

Terms and Conditions

- a. This grant and permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2880 and with all applicable law.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from Federal lands or otherwise disposed of as provided in the Plan of Development or as otherwise directed by the authorized officer.
- c. Each grant issued pursuant to the authority of paragraph (1) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit A (Legal Descriptions), Exhibit B (Apportionment of Right-of-Way and TUP), Exhibit C (Maps), attached hereto, and Exhibit D (Plan of Development, dated March 2002), are incorporated and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law, regulation or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- g. If the authorized officer determines that any activity being conducted or authorized by a holder within a right-of-way or temporary use permit area is endangering public health or safety or the environment, he may order the immediate suspension of that activity and immediate remedial action.
- h. The holder shall construct, operate, maintain, and terminate the pipeline and related facilities within this right-of-way in strict conformity with the approved Plan of Development, which includes, but is not limited to, the FERC Certificate of Public Convenience and Necessity, CEQA Notice of Decision and State Lands Commission Lease, and the USFWS Biological Opinion. Any relocation, additional construction, or use that is not in accord with the approved Plan of Development shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant and permit, including all stipulations and approved Plan of Development, shall be made available on the right-of-way area during construction, operation, maintenance, and termination to the authorized officer.
- i. The holder shall not initiate any construction or other surface disturbing activities on the right-of-way or permit areas without the prior written authorization of the authorized officer. Such authorization shall be a written Notice to Proceed issued by the authorized officer or representative. Any Notice to Proceed shall authorize construction or other use only as therein expressly stated and only for the particular location or use therein described.

- j. The authorized officer may modify, suspend, or terminate, in whole or in part, a Notice to Proceed when unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect public health or safety or the environment.
- k. Specific requirements for the cultural resources work to be completed by the holder are found in the provisions of the Historic Properties Treatment Plan (HPTP) for the North Baja Pipeline Project. The HPTP is incorporated and made a part of this grant instrument as fully and effectively as if it were set forth herein. Due to confidential site information the HPTP is not attached to this grant as an exhibit, but will be maintained in the official case file (CA-42662). An *Unanticipated Discovery Plan* is included in the Plan of Development and incorporated herein.
- l. The holder shall provide a bond in the amount of \$500,000.00 to be maintained until restoration of disturbed areas and other requirements relative to the construction phase of the project have been accepted by the BLM authorized officer. Upon completion, or partial completion of these construction-related requirements, the authorized officer may terminate or reduce the amount of the bond. Should the bond delivered under this grant become unsatisfactory to the authorized office, the holder shall, within 30 days of demand, furnish a new bond.
- m. The holder shall protect all survey monuments found within the right-of-way and temporary use permit work areas. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using survey procedures found in the *Manual of Surveying Instructions for the Survey of the Public Lands in the United States*, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.
- n. The holder agrees to indemnify the United States against any liability arising in connection with the use and occupancy of the right-of-way or permit areas including, but not limited to, any liability arising from the release or threat of release of any hazardous substance, pollutant, or contaminant (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq.), any hazardous waste (as defined in the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.), oil or any petroleum product (as defined in the Federal Water Pollution Control Act, 33 U.S.C. 1321 et seq. and the Oil Pollution Act, 33 U.S.C. 2701 et seq.), and natural gas, natural gas liquids, liquefied natural gas or synthetic gas. This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.
- o. If any activity or facility within the right-of-way or permit areas causes the release or threat of release of any substance identified in paragraph "n" above, the holder shall be responsible for controlling, remediating, or otherwise responding to the release or threat of release, regardless of fault. The holder shall perform such actions to the satisfaction of the BLM and other Federal, State, or local agencies having jurisdiction over the

release or threat of release. Upon failure of the holder to control, remediate or otherwise respond to the release or threat of release, and repair all damages resulting therefrom, the authorized officer may take such measures as he deems necessary to control, remediate, or otherwise respond to the release or threat of release and restore the area, including, where necessary, natural resources, at the full expense of the holder. Such action by the authorized officer will not relieve the holder of any liability or responsibility.

- p. The holder shall be liable for damage or injury to the United States to the extent provided by 43 CFR Sec. 2883.1-4. The holder shall be held to a standard of strict liability for damage or injury to the United States resulting from fire, oil spills, or soil movement (including land slides and slumps as well as wind and water-caused movement of particles) caused or substantially aggravated by any of the following within the right-of-way or permit area:
- (1) Activities of the holder, including but not limited to construction, operation, maintenance, and termination of the pipeline and related facilities.
 - (2) Activities of other parties including but not limited to:
 - (a) Land clearing and logging.
 - (b) Earth disturbing and earth moving work.
 - (c) Blasting.
 - (d) Vandalism and sabotage.
 - (e) Acts of God.

