

104 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Northwest Pipeline Corporation

Docket No. CP03-32-000

ORDER ISSUING CERTIFICATE

(Issued July 30, 2003)

1. On December 23, 2002, Northwest Pipeline Corporation (Northwest) filed an application in Docket No. CP03-32-000, requesting abandonment and certificate authorization under Sections 7(b) and 7(c), respectively, of the Natural Gas Act (NGA) related to its White River Replacement Project (White River Project). Northwest proposes (1) to construct and operate approximately 4,300 feet of 26-inch of pipeline and 4,300 feet of 30-inch pipeline loop in King County, Washington that will replace existing pipeline facilities; (2) to abandon, partially by removal and partially in place, approximately 3,300 feet of 26-inch pipeline and 3,300 feet of 30-inch pipeline loop being replaced by the new facilities; and (3) to remove approximately 665 feet of 26-inch pipeline crossing the White River that was previously retired in place.

2. The Commission finds that the White River Project is in the public interest because it will improve pipeline safety and reliability, while restoring the natural environment of the river and floodplains at the pipeline crossing location. Accordingly, the Commission will approve Northwest's proposal, subject to the conditions set forth herein.

Background

3. Northwest owns and operates an interstate natural gas transmission system extending from points of interconnection with El Paso Natural Gas Company (El Paso) and Transwestern Pipeline Company near Blanco, New Mexico. Northwest's system extends through the states of New Mexico, Colorado, Utah, Wyoming, Idaho, Oregon and Washington, to the Canadian border near Sumas, Washington where it interconnects with the facilities of both Duke Energy Gas Transmission Company and Sumas International Pipeline Inc.

4. Northwest's predecessor, El Paso, constructed the original 26-inch mainline from Ignacio, Colorado to Sumas, Washington, including the segment through the White River area, in 1954. 13 FPC 221 (1954). In 1971, El Paso constructed the 30-inch mainline loop in the White River area, while also replacing and realigning the original 26-inch river crossing. Six hundred sixty-five feet of the original 26-inch river crossing pipeline was abandoned in place. 46 FPC 232 (1971). The pipelines in the White River area are situated predominantly within the Muckleshoot Indian Tribe reservation.

5. River flooding in 1996 exposed the 26-inch and 30-inch pipelines on the north bank of the river. In order to protect the exposed pipelines, Northwest installed a rock/log structure over the pipelines under emergency authorization from federal and state regulatory agencies, with the condition that the structure was temporary and would be removed once a permanent solution was found. Although constant changes in channel alignment have caused the river to impinge directly on the north bank, the temporary north bank structure currently provides adequate protection to the pipelines.

6. Record high flow conditions in 1998 and 1999 caused the river channel to migrate southward, eroding the south bank and creating a safety risk where the two pipelines traverse the south bank. In 1999, Northwest installed approximately 400 feet of sheet piling along its pipeline right-of-way (ROW) on the south bank as a temporary measure to halt the continued erosion of the south bank.

7. Northwest states that the 26-inch pipeline river crossing that was abandoned in place must be removed because it has become exposed, is a safety risk to recreational traffic, and may be a barrier to upstream salmon migration. Further, to provide long-term stability and pipeline integrity while minimizing impacts on the environment, Northwest states that it needs to replace the existing pipeline crossings and to remove the associated temporary structures.

8. Northwest states that this application arose from meetings with the Muckleshoot Indian Tribe, the City of Auburn, the Army Corps of Engineers and other state and federal agencies to develop a crossing solution that will provide long-term pipeline integrity while restoring the natural function of the river environment and satisfying the significant concerns of other stakeholders.¹ Northwest states that it has been determined that a

¹On September 6, 2001, Northwest withdrew its original application in Docket No. CP00-141-000, to replace the White River pipeline crossings after it was unable to reach timely agreement with agencies on the design of the project.

combination of Horizontal Directional Drill (HDD) pipeline² beneath the White River and open cut trench construction in the south floodplain is the most environmentally acceptable option.

9. Northwest states that while it waits for approval and implementation of the proposed long-term solution, it continues to monitor both the existing north bank structure and the south bank sheet piling to ensure that the pipelines remain safe as the river flows change.

Proposal

10. Northwest requests the Commission to issue a certificate authorizing Northwest to construct and operate approximately 4,300 feet of 26-inch pipeline and 4,300 feet of 30-inch pipeline loop originating at approximately MP (milepost) 1356.24 on the existing pipeline ROW in King County, Washington and terminating at approximately MP 1355.33, as described below.

