

121 FERC ¶ 61,010
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 Nos.	CP06-61-000 CP06-61-001 CP06-61-002 CP01-23-003
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ORDER ISSUING CERTIFICATE AND AMENDING PRESIDENTIAL PERMIT

(Issued October 2, 2007)

1. On October 6, 2006, the Commission issued a preliminary determination addressing the non-environmental issues raised by North Baja Pipeline, LLC's (North Baja) application under section 7(c) of the Natural Gas Act (NGA), in Docket No. CP06-61-000, to expand and modify its existing natural gas interstate pipeline system to facilitate the importation of over 2.7 Bcf per day of regasified liquefied natural gas (LNG) from Mexico into California and Arizona markets.¹ The October 2006 Order preliminarily approved, subject to satisfactory environmental review, North Baja's proposal to modify its existing system to accommodate bi-directional gas flow, construct interconnecting facilities with Southern California Gas Company (SoCalGas), construct approximately 46 miles of lateral facilities to serve electric generation facilities, and loop its entire approximately 80-mile existing system with a combination of 42-inch and 48-inch diameter pipeline. The October 2006 Order also granted a predetermination supporting rolled-in rate treatment for the costs of the proposed mainline facilities in North Baja's next rate case. In addition, the October 2006 Order preliminarily approved North Baja's request in Docket No. CP01-23-003 to amend its Presidential Permit and NGA section 3 authorization to allow for modifications of its existing export facilities at the international border to also accommodate the importation of natural gas.

2. On November 21, 2006, in Docket No. CP06-61-001, North Baja filed an amendment to its application in order to modify the location and facilities associated with

¹*North Baja Pipeline, LLC*, 117 FERC ¶ 61,022 (2006) (October 2006 Order).

the proposed interconnection between North Baja and SoCalGas. Further, on February 1, 2007, North Baja filed a second amendment to its application, in Docket No. CP06-61-002, to remove from consideration a short lateral and associated interconnection facilities to serve a power plant that no longer desires service from North Baja.

3. The Commission has completed its environmental analysis of North Baja's proposed project, as amended. As discussed below, we will grant the requested authorizations, subject to conditions.

I. Background

4. North Baja's existing natural gas pipeline system extends approximately 79.8 miles from an interconnection with the facilities of El Paso Natural Gas Company (El Paso) near Ehrenberg, Arizona through southeast California to a point on the international border between Yuma, Arizona and Mexicali, North Baja Mexico, where the pipeline interconnects with Sempra Energy's existing Gasoducto Bajanorte, S. de R.L. de C.V. (Gasoducto Bajanorte) pipeline. The North Baja system and the Gasoducto Bajanorte pipeline were built in 2002 to supply natural gas from the United States primarily to gas-fired electric generation facilities in Mexico. The existing North Baja system is currently authorized to transport 512,000 Dth of natural gas per day in a southbound direction.

5. On February 7, 2006, in Docket No. CP06-61-000, North Baja filed an application under section 7(c) of the NGA for certificate authority to modify its existing pipeline system to accommodate the northbound flow of gas, as well as to expand its system to facilitate the importation of re-gasified LNG from Mexico into California and Arizona. The expanded system, once completed, would be capable of transporting 2,932,000 Dth of natural gas per day from Mexico in a northbound direction to California and Arizona markets. However, North Baja also would continue to offer southbound gas transportation service for several existing shippers. North Baja also filed, in Docket No. CP01-23-003, an application pursuant to section 3 of the NGA, to amend its Presidential Permit and section 3 authorization to allow for modifications to its existing border facilities in order to receive supplies of imported natural gas.

6. The re-gasified LNG North Baja proposes to transport in its system will originate from new LNG terminals being planned or constructed along the coast of Baja California, Mexico. In its application, North Baja identified two terminals from which it would receive the regasified LNG: Sempra Energy's Energies Costa Azul LNG Terminal (ECA Terminal) and Chevron Corporation's (Chevron) Terminal GNL Mar Adentro de Baja California Project (Mar Adentro Terminal). However, in March 2007, Chevron cancelled its development of the Mar Adentro Terminal. The ECA Terminal is currently under construction and is expected to go into service on January 1, 2008, with a baseload

deliverability of 1.0 Bcf of natural gas per day and a peak deliverability of 1.3 Bcf per day. Sempra Energy has conducted open seasons for additional capacity at the ECA Terminal and anticipates constructing an expansion of the terminal to become operational in 2010, which would increase the baseload deliverability of the ECA Terminal to 2.0 Bcf per day. The LNG stored in tanks at the ECA Terminal, once vaporized, would then move through an expansion of the Gasoducto Bajanorte pipeline through Mexico to an existing interconnection with North Baja at the international boundary.

7. North Baja proposes to construct the expansion facilities in three phases. As described in more detail below, Phase I mainly would modify North Baja's facilities to facilitate the bi-directional flow of gas and add a new direct interconnection with SoCalGas. Phase I-A would construct a lateral to serve the Imperial Irrigation District's El Centro Generating Facility in Imperial County, California. Finally, Phase II would loop North Baja's existing pipeline.

8. In its original application, North Baja proposed, in Phase I of its proposed expansion, to: (1) modify its existing Ehrenberg Compressor Station in La Paz County, Arizona and its Ogilby Meter Station in Imperial County, California to allow for the northbound flow of gas; (2) construct a new 36-inch interconnection with SoCalGas' existing 36-inch diameter pipeline at a proposed new meter station, the Blythe Meter Station, in Riverside County, California;² (3) construct a new 42-inch diameter pipeline crossing under the Colorado River in La Paz County Arizona and Riverside County, California to connect the Ehrenberg Compressor Station with the proposed Blythe Meter Station;³ and (4) construct a 0.625 mile, 10-inch diameter lateral pipeline (the Blythe Energy Interconnect Lateral or BEI Lateral) to connect the proposed Blythe Meter Station with Blythe Energy's existing supply pipeline in Riverside County, California. The Blythe Energy pipeline is used to provide service to an existing power plant, the Blythe Energy Facility I, near Blythe, California.⁴ Upon completion of the proposed Phase I

²On November 21, 2006, in Docket No. CP06-61-001, North Baja filed an amendment to its application to modify the proposed SoCalGas interconnection and facilities by adopting an alternative interconnection with SoCalGas, the "Arrowhead Alternative." This proposed amendment is discussed in greater detail below.

³With the Arrowhead Alternative, North Baja's proposed 42-inch diameter pipeline will become a part of the Phase II construction, as discussed *infra*.

⁴On February 1, 2007, North Baja filed, in Docket No. CP06-61-002, an amendment to delete the BEI Lateral from its proposal to reflect the termination of the precedent agreement with the sole shipper on the lateral, FPL Energy, LLC (FPL Energy). This amendment is also discussed in greater detail below.

facilities, as amended, North Baja will be able to transport up to 614,000 Dth per day of natural gas on a firm basis from Mexico to markets in California and Arizona.

9. In Phase I-A, North Baja proposes to construct and operate a 45.7 mile, 16-inch diameter lateral pipeline extending from a point north of its Ogilby Meter Station westward through Imperial County, California to the Imperial Irrigation District's El Centro Generating Facility (the IID Lateral). The IID Lateral will allow North Baja to provide up to 110,000 Dth per day of firm natural gas transportation service for the Imperial Irrigation District. North Baja anticipates placing the IID Lateral into service on June 1, 2009.

10. Finally, in Phase II of its expansion, North Baja proposes to construct a new loop line (the B-Line) parallel to its existing 30-inch and 36-inch diameter mainline system (the A-Line) in Riverside and Imperial Counties, California. Specifically, North Baja proposes to construct 68.1 miles of 48-inch diameter pipeline and 11.2 miles of 42-inch diameter pipeline which will entirely loop North Baja's existing mainline system. The new B-Line will be fully integrated with the existing A-Line through a series of interconnections. Upon completion of the Phase II facilities, North Baja's system will have a northbound capacity of 2,932,000 Dth per day. North Baja anticipates placing the Phase II facilities into service by January 1, 2010, contemporaneous with the anticipated in-service date of the ECA Terminal expansion. North Baja estimates that the entire cost of all phases of the expansion will be \$290,963,377.

11. In response to the development of the LNG terminals in Mexico, North Baja conducted two open seasons for expansions and modifications to its pipeline facilities. After the first open season for Phase I service, conducted from March 31 through September 2003, two shippers⁵ entered into precedent agreements for a total of 312,000 Dth per day of firm northbound capacity on North Baja's system for 20-year terms, and some of North Baja's existing shippers elected to reverse the primary path of 302,000 Dth per day of southbound capacity to northbound capacity. Thus, when Phase I service commences from the ECA Terminal, northbound volumes will total 614,000 Dth per day. Existing shippers on North Baja will retain 185,000 Dth per day of southbound capacity.⁶

⁵They are Coral Energy Resources, LP (Coral) and Sempra Energy LNG Marketing Corp. (Sempra LNG).

⁶In 2010, however, 30,000 Dth per day of the northbound capacity attributable to the existing shippers reverts to southbound capacity. Thus, the Phase I northbound volumes will be reduced to 584,000 Dth per day and the southbound volumes will increase to 215,000 Dth per day.

12. North Baja held its second open season from May 11 through June 8, 2005 for Phase II of its proposed expansion, to coincide with the anticipated in-service dates of the ECA Terminal expansion in 2010 and the Mar Adentro Terminal.⁷ The combined northbound capacity under precedent agreements resulting from this open season was 2,384,000 Dth per day,⁸ which is 548,000 Dth per day less than the proposed 2,932,000 Dth per day northbound physical capacity of North Baja's system after the Phase II facilities are in service. While Chevron has cancelled the Mar Adentro Terminal, Chevron USA has not cancelled its precedent agreement with North Baja for northbound mainline transportation service. Therefore, North Baja still has precedent agreements for 2,384,000 Dth per day.

13. In addition to shippers entering into precedent agreements for the mainline capacity proposed by North Baja, the Imperial Irrigation District has executed a precedent agreement with North Baja for 110,000 Dth per day of firm incremental transportation capacity on North Baja's proposed IID Lateral for a term of 20 years. The Imperial Irrigation District intends to use its capacity on the IID Lateral to supply natural gas to its El Centro Generating Station in El Centro, California. Also, FPL Energy had executed a precedent agreement with North Baja for 120,000 Dth per day of firm transportation capacity on North Baja's proposed BEI Lateral for a term of 20 years. FPL Energy had intended to use its capacity on the BEI Lateral to serve its affiliate's Blythe Energy Facility I electric generating facility. However, on January 30, 2007, FPL Energy exercised its right to terminate its precedent agreement for service on the BEI Lateral.

14. North Baja proposes to use its currently effective recourse rates under its existing Rate Schedules FTS-1 and ITS-1 as initial recourse rates for the mainline expansion services. For the Phase I service, Coral has elected to pay a negotiated rate and Sempra LNG has retained the option to pay either a negotiated rate, a recourse rate, or a combination thereof. For Phase II service, Chevron USA, Coral, and Sempra LNG have elected to pay the recourse rate. North Baja intends to roll the costs of the mainline expansions into its existing rate base in a future NGA section 4 proceeding, and requested that the Commission grant a preliminary determination supporting rolled-in rates. For service on the IID and BEI Laterals, North Baja proposed incremental rates.

15. In the October 2006 Order, the Commission determined that, contingent on a favorable outcome of our then-pending environmental review, North Baja's proposed

⁷As previously noted, Chevron has canceled the Mar Adentro Terminal.

⁸Chevron USA, Inc. (Chevron USA), Coral, and Sempra LNG entered into precedent agreements for 20-year terms.

expansion is required by the public convenience and necessity. The Commission also held that, absent any material change in circumstances, North Baja could roll the costs of the mainline expansions into its existing rates in a future NGA section 4 proceeding. In addition, the Commission made a preliminary determination in the October 2006 Order that North Baja's requested modifications to its Presidential Permit and authorization pursuant to section 3 of NGA would be consistent with the public interest. Finally, in the October 2006 Order, we deferred addressing the environmental concerns raised by the Imperial County Air Pollution District (Imperial County APCD), Imperial County, California (Imperial County), and the Morongo Band of Mission Indians (Morongo Band) to the instant order. No party requested rehearing of the October 2006 Order.

II. Proposed Amendments

A. Docket No. CP06-61-001 Amendment Adopting "Arrowhead Alternative"

16. On November 21, 2006, in Docket No. CP06-61-001, North Baja filed an amendment to its application, proposing to construct a different interconnection with SoCalGas than it proposed in its original application. Specifically, North Baja proposes to formally adopt the "Arrowhead Alternative" interconnection with SoCalGas, instead of constructing the originally proposed Blythe Meter Station in Riverside County, California. North Baja had previously submitted supplemental filings with the Commission on May 1 and May 24, 2006, notifying the Commission that North Baja was engaged in discussions with SoCalGas regarding a potential delivery point at SoCalGas' existing Blythe Compressor Station, and providing detailed information on this alternative interconnection, known as the "Arrowhead Alternative."⁹ North Baja's proposed modification of the delivery point to the SoCalGas system would also require modification of the delivery point to the Blythe Energy Facility I supply pipeline.

