is no compression on the Yuma Lateral, it proposes a fuel rate of zero percent, and it does not propose to recover any line losses.

14. North Baja indicates that it has executed a precedent agreement with APSC for the entire capacity of the lateral and has offered APSC the option of negotiated or recourse rates. North Baja states that APSC has elected a long-term fixed negotiated rate. North Baja asserts that it will file tariff sheets reflecting the name of the shipper, along with the negotiated rates, the applicable receipt and delivery points, and the quantities to be transported under each contract, prior to providing service on the lateral.

1. Recourse Rates

15. The Commission finds that North Baja's proposed incremental firm recourse rates fully recover the costs of the proposed construction based on the design capacity, and that the use of the SFV method is consistent with Commission policy. However, North Baja does not propose to provide transportation service on an interruptible basis for the Yuma Lateral. Section 284.9 of the Commission's regulations states that a pipeline providing firm transportation service must also offer transportation service on an interruptible basis.⁹ Therefore, North Baja is not in satisfactory compliance with the Commission's regulations. To remedy this omission, the initial recourse rates for LAT-1 service are approved, but North Baja is directed to make a further compliance filing to provide for interruptible transportation service on the Yuma Lateral in accordance with section 284.9 of the Commission's regulations. The Commission directs North Baja to file actual tariff sheets in accordance with section 154.207 of the Commission's regulations between 30 and 60 days prior to placing the facilities into service, and the tariff sheets must comply with section 284.9 of the Commission's regulations.¹⁰

⁸ See North Baja's April 18, 2008 Errata, Exhibit N, page 2. See also Substitute Pro Forma Sixth Revised Sheet No. 4.

⁹ 18 C.F.R. § 284.9(a) (2008).

¹⁰ 18 C.F.R. § 154.207 (2008).

16. North Baja also must file tariff sheets to either establish a representative level of costs to be allocated to interruptible transportation services on the Yuma Lateral, and revise its initial rates accordingly, or the pipeline should provide for a credit of 100 percent of interruptible revenues, net of variable costs, to firm and interruptible customers.¹¹

17. In addition, because we are approving incremental rates for the Yuma Lateral, North Baja will be required to maintain its accounts for these incremental expansion facilities in accordance with section 154.309 of the Commission's regulations.¹²

2. Negotiated Rates

18. The Commission establishes initial recourse rates in certificate proceedings and does not make determinations regarding specific negotiated rates for proposed services.¹³ North Baja must file either its negotiated rate contract or numbered tariff sheets at least 30 but not more than 60 days prior to the commencement of service consistent with section 24 of the General Terms and Conditions of its tariff,¹⁴ the Commission's

¹¹ See, e.g., *East Tennessee Natural Gas LLC*, 114 FERC ¶ 61,122, at P 31 (2006); *Tractebel Calypso Pipeline, LLC*, 106 FERC ¶ 61,273, at P 11 (2004); *Vector Pipeline L.P.*, 85 FERC 61,083 (1998); *Maritimes & Northeast Pipeline L.L.C.*, 80 FERC 61,136, at 61,475 (1997). See also *Cheyenne Plains Gas Pipeline Co., L.L.C.*, 108 FERC ¶ 61,052 (2004) (clarifying that a pipeline and its negotiated rate customers may agree in their negotiated rate contracts to allow for a sharing of a proportionate amount of interruptible revenues collected by the pipeline and a pipeline may credit interruptible revenues to negotiated rate shippers in accordance with these agreements. However, to the extent that recourse rate shippers take service on the pipeline, the Commission required that firm and interruptible shippers receive a proportionate share of 100 percent of interruptible revenues collected less out of pocket costs).

¹² 18 C.F.R. § 154.1 and § 154.112 (2008).

¹³ *CenterPoint Energy -- Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007, at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,042, at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360, at n.19 (2002).

¹⁴ North Baja's FERC Gas Tariff, Original Volume No. 1.

Alternative Rate Policy Statement,¹⁵ and the Commission's decision in *NorAm Gas Transmission Company (NorAm)*.¹⁶ North Baja must also disclose any other agreement, understanding, negotiation, or consideration associated with the negotiated agreements. Finally, North Baja must also maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA Section 4 or 5 rate case.

C. Presidential Permit

19. North Baja requests that the Commission amend its existing Presidential Permit and section 3 authorization to allow for the construction of new facilities on the Arizona/Mexico border in order to import gas, including re-vaporized LNG from Mexico. Specifically, as clarified by North Baja in its filing of April 18, 2008, North Baja requests that the amended authorization apply to 1,150 feet of 12-inch diameter pipeline extending from North Baja's proposed Yuma Lateral at the center of the Salinity Canal in Yuma County, Arizona to the international boundary near Algodones, Mexico to interconnect with natural gas facilities to be constructed and operated by Gasoducto Bajanorte. As stated above, because the proposed new border facilities are not connected to North Baja's existing pipeline facilities, including those subject to North Baja's existing Presidential Permit, we will not amend the existing Presidential Permit but instead issue a separate new Presidential Permit for the Yuma Lateral border facilities in Docket No. CP08-152-000.