North tie-in and Valve Site: To connect the HDD pipelines, sections of the existing pipelines will be cut out and bypassed. At approximately MP 1356.24 a valve site will be installed to facilitate connecting the replacement lines and to allow continued service to meter stations located downstream. Approximately 200 feet of new 26-inch and 200 feet of new 30-inch pipe will be installed to connect the end of HDD lines to the existing pipelines. Part of the by-pass will be left in place to facilitate continued service through approximately 1,100 feet of the existing 26-inch and 30-inch lines from the valve site underneath Cameron Park and the Enumclaw meter stations.

White River HDDs: Approximately 3,200 feet of 26-inch and 3,200 feet of 30-inch pipeline will be installed under the White River using HDDs. The HDDs will be completed in 2003 and the pipeline will be packed temporarily with nitrogen and capped until tie-in work can follow in 2004.

²HDD is a construction method to install pipelines beneath rivers, wetlands, and features that require special attention to environmental and logistical concerns. Appendix D to the environmental assessment at p. 2.

South Floodplain Pipeline: Approximately 800 feet of 26-inch and 800 feet of 30-inch pipeline will be installed at a lower depth, from the HDD south terminus to the toe of the south slope.

South Tie-in: The south floodplain pipeline will be connected to the existing pipeline at approximately MP 1355.33, using two double stopples and a temporary by-pass to keep the mainline in service until all tie-in work is completed.

11. Northwest also requests the Commission to grant permission and approval for abandonment of approximately 3,300 feet of 26-inch pipeline and 3,300 feet of 30-inch pipeline loop that will be replaced by the new relocated facilities, along with removal of the exposed 26-inch pipeline crossing the White River that previously was retired in place as described below.

Retired 26-inch River Crossing: Approximately 665 feet of previously retired 26-inch pipeline that is currently exposed in the river will be removed.

Existing River Crossing: Approximately 500 feet of 26-inch and 500 feet of 30-inch pipeline located under the White River will be abandoned in place and filled with grout.

South Floodplain: Approximately 1,400 feet of 26-inch and 1,400 feet of 30-inch pipeline in the south floodplain from approximate MP 1355.55 northward (from south slope toe to the bank of the White River) will be abandoned by removal. Approximately 400 feet of existing sheet piling protecting the abandoned pipeline along the south bank also will be removed.

North Bank: Approximately 375 feet of 26-inch and 375 feet of 30-inch pipeline on the north bank will be removed followed by immediate dismantling of the north bank structure. As advocated by the various stakeholders, large woody debris then will be placed in the White River to promote the restoration of the natural river process and fish habitat.

North Slope: Approximately 400 feet of 26-inch and 400 feet of 30-inch pipe in the north slope will be abandoned in place, by cutting, capping and filling with nitrogen.

Johnson Property: Approximately 300 feet of 26-inch and 300 feet of 30-inch pipeline from the top of the north slope to the southern edge of the state highway easement, referred to as the "Johnson Property", will be removed.

State Highway to Enumclaw Meter Station: Approximately 300 feet of 26-inch and 300 feet of 30-inch pipeline from the southern edge of the state highway easement to the Enumclaw meter station will be abandoned in place. The 75-foot section under the highway will be filled with grout and the remaining 225 feet will be cut, capped and filled with nitrogen.

12. Northwest states that the proposed replacement project will not affect its system design capacity. The maximum allowable operating pressures of the replacement pipelines will be the same as the existing pipelines.
13. The estimated total cost of the proposed project is approximately \$29.4 million, comprised of approximately \$25.2 million for the installation of replacement pipeline and approximately \$4.2 million for removal of replaced and retired pipeline and associated structures. Exhibit K to the application.
14. Because this project is designed to maintain safety and reliability of Northwest's transmission system for the benefit of existing customers, Northwest requests permission to roll-in all project costs into its rates in its next rate case. Northwest states that the cost-of-service attributable to this project will represent an approximate \$0.0066 per Dth rate impact in Northwest's next general rate proceeding. Exhibits N and P to the application.
15. Northwest estimates that the project will require approximately six months to complete over a two-year period beginning in the summer of 2003, with completion in the fall of 2004. Installation of HDDs will occur in the summer of 2003 and all other construction and abandonment activities will occur in 2004.

Notice, Interventions, Comments and Protests

16. Notice of Northwest's application was published in the Federal Register on January 6, 2003 (68 Fed. Reg. 550) with interventions due on January 21, 2003. Timely interventions were filed by Southwest Gas Corporation, Sierra Pacific Power and the Northwest Industrial Gas Users (NWIGU). Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. See 18 C.F.R. § 385.214(a)(3)(2003).