17. The Arrowhead Alternative consists of the following added facilities: (1) the Arrowhead Extension, a 2.1-mile, 36-inch diameter pipeline extending from North Baja's pipeline at Milepost 7.4 to SoCalGas' existing Blythe Compressor Station; (2) the Blythe-Arrowhead Meter Station and Pig Receiver, located within the fenced yard of

⁹SoCalGas' existing Blythe Compressor Station is located two miles north of North Baja's existing pipeline, at the intersection of Arrowhead Boulevard and 14th Avenue in Riverside County, California.

SoCalGas' existing Blythe Compressor Station;¹⁰ (3) the new BEI Lateral, a 40-foot, 8-inch diameter lateral extending from the proposed Blythe-Arrowhead Meter Station to the existing Blythe Energy Facility I supply pipeline; and (4) other appurtenant facilities.

18. In addition, under the Arrowhead Alternative, the following facilities will be eliminated from the project: (1) the Blythe Meter Station on Riviera Drive (including the SoCalGas Meter Station and the Blythe Energy Meter Station); (2) 20 feet of interconnect piping with SoCalGas at the originally proposed Blythe Meter Station; (3) the 0.6 mile, 10-inch diameter, BEI Lateral from the originally proposed Blythe Meter Station to the Blythe Energy Facility I supply pipeline; and (4) an odorant facility at the Ogilby Meter Station. Also, as a result of the adoption of the Arrowhead Alternative, North Baja plans to defer to Phase II construction of the proposed B-Line Colorado River crossing to connect North Baja to the Ehrenberg Compressor Station for deliveries to El Paso. North Baja's amended application presents no changes to its cost estimates for the project,¹¹ or to the capacities or volumes proposed in Docket No. CP01-61-000.

19. North Baja states that it is proposing to adopt the Arrowhead Alternative because SoCalGas has indicated that this alternative interconnection will better serve its operational needs, eliminates redundant facilities, such as the gas odorization facility, and will locate the metering facilities inside an existing compressor station yard, rather than adjacent to existing and planned residential areas in the City of Blythe. North Baja further states that it has previously notified affected landowners that the Arrowhead Alternative could become part of the proposed project,¹² and notes that the Commission's

¹⁰The Blythe-Arrowhead Meter Station includes two separate meters, the Blythe Energy Interconnect Meter and the SoCalGas Interconnect Meter. North Baja states that gas delivered into the SoCalGas system would be odorized by SoCalGas using existing odorant facilities.

¹¹In a December 19, 2006 data request, the Commission's staff asked North Baja to provide the impact on costs and the incremental rates for the BEI Lateral resulting from the design changes. On January 8, 2007, North Baja filed a response stating that the shipper on the facility was contemplating the termination of its precedent agreement for service on the BEI Lateral. The request subsequently was made moot by North Baja's amendment in Docket No. CP06-61-002 to eliminate the facilities and services associated with the BEI Lateral.

¹²North Baja states that it first sent letters to affected landowners on May 4 and May 11, 2006, notifying them of the potential Arrowhead Alternative, and then advised landowners by letter on October 18, 2006 that it intended to amend its application to adopt the Arrowhead Alternative as part of its project.

Draft Environmental Impact Statement prepared for North Baja's project, issued on September 26, 2006, fully evaluated the Arrowhead Alternative and concluded it is a reasonable alternative.

B. Docket No. CP06-61-002 Amendment Eliminating BEI Lateral

20. On February 1, 2007, in Docket No. CP06-61-002, North Baja filed a second amendment to its application to remove from consideration the facilities and services associated with the BEI Lateral. North Baja states that on January 30, 2007, the sole customer holding a precedent agreement for service on the BEI Lateral facilities, FPL Energy, LLC, exercised its right to terminate its precedent agreement. Therefore, North Baja no longer needs to construct the BEI Lateral, and proposes to eliminate the BEI Lateral facilities from its application.

21. Specifically, North Baja proposes to delete: (1) the 40-foot, 8-inch diameter, BEI Lateral; and (2) the Blythe Energy Interconnect Meter from the Blythe-Arrowhead Meter Station and Pig Receiver. North Baja states that because the costs of the BEI Lateral were separately stated, and were to be recovered through incremental Lateral Rate Schedule (LAT-2), removal of the BEI Lateral has no effect on other costs or rates set forth in its original application. North Baja further states that given the de minimus effect of this change, it does not intend to send out any landowner notification.

III. Notice and Interventions

22. Public notice of North Baja's application in Docket Nos. CP06-61-000 and CP01-23-003 was published in the *Federal Register* on March 1, 2006.¹³ Motions to intervene were submitted as described in the October 2006 Order.¹⁴ In addition, on November 28, 2006, the South Coast Air Quality Management District (SCAQMD) filed a timely motion to intervene on environmental grounds.¹⁵

¹³71 Fed. Reg 10,489 (2006).

¹⁴117 FERC ¶ 61,022 at PP 29-32 and Appendix.

¹⁵18 C.F.R. §§ 157.10(a)(2) and 380.10(a)(1)(i) (2007). These sections provide that any person may file to intervene on environmental grounds based on the draft environmental impact statement. Such an intervention is deemed timely as long as it is filed within the comment period for the draft environmental impact statement.

23. Public notice of North Baja's amended applications in Docket Nos. CP06-61-001 and CP06-61-002 were published in the *Federal Register* on December 12, 2006, and February 14, 2007, respectively.¹⁶ No party filed an intervention or protest in response to either notice.

IV. Discussion

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

A. Application of Certificate Policy Statement to Amended Project

25. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certificating new construction.¹⁷ The Certificate 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 Certificate 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. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, and the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

26. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects 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, we will evaluate the project by balancing the evidence

¹⁶71 Fed. Reg. 70,750 (2006) and 72 Fed. Reg. 7,023 (2007).

¹⁷*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

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 we proceed to complete the environmental analysis where other interests are considered.

27. In the October 2006 Order, the Commission found that North Baja's existing customers will not subsidize the proposed expansion because all of the existing customers receive service pursuant to long-term, fixed negotiated rates, the costs of the proposed laterals will be recovered through incremental rates, and the proposed roll-in of mainline expansion costs and volumes into existing rates will provide adequate revenues to cover the cost of service for the mainline facilities and will lower North Baja's system recourse rate.¹⁸ The Commission also found that North Baja's expansion will not adversely impact other pipelines and their customers, but will benefit existing shippers in the Southwest by providing a new supply of natural gas to the region. The proposed amendments to North Baja's expansion project modify various project facilities, but do not change the proposed increase in mainline capacity and mainline volumes of the project.¹⁹ Although the amended proposal eliminates the BEI Lateral and retains the IID Lateral, North Baja proposed to charge incremental rates for service on these laterals. Therefore, the proposed amendments do not affect North Baja's proposed cost recovery or the project's impact on other pipelines and their customers.

28. Further, with respect to the project's impact on landowners, the Commission noted in the October 2006 Order that North Baja expects very limited, if any, use of eminent domain, since virtually all of the project facilities will be located within or adjacent to North Baja's existing right-of-way, or in existing compressor station or meter station

¹⁸117 FERC ¶ 61,022 at PP 36-37.

¹⁹As discussed above, although Chevron has cancelled the Mar Adentro Terminal, Chevron USA has not cancelled its precedent agreement with North Baja for northbound mainline transportation service. Thus, North Baja still has precedent agreements for 2,384,000 Dth per day using the mainline expansion facilities. Further, North Baja still has the precedent agreement with the Imperial Irrigation District for 110,000 Dth per day using the IID Lateral. Consistent with Commission policy, we will condition North Baja's certificate authority upon its execution of final contracts for volumes equivalent to those reflected in the precedent agreements for each phase of the project, prior to commencement of construction of each phase of the project. *See Texas Eastern Transmission LP*, 119 FERC ¶ 61,258 (2007) at n. 12 and Ordering Paragraph (E) and *Wyoming Interstate Company, Ltd.*, 119 FERC ¶ 61,251 (2007) at n. 4 and Ordering Paragraph (I).

areas. The Commission concluded that North Baja has made sufficient efforts to minimize adverse impacts on landowners.

29. North Baja's proposed adoption of the Arrowhead Alternative interconnection with SoCalGas in Docket No. CP06-61-001 similarly presents limited impacts on landowners. The metering and odorant facilities associated with the Arrowhead Alternative will be located within SoCalGas' existing Blythe Compressor Station yard, rather than on the privately-owned land of existing and planned residential areas in the City of Blythe. The pipeline portion of the Arrowhead Alternative, the 2.1-mile Arrowhead Extension, adjacent to Arrowhead Boulevard, will be built on both private (1.1 miles) and county land (1 mile).²⁰ North Baja has indicated that the rights to operate the Arrowhead Extension within the Arrowhead Boulevard right-of-way would be authorized under an agreement between North Baja and Riverside County. Further, North Baja's proposed elimination in Docket No. CP06-61-002 of the BEI Lateral, as modified in Docket No. CP06-61-001, will have no impact on landowners.

30. The Commission found in the October 2006 Order that any potential adverse effects of North Baja's project are outweighed by the substantial benefits of the project, namely, the provision of a much-needed new source of natural gas to the southwest region of the United States. The Commission also granted a predetermination that rolled-in rate treatment for the costs associated with the mainline expansion would be appropriate, absent material changes in the relevant facts and circumstances, and approved North Baja's proposed incremental rate for treatment for the IID and BEI Laterals.²¹ Therefore, consistent with the Certificate Policy Statement and section 7 of the NGA, the Commission determined that, pending completion of the environmental review, the approval of North Baja's proposed expansion would be in the public convenience and necessity.

31. The amendments to North Baja's proposal do not affect or change the Commission's rationale underlying such preliminary approval of the project. Moreover, as previously noted, there were no requests for rehearing of the October 2006 Order. Accordingly, having completed the environmental review of the project, discussed below, the Commission affirms its preliminary determination that North Baja's proposed expansion is required by the public convenience and necessity. Similarly, the

²⁰No residences or businesses are located within 100 feet of the Arrowhead Extension.

²¹As previously noted, North Baja no longer proposes to construct and operate the BEI Lateral.

Commission affirms its predetermination permitting rolled-in rate treatment for the costs of the mainline facilities in North Baja's next rate case.

B. Environmental Review

32. The environmental impacts of North Baja's proposed expansion project were evaluated in a draft and final environmental impact statement/environmental impact report (EIS/EIR) and proposed land use plan amendment prepared jointly by the staffs of the Commission and the California State Lands Commission (CSLC).²² The draft and final EIS/EIR were prepared to satisfy the requirements of the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), and the Federal Land Management and Policy Act. The CSLC will use the final EIS/EIR to consider North Baja's application to amend its existing right-of-way lease across the State's Sovereign and School Lands in California.

33. The U.S. Bureau of Land Management (BLM) and the Bureau of Reclamation (BOR) served as federal cooperating agencies for the preparation of the final EIS/EIR under NEPA. The final EIS/EIR will be used by the BLM to consider amending the California Desert Conservation Area Plan and the Yuma District Resource Management Plan to accommodate the construction of portions of the project on federally-managed lands.

34. The Commission issued its draft EIS/EIR on September 22, 2006, and public notice of the availability of the draft EIS/EIR was published in the *Federal Register* on September 29, 2006. The draft EIS/EIR was filed with the U.S. Environmental Protection Agency (EPA); submitted to the California State Clearinghouse; and mailed to approximately 1,000 interested parties, including federal, state, and local government agencies, elected officials, Native American tribes, affected landowners, including landowners and tenants potentially affected by the Arrowhead Alternative, local libraries and newspapers, intervenors in the Commission's proceeding, and other interested parties (i.e., miscellaneous individuals and environmental groups who provided scoping

²²The CSLC is the state agency that has jurisdiction and management control over California's Sovereign and School Lands. As such, the CSLC has the principal responsibility for carrying out and approving the project in California, and is thus the lead agency in California for preparing the EIS/EIR, complying with the California Environmental Quality Act (CEQA), following the guidelines for the implementation of the CEQA (California Code of Regulations, Title 14, §15000 *et seq.*) (CEQA Guidelines), and coordinating the review of the EIS/EIR by state and local responsible and trustee agencies.

comments, or wrote to the Commission or one of the cooperating agencies asking to receive a copy of the document). The public was given 90 days after the date of publication in the *Federal Register* to review and comment on the draft EIS/EIR both in the form of written comments and at public meetings held on December 5, 2006, in El Centro California and on December 6, 2006, in Blythe, California. The Commission received 41 separate comments in response to the draft EIS/EIR.

35. The final EIS/EIR was issued by the Commission on June 8, 2007, and the EPA issued a notice of availability of the final EIS/EIR on June 15, 2007 (72 Fed. Reg. 33,221). The final EIS/EIR was mailed to the same agencies, groups, and individuals to which the draft EIS/EIR was mailed, as well as to those interested parties who had commented on the draft EIS/EIR. The distribution list is provided as Appendix A of the final EIS/EIR.

