

153 FERC ¶ 61,302  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Kern River Gas Transmission Company

Docket No. CP15-132-000

ORDER ISSUING CERTIFICATE  
AND GRANTING ABANDONMENT AUTHORITY

(Issued December 17, 2015)

1. On March 26, 2015, Kern River Gas Transmission Company (Kern River) filed an application, pursuant to section 7 of the Natural Gas Act (NGA)<sup>1</sup> and Part 157 of the Commission's regulations,<sup>2</sup> seeking authorization for its Summerlin Pipe Replacement Project in Clark County, Nevada. The proposed project consists of replacing a 1.56-mile-long segment of Kern River's 6-inch-diameter A-line with thicker walled pipe to comply with a class location change by the U.S. Department of Transportation (DOT) and DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA).

2. For the reasons discussed below, we will grant authorization for Kern River's replacement project with appropriate conditions.

**I. Background and Proposal**

3. Kern River is a general partnership formed under the laws of the State of Texas and based in Salt Lake City, Utah, engaged primarily in the transportation of natural gas in interstate commerce subject to the Commission's jurisdiction. Kern River is a natural gas company as defined under section 2(6) of the NGA. In 1991, Kern River constructed its A-line, which extends approximately 904 miles from Opal, Wyoming, through Wyoming, Utah, and Nevada, to its terminus in California.

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<sup>1</sup> 15 U.S.C. § 717f(c) (2012).

<sup>2</sup> 18 C.F.R. Part 157, Subpart A (2015).

4. Kern River proposes to replace an approximately 1.56-mile segment of the A-line's 36-inch-diameter pipe with thicker-walled 36-inch-diameter pipe. Based on residential and other development in the area at the time of the pipeline's construction in 2003, the portion of the A-line including the segment of pipeline to be replaced was designed for a Class 1 location as defined in DOT's regulations.<sup>3</sup> A newly planned residential development will cause the area to become a Class 3 location.<sup>4</sup> Kern River's proposal to replace the 1.56-mile-long segment of pipeline in the subject area with thicker-walled pipe will allow it to maintain the pipeline's maximum allowable operating pressure of 1,333 psig while complying with DOT and PHMSA design and safety requirements.

5. The pipeline segment to be replaced is located west/southwest of Las Vegas, in Clark County, Nevada, at approximate MP 543.63 to 545.19 of Kern River's A-line. The replacement pipeline will be placed at a 25-foot offset from the existing parallel B-line's centerline for approximately 1.15 miles. Because there is a crossover of the A-line and B-line, the centerline for the remaining 0.41 mile of replacement pipeline will be offset 25 feet from the centerline for the A-line. After the A-line is removed, the replacement pipeline and the existing B-line easements will not overlap from MP 1.15 to 1.56. A valve site, including all aboveground facilities related to this construction, will be located within and immediately adjacent to the permanent right-of-way of the replacement facilities and that of the existing mainline. The total area that will be utilized for replacement project's permanent right-of-way is 9.74 acres, of which 4.98 is already designated as permanent right-of-way for the A-line or B-line. Some of the remaining 4.76 acres to be designated as new permanent right-of-way have been previously disturbed. Once the replacement pipeline has been placed in service, Kern River will abandon the existing 1.56-mile-long segment of the A-line by removal.<sup>5</sup>

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<sup>3</sup> Under DOT's regulations, a Class 1 location includes any continuous 1-mile length of pipeline where there are 10 or fewer buildings intended for human occupancy within 220 yards on either side of the pipeline. 49 C.F.R. § 192.5(b)(1).

<sup>4</sup> 49 C.F.R. § 192.5(3) (defining a Class 3 location to include any continuous 1-mile length of pipeline where there are 46 or more buildings intended for human occupancy within 220 yards on either side of the pipeline; an area where the pipeline lies within 100 yards of a building that is occupied by 20 or more persons during normal use; or a playground, recreation area or other small, well-defined outside area occupied by 20 or more persons during normal use).

<sup>5</sup> Application, Resource Report 1 at 24.