17. The Muckleshoot Indian Tribe and the State of Washington Department of Fish and Wildlife filed late motions to intervene. The Commission finds that granting the late motions to intervene at this early date will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, we will grant the late motions to intervene. See 18 C.F.R. § 385.214(d)(2003).

18. Comments to the filing were submitted by NWIGU which states that it does not oppose the project but states that the project costs are significant and warrant a careful accounting and demonstration of prudent cost management when Northwest seeks to recover those costs in its rates.

19. Comments expressing environmental concerns were filed by landowners Frank and Diana Pratt and Bob and Jan Rollins. The Pratts state that before construction begins, a plan should be in place to protect the health and well-being of the people living near the construction site, including a plan to relocate or buy out the people most affected by the two-year construction process. The Rollins assert that the intended pipeline route will severely impact the value of their land by reducing the number of buildable lots on that land. They add that the proposed route passes close to their 80-foot deep well and might interfere with the flow of water to this well. They further state that the pipeline route passes close to several small outbuildings which are situated on the 50-foot construction easement. The landowners' comments are discussed in the environmental section of this order.

Discussion

20. Since Northwest's facilities and services are used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposals are subject to the requirements of subsections (c) and (e) of Section 7 of the NGA.

Public Convenience and Necessity

21. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.³ The Policy Statement established criteria for determining whether there is a need for a

³Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999); order clarifying statement of policy, 90 FERC ¶ 61,128 (2000); order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. 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, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

22. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from the 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, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission then proceed to complete the environmental analysis where other interests are considered.

23. Northwest's project satisfies the no subsidy requirement of the Policy Statement since it is needed to maintain the long-term safety and reliability of the pipeline for the benefit of existing customers and the public. The Policy Statement provides that increasing the rates of existing customers to pay for projects designed solely to improve the reliability or flexibility of service for those existing customers is not a subsidy, and that the costs of the project may be rolled-in. 88 FERC ¶ 61,227 at 61,746. Therefore, Northwest may roll-in the costs of this project in a future rate case, absent any material change in circumstances.

24. With regard to NWIGU's concern that project costs must be carefully accounted for, we note that a predetermination that rolled-in rate treatment is warranted is based on the facts presented in the application and presumes that there will be no material change in circumstances. When Northwest files under Section 4 to recover its costs, if NWIGU or any party believes that Northwest failed to prudently manage or accurately account for its costs, the party may allege a material change in circumstances and argue that it warrants a reevaluation of the predetermination supporting rolled-in rate treatment in this proceeding.

25. There is no indication that Northwest's project will harm existing customers or other pipelines. Service to existing customers will not be interrupted by the construction of the replacement facilities and the maximum operating pressures of the new pipelines will be the same as that of the pipelines that are being replaced.

26. Finally, we find that the proposed impact on landowners and communities will be minimal. The proposed project will temporarily disturb approximately 35 acres of property during construction, but will require permanent right-of-way (ROW) on only approximately five acres.

27. We find that the White River Project is in the public interest because construction of the replacement pipeline under the river bed and abandonment and removal of the existing pipeline provides a solution to the safety hazard posed by the eroding effects of changing river flows on the pipeline crossings as currently constructed.

Environment

28. On January 10, 2003, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed White River Replacement Project and Request for Comments on Environmental Issues (NOI). We received responses to the NOI from the City of Auburn, the State of Washington Department of Fish and Wildlife (WDFW), and two landowners. Our staff addressed all substantive comments in the environmental assessment (EA).

29. The EA addresses geology, soils, water resources, wetlands, vegetation, wildlife habitat, federally listed endangered and threatened species, land use, cultural resources, and alternatives. On May 20, 2003, we mailed the EA to Federal, state and local agencies, public interest groups, affected landowners, newspapers, libraries, and parties to this proceeding and we issued a Notice of Availability of the Environmental Assessment for the Proposed White River Replacement Project (NOA). The City of Auburn (Auburn) and the Muckleshoot Indian Tribe (Muckleshoot Tribe) filed comments raising issues concerning the EA's discussion of impacts and mitigation, land use compatibility, stability of the north slope, and habitat restoration in and around the White River.

30. Auburn states that it assumes that the Commission would be required to supplement the EA and permit further public comment should Northwest decide to conduct the HDD in a north-to-south direction, opposite what is proposed and discussed in the EA. For relatively minor changes, such as changing the direction of the HDD, condition Nos. 1, 2 and 5 of this Order allows the Director of the Office of Energy Projects to approve them so long as Northwest demonstrates that the environment would

be properly protected, and the necessary consultations have been completed and permits obtained. However, if Northwest proposes a major change in its project, such as a significant change in the location an/or configuration of its certificated facilities, then it would be required to file an amendment and it would receive the appropriate environmental review.