36. The final EIS/EIR analyzes the environmental impacts of North Baja's proposed expansion project, addressing issues related to project objectives, purpose and need, alternatives, geology, soils, water resources, wetlands, vegetation, wildlife and aquatic resources, special status species, land use (including special management areas, recreation and public interest areas, and aesthetic resources), transportation and traffic, cultural resources, air quality, noise, reliability and safety, cumulative impacts, growth-inducing impacts; and environmental justice.

37. The final EIS/EIR also addresses the issues and concerns raised in the comments on the draft EIS/EIR received from federal, state, and local agencies, a Native American tribe, and companies and organizations. The primary concerns reflected in the comments relate to the project's potential impacts on air quality and the adequacy of the draft EIS/EIR's analysis of these impacts. The commenters raised issues regarding alleged air quality impacts that would result from the end use in the California South Coast Air Basin (SCAB)²³ of the LNG-source gas transported by North Baja. The commenters maintained that the supplies of LNG-source gas would have a higher Wobbe Index (WI)²⁴ than existing supplies, and argued that the introduction of the higher Btu-content

²³The SCAB comprises four southern California counties (Orange County, and the non-desert portions of Los Angeles, Riverside and San Bernadino Counties). The SCAB, together with the Riverside County portions of the Salton Sea Air Basin and the Mojave Desert Air Basin, make up the jurisdictional area of the SCAQMD, the governmental body charged with regulating air pollution in the largest air pollution district in California. In this order, the term "SCAB" is intended to denote the entire jurisdictional area of the SCAQMD.

²⁴The WI is a widely accepted indicator of the interchangeability of fuel gases and
(continued)

gas would increase emissions of nitrogen oxides (NOx) (an ozone precursor) in the SCAB, directly affecting air quality and making attainment of the federal air quality standards more difficult. The commenters requested that the Commission evaluate the air quality impacts of the end use of the gas and conduct a full General Conformity Analysis for the SCAB under the Clean Air Act (CAA), or condition North Baja's certificate to allow North Baja to only transport gas with a lower WI. The commenters also raised issues regarding the potential air quality impacts of two compressor stations proposed on the Mexican segment of the project and future power plants in Mexico. The commenters requested that the Commission evaluate emissions from the future Mexican power plant facilities, and/or require the Mexican compressor stations and power facilities to be located in the United States where they would have to meet more stringent emission standards.

38. The final EIS/EIR determined that construction and operation of the North Baja's expansion project would result in adverse environmental impacts. For instance, a number of resources, such as soils, crop production, native desert habitat and vegetation, and special status species, would be irretrievably lost as a result of the construction and existence of the project. The final EIS/EIR concluded, however, that with the implementation of recommended environmental mitigation measures, most of the adverse environmental impacts would be reduced to less than significant levels and the project would be an environmentally acceptable action. But, the final EIS/EIR found that impacts on three sensitive species (the federally listed desert tortoise and Peirson's milk-vetch, and the state-listed flat-tailed horned lizard) and their habitats could remain significant even after feasible mitigation is applied. The Commission has completed consultation with the U.S. Fish and Wildlife Service (FWS) regarding the tortoise and milk-vetch, and the FWS has issued a biological opinion that the North Baja project would not jeopardize the continued existence of these species.²⁵

is frequently defined in the specifications of gas supply and transport utilities. The WI measures the heating potential, or potential Btu content, of the gas; the higher the WI, the higher the heat value. Combustion of natural gas with higher heating values and a higher WI results in increased combustion temperature and the possibility of increased NOx emissions.

²⁵The California Department of Fish and Game has not yet issued its conclusions regarding the impact of the project on the desert tortoise, Peirson's milk-vetch, or flat-tailed horned lizard.

39. With respect to air quality, the draft and final EIS/EIR analyzed the air quality impacts resulting from the construction and operation of the proposed facilities.²⁶ There are typically little or no air emissions associated with operation of a pipeline, and the EIS/EIR found that there would be no air emissions generated by these above-ground or pipeline facilities during their operation, with the exception of those emissions associated with emergency venting and maintenance operations. The EIS/EIR analyzed the air quality impacts associated with the construction of the pipeline project, and found that there would be intermittent and short-term dust emissions from soil disruption caused by construction activities and combustion emissions from construction equipment. The EIS/EIR determined that fugitive dust would be minimized, however, by the implementation of North Baja's Dust Control Plan and recommended that North Baja file a revised project-wide Dust Control Plan.

40. The EIS/EIR did not analyze the air quality impacts resulting from the end use of the natural gas that would be transported by the North Baja expansion because it found the end use of the gas was not a part of the project.²⁷ The EIS/EIR did, however, consider whether emissions from the end use of the LNG-source gas were "indirect emissions" of the project under the General Conformity Rule, promulgated to implement the conformity provision of the CAA,²⁸ for purposes of determining whether a general conformity analysis was required. In addition, the EIS/EIR found that because the CPUC had recently reduced the maximum WI limit for gas received on the SoCalGas and San Diego Gas Electric Company (SDG&E) systems from 1,437 to 1,385, and North Baja's precedent agreements require that gas delivered to North Baja meet the most stringent gas quality standards of any of the pipelines to which North Baja might ultimately deliver gas, the gas North Baja delivers to SoCalGas and SDG&E, of necessity, will have to meet

²⁶These proposed facilities are modifications to the existing Ehrenberg Compressor Station, El Paso Meter Station, and Ogilby Meter Station to allow northbound flow of natural gas, and the construction of 127.6 miles of 48- to 16-inch diameter pipeline, two meter stations, 13 valves, four pig launchers, five pig receivers, and three taps and crossover piping.

²⁷Final EIS/EIR at 1-23 (June 8, 2007).

²⁸42 U.S.C. § 7401 *et seq.* Title I, section 176(c)(1) of the CAA requires that the federal government not engage, support, or provide financial assistance for licensing, permitting, or approving, any activity not conforming to an approved CAA implementation plan.

the 1,385 WI limit and the gas quality and interchangeability standards required by the CPUC.²⁹

41. Although many factors were considered in the determination that the project would be an environmentally acceptable action, the principal reasons are:

99 percent of the proposed pipeline facilities would be constructed in or adjacent to various existing rights-of-way;

no new permanent right-of-way would be required for the pipeline loop, and the permanent right-of-way for the lateral pipelines would be limited to a maximum width of 30-35 feet;

North Baja would implement its various mitigation plans to protect natural resources and residential areas during construction and operation of the project;

use of the horizontal directional drill method would avoid disturbances to the beds and banks of the Colorado River, the All-American Canal, and the East Highline Canal and associated wetlands/riparian areas;

²⁹Final EIS/EIR at 1-7. (June 8, 2007). In this proceeding, North Baja states its intention to ensure that gas flowing on its expansion line meet the strictest gas quality and interchangeability standards of the interconnecting pipeline systems. This intention is reflected in the terms of the precedent agreements. The Commission, however, looks not to service agreements, but to a company's tariff for enforceable gas quality and interchangeability provisions. Accordingly, consistent with North Baja's stated intent, the Commission directs North Baja to modify its tariff to implement such provisions to ensure expansion shippers' volumes meet the most stringent standards of any of the pipelines to which North Baja might ultimately deliver gas. North Baja's tariff modifications must be consistent with the Commission's *Policy Statement on Provisions Governing Natural Gas Quality and Interchangeability in Interstate Natural Gas Pipeline Company Tariffs*, 115 FERC ¶ 61,325 (2006). In view of this expected change to the North Baja tariff, we reject the SCAQMD's contention that the Commission is relying on "voluntary and unenforceable agreements between the utility company and its natural gas suppliers" in concluding that the proposed project will not result in significant adverse environmental impacts.

the appropriate agency and tribal consultations, and any appropriate compliance actions resulting from these consultations, would be completed before North Baja would be allowed to begin construction in any given area; and

an environmental inspection and mitigation monitoring program would ensure compliance with all mitigation measures that become conditions of certification or approval.

42. Although the Commission's regulations do not provide a formal comment period within which parties may comment on a final EIS, the SCAQMD, the Imperial County Planning & Development Services Department (Imperial County P&D), Imperial County, and EPA filed comments with the Commission and the CSLC on the final EIS/EIR.

43. The SCAQMD asserts that the final EIS/EIR fails to adequately address, analyze, and mitigate adverse air quality impacts that would allegedly result from the end use of the imported natural gas delivered by the project and, therefore, is legally deficient under NEPA and CEQA. The SCAQMD also argues that the final EIS/EIR is incorrect in its conclusion that a general conformity analysis under the CAA is not required.

44. Imperial County P&D argues that the final EIS/EIR fails to adequately address the cumulative air quality impacts from the two new compressor stations on the Mexican segment of the pipeline and the two existing power plants in Mexico. Imperial County P&D argues that the Commission should revisit the results of the final EIS/EIR and substitute California's stricter air quality standards for the federal standards employed. Imperial County P&D also argues that the final EIS/EIR fails to address the cumulative air quality impacts of emissions from future natural gas-fired power and industrial plants in Mexico fostered by North Baja's project.

45. EPA states that it continues to have concerns with respect to the lack of analysis of indirect air quality impacts, and mitigation to reduce those impacts, associated with the end use of gas with a higher WI; EPA notes that the CSLC, in certifying the EIR, required such an indirect impact analysis. Citing 40 CFR § 1502.14(f), EPA and the SCAQMD insist that the final EIS/EIR should have discussed all relevant and reasonable mitigation measures, even those outside the Commission's jurisdiction to implement. EPA also urges that the EIS/EIR consider permanent and temporary impacts for the 265 ephemeral washes crossed by the project.

46. Finally, while Imperial County argues that the analysis of alternatives in the final EIS/EIR fails to comply with the level of detail required by NEPA, the main thrust of Imperial County's comments is that the final EIS/EIR fails to adequately analyze under CEQA: (1) adverse impacts on air quality and the health risks thereof, including

emissions attributable to power plants in Mexico; (2) growth induced by added gas fueled electric production, specifically, growth in population, housing, and traffic; (3) the possibility of terrorist acts directed at the expansion line; and (4) the range of adverse impacts that would result from adopting alternatives to North Baja's proposal. Imperial County argues that the Commission and CSLC staff's failure to revise and recirculate portions of draft EIS/EIR related to cumulative and growth-inducing impacts constituted a violation of CEQA, and that CEQA requires the Commission and the CSLC to do so prior to certification of the document.

47. The Commission addresses these comments below.

1. California Environmental Quality Act

48. The issue of whether the final EIS/EIR complies with the requirements of CEQA or should be revised and recirculated prior to its certification, raised by Imperial County, is not a matter within the Commission's jurisdiction and, in any event, is moot, as the CSLC has already certified the final EIR.

49. "Document certification" is a process undertaken by the CSLC as a part of California's CEQA requirements. When an EIR is completed, the CSLC considers and certifies that: (1) the final EIR has been completed in compliance with CEQA; (2) the final EIR was presented to the CSLC in a public meeting, and the CSLC reviewed and considered the information contained in the final EIR prior to considering the proposed project; and (3) the final EIR reflects the CSLC's independent judgment and analysis.³⁰ In addition, the CSLC must prepare one or more written findings of fact for each significant environmental impact identified in the EIR.

50. At a public meeting held on July 13, 2007, the CSLC determined that the final EIR complies with CEQA and certified the document. The CSLC granted North Baja's application to amend its existing right-of-way lease for the construction of the project facilities. However, the CSLC added a condition to North Baja's lease agreement requiring North Baja to study the air quality impacts in the SCAB of using gas with a higher WI than is presently used in the SCAB. This condition requires North Baja to measure NOx emissions directly attributable to any incremental increases in the WI of gas used in the SCAB resulting from the operation of North Baja's pipeline, to determine

³⁰See CEQA Guidelines, §15090[a].

appropriate measures to mitigate such increases in NOx emissions, and to implement those mitigation measures approved by the CSLC.³¹

2. Air Quality Impacts from End Use of LNG-Source Gas

51. As stated, *supra*, commenters on the draft EIS/EIR had argued that the end use of the higher Btu-content gas that they expect to be transported by North Baja's expansion project would increase emissions of NOx in the SCAB and that the EIS/EIR should analyze and require mitigation for the air quality impacts that would result from the end use of the gas. The commenters argued that the definition of the proposed project should include the end use of the gas because the end use, allegedly, is a connected action of the project. The final EIS/EIR, however, held that "[t]he end use of the natural gas that would be transported by the proposed Project is not considered part of the Project and, consequently is outside the scope of the EIS/EIR."³² The EIS/EIR then noted that the definition of the proposed project is further discussed in relation to the General Conformity Rule under the CAA, where the EIS/EIR considered whether emissions from the end use of the gas would constitute "indirect emissions" as defined in the General Conformity Rule.³³

52. In its comments, the SCAQMD faults the Commission for relying on analysis of whether end use emissions are indirect emissions under the CAA as the basis for declining to assess the potential impacts of the end use of the gas to be transported by North Baja as part of its NEPA review. The SCAQMD argues that the Commission cannot substitute the analysis required by the CAA for the analysis required by NEPA. The SCAQMD points out that indirect effects are categorized differently under the CAA and NEPA. Further, argues the SCAQMD, the analysis under NEPA requires an examination of the impacts of "connected actions" as defined by the Council on Environmental Quality (CEQ) regulations implementing NEPA. Under these regulations, "connected actions" are "closely related" and are connected if they: "(i) [a]utomatically

³¹If North Baja elects to enter into this lease, the Commission notes that the implementation of any resulting identifiable mitigation measures that would impact the operation of North Baja's facilities or result in a change in North Baja's gas quality specifications will require prior Commission approval.