6. To avoid interruption of any services during the pipeline replacement project, Kern River will install a valve and crossover pipe between the A-line and the B-line. Although there is an existing crossover valve and piping between the two pipelines several feet south of the proposed location for the new valve and piping, the existing crossover valve and pipeline connect with the segment of the A-line that will be removed during the replacement project. The proposed new crossover valve and pipeline are needed to divert gas to the B-line around the segment of the A-line to be replaced until the replacement pipeline is completed. The existing crossover valve and piping will no longer be needed and will be abandoned by removal.<sup>6</sup>

7. Kern River's estimated cost for the Summerlin Replacement Project is \$10.4 million, which Kern River states will be financed with internally generated funds.<sup>7</sup>

## **II. Notice and Motions to Intervene**

8. Notice of Kern River's application was issued on March 26, 2015, and published in the *Federal Register* on April 15, 2015 (80 Fed. Reg. 20,212). The notice established April 29, 2015, as the deadline for filing comments and interventions. Howard Hughes Corporation, Nevada Power Company, and Southwest Gas Corporation filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>8</sup>

## **III. Discussion**

9. Since Kern River proposes to replace facilities that are used to transport natural gas in interstate commerce subject to the Commission's jurisdiction, the abandonment of the existing facilities and the construction and operation of the replacement facilities are subject to the requirements of subsections (b) and (c) of section 7 of the NGA.

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> Application, Exhibit K.

<sup>8</sup> 18 C.F.R. § 385.214(c) (2015).

**A. Certificate Policy Statement**

10. The Commission's Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.<sup>9</sup> The Certificate Policy Statement establishes 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 new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new natural gas facilities.

11. Under this policy, the threshold requirement for existing pipelines proposing construction projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse 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 proposed route or location of the new pipeline facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

12. As stated, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. Under the Certificate Policy Statement, it is not a subsidy for existing customers to pay for projects that are necessary to replace old and deteriorated facilities and existing capacity in order to meet safety requirements or to improve the reliability or

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<sup>9</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *clarified*, 90 FERC ¶ 61,128; *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

flexibility of existing service.<sup>10</sup> To comply with DOT's safety regulations, Kern River must either replace the 1.56-mile-long segment of its A-line with thicker walled pipe or reduce operating pressure, which would adversely affect its ability to maintain its existing service levels on a reliable basis. Therefore, the Commission finds that requiring Kern River's existing customers to pay for the costs of the project will not constitute a subsidy under the Certificate Policy Statement. In view of these considerations, Kern River's proposal satisfies the threshold requirement of the Certificate Policy Statement. Further, as explained in the Certificate Policy Statement, when a replacement project such as Kern River's is necessary in order to ensure the continued reliability of current services and will not create any expansion capacity for use by new shippers, Commission policy allows all of the costs of the project to be rolled into the pipeline company's generally applicable system rates in a future rate case.<sup>11</sup> Kern River will use its parallel loop, the B-line, to temporarily divert gas around the section of the A-line being replaced. Thus, the project should not adversely affect any existing services. Since no pipeline companies or their captive customers have filed adverse comments regarding Kern River's proposal, we also find that the replacement project will not have adverse impacts on any other pipelines or their customers.

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<sup>10</sup> Certificate Policy Statement, 88 FERC ¶ 61,227, at n.12 (1999). *See, e.g., National Fuel Gas Supply Corporation*, 150 FERC ¶ 61,162, at P 15 (2015) (finding that requiring existing customers that relied on facilities to pay for replacement facilities would not result in a subsidy since the existing 68-year-old pipeline was deteriorated and needed to be replaced in order to ensure continued reliability of the existing services). *See also Northwest Pipeline Corporation*, 104 FERC ¶ 61,176, at PP 5–7 and 23 (2003) (approving costs to remove river-crossing pipeline posing safety risks because it had become exposed as the result of flooding; approving construction of replacement river-crossing pipeline in different location; and finding that it was not a subsidy to require that existing customers pay for the costs of a project that was necessary for safety reasons and maintain reliable service).

<sup>11</sup> The Commission stated in the Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12, that:

Projects designed to improve existing service for existing customers, by replacing existing capacity, improving reliability or providing flexibility, are for the benefit of existing customers. Increasing the rates of the existing customers to pay for these improvements is not a subsidy.

13. The majority of the project will occur on Kern River's existing right-of-way. Kern River's construction activities will expand its existing right-of-way by 4.76 acres. Kern River has already acquired 0.15 acre of land to accommodate the new crossover valve and crossover piping that will allow use of the B-line to divert gas in the A-line around the section of pipe being replaced. Therefore, the replacement project will have minimal adverse economic impacts on landowners or communities.

14. Based on the above findings, the Commission concludes that the proposed replacement project will provide benefits by allowing Kern River to meet DOT's safety requirements while maintaining current service levels without any identifiable adverse impacts on existing customers, other pipelines, landowners, or communities. Thus, consistent with the Certificate Policy Statement and section 7(c) of the NGA, the Commission concludes that approval of Kern River's proposal is required by the public convenience and necessity, subject to the environmental conditions discussed below and set forth in the Appendix to this order.