20. On May 23, 2008, as required by Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00A,¹⁷ the Commission submitted a draft of a Presidential Permit for North Baja to the Secretaries of State and Defense, informing each of North Baja's application in this proceeding and seeking their recommendations on the proposed new Presidential Permit for North Baja. Replies on behalf of the Secretaries of State and Defense were received on July 9, 2008 and July 29,

¹⁵ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, et al., U.S. App. Lexis 20697 (D.C. Cir. July 20, 1998).

¹⁶ *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011 (1996).

¹⁷ Executive Order No. 10485 requires that the Commission obtain favorable recommendations of the Secretaries of State and Defense prior to issuing a Presidential Permit.

2008, respectively. The Secretaries of State and Defense concurred with the issuance of the permit.

21. Since North Baja's proposed border facilities will be used to import natural gas from a foreign country, the proposal requires Commission approval under section 3 of the NGA. The Commission's authority over construction and operation of facilities under section 3 includes the authority to apply terms and conditions as necessary or appropriate to ensure that the proposed construction and siting are in the public interest. Section 3 provides that the Commission shall issue such order on application "unless ... it finds that the [proposal] will not be consistent with the public interest."¹⁸

22. Based upon our review of North Baja's application, we find that North Baja's proposal to construct the new border facilities will provide access to gas supplies for the Yucca Power Plant. Accordingly, given the lack of adverse comments from the Secretaries of State and Defense, we find that the issuance of a Presidential Permit and section 3 authorization to construct the new border facilities, as proposed, will not be inconsistent with the public interest, subject to the conditions set forth in the Presidential Permit and this order.

D. Environmental Analysis

23. An environmental assessment (EA) was prepared for North Baja's proposal. The EA addresses geology and soils, water and wetland resources, vegetation and wildlife, threatened and endangered species, cultural resources, land use, air and noise quality, safety, cumulative impacts, and alternatives. The U.S. Bureau of Reclamation (Reclamation) and Bureau of Land Management (BLM) were federal cooperating agencies in the development of the EA. The EA was placed into the public record on August 8, 2008.

24. On January 4, 2008, the FERC issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Yuma Lateral Project and Request for Comments on Environmental Issues (NOI). The NOI was mailed to about 200 interested parties including federal, state, and local officials; agency representatives; conservation organizations; Native American groups; local libraries and newspapers; and landowners in the vicinity of the proposed project.

25. In response to the NOI, we received comment letters: from the U.S. Fish and Wildlife Service (FWS), the Arizona Department of Game and Fish (AZGFD), the Soboba Band of Luiseno Indians, and the Fort Yuma-Quechan Tribe. The issues raised by these commentors were addressed or resolved in the EA as described below.

¹⁸ 15 U.S.C. § 717b.

26. The FWS letter included a list of threatened and endangered species that may be present in the project area. The EA concludes that with North Baja's proposal of timing restrictions to construct outside the breeding season of the southwestern willow flycatcher and Yuma clapper rail, the proposed project would not adversely affect any federally threatened or endangered species. However, we have not yet received concurrence from the FWS on our determination. Consequently, environmental condition 6 states that no construction will be allowed to begin until we have concluded consultation under section 7 of the Endangered Species Act.

27. The FWS and the AZGFD both noted that the Colorado River crossing could potentially impact riparian habitats and wetlands. The EA describes how North Baja's proposal to implement our Wetland and Waterbody Construction and Mitigation Procedures and utilize the horizontal directional drilling crossing method would avoid the riparian habitats and wetlands. Therefore, no adverse impacts are anticipated.

28. The Soboba Band of Luiseno Indians requested further consultation and copies of the cultural resources documentation. The Fort Yuma-Quechan Tribe also expressed concerns about cultural resources, and requested a copy of the cultural resources survey report, tribal monitoring, and notification in the event of discoveries of prehistoric materials. North Baja provided copies of the relevant cultural resource surveys to both groups and developed an unanticipated discovery plan that provides for Native American monitoring and notification in the event of a discovery.

29. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with North Baja's application and our recommended mitigation measures, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. As recommended in the EA, this authorization is subject to the environmental conditions attached in Appendix B to this order.

30. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁹

¹⁹ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

31. The Commission on its own motion, received and made a part of the record all evidence, including the application, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to North Baja under NGA section 7 authorizing the construction and operation of the Yuma Lateral facilities, as described more fully in the order, the application, and the April 18, 2008 supplement, as conditioned herein and subject to the environmental conditions set forth in Appendix B to this order.

(B) A Presidential Permit, attached in Appendix A to this order, and NGA section 3 authorization is issued to North Baja, as described in this order, the application, and the April 18, 2008 supplement, as conditioned herein, and subject to the environmental conditions set forth in Appendix B to this order.