31. Auburn states that it plans to establish a soft-surface multi-purpose recreational trail using Northwest's permanent ROW just south of the limits of the proposed project. Auburn is concerned that Northwest's easements for this project could adversely affect its ability to implement this trail. We do not believe Auburn's ability to obtain access rights from property owners for its planned trail would change as a result of this project. Unless Northwest owns the property, it cannot convey access rights that belong to a property owner.

32. Auburn states that the EA omitted mentioning the natural gas odor problem coming from the existing Enumclaw meter station that Auburn identified during project scoping. Northwest has indicated that Enumclaw Gas, a local gas distribution company, owns and operates this meter station. The project would install new blow-off vents at the meter station and no other work would occur on equipment at the meter station. Northwest is not responsible for the odor leak.

33. Auburn believes our EA should have studied relocating this meter station. Since Northwest does not own this facility, it is not appropriate to study this alternative.

34. Auburn requests a condition ensuring that Northwest would provide it with a hauling route and schedule to avoid congestion on local roads caused by project construction-related traffic. However, Auburn indicates that Northwest has promised this information would be provided when it applies for a grading permit from Auburn. Therefore, we believe that a condition is unnecessary. Northwest would have to comply with the State of Washington's road use regulations and any local permit requirements. We do not enforce these regulations. Moreover, the number of workers and equipment needed to conduct an HDD and pipeline construction for this small project is not large. Typically, 10 to 50 workers could be working along this short corridor on an as-needed basis. Congestion caused by construction traffic has not been a significant problem at other large construction projects. See Greenbriar Pipeline Project Final Environmental Impact Statement, February 2003, Docket No. CP02-396-000.

35. Auburn comments that the EA did not discuss air pollution impacts related to potential congestion caused by access of construction equipment and workers to the project site. Given the small number of crew and short length of this project, the amount

of traffic congestion caused by construction traffic is expected to be relatively minor. In the immediate area of the project disturbance, operation of the construction equipment would produce air emissions. Such emissions include products resulting from the combustion of gasoline and diesel fuels, such as nitrous oxides, carbon monoxide, volatile organic compounds, and particulate matter. The amount of these emissions generated by construction equipment is generally considered to be short-term and sporadic, resulting in an insignificant impact on local air quality. The majority of air emissions during construction activities would be particulate matter in the form of fugitive dust generated by mechanical disturbances of soil during equipment movement and site preparation activities. Condition 15 of the EA includes measures for controlling fugitive dust.

36. Auburn is concerned that construction on the north bank could result in instability of the north slope once the protective north bank riprap structure and the previously abandoned 26-inch-diameter pipeline are removed. Auburn cites Northwest's filing which states that the possible resumption of channel meandering after construction could erode the north bank at the base of the north slope. However, Northwest's proposal, which includes removal of the north bank structure, took into consideration recommendations by the U.S. Army Corps of Engineers (COE), the National Marine Fisheries Service (NMFS), and the U. S. Fish and Wildlife Service (FWS) as well as the Muckleshoot Tribe. Removal of the north bank structure, installed in 1997, is a requirement under the emergency authorization issued by the COE in Docket No. CP00-141-000. Northwest would recontour the north bank and revegetate the north slope with Douglas-fir seedlings, which would help to stabilize the north slope. Extensive impact to the north bank and slope is avoided by use of the HDD. We do not believe the removal of pipelines from the north bank would destabilize the north slope.

37. Auburn also expresses concern that the in-stream fish habitat structures (large woody-debris and log jams) proposed to be installed by Northwest may cause the river banks to erode and harm properties downstream of the project. Northwest proposed this mitigation based on pre-filing consultations with the Muckleshoot Tribe, the FWS, and the NMFS. Structural integrity within the erosional channel environment is one of the requirements of these habitat structures and thus they should not result in more river bank erosion.

38. Auburn questions whether the forest on the new permanent ROW on the north slope would be cut and periodically mowed during operation of the pipelines, or would be left undisturbed during operations. Northwest will not clear the new permanent ROW on the north slope during construction and will not mow this ROW.