³²Final EIS/EIS at 1-23.

³³*Determining Conformity of General Federal Actions to State or Federal Implementaion Plans*, 58 Federal Register 63214 (November 30, 1993), *codified in* 40 C.F.R Part 51, Subpart W and Part 93, Subpart B.

trigger other actions which may require environmental impact statements[;] (ii) [c]annot or will not proceed unless other actions are taken previously or simultaneously[; or] (iii) [a]re interdependent parts of a larger action and depend on the larger action for their justification.”³⁴

53. The Commission clarifies that the discussion of whether end use emissions would constitute indirect emissions of the project under the General Conformity Rule was intended to fulfill the Commission’s obligations under the CAA. While our decision not to seek to quantify overall end use emissions as part of our analysis under NEPA rests, in part, on a similar foundation as our decision not to seek to quantify end use emissions in non-attainment areas under our general conformity assessment – namely, the amorphous nature of such emissions and the fact that there are no new facilities dedicated to consuming the expansion gas – the Commission agrees with the SCAQMD that a consideration of whether end use emissions are indirect effects of the project under NEPA, and a consideration of whether such emissions are indirect effects of the project for General Conformity purposes under the CAA, are separate analyses, which employ two different definitions of “indirect effects.” Our consideration of indirect effects under NEPA is discussed below.

54. However, as first discussed below, the Commission disagrees with the SCAQMD that the relevant inquiry under NEPA is whether the end use of the LNG-source gas is *part* of the project or the proposed action because it is a “connected action.” Rather, the relevant issue is whether the end use of the gas (*i.e.*, the operation and emissions of end users) is an *effect* or “indirect impact” of the proposed project that must be included within the scope of the environmental analysis.³⁵ We find below that the end use of the gas is not an indirect effect of North Baja’s project that must be analyzed in the EIS/EIR.

³⁴40 C.F.R. § 1508.25(a)(1).

³⁵Section 1508.25 of the CEQ regulations states that the determination of the scope of an EIS requires a consideration of three types of actions (connected, cumulative, and similar actions), three types of alternatives (no action alternative, other reasonable courses of action, and mitigation measures not in the proposed action), and three types of impacts (direct, indirect, and cumulative).

a. Scope of Proposed Project and “Connected Action” Test

55. The SCAQMD asserts that NEPA requires the evaluation of the environmental impacts of “connected actions” in a single EIS, and that the use, or burning, of the gas by end users is a “connected action” to North Baja’s expansion project. The SCAQMD argues that North Baja’s project and the end use of the gas are interconnected actions because a primary purpose of the pipeline is to deliver natural gas for use in southern California.³⁶ It asserts that limiting the scope of the project to the proposed facilities and their impacts ignores what it considers to be the project’s central purpose -- the importation of LNG from a terminal in Mexico into the SCAB – and the air quality impacts resulting from the delivery and use of the LNG imports in the SCAB.³⁷

56. The SCAQMD relies on several cases to support its argument that the end use of the gas is a “connected action” to the project warranting NEPA review. The SCAQMD cites *Border Power Plant Working Group*,³⁸ in which the court found that a Department of Energy (DOE) permit to construct and operate electric lines from the border with Mexico required NEPA review of air emissions impacts stemming from power generation at an associated plant in Mexico, even though the permit sought was solely for the construction of the transmission lines themselves. The SCAQMD also cites *Thomas v. Peterson*,³⁹ in which the court found that the construction of a logging road and the timber sales the road would facilitate were interconnected in such a manner so as to require analysis of both in the EIS.

57. The “connected action” analysis is inapposite to the SCAQMD’s argument that the end use of the gas warrants NEPA review because the “connected action” analysis is applicable only to multiple federal actions. Section 102(2)(C) of NEPA requires an EIS

³⁶The SCAQMD states that the final EIS/EIR expounds on the need for new sources of gas in California and finds that one of the objectives of the project is the connection of the pipeline system with the transmission system of SoCalGas and the delivery of gas to southern California. July 6, 2007 Comments of SCAQMD at 12 citing final EIS/EIR at 1-4.

³⁷The Commission notes that the project facilities are located approximately 100 to 200 miles from the major metropolitan areas of the SCAB, such as Los Angeles and Riverside, California.

³⁸260 F.Supp. 2d 997 (S.D. Cal. 2003) (*Border Power*).

³⁹753 F.2d 754 (9th Cir. 1985) (*Thomas*).

for “major Federal actions significantly affecting the quality of the human environment.”⁴⁰ The CEQ regulations implementing NEPA defines a “major federal action” as including “actions with effects that may be major and which are potentially subject to Federal control and responsibility.”⁴¹ As described by the court in *Thomas*, there are certain situations in which an agency is required to consider several related actions in a single EIS so as to preclude a project that would constitute a major federal action from being divided into multiple smaller segments, each alone having an insignificant environmental impact, but which would collectively have a substantial impact.⁴² The CEQ regulations regarding “connected actions” define the circumstances under which multiple federal actions must be covered by a single EIS. Under the regulations, “connected actions” are actions that are “closely related.”⁴³

58. In *Thomas*, cited by the SCAQMD, the court determined that the U.S. Forest Service’s federal sale and harvesting of timber and the U.S. Forest Service’s construction of a federal timber road to provide access to the timber to be sold were “connected actions” under NEPA.⁴⁴ The court held that these two federal actions were “inextricably intertwined.”⁴⁵ However, in *Border Power*, also cited by SCAQMD, the court found that the operation of the Mexican power plant was not within the scope of the proposed action (nor was it ever alleged that they were a part of the project), not because they did not meet the factors of the “connected action” test, but because the Mexican power plants were not “subject to federal control and responsibility” and therefore were not federal actions within the meaning of the CEQ regulations on connected actions.⁴⁶ In other

⁴⁰42 U.S.C. § 4332(2)(C).

⁴¹40 C.F.R. § 1508.18.

⁴²For example, an analysis of whether NEPA requires a single EIS for related federal actions has been undertaken in cases addressing the issues of when subsequent phases of development must be covered in an EIS on the first phase (*Trout Unlimited v. Morton*, 509 F.2d 1276 (9th Cir. 1974)), and when a highway may be segmented for purposes of NEPA (*Daly v. Volpe*, 514 F.2d 1106 (9th Cir. 1975)).

⁴³40 C.F.R. § 1508.25(a)(1).

⁴⁴753 F.2d 754 at 759. The sale of the timber was part of a federal “Combined Timber Management Plan and Forest Road Program” for an entire national forest.

⁴⁵*Id.*

⁴⁶260 F. Supp. 997 at 1013.

words, the court found that the “connected action” analysis is inapplicable to situations where one of the potentially related actions is not subject to federal jurisdiction.⁴⁷

59. Thus, the “connected action” analysis for determining if an action is sufficiently related to the proposed action to be deemed a part of the proposed action, and therefore evaluated in a single EIS, is only applicable to multiple, related, federal actions.⁴⁸

60. There is no suggestion that the end use in California of the gas to be transported by North Baja’s proposed pipeline will be an action potentially “subject to Federal control and responsibility.” The operation of, and air emissions from, power plants, manufacturing plants, or residential end users in California who potentially may burn the LNG-source gas are not federal actions, but actions subject to state and local jurisdiction. Thus, the end use of the gas is not a federal action that could be “connected” to the proposed action of the expansion of North Baja’s pipeline within the meaning of the CEQ regulations. The Commission finds that the end use or burning of the LNG-source gas is not within the scope of the proposed project.

b. Scope of the EIS Required by NEPA

61. *Border Power* differentiated between the scope of a proposed action and the scope of the environmental review required under NEPA. In that case, even though the court found that the proposed federal action of constructing the cross-border electric transmission lines did not include Mexican power plants, the court went on to consider whether emissions from those power plants must be included in the scope of the NEPA review because they are effects of a proposed federal action. The court, therefore, distinguished between the scope of a proposed action and the scope of the impact or effects of that action.⁴⁹ Whether a particular impact must be addressed in the

⁴⁷*Id.* at 1015, n.10.

⁴⁸*See, e.g., Enos v. Marsh*, 769 F.2d 1363 (9th Cir. 1985) (in determining whether a federal harbor project and state shoreside facilities constituted a single federal action, court stated, “whether the shoreside facilities planned by the state are to be included in the EIS turns on whether that action is ‘federal’”); *Friends of the Earth v. Coleman*, 518 F.2d 323, 327 (9th Cir. 1975) (agency did not have to prepare an EIS for state funded projects in a partially federally funded airport development).

⁴⁹260 F.Supp. 2d 997 at 1012-15. The court noted that many cases confuse the two concepts of the scope of the action and the scope of the environmental impacts an EIS must address. Hence, many cases inaccurately discuss whether a particular effect or impact is a “connected action” and part of the project, rather than whether the impact is

(continued)

environmental review of a project boils down to an issue of causation – whether the environmental impact or effect is caused by the proposed project, and how proximate the impact or effect is to the proposed action or project. The *Border Power* court stated that, “Ninth Circuit precedent makes clear that effects must be causally linked to the proposed federal action in order for NEPA to require consideration of those effects in an EA or EIS.”⁵⁰

62. Thus, for the effects on air quality from the burning of gas by end users to be caused by North Baja’s proposed project, the burning of gas by end users or, more precisely, the operation of the end use facilities, must be caused by, and therefore an effect of, North Baja’s project. As discussed below, the Commission finds that the end use of the LNG-source gas, and accordingly, any resultant air quality impacts, will not be effects of the proposed North Baja expansion project because they will not be caused by North Baja’s project.

63. Under the CEQ regulations implementing NEPA, an EIS must consider three types of impacts – direct, indirect, and cumulative.⁵¹ The CEQ regulations define “direct” and “indirect” effects.⁵² “Direct effects” of a proposed action are “caused by the action and occur at the same time and place.”⁵³ “Indirect effects” are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”⁵⁴ Indirect effects include “growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”⁵⁵ Thus, for an impact

an effect of the proposed action, i.e., caused by the proposed action.

⁵⁰*Id.* at 1016.

⁵¹40 C.F.R. § 1508.25(c).

⁵²Section 1508.8 defines “direct effects” and “indirect effects.” This section also states that the terms “effects” and “impacts” as used in the regulations are synonymous. 40 C.F.R. §1508.8. “Cumulative impacts” are defined in section 1508.7 of the regulations.

⁵³40 C.F.R. § 1508.8(a).

⁵⁴40 C.F.R. § 1508.8(b).

⁵⁵*Id.*

to be an indirect effect of a proposed action, it must be both (1) caused by the proposed action, and (2) reasonably foreseeable.

64. In this case, the parties argue that the impact on air quality from the end use of gas, and in particular, high Btu content gas, in southern California would be an “indirect effect” of approval of North Baja’s proposed project that should have been analyzed in the final EIS/EIR. The SCAQMD’s position, set forth in its comments on the final EIS/EIR, is that because a primary purpose of North Baja’s expansion project is to deliver a new source of natural gas to southern California for use in southern California, this end use of the gas is an “inevitable effect of the construction of the North Baja Pipeline.”⁵⁶ However, under case law addressing the scope of the effects of a proposed federal action and whether non-federal or private actions related to the proposed federal action are caused by the federal action, a stronger connection between North Baja’s proposed project and the end use of the gas is required to demonstrate causation than the assumption that some of the gas delivered by North Baja will ultimately be used in southern California.

65. In *Sylvester v. U.S. Army Corps of Engineers*,⁵⁷ the court held that the U.S. Army Corps of Engineers, in issuing a federal permit to build a golf course on wetlands within a larger resort complex, was not required by NEPA to consider the environmental impacts of the construction of the rest of the resort complex. The court held that for an agency to be required under NEPA to consider as indirect effects of a federal action, the effects of a second action, the proposed action and the related secondary action must be “two links of a single chain.” The *Sylvester* court created the following analogy to describe the scope of the effects of a proposed action:

Environmental impacts are in some respects like ripples following the casting of a stone in a pool. The simile is beguiling but useless as a standard. So employed it suggests that the entire pool must be considered each time a substance heavier than a hair lands upon its surface. This is not a practical guide. A better image is that of scattered bits of a broken chain, some segments of which contain numerous links, while others have only one or two. Each segment stands alone, but each link within each segment does not.⁵⁸

⁵⁶July 6, 2007 Comments of SCAQMD at 10.

