

## **Narrative History of Transwestern Right-of-Ways**

Although documents contained in the files of the Navajo Minerals Department demonstrate a relationship regarding right-of-ways between the Navajo Nation and Transwestern Pipeline Company dating back to the 1960s, this narrative history will focus on the time frame from the mid 1980s to the present.<sup>1</sup>

On October 31, 1984 a Memorandum of Understanding (MOU) was entered into between the Navajo Nation and Transwestern regarding various rights-of-way across Navajo lands. This MOU was signed by James Malven on behalf of Transwestern and Tribal Council Chairman Peterson Zah on behalf of the Navajo Nation. In brief summary the MOU settled disagreements between Transwestern and the Navajo Nation that had resulted in lawsuits being filed in the United States District Courts for the District of New Mexico and the District of Arizona, Cause No. CIV-83-2458. The MOU represents a negotiated agreement between the parties whereby Transwestern bound itself to rights-of-way limited to a term of years, ending in the year 2003, involving a main natural gas pipeline, an existing radio tower and appurtenant facilities and an existing natural gas loop line.

Since October 31, 1984 there have been a minimum of nine transactions involving the Navajo Nation and Transwestern relating to easements/rights-of-way across Navajo lands. All of these transactions have been successfully negotiated between the parties

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<sup>1</sup> The Navajo Nation believes that by focusing on this time frame the Department of Interior will be able to see how effectively the current market oriented bargaining system has functioned in the last twenty years without unnecessary government interference. In preparing this narrative the oldest document discovered in the Navajo Minerals Department files is dated November 29, 1966 and relates to a right-of-way granted to the Transwestern Pipeline Company by the Navajo Nation and approved by the BIA concerning the construction of a building, the use of generators and the installation of communications equipment.

without resort to court proceedings, arbitration, mediation or congressional involvement.

They involve the following situations.

On April 15, 1985 Navajo President Peterson Zah signed a document renewing Transwestern's easement for communications facilities on Navajo lands.

On July 25, 1985 the Navajo Nation granted Transwestern an easement for right-of-way for construction of a pipeline for natural gas over 7.6 acres of land until December 31, 2003.

On March 4, 1991 the Navajo Nation and Transwestern entered into an MOU through which Transwestern gained an option to acquire a right of way for 79.5 miles (25,442.27 rods) for a natural gas pipeline until December 31, 2003.

On September 6, 1991 the Navajo Nation granted Transwestern an easement for a right-of-way for a 30" natural gas pipeline running 85.77 miles (27,448.30 rods) and expiring on December 31, 2003.

On September 11, 1991 a grant of easement for a right-of-way given by the Navajo Nation to Transwestern relating to a natural gas pipeline across 36.99 miles (11,836.73 rods) and expiring on December 31, 2003 was amended.

On October 23, 1991 the Navajo Nation granted Transwestern an easement for a natural gas pipeline approximately 32.58 miles long (10,426.73 rods) expiring on December 31, 2003.

On April 29, 1999 a grant of an easement for a right-of-way for approximately 85.85 miles (27,477.13 rods) and expiring on December 31, 2003 was amended.

On May 10, 2001 the Resources Committee of the Navajo Nation Council approved a Resolution extending many of the above referenced rights-of-way until

November 18, 2009. The next day, May 11, 2001, the Navajo Nation and Transwestern entered into a formal extension agreement.

Most recently, on October 15, 2004 the Navajo Nation and Transwestern amended the above-referenced extension agreement to provide a right-of-way for a 36" natural gas pipeline loop running approximately 21,415 rods and expiring on November 18, 2009.

The Navajo Nation believes that all of the above-referenced transactions are the result of arms length bargaining between the Nation and Transwestern and on balance resulted in negotiated payments to the Nation for the rights-of-way, while at the same time allowing a fair and reasonable profit for Transwestern. The transactions further demonstrate that the free market system, based on Indian sovereignty and industry ability to negotiate a reasonable price for the rights-of-way, is not broken and not in need of governmental intervention.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made and entered into by and between Transwestern Pipeline Company, a Delaware corporation ("Transwestern"), and the Navajo Nation, an Indian tribe, and states the terms and conditions pursuant to which Transwestern and the Navajo Nation have agreed that the Navajo Nation shall consent to the granting of certain rights-of-way and other authorizations necessary or useful in Transwestern's continued operation of its natural gas pipeline system on and across lands of the Navajo Nation.