## **B. Environmental Analysis**

15. On May 12, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Summerlin Pipe Replacement Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register<sup>12</sup> and mailed to organizations and interested parties, including federal, state, county, and local agencies; elected officials (federal and state representatives and senators); local tribes; local libraries and newspapers; intervenors in the proceeding; and property owners along the pipeline segment to be replaced.

16. In response to the NOI, the Clark County Department of Air Quality provided comments on the required Dust Control Permit. The U.S. Army Corps of Engineers filed comments acknowledging the Commission's role as the lead agency for consultations under Section 7 of the Endangered Species Act<sup>13</sup> and Section 106 of the Natural Historic Preservation Act.<sup>14</sup>

17. Clark County, Nevada, filed comments in response to the NOI regarding Kern River's plans for accessing the site for its proposed crossover valve and piping between its A-line and parallel B-line noting Kern River would require permanent use of

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<sup>12</sup> 80 Fed. Reg. 28,259-28,261 (2015).

<sup>13</sup> 16 U.S.C. § 1536 (2012).

<sup>14</sup> 16 U.S.C. § 470 (2012).

county roads on land that is dedicated to flood control purposes and subject to agreements between the county and third parties. The Clark County Deputy District Attorney filed comments expressing concern that Kern River's permanent use of these roads could potentially cause damage to a county flood control structure.

18. The U.S. Department of Interior's Bureau of Land Management (BLM), the National Park Service (NPS), and the Old Spanish Trail Association (Trail Association) filed comments in response to the NOI regarding the Class III cultural resource inventory conducted by Kern River. The BLM and the Trail Association disagreed with Kern River's finding that segments of the Old Spanish National Historic Trail in the project area are non-contributing to National Register of Historic Places eligibility. They requested that Kern River be required to implement specific protection measures.

19. All substantive comments received in response to the NOI were addressed in the environmental assessment (EA) for Kern River's proposal prepared in cooperation with the BLM to satisfy the requirements of the National Environmental Policy Act of 1969.<sup>15</sup> The EA addresses geology, paleontology, and soils; groundwater and surface water; vegetation and wildlife; special status species; land use, recreation, special interest areas, and visual resources; cultural resources; air quality and noise; reliability and safety; and cumulative impacts. The EA also assesses the no-action alternative. All comments received in response to the NOI and Kern River's cultural resource inventory, including those noted above, were addressed in the EA. The EA was issued for a 30-day comment period and placed into the public record on September 30, 2015.

20. Following issuance of the EA, the Commission received further comments from Kern River, the BLM, and the NPS.

21. Kern River provides the following clarifications in response to the EA: the Existing 0.22-acre pig launcher yard would be expanded *to* 0.37 acre, not *by* 0.37 acre in order to accommodate the proposed new crossover valve and pipeline between the A-line and B-line; Kern River would adhere to its existing Biological Opinion for operation and maintenance activities; and the beardtongue plant identified in the right-of-way is a rosy twotone beardtongue, not a yellow twotone beardtongue.

22. The BLM's comments on the EA clarified that, while the EA stated that 29.06 acres of vegetation would be disturbed by Kern River's project to replace the 1.56-mile-

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<sup>15</sup> 42 U.S.C. §§ 4321-4370f (2012).

long section of it's A-line,<sup>16</sup> only a subset of 5.85 acres is considered undisturbed desert tortoise habitat.

23. Kern River's and the BLM's clarifications do not change the conclusions reached in the EA.

24. In its comments on the EA, the NPS recommends that the Commission include specific certificate conditions to ensure Kern River's compliance with its commitments to monitoring and cultural resource sensitivity training. The NPS expresses concern that approval of the project could result in adverse effects on the Old Spanish National Historic Trail and seeks assurance that the project will not be allowed to go forward until the Nevada State Historic Preservation Office (SHPO) has commented on the project's potential effects.

25. We do not believe that an additional, specific condition is necessary to ensure that Kern River monitors and provides cultural resource sensitivity training in accordance with its proposed avoidance and protective measures, as described in section B.7.a of the EA. The EA's recommended Environmental Condition No. 1 is included in the Appendix to this certificate order, and it requires that Kern River adhere to all construction procedures and mitigation measures as described in its application and supplements (including responses to staff data requests) and as identified in the EA. Before deviating from any of these approved procedures, measures, and conditions, Kern River will have to obtain the Commission's approval, which will depend on Kern River providing site-specific justification and assurance that its proposed changes will provide an equal or greater level of environmental protection.