⁵⁷884 F.2d 394 (9th Cir. 1989) (*Sylvester*).

⁵⁸*Id.* at 400.

66. The *Sylvester* court held that the secondary or indirect impacts of construction of the golf course did not include the construction of the other resort facilities. The court found that the golf course and the rest of the resort were not two links of a single chain, but were separate segments of chain, since “each could exist without the other, although each would benefit from the other’s presence.”⁵⁹

67. Similarly, in *Wetlands Action Network v. U.S. Army Corps of Engineers*,⁶⁰ the court followed its finding in *Sylvester*, stating that it had “upheld an agency’s decision to limit the scope of its NEPA review to the activities specifically authorized by the federal action where the private and federal portions of the project could exist independently of each other.”⁶¹

68. In *City of Davis v. Coleman*,⁶² the court found that effects of a proposed action must be included in the environmental review when the action is an “indispensable prerequisite” or an “essential catalyst” to those effects.⁶³ In that case, the court determined that a proposed freeway interchange, state-planned and federally-financed, was an indispensable prerequisite and essential catalyst to rapid future industrial development, thereby requiring an environmental analysis of the industrial development under NEPA as a secondary or indirect effect of the construction of the freeway interchange. The court also found that “the main purpose of the interchange, and its only

⁵⁹*Id.*

⁶⁰222 F.3d 1105 (9th Cir. 2000) (*Wetlands Action*).

⁶¹*Id.* at 1116. In this case, the court found that the Corps had not violated NEPA by limiting the scope of its analysis to the impacts of the permit activities of dredging and filling 16 acres of federally delineated wetlands, rather than considering the impact associated with 600 acres of a mixed-use development project of which the wetlands were a part. In addition to *Sylvester*, the *Wetlands Action* court cited *California Trout v. Schaefer*, 58 F.3d 469 (9th Cir. 1995) (upholding an agency’s decision to limit the scope of its NEPA review to impacts associated with the fill of wetlands rather than include impact on downstream fisheries from an entire canal project), and *Enos v. Marsh*, 769 F.2d 1363, 1371-72 (9th Cir. 1985) (upholding agency’s decision to exclude from its NEPA analysis the impact of non-federal shore facilities for a new federal deep draft harbor).

⁶²521 F.2d 661 (9th Cir. 1975) (*City of Davis*).

⁶³*Id.* at 674.

credible economic justification, [was] to provide access to the Kidwell area for future industrial development.”⁶⁴

69. Relying on *Sylvester*, the court in *Border Power* similarly framed the question there as “whether the transmission lines and the power plants at issue would exist in the absence of the other.”⁶⁵ In *Border Power*, Baja California Power (BCP) sought a Presidential Permit to construct and operate a cross-border electric transmission line to connect with the La Rosita Power Complex (LRPC) being constructed in Mexicali, Mexico by Energia de Baja California (EBC).⁶⁶ The LRPC power plant was to consist of four turbines, one owned by EBC and three owned by EAX, and the BCP line would be able to transport power generated by any of the four turbines. However, two of the EAX turbines would be providing power to Mexico exclusively. The third EAX turbine was to produce power through the BCP transmission line exclusively for export to the United States, but the power it produced could also be transmitted to the United States by a transmission line other than the BCP line. The EBC turbine, though, was configured and licensed only to sell electricity over the BCP line.

70. Although the LRPC plant would have four turbines, the court found that only the emissions resulting from the EBC turbine could be considered indirect effects of the permitting of the BCP transmission line.⁶⁷ The court stated:

[g]iven that the BCP line is the only current means evidenced by the record through which the EBC turbine could transmit its power, the Court finds that the BCP line was a but-for cause of the generation of power at the EBC turbine. Because the EBC turbine and the BCP transmission line are two links in the same chain, the emissions resulting from the operation of the EBC turbine are ‘effects’ of the BCP transmission line that must be analyzed under NEPA. For the same

⁶⁴*Id.* at 677.

⁶⁵*Border Power*, 260 F.Supp. 2d 997 at 1014.

⁶⁶In addition, Sempra Energy Resources also sought a DOE Presidential Permit to construct and operate another cross-border transmission line (T-US transmission line) to connect the Imperial Valley electric substation to the Termoelectrica de Mexicali (TDM) power plant also being constructed near Mexicali, Mexico.

⁶⁷With respect to the TDM plant, the court also found that its emissions were effects of the T-US transmission line.

reasons, the Court finds that the operation of the TDM plant is an effect of the T-US transmission line.

Conversely, the Court finds that the two turbines in the LRPC dedicated almost exclusively to the generation of power for the Mexican market are not causally linked to the BCP line in a way that makes the BCP line a necessary prerequisite or essential catalyst to their operation. Because the line of causation is too attenuated between these turbines and the federal action permitting the BCP line, Ninth Circuit authority makes clear that the emissions of the non-export turbines were not effects of the BCP line and that the federal defendants were therefore under no NEPA obligation to analyze their emissions as effects of the action. Additionally because the record makes clear that the EAX turbine has an alternative to the BCP line to export its power, the BCP line cannot be considered the but-for cause of the EAX export turbine's operation. Indeed, the EA concludes that the EAX export turbine would be built regardless of whether the BCP line is permitted. For this reason, the EAX turbine is also not an effect of the action.⁶⁸

71. In the present case, the Commission finds that the end use of the natural gas that will be transported by North Baja's project is not an indirect impact of North Baja's project. The end use of the gas and any associated air quality impacts are not caused by the proposed project, since the project and the end use facilities can each exist independently of the other. First, it cannot be said that but for North Baja's expansion project, the end use facilities would not exist or would not be operating or burning gas. The end use facilities in the proposed project's market area, be they generation facilities, industrial plants, businesses or homes, are already in place and in operation. Thus, the construction of North Baja's proposed project is not causing end use facilities in California to be built. Therefore, construction of the North Baja expansion project is not the "but for" cause of the existence or operation of the end use facilities or the burning of gas by end users, since the end use of gas is occurring without North Baja's project, and will continue to exist and use gas regardless of North Baja's project.⁶⁹

⁶⁸*Border Power*, 260 F.Supp. 2d 997 at 1017.

⁶⁹*See WAN*, 222 F.2d 1105 at 1117 (where the court stated that "[i]t appears that the project certainly *could* proceed without the permit and, as the Corps notes, is currently proceeding without the permit").

72. Second, it cannot be said that, but for North Baja's project, the end use facilities would not be burning higher-Btu gas. Clearly, but for North Baja's project, vaporized LNG delivered from the ECA Terminal would not be burned by domestic end users. But that is not the relevant inquiry. The action allegedly causing the adverse environmental impact of NO_x emissions is the burning of higher-Btu gas, not the burning of vaporized LNG delivered from the ECA Terminal. The question presented is whether, but for North Baja's project, the end use facilities would be burning higher Btu gas.

73. SCAQMD maintains that, "'but for' the proposed [p]roject's expansion of the existing pipeline and reversal of the flow, new hot LNG would not be delivered to the Basin. Conversely, expanding the pipeline and reversing the flow serves no purpose except to deliver a new source of hot gas to the Basin."⁷⁰ The Commission disagrees.

74. Since, as noted above, the end use facilities already exist and burn gas, one cannot say that construction of the pipeline bringing LNG-source gas into southern California is the "but-for" cause of end users burning high-Btu gas. Because the end use facilities already exist, it would be possible for them to burn high Btu gas from sources other than ECA Terminal deliveries transported on North Baja's project. In fact, comments filed on the draft EIS/EIR jointly by Sempra LNG and Coral indicate that a number of existing domestic supply sources have WI values that are comparable to those of the potential new Mexican LNG supplies.⁷¹ Sempra LNG and Coral state that "the Wobbe Index of California in-state production and interstate supplies at times has been as high as 1430," and that "the Wobbe Index of supplies delivered into Southern California by Kern River Gas Transmission, a major interstate supplier, has ranged as high as 1380 over the past three years."⁷²

75. Further, indications are that in the future other high-Btu, LNG-source gas could be delivered to California without using North Baja's pipeline. The Commission notes that two LNG deepwater port facilities and associated pipeline delivery systems are being

⁷⁰SCAQMD's December 28, 2006 Comments on draft EIS/EIR at 12 (incorporated by reference in SCAQMD's July 6, 2007 Comments on the final EIS/EIR).

⁷¹See Sempra LNG's and Coral's Comment Letter at 3 (January 10, 2007).

⁷²The comments cite the California Public Utility Commission Rulemaking to Establish Policies and Rules to Ensure Reliable, Long-Term Supplies of Natural Gas to California, R.04-01-25, Exhibit 107 at p. 11 and Exhibit 129. *Id.*

planned off the southern California shore, which would bring regasified LNG to southern California without involving Mexican LNG terminals or North Baja's pipeline.⁷³

76. Also, because gas delivered by North Baja's expansion to SoCalGas will only be part of SoCalGas' aggregate supply pool and will be mixed with supplies from other sources, including domestic production, it is not possible to attribute the burning of high-Btu gas solely to North Baja's delivery of the ECA Terminal LNG supplies.

77. Thus, North Baja's project is not an "indispensable prerequisite" or "essential catalyst" to the construction or operation of the end use facilities or the end use of high Btu-content gas (unlike the EBC turbine in *Border Power* which required the BCP line to be able to transmit any power at all). Arguably, North Baja's project may be a catalyst to the end use of high Btu content gas, since the project is designed to transport LNG-source gas, but it is not an "essential" catalyst. For these reasons, North Baja's project and the end use of the gas are not two linked segments of chain like in *Sylvester*. Rather, they are two separate segments of chain, that are merely "related" because one segment (North Baja's pipeline project) will provide gas that the other segment (the end use facilities) may use.⁷⁴ The proposed expansion may benefit end users by providing an additional source of gas, but the end users could continue to function, and may well use high Btu-content gas, without North Baja's expansion project.

78. Conversely, North Baja's pipeline expansion project has independent utility without the end users in the SCAB. Although the Commission takes into account North Baja's statement that its proposed project will bring ECA Terminal LNG supplies through Mexico into Arizona and California, including the SCAB, North Baja's proposed project is not being constructed or certificated to directly serve the SCAB, or any particular market in the southwestern United States. Rather, the Commission's certificate authorization is limited to the construction and operation of the pipeline from the border to the interconnection with El Paso at Ehrenberg, Arizona. Accordingly, the certificate

⁷³See Northern Star LNG, LLC's proposed Clearwater Port LNG Deepwater Port facility to be located 14 miles off the southern California shore before the Maritime Administration of the Department of Transportation in Docket No. 28676, and Woodside Natural Gas' proposed Oceanway Secure Energy project to be located 21 miles offshore of Los Angeles before the Maritime Administration in Docket No. 26844.

⁷⁴In contrast, North Baja's project and the Gasoducto Bajanorte pipeline are more like two linked segments of chain, and hence, the Commission considered the cumulative air quality impacts from the proposed Mexican compressor stations on the Gasoducto Bajanorte pipeline in final EIS/EIR.

will permit North Baja to receive gas from any source, domestic or foreign, provided the gas meets North Baja's tariff's quality standards, and to transport gas, up to the pipeline's certificated maximum capacity, to all accessible end use markets in the southwest or elsewhere.⁷⁵

79. The Commission finds that the causal connection between North Baja's expansion project and the end use of the expansion gas is too attenuated to make the air quality impacts of expansion gas consumption an indirect effect of the North Baja project. The North Baja expansion project and the existing end use facilities are two separate, and not interconnected, links of chain; therefore, the emissions resulting from the end use facilities' burning gas transported on the expansion line are not effects of the North Baja project that must be analyzed under NEPA. Further, because we conclude that any impacts on air quality from the end use of expansion gas volumes are not caused directly or indirectly by North Baja's project, the Commission is not required to assess whether any impacts are significant or reasonably foreseeable, and is not required to consider mitigation measures to address such effects.

80. However, even if we had determined that the end use of the LNG-source gas to be transported by North Baja is caused by the project, the end use emissions and associated impacts on air quality would not be reasonably foreseeable as required by the CEQ regulations. The factors necessary for an analysis of whether and how the end use of the gas transported by North Baja will impact air quality, such as where and by whom the gas will be ultimately consumed, and the specific quantities and characteristics of the gas that will be consumed, are unknowable at this time.⁷⁶ While we anticipate potential end users

⁷⁵The record reflects that not all of the gas North Baja will transport from the ECA Terminal North Baja will be delivered to SoCalGas, since the physical takeaway capacity of the SoCalGas pipeline is only 1.2 Bcf per day. Some of the gas may go to El Paso which serves Phoenix and other areas east of California. Further, not all of the gas that is actually delivered to SoCalGas necessarily will flow to the SCAB. Volumes could also be delivered to the San Diego market or to other markets in southern California outside of the SCAB, or delivered off-system to Pacific Gas and Electric customers in the central and northern portions of California. *See* North Baja's Comment Letter at 3 (January 22, 2007) and Sempra LNG's and Coral's Comment Letter at 4 (January 10, 2007).