WHEREAS, Transwestern's original rights-of-way and permits for its main pipeline and radio tower across lands of the Navajo Nation have expired;

WHEREAS, Transwestern has duly filed its applications for new or renewal rights-of-way and for related authorizations;

WHEREAS, Transwestern and the Navajo Nation have agreed to the terms and conditions by which the Navajo Nation shall consent to the granting to Transwestern of certain rights-of-way, permits and other authorizations for the continued maintenance and operation of its natural gas pipeline system across lands of the Navajo Nation as set forth herein;

WHEREAS, Transwestern's rights-of-way for its loop line pipeline across lands of the Navajo Nation are in full force and effect and shall not expire until approximately April 14, 1989;

WHEREAS, Transwestern and the Navajo Nation recognize and agree that it may be necessary or desirable for Transwestern to complete all or part of its loop line pipeline across lands of the Navajo Nation; and

WHEREAS, litigation is presently pending in United States District Court for the District of New Mexico (Consolidated Cause Nos. CIV-83-1884 HB and CIV-84-0251 C) and in United States District Court of the District of Arizona

**EXHIBIT "NN-A"**

(Cause No. CIV-83-2458 PCT PCR) (collectively, "the Pending Actions"), and Transwestern and the Navajo Nation desire to settle and compromise their disputed claims and contentions in the Pending Actions;

ACCORDINGLY, it is COVENANTED, AGREED and UNDERSTOOD as follows:

1. Subject to the terms and conditions of this Memorandum of Understanding, including without limitation the provisions of paragraph 11 hereof, the Navajo Nation hereby consents to the granting of the rights-of-way, permits and other authorizations, applications for which are filed or to be filed with the Secretary of Interior, or his designate, and any amendments or supplements thereto, for the maintenance, repair, and operation of all or any portion of the facilities described in Paragraph 4 and 6 hereof, and conditioned on compliance with this Memorandum of Understanding.

2. Subject to the terms and conditions of this Memorandum of Understanding, including without limitation the provisions of Paragraph 11 hereof, Transwestern, as consideration for the Navajo Nation's consent to the granting of the rights-of-way, permits or other authorizations described herein, shall pay to the Navajo Nation the sum of Nine Million, Six Hundred Seven Thousand, Six Hundred Fifty Dollars (\$9,607,650) ("the Settlement Amount"), which it is agreed shall constitute full and adequate compensation for the consents granted herein and for Transwestern's use and occupancy of lands of the Navajo Nation described in its pending applications for rights-of-way and other authorizations from and after the date of expiration of Transwestern's original rights-of-way and shall further constitute full and adequate compensation to the Navajo Nation for any alleged trespass by Transwestern. The Settlement Amount shall be paid as follows:

A. Within fifteen days of receipt by Transwestern of the original of this Memorandum of Understanding, executed by the Chairman of the Navajo Tribal Council, Transwestern shall

pay the sum of One Million Thirty-One Thousand Nine Hundred Twenty-One Dollars (\$1,031,921) to Sunwest Bank of Albuquerque, N.A., as escrow agent for the parties, pursuant to the escrow arrangements reflected in the escrow letter dated October 31, 1984, a copy of which is attached as Exhibit A to this Memorandum of Understanding ("the Escrow Letter"). If the conditions stated in the Escrow Letter and in Paragraph 3 of this Memorandum of Understanding do not occur within 120 days of the date of execution by the Navajo Nation of this Memorandum of Understanding, unless extended by written agreement signed by the parties, such One Million Thirty-One Thousand Nine Hundred Twenty-One Dollars (\$1,031,921) together with any interest earned thereon, shall be returned to Transwestern, and Transwestern shall have no duty to make the payments provided for in subparagraphs 2(B) and 2(C) below and shall have no further duty or obligation pursuant to this Memorandum of Understanding.

B. On or before May 1, 1985, Transwestern shall pay the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000);

C. On or before the date one year after the date of execution of this Memorandum of Understanding by the Navajo Nation, Transwestern shall pay the sum of Five Million, Six Hundred Seven Thousand, Six Hundred Fifty Dollars (\$5,607,650).

D. The sum of Four Hundred Sixty-Eight Thousand Seventy-Nine Dollars (\$468,079) has been deposited by Transwestern with the Bureau of Indian Affairs, Navajo Area

Office. Within 5 business days of the date upon which the conditions stated in Paragraph 3 of this Memorandum of Understanding have been satisfied, Transwestern shall make written request of the Bureau of Indian Affairs that it release such amount together with all accrued interest to the Navajo Nation; provided, if such conditions have not been met within 120 days of the date of execution of this Memorandum of Understanding, unless extended by written agreement signed by the parties, Transwestern shall have the option to request the return of such money from the Bureau of Indian Affairs.