26. In response to the NPS's concern that Kern River not be allowed to commence construction until the Nevada SHPO has commented, we note that the EA acknowledged that Kern River had not yet filed the SHPO's comments. Further, the EA's recommended Environmental Condition No. 13 is included in the Appendix to this order, and it provides that our staff will not authorize the commencement of construction until Kern River has filed the Nevada SHPO's comments on Kern River's Class III inventory reports and staff confirms that the National Historic Preservation Act Section 106 process has been completed and satisfied.<sup>17</sup>

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<sup>16</sup> See Appendix D to the EA.

<sup>17</sup> Although the BLM and the Trail Association also had filed comments in response to the NOI regarding Kern River's cultural resource inventory and segments of the Old Spanish National Historic in the project area, they did not file any further comments following issuance of the EA with its recommended environmental conditions.

27. Based on the analysis in the EA, we conclude that if replaced and operated in accordance with Kern River's application and supplements, and in compliance with the environmental conditions in the Appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

28. 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 replacement or operation of facilities approved by this Commission.<sup>18</sup>

29. At a hearing held on December 17, 2015, the Commission, on its own motion, received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Kern River to replace and operate the Summerlin Pipe Replacement Project facilities, as described more fully in this order and in the application.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on Kern River's:

- (1) completion of construction of the authorized facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations.
- (2) compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

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<sup>18</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the Natural Gas Act to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by FERC); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

- (3) Compliance with the environmental conditions listed in the Appendix to this order.

(C) Kern River is granted permission and approval, pursuant to NGA section 7(b), to abandon certain facilities, as described herein and in the application. Kern River shall notify the Commission within 10 days of completing the authorized abandonments.

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix

### Environmental Conditions Kern River's Summerlin Replacement Project Docket No. CP15-132-000

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Kern River Transmission Company (Kern River) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Kern River 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 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 operation of the project and activities associated with the abandonment portion of the project. This authority shall allow:
  - a. the modification of conditions of the 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**, Kern River 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 inspectors' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Kern River 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 the facility approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Kern River 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 Kern River's site-specific Upland Erosion Control, Revegetation, and Maintenance Plan and/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:

- (i) implementation of cultural resources mitigation measures;
- (ii) implementation of endangered, threatened, or special concern species mitigation measures;

- (iii) recommendations by state regulatory authorities; and
- (iv) agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the authorization and before construction begins**, Kern River shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Kern River must file revisions to the plan as schedules change. The plan shall identify:

- a. how Kern River will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
- b. how Kern River 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;
- c. the number of environmental inspectors assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
- e. the location and dates of the environmental compliance training and instructions Kern River will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
- f. the company personnel (if known) and specific portion of Kern River's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) Kern River will follow if noncompliance occurs; and
- h. 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 environmental compliance training of onsite personnel;
  - iii. the start of construction; and
  - iv. the start and completion of restoration.

7. Kern River shall employ at least one environmental inspector per construction spread. The environmental inspector(s) shall be:
  - a. responsible for monitoring and ensuring compliance with all mitigation measures required by the 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 (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - e. responsible for maintaining status reports.
  
8. Beginning with the filing of its Implementation Plan, Kern River shall file updated status reports with the Secretary on a **weekly** basis until all construction and restoration activities 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. an update on Kern River's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for dry-wash crossings or work in other environmentally sensitive areas;
  - c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) 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);
  - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
  - e. the effectiveness of all corrective actions implemented;

- f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by Kern River from other federal, state, or local permitting agencies concerning instances of noncompliance, and Kern River's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Kern River shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Kern River must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the authorized facilities in service**, Kern River shall file an affirmative statement with the Secretary, certified by a senior company official:
  - a. that the respective 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 conditions in the Order Kern River has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Kern River **shall not use or improve** the "Main Access Road" or "Access Road #4" **until**:
  - a. Kern River files with the Secretary the results of its consultations with Clark County; and
  - b. the Director of OEP notifies Kern River in writing that construction may proceed.

13. Kern River **shall not begin construction** of facilities and/or use of staging, storage, or temporary work areas and to-be-improved access roads **until**:
  - a. Kern River files with the Secretary, the Nevada State Historic Preservation Office's comments on the Class III inventory report and supplemental report; and
  - b. the Director of OEP notifies Kern River in writing that construction may proceed.

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