39. The Muckleshoot Tribe states that the EA did not discuss the adverse impact of scouring of the south bank on fish spawning, accretion of spawning gravel and woody debris onto the bank, and recruitment of gravel into the White River. The Muckleshoot Tribe believes that this scouring was caused by installation of the north bank structure in 1997. The Muckleshoot Tribe also believes that the sheet piling installed on the south bank in 1999 has impeded the intergravel flows, transfer of nutrients, and the movement of macro-invertebrates and small fish between the White River and south floodplain. In addition, the Muckleshoot Tribe lists a number of impacts it believes occurred during installation of these structures, such as sedimentation, fuel spills, etc., that were not discussed in the EA. The Muckleshoot Tribe comments that no specific mitigation measures for these past and present impacts are identified in the EA. These potential past and present impacts were not identified during scoping. Environmental impacts that occurred during the original installation of the structures on the north and south banks of the White River lie beyond the scope of this EA. We will not speculate on past impacts. The proposed project would remove the structures on both banks and allow the White River to resume its natural path. Therefore, the project would eliminate any adverse impacts caused by these structures. We believe the EA has sufficiently identified the necessary mitigation recommendations proposed by Northwest which have been developed in consultation with the Muckleshoot Tribe and fish and wildlife resource agencies.

40. The Muckleshoot Tribe similarly details what it calls a lack of identification and discussion of mitigation for HDD procedures having potential impacts to the White River and floodplain. These activities include sedimentation induced by vibration, dewatering of the bore hole, the intake, treatment, and release of hydrostatic test water, the capture and disposal of excess drilling mud, and the use of fuels for the HDD rig and dewatering pumps. In particular, the Muckleshoot Tribe states there could be excess pumping of water from the White River. We disagree. Water would not be pumped directly from the White River. Groundwater from the HDD bore hole and excavations near the White River would be discharged in surrounding areas. Water pumped out of the ground near the White River, released either at the banks or uphill according to requirements by the WDFW, would be expected to return to the White River at roughly the same rate as its withdrawal. Thus, there would be no significant net loss of water. The Muckleshoot Tribe also is concerned that the mud pit for the HDD would be used for two years. This is incorrect. We clarify that Section A.3.c on page 18 of the EA means that Northwest would no longer require the mud pit after the end of the HDD. It would be immediately restored to pre-construction condition during the first summer of construction. We note that parts of the ROW over the mud pit would be still be used again in the following year for installation of the replacement pipelines. We believe all the above HDD activities and

relevant mitigation measures associated with the sedimentation of the White River and contamination of the groundwater have been adequately discussed in the EA.

41. The Muckleshoot Tribe states that the schedule on page 14 of the EA depicting construction starting in June of 2003 is erroneous. Northwest originally planned to use this schedule for its project. We recognize that a June 2003 start date cannot be met at this point. However, this schedule continues to show the sequential construction activities that would be undertaken over a 2-year period. The schedule is restricted during the first construction year by the 80 days required for preparing and finishing both HDD's during the summertime, low-flow stream conditions, and is restricted during the second construction year by the June 15 to August 15 fish habitat construction window required by the WDFW. If Northwest cannot obtain the necessary permits and approvals in time for a start in early summer 2003, then the entire construction sequence would be shifted to begin the next year (2004).

42. The Muckleshoot Tribe states that the erosion and sedimentation control provisions in our staff's Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) are too general and not appropriate for the construction site. In particular, the Muckleshoot Tribe questions allowing erosion and sedimentation controls to go up after the start of construction. We believe that the Plan contains measures specifically pertinent to this project as these measures are often employed for such construction activities. We note that the initial disturbance allowed before installing protective erosion and sedimentation control devices is limited to equipment-light vegetation clearing and site preparations. The Muckleshoot Tribe also states that the Plan lacks restrictions on the length of time for ground disturbance and on the number of acres that can be disturbed at any one time. The Muckleshoot Tribes requests Plan modification to specify exactly how long soils can be left exposed. We disagree that this modification is needed. The Plan omits time restrictions for exposed soil because it is impossible to foresee all of the factors (weather, equipment failures) that affect the amount of time needed to perform construction. We believe the Plan's provision are reasonable for controlling erosion and sedimentation, and we do not believe it is appropriate to impose more detailed and inflexible provisions.

43. The Muckleshoot Tribe is concerned that Access Road AR-5 (a private dirt driveway), proposed by Northwest to be used only in the event of a clean up of HDD fluids, would not be restored to pre-construction conditions. On July 1, 2003, Northwest clarified that it does not intend to improve this road. If it becomes necessary for Northwest to modify this access road, the access road would be restored to its prior condition unless the owner prefers to keep it as modified.