⁷⁶ *See Lange v. Brinegar*, 625 F.2d 812, 818 (9th Cir. 1980) (in ruling that consideration by Federal Highway Administration and Washington State Department of Highways of the impact of construction of a segment of interstate highway on secondary land development was adequate, court stated "the fact that no reference is made to the possible impact incidental development may have on water supplies and sewage

(continued)

of the North Baja expansion's gas supplies will be located in California and Arizona, we cannot reliably determine the identities of the end users or the expansion volumes that each end user will consume.⁷⁷ In contrast to a proposal for a pipeline to deliver gas to a known end user for a known end use, here, the ultimate consumption of gas made accessible via the proposed expansion is destined to take place at multiple locations by unknown end users. In addition, it is not possible to determine the precise WI of the natural gas North Baja will receive and deliver, or the ultimate character or quality of the natural gas at the end user, since the gas received by North Baja may be blended with other gas in the SoCalGas distribution system.

81. Under these circumstances, the end uses of the gas and their impacts are not caused by North Baja's project, nor are they reasonably foreseeable; therefore, it is neither obligatory, nor practical, to conduct an analysis of end use emissions. We have found that the applicant has demonstrated a need for the proposed expansion and we have found no practical alternative to meet this demonstrated need. Moreover, we note that end users of the new LNG-source gas will be subject to all applicable local, state, and federal air quality standards and permitting requirements.⁷⁸

treatment plants is not controlling. The precise impact of potential future business development on water supply and sewage facilities cannot be determined until decisions are made as to whether, when, and where such construction should occur. Until then, an attempt to measure the possible economic impact would be an exercise in speculation"); and *Cumington Preservation Comm. v. Federal Aviation Adm.*, 524 F.2d 241, 244 (1st Cir. 1975) (in finding EIS for a radar facility and access road to be built by FAA adequately discussed existence of the potential for future development, court stated, "[t]he precise issue of how the project might influence future development was not directly addressed; on the other hand it is not clear how much further the analysis could meaningfully be taken, so much being contingent upon unknown factors"). *See also*, *Kleppe v. Sierra Club*, 427 U.S. 390, 402 (1976) (where U.S. Supreme Court held that federal agencies that had prepared EIS's for individual mining operations and for a national mining program did not err by failing to prepare a separate EIS for regional mining activity in the Northern Great Plains, since no proposal for a regional plan or program of development existed and thus "there would be no factual predicate for the production of an environmental impact statement of the type envisioned by NEPA").

⁷⁷ We do know that North Baja's proposed IID Lateral will be used to supply gas to the Imperial Irrigation District's El Centro Generating Station in Imperial County, California. However, we note this facility is not located in the SCAB.

⁷⁸ We further note that no prospective end users of the proposed gas in California,
(continued)

82. As a result of our determination that the final EIS/EIR adequately addresses environmental impacts of the proposed project, we reject requests to review additional environmental impacts that cannot be legitimately attributed to the project. For example, Imperial County seeks an assessment of health risks resulting from end use emissions, the consequences of economic development made possible by the new gas supply, and potential end users in Mexico. We find these outcomes to be only tenuously connected to the proposal and, thus, properly excluded from the EIS/EIR.⁷⁹

c. Adequacy of General Conformity Analysis

83. The General Conformity Rule under the CAA applies to projects that are located in non-attainment or maintenance areas and evaluates the impacts of both direct and indirect emissions from a proposed project in the non-attainment area. Portions of the proposed pipeline in Imperial County, California, will be within a non-attainment area, thereby requiring a general conformity assessment or review. Under a general conformity review, if the total direct and indirect emissions of the project will equal or exceed specified pollutant thresholds per year in the non-attainment area, then a full general conformity determination is required, analyzing whether approval of the project conforms to state CAA implementation plans.

84. The draft EIS/EIR had evaluated whether the direct and indirect emissions associated with the construction and operation of the pipeline facilities occurring in the designated non-attainment areas where the pipeline will be located would exceed the applicable regulatory thresholds for the project area's non-attainment status. In response to comments on the draft EIS/EIR, the final EIS/EIR considered, as well, whether emissions from the end use of the gas transported by North Baja's proposed expansion would constitute indirect emissions of the expansion project.⁸⁰ However, the final

including the Imperial Irrigation District, have identified any concerns related to their continued ability to meet applicable air quality standards.

⁷⁹Imperial County repeats earlier concerns regarding potential terrorist attacks on the new facilities. We find the final EIS/EIR adequately addresses such concerns in section 4.14 on reliability and safety, which includes a subsection covering terrorism.

⁸⁰Commenters argued that the general conformity review must evaluate whether the emissions generated by the end use of the gas in the more serious non-attainment areas where the end use facilities are located, such as the SCAB, would exceed the conformity thresholds for those non-attainment areas. As noted, *supra*, any end use facilities in the SCAB would be at least 100 miles from the proposed project.

EIS/EIR determined that the emissions from the end use of the gas did not meet the General Conformity Rule's definition of "indirect emissions," since such emissions are not "reasonably foreseeable," as defined by the Rule.⁸¹ The final EIS/EIR explained that various factors necessary to be able to identify and quantify the end use emissions are unknown, such as the precise WI of the natural gas both to be delivered to North Baja and to be consumed by the end user, the sector of the SoCalGas market to which the gas would be delivered, and where the gas would be consumed.⁸²

85. Thus, for purposes of the general conformity assessment, the final EIS/EIR defined the project's direct and indirect emissions to be only "those associated with the construction and operation of the pipeline facilities occurring in the non-attainment areas where the pipeline will be located."⁸³ The final EIS/EIR concluded that such emissions would not exceed the applicable conformity thresholds for those non-attainment areas.⁸⁴ Consequently, the final EIS/EIR held that a full general conformity determination was not required.

86. The SCAQMD argues that the final EIS/EIR failed to prepare the general conformity determination required by the CAA. The SCAQMD continues to argue, as it did with respect to the draft EIS/EIR, that the basis for the Commission's finding that project emissions meet pollutant thresholds and, therefore, a conformity determination is not required, is flawed. The SCAQMD asserts that because the final EIS/EIR narrowly defined the project and the project area, it failed to apply all applicable conformity thresholds. The SCAQMD's position is that because emissions from the project

⁸¹Under the Rule, "reasonably foreseeable" emissions are "projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency." 40 C.F.R. § 51.852.

⁸²Final EIS/EIR at 4-198 (June 2007).

⁸³*Id.* at 4-199 (June 2007). Since North Baja's proposal does not include any new direct emission sources as part of its expansion facilities, direct emissions were not included in the general conformity review.

⁸⁴The final EIS/EIR found that the emissions from the construction and operation of the pipelines facilities occurring in the serious PM10 nonattainment area and marginal ozone nonattainment area in Imperial County would not exceed the relevant pollutant thresholds of 70 tpy and 100 tpy, respectively.

allegedly include end-use emissions in the SCAB, the general conformity assessment should have also analyzed the end-use emissions in the SCAB and applied the stricter conformity threshold of the SCAB (25 tons of NO_x per year), which is a severe-17 nonattainment area for ozone under the federal 8-hour ozone standard, to the end-use emissions. Applying this standard, the SCAQMD asserts that the end-use emissions of the gas transported by North Baja would exceed the general conformity thresholds, and a full General Conformity Analysis would have been required.

87. The Commission affirms the final EIS/EIR's determination that emissions from the end use of the gas transported by North Baja are not indirect emissions of the project for general conformity purposes and, thus, its use of the conformity thresholds associated with the non-attainment areas where North Baja's project will be located, rather than with the non-attainment areas where the gas may be used. "Indirect emissions" of a proposed project, as defined in the General Conformity Rule, are

"emissions of a criteria pollutant or its precursors that: (1) are caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself, although still reasonably foreseeable; and (2) the Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency."⁸⁵

88. The SCAQMD's position that the final EIS/EIR erred by failing to make a general conformity determination because it did not examine emissions in the non-attainment areas where the gas may be burned and thus used the wrong conformity threshold is based on its faulty assumptions both that the end use facilities and their burning of the gas transported by North Baja are part of the expansion project, and that the emissions from the end use facilities are caused by the project. The final EIS/EIR analyzed whether the end use emissions were reasonably foreseeable, but did not address whether the emissions were "caused by the Federal action." As discussed in the preceding section, the Commission finds that the end use of the gas transported by North Baja is neither part of the expansion project, nor caused by the expansion project. Further, the Commission also affirms the finding of the final EIS/EIR that the end use emissions are not "reasonably foreseeable."⁸⁶ Thus, end use emissions of the gas transported by North Baja are not indirect emissions of North Baja's expansion project because they are neither caused by the project, nor reasonably foreseeable. Accordingly, the final EIS/EIR correctly found that a general conformity determination was not required.

⁸⁵40 C.F.R. § 51.852.

⁸⁶Final EIS/EIR at 4-198 (June 2007).

3. Cumulative Air Quality Impacts from Emissions from Compressor Stations and Power Plants in Mexico

89. The final EIS/EIR analyzed the cumulative air quality impacts from the two new compressor stations that are being constructed on the Gasoducto Bajanorte pipeline in Mexico (Algodones Compressor Station and the Mexicali Compressor Station) to enable the LNG-source gas from the ECA Terminal to flow into the United States.⁸⁷ The final EIS/EIR also analyzed the air impacts from the two existing Mexican power plants (the La Rosita Power Complex (LRPC) and the Termoelectrica de Mexicali Power Plant (TDM)) in conjunction with its assessment of emissions from the Mexicali Compressor Station, since the Mexicali Compressor Station will be located on or immediately adjacent to either the LRPC or TDM plants.⁸⁸ The final EIS/EIR found that no emitted pollutants at the Mexicali or Algodones Compressor Station sites would result in a predicted concentration above an established Significant Impact Level at the maximally impacted receptor located in the vicinity of the U.S.-Mexico border. As a result, the final EIS/EIR concluded that it is unlikely that emissions from the proposed future compressor stations would result in any significant cumulative ambient air quality impacts at receptors in the vicinity of or across the U.S. border.⁸⁹

90. Imperial County P&D argues that the analysis of the final EIS/EIR with respect to the cumulative air quality impacts from the two new compressor stations and the two existing power plants fails to adequately address cumulative impacts from combustible sources of particulate matter (PM) with an aerodynamic diameter less than or equal to 2.5 microns (PM_{2.5}). Imperial County P&D states that although the final EIS/EIR identifies the National Ambient Air Quality Standards (NAAQS), it fails to identify California Ambient Air Quality Standards (CAAQS) in Tables 4.14.8-2, .8-3, and .8-4 of the cumulative impact analysis. Imperial County P&D argues that the stricter

⁸⁷*Id.* at 4-232 to 4-237 (June 2007). Sempra LNG's Gasoducto pipeline is being expanded in conjunction with North Baja's phased expansion. To correspond with North Baja's Phase I expansion, Sempra is reconfiguring the Gasoducto pipeline to move gas in the opposite direction, and constructing the Algodones Compressor Station 2.5 miles south of the California-Mexico border and a lateral from the ECA terminal to the new compressor station. In coordination with North Baja's Phase II expansion, Sempra will loop the Gasoducto pipeline, and add compression by constructing the new Mexicali Compressor Station and increasing compression at the Algodones Compressor Station.

⁸⁸*Id.* at 4-234-237 and Tables 4.14.8-2 to 4.14.8-4.

⁸⁹*Id.* at 4-237.

California air quality standards should have been used to analyze cumulative impacts, particularly in light of the fact that PM_{2.5} is attributable to combustible emissions sources and is linked to cancer, respiratory illnesses, and heart disease.

91. Imperial County P&D also disputes the final EIS/EIR's statement that, "a portion of Imperial County that is within the Project area (specifically the Imperial Valley) is nonattainment for PM₁₀ and unclassified for PM_{2.5} primarily due to ambient concentrations of windblown dust, not due to ambient concentrations of PM₁₀/PM_{2.5} from combustion sources."⁹⁰ Imperial County P&D states that although it agrees that there is a baseline level of PM in the air due to windblown dust sources, it believes that the exceedances over state and federal ambient air quality standards are due to human activity, particularly from combustion sources, contrary the final EIS/EIR's finding.

92. The final EIS/EIR included detailed dispersion modeling of all of the reasonably foreseeable Mexican facilities, including combustion sources. This modeling included impacts from carbon monoxide, nitrogen oxides (NO_x), and particulate matter with an aerodynamic diameter less than or equal to 10 microns and PM_{2.5}. Results were compared to significant impact levels and the NAAQS and were found to be well below all significance criteria. Although the CAAQS were not used for evaluation of the cumulative impacts, the CAAQS were identified in Section 4.12.2 of the final EIS/EIR addressing existing air quality in the project area and the project impacts on air quality. We find that the cumulative estimated emissions from the Algodones and Mexicali Compressor Stations and the LRPC and TDM plants would also be well below the CAAQS. With respect to Imperial County P&D's point that the Imperial Valley is nonattainment for PM₁₀ and unclassified for PM_{2.5} ambient concentrations of PM₁₀/PM_{2.5} from combustion sources, not windblown dust, as stated, the detailed dispersion modeling of all of the Mexican facilities included impacts due to combustion activities for all pollutants, including PM₁₀/PM_{2.5}.