Strict liability shall not be imposed for damage or injury resulting primarily from an act of war or from the negligent acts or omissions of the United States.

The holder's liability under strict liability shall be limited to one million dollars (\$1,000,000.00) for any one event and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred. This financial limitation shall not apply to the release or discharge of any hazardous substance, pollutant, or contaminant, or as otherwise allowed by law.

- q. Within 120 days of completion of construction, the holder will submit to the authorized officer as-built drawings and a certification of construction verifying that the facility has been constructed (and tested) in accordance with the design, plans, specifications, and applicable laws and regulations.
- r. There is reserved to the authorized officer the right to grant to third parties additional rights-of-way or permits for compatible uses on, over, under, or adjacent to the land involved in this grant or permit. The holder will be notified and have an opportunity to comment on any applications for grants or authorizations to third parties to use the land covered by and adjacent to this grant.
- s. The holder shall prepare a fire prevention and suppression plan that shall be reviewed, modified, and approved, as appropriate, by the authorized officer. The holder shall take into account such measures for prevention and suppression of fire on the right-of-way and other Federal land used or traversed by the holder in connection with operations on the right-of-way. Project personnel shall be instructed as to individual responsibility in implementation of the plan.
- t. During construction, operation, maintenance, and termination of the pipeline, during the period from May 1 to September 15 of each year the grant is in force, vehicles, gas

powered equipment, and flues shall be equipped with spark arresters approved by the authorized officer.

- u. The holder shall maintain a fire watch with fire fighting equipment during construction at the following locations: from Mile Post 25 to Mile Post 34 and as required by the authorized officer for locations of heavy vegetation, such as major washes.
- v. When requested by the authorized officer, the holder shall make his equipment already at the site with operators, temporarily available for fighting fires in the vicinity of the project. Payment for such services will be made at rates determined by the authorized officer.
- w. The holder is responsible for obtaining applicable permits, certificates, licenses, or other approvals from Federal, State, or local government agencies. The holder shall also comply with Federal, State and local laws, regulations, and ordinances in the construction, operation, maintenance, and termination of the pipeline and related facilities.
- x. To ensure compatibility with the operations and maintenance of the All American Canal, the holder shall 1) obtain applicable authorizations from the Imperial Irrigation District (IID), the operating entity; 2) obtain approval of construction drawings from Bureau of Reclamation (BOR); and 3) notify IID (760-337-9239) and the BOR (928-343-8100) at least 72 hours prior to implementation of construction activities at the All American Canal.
- y. To ensure compatibility with the operations and maintenance of the Cibola National Wildlife Refuge, the holder shall comply with all stipulations identified in the *Cibola National Wildlife Refuge Compatibility Determination*, dated October 24, 2001, a copy of which is contained in the approved Plan of Development.
- z. At least 90 days prior to termination, relinquishment, or abandonment of the right-of-way grant, the holder shall contact the authorized officer to arrange a pre-termination conference. This conference will be held to review the termination provisions of the grant and applicable law.

Definitions:

- a. **Access Roads** means the roads on Federal lands constructed or used by the holder for Ingress and egress to the pipeline system.
- b. **Authorized Officer** means any employee of the Department of the Interior to whom has been delegated the authority to perform the duties described in 43 CFR 2880 in respect to this grant or permit.
- c. **Notice to Proceed (NTP)** means a written authorization to initiate construction or other use as expressly stated therein and only for the particular location or use therein described.
- d. **Pipeline** means a line traversing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities.

- e. **Pipeline System** means all facilities, whether or not located on Federal lands, used by a holder in connection with the construction, operation, maintenance, or termination of a pipeline.
- d. **Plan of Development** is a plan developed by the holder that sets forth in sufficient detail sequential events and site specific actions at given periods of time during construction and/or any surface disturbing activity so that the authorized officer may determine compliance with the terms and conditions of this grant or permit.
- e. **Related Facilities** means those structures, devices, improvements and sites, the substantially continuous use of which is necessary for the operation or maintenance of the pipeline, which are located on Federal lands, and which are authorized under the Mineral Leasing Act, including but not limited to: valves and other control devices, buried communication lines, metering facilities, access roads, supporting structures, and cathodic protection devices.
- h. **Temporary Use Permit** means a revocable nonpossessory privilege to use specified Federal lands in the vicinity of a right-of-way in connection with the construction, operation, maintenance, or termination of a pipeline or for the protection of the natural environment or public safety.