44. The Muckleshoot Tribe recommends that the pipelines should be buried deeper in the south floodplain than the 23 feet proposed by Northwest for greater protection from future uncovering. However, given that Northwest states the maximum scour depth of the White River is about 20 feet below the floodplain, and that the existing pipelines placed 20 feet under the White River in 1971 have not been uncovered, 23 feet of burial should be sufficient. Additionally, using a deeper trench would disturb more ROW for a wider trench and for storing more spoil on the south floodplain. Therefore, we do not believe it is necessary to require deeper installation.

45. The Muckleshoot Tribe states that the EA underestimates the amount of vegetation that would be disturbed on the south floodplain portion of the project. We disagree. The Muckleshoot Tribe arrived at its estimated amount of 24 acres by including 12 acres of upland ROW that is not part of the south floodplain. The correct amount of south floodplain vegetation to be disturbed is 12 acres.

46. The Muckleshoot Tribe comments that the clearing of a 75-foot-wide corridor of floodplain forest would adversely impact recruitment of woody debris important for salmon habitat in the White River. It further states that regeneration of ROW adjacent to this corridor starting with seedlings does not adequately compensate for the lost mature trees. In order to help compensate for this impact and other past impacts, the Muckleshoot Tribe recommends that: 1) our staff's Plan be modified to increase the length of revegetation monitoring from two years to at least five years; and 2) the Commission require Northwest to construct up to six engineered woody debris logjams in the White River, instead of just one. We recognize that removing some forest near the White River is an unavoidable impact and it would take years to reestablish replacement forest on the adjacent ROW. However, given that the strip of forest removed is at right angles to the White River bank, we believe that this impact would be most pronounced close to the White River. Also, the amount of ROW to be eventually reforested is larger than the amount being cleared and converted to maintained ROW. We disagree with the first recommendation. We believe that the Plan's standard 2-year monitoring of revegetation success for stream and wetland crossings is sufficient for the White River floodplain. Regarding the second recommendation, the single woody debris logjam offered by Northwest in its application is the amount being considered by the NMFS and the FWS in their review of the project under the Endangered Species Act (ESA). We believe that the amount of mitigation currently proposed for this project is sufficient.

47. The Muckleshoot Tribe states that the discussion concerning bull trout in Section B.6 of the EA starting on page 53 is incorrect and that it should be based on discussions with the FWS. The Muckleshoot Tribe does not specify what is incorrect. Our staff will discuss this concern with the FWS prior to the completion of the ESA consultation for the

bull trout. The same information is in the Biological Assessment (BA) that was sent to the FWS and the NMFS to initiate formal Section 7 consultation under the ESA and the Magnuson-Stevens Fishery Conservation Act. These agencies will evaluate the adequacy of the BA for accuracy and completeness and include their recommendations and/or changes in their Biological Opinion (BO) and any Conservation Recommendations (CR) for the project. If necessary, these agencies can request additional or corrected information, and no construction may proceed until a BO is received. Therefore, we find the information contained in Section B.6 concerning bull trout is sufficient at this time.

48. The Muckleshoot Tribe requests a change in the June 15 to August 15 in-stream construction window listed in the EA because it states that it is inadequate for protecting Spring Chinook salmon migrating in the White River during this time period. We note that protected species potentially use this river year round and that there is no "perfect" time window for working in the river. Northwest developed this time window in consultation with other state and Federal agencies. Our staff also discussed the construction window with the WDFW and the NMFS. The WDFW did not think it advisable to change this window. In addition, the NMFS can recommend a different time window in its BO and CR as part of the current ESA consultation if it determines that this is necessary. Therefore, we believe that this construction window is sufficient and will not change it unless the FWS and the NMFS direct it.

49. The Muckleshoot Tribe notes that the Chinook salmon critical habitat discussion on page 55 of the EA is based partly on a database of the Washington State Department of Natural Resources (WDNR) that is out of date. It suggests this discussion be updated with information from NMFS's website. We consulted with the NMFS and determined that the information is outdated, but the NMFS determined that the information would not affect the NMFS's review of the BA. Consequently, proper consideration will be given to this information.

50. The Muckleshoot Tribe suggests several construction mitigation measures that could benefit wildlife including: 1) using the cleared trees in the south floodplain and woody material removed from the north bank structure as woody fish habitat instead of for off-road vehicle barriers; 2) constructing fence to prevent elk, deer and other wildlife from falling into bore pits and trenches; 3) modifying the seasonal and daily construction schedules to accommodate elk and deer movement through the construction area in the south floodplain; and 4) modifying the Riparian Mitigation Plan's spatial arrangement of Douglas-fir seedling planting to accommodate the movement of elk and deer through the area. These mitigation measures were not identified during scoping. Concerning item 1, Northwest plans to obtain wood from other sources. Therefore, it is not critical that wood obtained from the construction be specifically used for the in-stream structures.