93. Imperial County P&D also argues that the final EIS/EIR continues to inadequately address the cumulative impacts of air emissions from future industrial and commercial development and the construction of new power plants in Mexicali, Mexico, which it maintains will be fostered by North Baja's proposed pipeline expansion project. Imperial County P&D asserts that American investment in natural gas supplies and infrastructure in Mexico has already caused the construction of the two natural gas-fired power plants outside of Mexicali, and this past development serves as a precursor to reasonably foreseeable future industrial development in Mexicali stimulated by the newly proposed LNG infrastructure.

⁹⁰Final EIS/EIR at 4-234 (June 2007).

94. The final EIS/EIR was not required to analyze the cumulative impacts on air quality from emissions from the future development of industrial or power plants in Mexico. NEPA requires an EIS to analyze “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or nonfederal) or person undertakes such other actions.”⁹¹ The final EIS/EIR lists in Table 4.15.1 the present or reasonably foreseeable future projects or activities that could cumulatively or additively impact resources that would be affected by North Baja’s project.⁹² This list appropriately does not include future industrial or power plants in Mexico that are presently unplanned or otherwise unidentifiable, since such projects would not be “reasonably foreseeable.”

95. Furthermore, the causal connection between North Baja’s expansion project and future industrial activity in Mexico is too attenuated for future industrial growth in Mexico to be attributable to North Baja’s expansion project. While the original North Baja pipeline project to deliver natural gas to Mexico may have fostered the development of new gas-fired industrial and power plants in Mexico, this project is not supplying gas to Mexico or Mexican power facilities that would cause increased industrial or generating activity. To the extent that the expansions to the Gasoducto pipeline could result in or help fuel new commercial or industrial plants in Mexico, there is no evidence that the Mexican growth in generation or additional compression on the Gasoducto pipeline would not occur without North Baja’s expansion project.⁹³

4. Adequacy of Alternatives Analysis

96. Imperial County claims that the final EIS/EIR does not contain a rigorous analysis of alternatives, as required by NEPA. Imperial County argues that the final EIS/EIR provides little comparative analysis of the identified alternatives and fails to devote substantial treatment to each alternative, including the proposed action. Imperial County also maintains that the final EIS/EIR does not compare each proposed alternative to the

⁹¹See 40 C.F.R. § 1508.7.

⁹²Final EIS/EIR at 4-226.

⁹³The final EIS/EIR found that potential infrastructure growth, even in the project area and other areas in the southwest United States, from the additional gas supply delivered by the project, might occur with or without the construction of North Baja’s expansion project and thus would not be attributable to North Baja’s proposed project. Final EIS/EIR at 4-242 (June 2007).

goals and objectives of the project. Further, Imperial County argues that the final EIS/EIR fails to adequately discuss alternatives that were eliminated from detailed study and to explain the reasons for their elimination.

97. We disagree with Imperial County's claims. The Commission recognizes that under NEPA it is required to analyze the environmental consequences of a proposed pipeline project, as well as reasonable alternatives to the project.⁹⁴ NEPA requires the Commission to rigorously explore and objectively evaluate all reasonable alternatives to a proposed action in order to provide a clear basis for choice among options by the decision-makers and the public.⁹⁵ The purpose of NEPA's requirement is to ensure that the Commission is fully informed of the environmental consequences of a proposal before it decides whether to certificate it.⁹⁶ However, the discussion of alternatives need not be exhaustive, and need only provide sufficient information to permit a reasoned choice of alternatives.⁹⁷

98. Section 3 of the final EIS/EIR thoroughly evaluates a number of alternatives, including the no-action alternative, system alternatives, route alternatives, route variations, alternative delivery points, and above-ground facility site alternatives.⁹⁸ Section 3.1 of the final EIS/EIR explains the factors used in the identification and selection of alternatives. Further, in addition to narrative text fully describing project alternatives and explaining why particular alternatives were eliminated, where appropriate, Section 3 of the EIS/EIR contains numerous tables and maps to help facilitate analysis and comparison of alternatives.⁹⁹ Most of the tables are comparisons of a particular alternative to the proposed segment of the project, while the maps provide comparison among the various route alternatives. Moreover, the final EIS/EIR

⁹⁴42 U.S.C. § 4332(C) (2007).

⁹⁵40 C.F.R. Part 15012.14 (2007).

⁹⁶*Vermont Yankee Nuclear Plant Corp. v. NRDC*, 435 U.S. 519, 558 (1978).

⁹⁷*North Carolina v. Federal Power Comm'n*, 533 F.2d 702, 706 (D.C. Cir. 1976), *vacated on other grounds*, 429 U.S. 891 (1976).

⁹⁸Final EIS/EIR at Section 3.0.

⁹⁹*Id.* at 3-5 to 3-31.

recommends the adoption of an alternative involving a route variation, which we are including as Environmental Condition No. 10 in Appendix B of this order.¹⁰⁰

5. Water Quality Impacts

99. In its comments, EPA reiterates its concern about the impact of the project on water resources. EPA states that the final EIS/EIR provides that the U.S. Army Corps of Engineers has determined that the project would qualify for an Authorization under the Nationwide Permit program¹⁰¹ and would be exempt from a compensatory mitigation requirement. EPA questions which type of Nationwide Authorization under Section 404 of the Clean Water Act will be issued, and asserts that the Nationwide Permit program does not exempt applicants from mitigating for project impacts.

100. EPA further states that, in response to its comments on the draft EIS/EIR, the final EIS/EIR clarified that the impact acreages identified in Table 4.4.2-1 does not include the impacts of crossing 265 ephemeral washes.¹⁰² EPA maintains that permanent and temporary impacts for waters, including ephemeral washes, should be discussed in the environmental document.

101. Recent consultation with the U.S. Army Corps of Engineers indicates that the section 404/section 10 permit is ready to issue, will be a Nationwide 12 Authorization, and will not contain a compensatory mitigation requirement because the impacts of the project would be temporary. We clarify that applicants are not exempt from a compensatory mitigation requirement under the Nationwide Permit program. Rather, whether to require mitigation for a project is evaluated by the U.S. Army Corps of Engineers on a case-by-case basis under the requirements of Nationwide Permit General Condition 20.

102. We also note that impacts on ephemeral washes are discussed in section 4.3.3.2 of the final EIS/EIR (referred to as dry washes therein) and would be limited to the temporary alteration of beds and banks, loss of wildlife habitat, and possibly increased

¹⁰⁰*Id.* at 3-20 to 3-22.

¹⁰¹A Nationwide Authorization is a general permit authorization issued by the U.S. Army Corp of Engineers under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act for certain activities having minimal impact.

¹⁰²Final EIS/EIR at 4-62. An ephemeral wash is a waterway that experiences no-flow periods.

sediment load during initial storm events following construction. These temporary impacts are tabulated in Appendix M of the final EIS/EIR. The impacts on other waterbodies from the project would also be minimal. Rannells Drain is the only other waterbody that would be crossed using the open-cut method.¹⁰³ Impacts on Rannells Drain would be temporary. The remaining waterbodies would be crossed using the horizontal directional drill or bore method or the crossing would be installed between the drain culverts and a road and the waterbodies would not be impacted. It is estimated that a total of 4.1 acres of waters of the United States would be temporarily impacted by construction. There would be no permanent impact on any waters of the U.S.

6. Impacts on Morongo Indian Reservation

103. In its motion to intervene, the Morongo Band of Mission Indians expressed concern regarding potential future impacts on the Morongo Reservation as a result of the planned interconnection between the North Baja Pipeline Expansion Project and the existing natural gas pipeline that crosses the Morongo Reservation (referring to a pipeline of SoCalGas). The Morongo Band of Mission Indians particularly noted its concerns regarding indirect impacts associated with the future development and construction of new high-voltage electric transmission lines and rights-of-way associated with potential natural gas-fueled electric energy production resulting from North Baja's expansion.

104. The interconnection between the North Baja and SoCalGas systems would be in Blythe, California, which is approximately 138 miles from the Morongo Reservation. No modifications on the SoCalGas system would be necessary to transport the gas from the North Baja system to Southern California. As such, although the project could potentially result in the construction of additional power and pipeline infrastructure, this additional infrastructure would not be expected in the vicinity of the Morongo Reservation.

7. Conclusion

105. We have reviewed the information and analysis contained in the final EIS/EIR regarding the potential environmental effects of the project. Based on our consideration of this information, we agree with the conclusions presented in the final EIS/EIR and find that North Baja's project, if constructed and operated as described in the final EIS/EIR and in accordance with the recommended environmental mitigation measures in

¹⁰³North Baja originally proposed to also cross the two unnamed canals along the Arrowhead Extension using the open-cut method. Since issuance of the final EIS/EIR, North Baja has indicated it will cross these canals using the bore method.

Appendix B to this order, is environmentally acceptable. Therefore, we are including the environmental mitigation measures recommended in the final EIS/EIR as conditions to the authorization issued to North Baja by this order.

106. 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.¹⁰⁴

107. North Baja shall notify the Commission's environmental staff by telephone, email, 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.

C. Amendment of Presidential Permit in Docket No. CP01-23-003

108. North Baja requests that the Commission modify its existing Presidential Permit and section 3 authorization to allow for the importation of natural gas from Mexico and to reflect the proposed new facilities at the international border. The proposed border facilities subject to NGA section 3 and the Presidential Permit are approximately 500 feet of 48-inch diameter pipeline looping adjacent to North Baja's existing mainline commencing in California near the center of the All American Canal and interconnecting with the Gasoducto Bajanorte pipeline at the international boundary between the United States and Mexico, near Mexicali, Mexico.

109. In our October 2006 Order, we preliminarily found that in light of our preliminary approval of North Baja's expansion proposal pending completion of the environmental review, and the lack of adverse comments by the Secretaries of Defense and State,¹⁰⁵

¹⁰⁴See, 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).

¹⁰⁵On April 25, 2006, as required by Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00A, the Commission submitted a draft of an amended Presidential Permit for North Baja to the Secretaries of Defense and State, informing each of North Baja's application in this proceeding and seeking their
(continued)

issuance of an amended Presidential Permit and NGA section 3 authorization to modify North Baja's border facilities would not be inconsistent with the public interest, subject to the conditions set forth in the amended Presidential Permit, and the completion of our environmental review.¹⁰⁶

110. As discussed, *supra*, North Baja subsequently proposed two amendments to the expansion facilities originally proposed. These proposed changes to the expansion facilities do not affect North Baja's border facilities and, therefore, have no impact on our previous finding that North Baja's proposal to modify its natural gas export facilities to accommodate the importation of regasified LNG from Mexico will facilitate growing international trade between the United States and Mexico and provide additional supplies of natural gas to the California and Arizona markets.¹⁰⁷

111. The environmental review of North Baja's expansion project, as amended, has been completed and, in this order, we are approving North Baja's amended project and issuing a certificate of public convenience and necessity. Thus, in accordance with the Commission's preliminary determination in the October 2006 Order, and in view of the above considerations, the Commission finds that the issuance of an amended Presidential Permit and NGA section 3 authorization to modify North Baja's border facilities, as proposed, is consistent with the public interest,¹⁰⁸ subject to the conditions set forth in the

recommendations on the proposed amendment to North Baja's existing Presidential Permit. Replies on behalf of the Secretaries of Defense and State were received on August 28 and 29, 2006, respectively. The designees of the Secretaries of Defense and State concurred with the issuance of the amended permit. The designee of the Secretary of Defense stated that the Secretary has no objection to the issuance of the amended permit, subject to approval and validation of any associated Army Corps of Engineers permit process. As noted, *supra*, the Army Corps of Engineers' section 404 water quality permit is ready to be issued.

¹⁰⁶117 FERC ¶ 61,022 at P 66 (2006).

¹⁰⁷*Id.*

¹⁰⁸Section 3 of the NGA provides for the Commission's approval of an application under that section "unless, . . . , it finds that the [proposal] will not be consistent with the public interest." 15 U.S.C. § 717b.

amended Presidential Permit.¹⁰⁹ Accordingly, the Commission grants North Baja's requested amendments to its Presidential Permit and NGA section 3 authorization.

V. Summary

112. We affirm our October 2006 preliminary determination that North Baja's proposed expansion is required by the public convenience and necessity. We also affirm our determination that absent a material change in circumstances, the costs of associated with North Baja's proposed expansion will qualify for rolled-in rate treatment when North Baja makes its next NGA general section 4 filing. Further, we find that North Baja's project, as conditioned herein, is environmentally acceptable, and that approval of North Baja's proposed amended Presidential Permit and section 3 authorization would not be inconsistent with the public interest.