(C) The certificate authority granted in Ordering Paragraph (A) shall be conditioned on the following:

- (1) North Baja's completion of the authorized construction of the proposed facilities and making them available for service within 1 year of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations.
- (2) North Baja's compliance with all applicable Commission regulations under the NGA including but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(D) North Baja shall execute a firm service agreement equal to the level of service represented in its precedent agreement prior to commencing construction of the Yuma Lateral.

(E) North Baja shall notify the Commission's environmental staff by telephone, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies North Baja. North Baja shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(F) The Commission approves North Baja's initial recourse rates for LAT-1 service under Rate Schedule FTS-1, subject to North Baja making a further compliance filing to provide tariff sheets for interruptible service in accordance with section 284.9 of

the Commission's regulations and to address how it will treat revenues received from incremental interruptible transportation service on the Yuma Lateral.

(G) North Baja must file actual tariff sheets in accordance with section 154.207 of the Commission's regulations not less than 30 and not more than 60 days prior to commencing service on the Yuma Lateral, as discussed herein.

(H) North Baja must file its negotiated rate contract or numbered tariff sheets reflecting the essential elements of its negotiated rate agreement not less than 30 and not more than 60 days prior to commencing service on the Yuma Lateral.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A**PERMIT AUTHORIZING NORTH BAJA PIPELINE, LLC TO OPERATE AND MAINTAIN NATURAL GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND MEXICO****FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NO. CP08-152-000**

(Issued September 2, 2008)

North Baja Pipeline, LLC (Permittee) a limited liability company organized under the laws of the State of Delaware filed on April 15 and April 18, 2008, in Docket No. CP08-152-000 an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00A requesting that the Commission issue an order authorizing it to construct facilities located at the international boundary between the United States and Mexico.

By letter dated July 9, 2008, the Secretary of State, and by letter dated July 29, 2008, the Secretary of Defense, favorably recommended that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, and the Commission's Regulations, permission is granted to Permittee to operate and maintain the natural gas facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission upon proper application therefore.

Article 2. The following facilities are subject to this Permit:

Approximately 1,150 feet of 12-inch pipeline commencing from the Permittee's Yuma Lateral at the center of the Salinity Canal in Yuma County, Arizona to the international boundary near Algodones, Mexico to interconnect with the natural gas facilities to be constructed, owned and operated in Mexico by Gasoducto Bajanorte, S. de R.L. de C.V.

Article 3. The natural gas facilities subject to this Permit or which may subsequently be included herein by modification or amendment may be utilized for the importation or exportation of natural gas between the United States and Mexico only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas imported or exported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacements.

Article 9. At such time as this Permit is surrendered, revoked, or otherwise terminated, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The Commission will specify the time within

which any authorized facilities shall be removed, and the Permittee shall remove those facilities within such time and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of __, 2008 has caused its name to be signed by __, [pursuant to a resolution of its Board of Directors duly adopted] on the __ day of __, 2008, a certified copy of the record of which is attached hereto.

North Baja Pipeline, LLC

By _____

(Attest)

Executed in triplicate

Appendix B

Environmental Conditions

1. North Baja shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Commission Order. North Baja must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Commission Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, North Baja shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, North Baja shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of the Commission Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

North Baja's exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. North Baja's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a ROW for a pipeline to transport a commodity other than natural gas.

5. North Baja shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, and minor field realignments per property owner needs and requirements which do not affect other property owners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. North Baja **shall not begin construction** activities until:
 - a. we receive comments from the FWS regarding the proposed action;
 - b. we complete any required informal or formal consultation with the FWS; and
 - c. North Baja has received written notification from the Director of OEP that construction or use of mitigation may begin.

7. North Baja shall not begin construction and use of facilities or use of extra work spaces, the contractor yard, or any new or to-be-improved access roads until:
 - a. North Baja files with the Secretary, Reclamation's, BLM's, and the State Historic Preservation Office's (SHPO) comments on the cultural resources survey report;
 - b. North Baja files an addendum report for the portions of the meter station and contractor yard that remain to be surveyed, and any newly identified areas, and Reclamation's and SHPO's comments on the report;
 - c. North Baja files any required mitigation/treatment plan, and Reclamation's, BLM's (if appropriate), and SHPO's comments on the plan; and
 - d. the Director of OEP reviews and approves all reports and plans and notifies North Baja that it may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "CONTAINS PRIVILEGED INFORMATION--DO NOT RELEASE."

8. Prior to construction, North Baja shall file with the Secretary for review and written approval by the Director of OEP, a Noise Analysis and Mitigation Plan for the entry location for the Colorado River Horizontal Directional Drill. The plan should include:
 - a. the estimated number of days of drilling required;
 - b. a list indicating the distance and direction of the noise sensitive areas (NSAs) within 0.5 mile;
 - c. a topographic map showing the location of the NSAs within 0.5 mile;
 - d. the existing day-night average noise (L_{dn}) at the NSAs nearest to the drill location and the predicted noise impacts at the NSAs during drilling activities; and
 - e. a description of any noise mitigation that would be implemented prior to the start of drilling activities to reduce noise impacts, or alternate measures proposed by North Baja, such as temporary relocation or compensation.