Concerning item 2, a portion of the tribal land is zoned as a conservancy area in part for wildlife benefit. Therefore, we believe the request for fencing may be justified. The tribe may choose to require Northwest to install fencing in the Special Use Permit to be issued by the Muckleshoot Tribe. With regard to item 3, we do not believe it is prudent to require Northwest to restrict construction that could interfere with previously discussed in-stream fish construction windows and construction methods aimed at avoiding impacts to federally listed species. Lastly, we believe changing the spatial arrangement of the conifers in the Riparian Mitigation Plan is reasonable due to the concern for the movement of big game and may be required by permit on Muckleshoot tribal land. Elsewhere, Northwest's adjustments to the planting configuration associated with the Riparian Mitigation Plan can be negotiated with the specific land owner and/or agency for the affected properties.

51. The Muckleshoot Tribe requests that Northwest provide it with copies of the initial baseline report, the three follow-up annual reports, and the final report required by the Long-Term Habitat Monitoring Plan described in Appendix K of the EA. We note that these reports are required to be given only to the NMFS and the FWS even though the habitat structures to be monitored are being negotiated with the Muckleshoot Tribe. We believe this request is reasonable and will require Northwest to provide the Muckleshoot Tribe with copies of the monitoring reports required in the Long-Term Habitat Monitoring Plan.

52. The Muckleshoot Tribe also asks to participate in the ESA consultation for this project. We will forward this request to the FWS and the NMFS for their consideration. Our staff has already initiated the ESA consultation process with these agencies by mailing them our staff's EA (which is the BA for this project) and is at this time waiting for the FWS and NMFS to respond. The Muckleshoot Tribe has been mailed a copy of the EA

53. The EA also discusses landowner comments and imposed a number of conditions on Northwest to address their concerns. First, in response to the Pratts' comment that a plan should be in place to protect the health and well-being of landowners during construction, the EA requires Northwest to file plans, for Commission approval, identifying specific noise and dust control measures that it will use to minimize inconvenience and nuisance to nearby residences during construction.

54. Those requirements for noise and dust control are included as conditions 14 and 15 in the appendix to this order. In addition, condition 16 of this order requires Northwest to develop dispute resolution procedures to provide the means for quick response to specific landowner complaints that may arise during construction.

55. As to the Pratts' request for monetary compensation, we note Northwest is responsible for conducting negotiations with landowners, before construction begins, regarding the loss of value to that property caused during construction or by the ROW after construction. Should the parties fail to negotiate a mutually agreeable resolution it will be necessary for Northwest to seek the exercise of eminent domain under Section 7(h) of the NGA and the procedures set forth under the Federal Rules of Civil Procedure to obtain the ROW and extra work areas identified in the certificate. Compensation for property would be determined by the United States District Court or State Court granting eminent domain.

56. The effect of the pipeline project on the Rollins property value should be minimized by the fact that the proposed pipeline will be drilled 220 feet below the property on which they intend to build. EA at p. 78–9. Because of the pipeline's depth, there will be no need for access to the pipeline for maintenance as there would be for an above-ground pipeline and the view from the slope where the property is located will be undisturbed. As discussed in the EA, there should be no disturbance of the Rollins well or the small outbuildings which are located on the easement since the replacement pipeline will be drilled at least 50 feet west and 120 feet below the Rollins well and 200 feet below the outbuildings. EA at p. 31. In addition, Northwest has established a Ground Water Management and Mitigation Plan, with procedures designed to minimize impacts on water supplies and emergency measures to be undertaken in the event landowner water supplies are adversely affected by construction and until permanent mitigation measures can be put in place.

57. Based on the discussion in the EA, we conclude that if replaced or operated in accordance with Northwest's application and supplements filed December 27, 2002, February 5, 2003, February 24, 2003, February 27, 2003, March 14, 2003, May 7, 2003, and June 26, 2003, approval of this proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

58. Any state, local, or Muckleshoot Tribe 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, local agencies, or the Muckleshoot Tribe through application of state, local, or tribal laws, may prohibit or

unreasonably delay the replacement or operation of facilities approved by this Commission.⁴

Conclusion

59. For the reasons discussed above, and with the conditions imposed by this order, the Commission concludes the abandonment and certificate authorizations requested herein are, permitted and required, respectively, by the public convenience and necessity.