113. The Commission on its own motion, received and made a part of the record all evidence, including the applications, as amended and supplemented, and exhibits thereto, submitted in this proceeding. Upon consideration of this record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to North Baja under NGA section 7(c) authorizing the construction and operation of the natural gas expansion facilities, as described in this order, the October 2006 Preliminary Determination, and the application and amendments, as conditioned herein, and subject to the environmental conditions set forth in Appendix B.

(B) An amended Presidential Permit, attached in Appendix A, and NGA section 3 authorization is issued to North Baja, as described in this order, the October 2006 Preliminary Determination, and the application, as conditioned herein, and subject to the environmental conditions set forth in Appendix B.

(C) The certificate issued to North Baja in Ordering Paragraph (A) is conditioned on the following:

- (1) North Baja's constructing and making available for service the facilities described herein within four years of a final order in this proceeding, pursuant to paragraph (b) of section 157.20 of the Commission's regulations;

¹⁰⁹The Presidential Permit is attached as Appendix A to this order.

- (2) North Baja's compliance with all 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 Commission's regulations;
- (3) North Baja's execution of firm contracts for the capacity levels and terms of service represented in its precedent agreements supporting each phase of the expansion prior to commencing construction of that phase of the expansion.

(D) A preliminary determination is made that North Baja may roll the costs of its proposed mainline expansion into its systemwide cost-of-service in its next general NGA section 4 rate proceeding, provided there are no material changes in the relevant facts and circumstances associated with the project at the time it proposes to roll in the subject costs.

(E) The Commission approves North Baja's proposed incremental rate treatment for the Rate Schedule LAT-1 service on the IID Lateral.

(F) North Baja must modify its tariff to implement provisions to ensure that expansion shippers' volumes meet the most stringent gas quality and interchangeability standards of any of the pipelines to which North Baja might ultimately deliver gas, as discussed in the body of the order.

(G) North Baja must file actual tariff sheets in accordance with section 154.207 of the Commission's regulations between 30 and 60 days prior to commencing Rate Schedule LAT-1 service on the IID Lateral, as discussed in the October 6, 2006 Preliminary Determination.

(H) North Baja must file its negotiated rate contracts or tariff sheets reflecting the essential elements of its negotiated rate agreements supporting each phase of the expansion not less than 30 days and not more than 60 days prior to commencing service on each phase of the expansion.

(I) North Baja shall notify the Commission's environmental staff by telephone, email, 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.

By the Commission.

(S E A L)

Kimberly D. Dose,
Secretary.

**APPENDIX A
PRESIDENTIAL PERMIT**

**AMENDED PRESIDENTIAL PERMIT AUTHORIZING NORTH BAJA
PIPELINE, LLC (NORTH BAJA) TO OPERATE AND MAINTAIN NATURAL
GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE
UNITED STATES AND MEXICO**

**FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP01-23-003**

North Baja Pipeline, LLC, a limited liability company organized under the laws of the State of Delaware, filed on February 7, 2006, in Docket No. CP01-23-003, 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 modify its export facilities located at the international boundary between the United States and Mexico to accommodate the importation of regasified LNG from Mexico.

By letter dated August 18, 2006, the Secretary of State, and by letter dated August 15, 2006, the Secretary of Defense favorably recommended that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this Permit, allowing the modifications requested by North Baja, 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 12, 2006, and the Commission's regulations, permission is granted to North Baja (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 therefor.

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

A 30-inch-diameter pipeline and a 48-inch-diameter pipeline which will

commence in California at the center of the All American Canal approximately 500 feet from the international boundary between the United States and Mexico near Mexicali, Mexico and interconnect with Gasoducto Bajanorte, S. de R.L. de C.V., a pipeline owned and operated by Sempra Energy located within Mexico.

Article 3. The natural gas facilities authorized herein, 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 exported, imported, 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 replacement.

Article 9. Upon the termination, revocation, or surrender of this Permit, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The facilities authorized shall be removed within such time as the Commission may specify, and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, or any portion thereof, 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.

Appendix B

Environmental Conditions for North Baja's Pipeline Expansion Project

1. North Baja shall follow the construction procedures and mitigation measures described in its applications, supplemental filings (including responses to staff data requests), and as identified in the EIS/EIR, unless modified by this Order. North Baja must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary and the CSLC;
 - 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) and for the lands under the CSLC's jurisdiction, the Executive Officer of the CSLC **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 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 EIS/EIR, as supplemented by filed alignment sheets, and shall include the Modified ISDRA Transmission Line Alternative. **As soon as they are available, and before the start of construction**, North Baja shall file with the Secretary 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 this 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 this 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 pipelines to accommodate future needs or to acquire a right-of-way 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 North Baja's authorized Construction, Mitigation, and Restoration Plan or minor field realignments per landowner needs and requirements that do not affect other landowners 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. **Within 60 days of acceptance of the Certificate and before construction,** North Baja shall file an initial Implementation Plan with the Secretary and the CSLC for

the review and written approval of the Director of OEP and the Executive Officer of the CSLC describing how North Baja will implement the mitigation measures required by this Order and the CSLC MMP. North Baja must file revisions to the plan as schedules change. The plan shall identify:

- a. how North Baja will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of EIs assigned per spread and how North Baja will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including EIs and contractors, who will receive copies of the appropriate materials;
 - d. what training and instructions North Baja will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of North Baja's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) North Baja will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the mitigation training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. North Baja shall file updated status reports with the Secretary and the CSLC on a biweekly basis until all construction-related activities, including restoration, are complete. These status reports shall also be provided to other federal and state agencies with permitting responsibilities upon request. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) or the third-party compliance monitors during the

- reporting period (both for the conditions imposed by the FERC and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
- c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints that may relate to compliance with the requirements of this Order and the CSLC mitigation monitoring program, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by North Baja from other federal, state, or local permitting agencies concerning instances of noncompliance, and North Baja's response.
8. North Baja must receive written authorization from the Director of OEP **before commencing service for each component of the Project**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way are proceeding satisfactorily.
9. **Within 30 days of placing the certificated facilities in service**, North Baja shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions North Baja has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
10. North Baja shall adopt the Modified ISDRA Transmission Line Alternative between mileposts (MPs) 5.6 and 8.2 of the IID Lateral.
11. North Baja shall prepare a revised horizontal directional drill (HDD) plan that specifies the corrective action and cleanup procedures that would be followed in the event a frac-out occurs in the water during an HDD operation. North Baja shall file the revised plan with the FERC and the CSLC for the review and written approval of the Director of OEP and the Executive Officer of the CSLC before commencement of any HDD operation.

12. North Baja shall, in consultation with the U.S. Fish and Wildlife Service (FWS), the BLM, and the California Department of Fish and Game (CDFG), develop Preclearing Plans to protect migratory bird species during construction. These plans shall include specific details of the preclearing methods to be implemented, the specific locations where preclearing would occur, and the dates preclearing would be initiated and completed for each phase of construction. North Baja shall file these plans with the FERC and the CSLC for the review and written approval of the Director of OEP and the Executive Officer of the CSLC **before initiation of Phase I-A and Phase II** construction activities.
13. North Baja shall restrict stringing trucks to a 10-mile-per-hour speed limit between MPs 48.0 and 68.0 of the B-Line.
14. North Baja shall implement the following measures at the Colorado River during activities associated with the HDD:
 - a. all individuals working within or adjacent to southwestern willow flycatcher habitat shall complete southwestern willow flycatcher training **before working within the construction right-of-way in those areas**; and
 - b. dust shall be strictly controlled by watering construction areas within 1,000 feet of potential habitat at the Colorado River.
15. North Baja shall implement the following measures to minimize impact on the Yuma clapper rail unless North Baja provides documentation from the FWS and the CDFG that such measures are not necessary or if site-specific surveys fail to identify individuals at the Alamo River or Rannells Drain:
 - a. ensure vegetation at the proposed crossing location of Rannells Drain, extending 150 feet on either side of the proposed construction work area, is cleared **before February 1, 2009**;
 - b. ensure vegetation at the proposed crossing location of the Alamo River is cleared **before February 1, 2009**; and
 - c. initiate all construction activities at Rannells Drain and the Alamo River **between the hours of 8:30 AM and 3:30 PM** to avoid periods of peak Yuma clapper rail vocalizations.
16. North Baja shall not begin Phase I-A or Phase II construction activities **until**:
 - a. the CDFG makes a consistency determination on the FWS' Biological Opinion pursuant to section 2080.1 of the California Fish and Game Code

or issues an Incidental Take Permit that covers both federally and state-listed species that may be affected;

- b. North Baja obtains an Incidental Take Permit under section 2081 of the California Fish and Game Code for all state-listed species that may be affected, or receives concurrence from the CDFG that an Incidental Take Permit is not required;
 - c. North Baja has completed and filed with the FERC and the CSLC the results of consultations with the BLM regarding measures to avoid or minimize impacts on special status species on lands managed by the BLM; and
 - d. North Baja has received written notification from the Director of OEP and the Executive Officer of the CSLC that construction or use of conservation measures may begin.
17. For those portions of the project facilities where construction would occur more than 1 year from the date of issuance of the FERC and CSLC approvals for the project, North Baja shall consult with the FWS, the BLM, and the CDFG to update the species list and to verify that previous consultations and determinations of effect are still current. Documentation of these consultations, and the need for additional surveys and survey reports (if required), and FWS, BLM, and CDFG comments on the surveys and survey reports and their conclusions (as applicable), shall be filed with the FERC and the CSLC **before construction begins on those facilities.**
18. North Baja shall revise its Off-Highway Vehicle (OHV) Plan to include:
- a. the agency or agencies responsible for enforcement of the OHV Plan;
 - b. the frequency of monitoring that would be conducted to ensure that the implemented OHV blocking measures are functioning properly;
 - c. the methodology for reassessing the implemented OHV blocking measures in the future; and
 - d. enforcement measures.

North Baja shall file the revised OHV Plan with the FERC and the CSLC for the review and written approval of the Director of OEP and the Executive Officer of the CSLC **before construction of Phase I-A and Phase II.**

19. North Baja shall prepare a Traffic Management Plan for Arrowhead Boulevard in consultation with the County of Riverside Transportation Department to detail the specific measures that would be used to control traffic during construction of the

Arrowhead Extension. North Baja shall file the plan with the FERC and the CSLC for the review and written approval of the Director of OEP and the Executive Officer of the CSLC **before construction.**

20. North Baja shall defer implementation of any treatment plans/mitigation measures (including archaeological data recovery), construction of facilities, and use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until North Baja files with the FERC and the CSLC, as applicable, the materials listed in items a. through g., and the steps listed in items h. through j. below have been completed:**
- a. any FWS, Cibola National Wildlife Refuge (Cibola NWR) comments on the Overview and Survey Report;
 - b. any BOR comments on the Evaluation Plan;
 - c. any comments from the BOR and Native American tribes on the draft Evaluation Report;
 - d. the revised Evaluation Report;
 - e. the California State Historic Preservation Officer's (SHPO) comments on Addendum Reports 2 and 3, the revised Evaluation Report, and the revised Historic Properties Treatment Plan;
 - f. all additional cultural resources survey reports for denied access areas and any additional areas requiring survey, evaluation reports, and any necessary treatment plans as well as documentation that these reports and plans were submitted to the SHPO(s); the BLM; the BOR; the FWS, Cibola NWR; and Native American tribes, as applicable;
 - g. any comments of the SHPO(s); the BLM; the BOR; the FWS, Cibola NWR; and Native American tribes, as applicable, on all additional cultural resources reports and plans;
 - h. the CSLC reviews and approves all cultural resources reports and plans prepared for the California portion of the Project and notifies North Baja in writing that construction may proceed;
 - i. the Advisory Council of Historic Preservation is afforded an opportunity to comment, if historic properties would be adversely affected; and
 - j. the Director of OEP reviews and approves all applicable cultural resources reports and plans and notifies North Baja in writing that treatment plans/mitigation measures may be implemented or construction may proceed.

All material filed with the FERC 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.”**

21. North Baja shall prepare a revised project-wide Dust Control Plan that specifies the following:
 - a. the sources of water that would be used for dust control;
 - b. the anticipated quantities of water that would be required;
 - c. the measures that would be implemented to prevent fish and egg entrainment during dust control water withdrawals;
 - d. the precautions that would be taken to minimize fugitive dust emissions from construction activities;
 - e. the measures that would be taken to limit visible density (opacity) of emissions to less than or equal to 20 percent;
 - f. how visual density would be measured to determine that it is less than or equal to 20 percent;
 - g. how compliance with the 20 percent visual density requirement would be recorded;
 - h. the individuals with authority to determine if/when water needs to be reapplied for dust control;
 - i. the speed limit that would be required on unpaved roads and unpaved haul and access roads; and
 - j. the individuals with authority to stop work if the contractor does not comply with dust control measures.

The revised project-wide Dust Control Plan shall be filed with the FERC and the CSLC for the review and written approval of the Director of OEP and the Executive Officer of the CSLC **before construction.**