60. At a hearing held on July 23, 2003, the Commission on its own motion received and made part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity under NGA Section 7(c) is issued, authorizing Northwest to construct and operate the proposed facilities, as described more fully above and in the application.

(B) Northwest is granted permission and approval, pursuant to NGA Section 7(b), to abandon certain facilities, as discussed more fully above and in the application.

(C) The authorizations under Ordering Paragraph (A) and Ordering Paragraph (B) are conditioned on the following:

(1) Northwest's completing the proposed facilities and making them available for service within 24 months of date of this order, pursuant to paragraph (b) of Section 157.20 of the Commission's regulations;

(2) Northwest's complying with all applicable Commission regulations under the Natural Gas Act, particularly the

⁴See, 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., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

conditions set forth in (a), (b), (c), (e), and (f) of Section 157.20 of the regulations.

(3) Northwest's notifying the Commission within 10 days of the date of the abandonment of the facilities;

(4) Northwest's compliance with the environmental conditions in the Appendix.

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

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX
Northwest Pipeline Corporation
Docket No. CP03-32-000
Environmental Conditions

1. Northwest shall follow the construction procedures and mitigation measures described in its application and supplements and as identified in the environmental assessment, unless modified by this Order. Northwest must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and activities associated with abandonment 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.

3. **Prior to any construction**, Northwest shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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 location shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Northwest shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of

environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Northwest 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, and 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 minor field realignments per landowner needs and requirements which 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. Northwest shall employ at least one environmental inspector. The environmental inspector shall be:

- a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other Federal, state, local agencies or the Muckleshoot Tribe; and
 - e. responsible for maintaining status reports.
7. Northwest shall file updated status reports prepared by the environmental inspector with the Secretary on a weekly basis until all construction-related activities, including restoration and initial permanent seeding, are complete. On request, these status reports will also be provided to other Federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. the current construction status of the project, 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 environmental inspector during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other Federal, state, or local agencies or the Muckleshoot Tribe);
 - 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 which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Northwest from other Federal, state or local permitting agencies or the Muckleshoot Tribe concerning instances of noncompliance, and Northwest's response.
8. Northwest must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted

following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.

9. **Within 30 days of placing the certificated facilities in service**, Northwest 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 Northwest 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. Northwest shall, **prior to construction**, revise its SPCC Plan to include:
 - a. an updated Attachment A (emergency contact names and phone numbers);
 - b. an updated Attachment B (types and storage locations of fuel, chemicals and hazardous materials); and
 - c. an updated Section IV.B.3 showing locations where it plans to store spill clean up supplies mentioned in Section IV.B.3.

11. Northwest shall file procedures for sealing abandoned drill holes used in the HDD process.

12. Northwest shall:
 - a. file with the Secretary any comments it receives from the FWS and the NMFS on the BA and its conclusions; and
 - b. not begin construction activities until:
 - I. the staff completes formal consultation with the FWS and the NMFS, if required; and
 - ii. Northwest has received written notification from the Director of OEP that construction or use of mitigation measures may begin.

13. Northwest shall consult with the landowner of the property on which the block valve site would be installed in the pasture north of Cameron Park at Station

Number 15413+11 to determine if visual screenings are required, and file the results of these consultations with the Commission.

14. Northwest shall, **prior to construction**, file with the Secretary for review and written approval of the Director of OEP a site-specific plan identifying the specific noise control measures it would use to control and monitor daytime and nighttime construction noise for nearby residences and the Buena Vista Elementary School during HDD operations.
15. Northwest shall, **prior to construction**, file with the Secretary for review and written approval of the Director of OEP measures to control fugitive dust near residences.
16. Northwest shall develop and implement an environmental complaint resolution procedure. The procedure should provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, Northwest shall mail the complaint procedures to each landowner whose property would be crossed by the project. In its letter to affected landowners, Northwest shall:
 - a. provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - b. instruct the landowners that, if they are not satisfied with the response, they should call Northwest's Hotline; the letter should indicate how soon to expect a response; and
 - c. instruct the landowners that, if they are still not satisfied with the response from Northwest's Hotline, they should contact the Commission's Enforcement Hotline at 1-888-889-8030.

In addition, Northwest shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:

- the date of the call;
- the identification number from the certificated alignment sheets of the affected property;
- the description of the problem/concern; and
- an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.

17. **Prior to construction**, Northwest shall file with the Secretary documentation of concurrence from the State of Washington for its Coastal Zone Consistency Certification.
18. Northwest shall provide the Muckleshoot Tribe with copies of the monitoring reports required by the Long-Term Habitat Monitoring Plan.