As used herein, the date of execution of this Memorandum of Understanding shall be the date it is signed by the Chairman of the Navajo Tribal Council. Transwestern shall have no further or additional liability for the payment of interest or other amounts in addition to the Settlement Amount, except as expressly provided in this Memorandum of Understanding.

3. Within five days after the occurrence of all of the following events, Transwestern and the Navajo Nation shall execute and deliver to Sunwest Bank of Albuquerque, N.A., the written advice provided for in the Escrow Letter, attached as Exhibit A to this Memorandum of Understanding, that a final settlement agreement has been concluded and that Transwestern has been issued all pertinent rights-of-way permits and authorizations, those events being:

A. The receipt by Transwestern of satisfactory assurances from the staff of the Federal Energy Regulatory Commission that the Settlement Amount provided for in this Memorandum of Understanding is reasonable and prudent under the circumstances and properly includable in and as a part of Transwestern's rate base;

B. The receipt by Transwestern of grants of rights-of-way easements or permits for its main pipeline and radio tower facilities containing terms and conditions consistent with the Memorandum of Understanding, from the duly authorized official within the Department of the Interior.

C. Delivery to Transwestern of an opinion signed by legal counsel for the Navajo Nation stating that the Tribal Official who signs this Memorandum has the authority to enter into such agreement and each of its provisions on behalf of the Navajo Nation.

D. The receipt by Transwestern of staff interpretations of the Navajo Tax Commission consistent with the following representations of the Navajo Nation to Transwestern with respect to the following taxes:

1. As to the Navajo Possessory Interest Tax, 24 N.T.C. §201 et seq. (Supp. 1984), the Navajo Nation acknowledges that the Settlement Amount represents the settlement of disputed claims by and between the parties as to the right of the Navajo Nation to withhold its consent to the grant or renewal of rights-of-way and is not an appropriate factor for computing the liability of Transwestern, if any, pursuant to the Navajo Possessory Interest Tax on the value of Transwestern's rights-of-way, permits, or authorizations, but that the Navajo Possessory Interest Tax shall be computed in accordance with 24 N.T.C. §205 (Supp. 1984), as it

may be amended from time to time.

2. As to the Navajo Business Activity Tax, 24 N.T.C. §401 et seq., that the Settlement Amount may be prorated over the term of this Agreement for purposes of the deductions allowed in 24 N.T.C. §406(c), as it may be amended from time to time.

This Memorandum of Understanding shall not prejudice or limit in any respect the right of the Navajo Nation to impose taxes, nor does it prejudice or limit in any respect Transwestern's rights to make any lawful challenge thereto. However, it is agreed and understood that Transwestern has relied upon such representations as to taxation in entering into this Memorandum of Understanding.

E. The dismissal without prejudice of all claims by and between the parties and the United States in the Pending Actions.

4. The rights-of-way, permits, or other authorizations consented to by the Navajo Nation in this Memorandum of Understanding and issued, granted, or approved by the duly authorized official within the Department of the Interior are to be in the opinion of Transwestern, sufficient to permit, within the boundaries of such rights-of-way, the continued maintenance, operation, repair, and replacement of the following facilities located on lands of the Navajo Nation, and sufficient to permit ingress to and egress from such facilities, together with rights to install and maintain cathodic protection equipment, fittings, tie-overs, taps, blow-offs, valves and such other appurtenances, above or below ground, as are necessary for such maintenance, operation, repair, and replacement of a natural gas pipeline system for the following terms:

A. Transwestern's existing main natural gas pipeline located on lands of the Navajo Nation within the States of New Mexico and Arizona and the subject matter of Transwestern's

Application for rights-of-way dated August 24, 1981 for a term of twenty (20) years beginning January 1, 1984 and ending December 31, 2003.

B. Transwestern's existing radio tower and appurtenant facilities located on lands of the Navajo Nation and the subject matter of Transwestern's Application for Right-of-Way for Site for Radio Tower and Appurtenant Facilities or for Renewal of Right-of-Way dated August 24, 1981, for a term of twenty (20) years beginning January 1, 1984 and ending December 31, 2003.

C. Transwestern's existing natural gas loop line pipeline located on lands of the Navajo Nation and the subject matter of that certain Grants of Easement for right-of-way by and between the United States of America, Grantor, and Transwestern, Grantee, dated April 15, 1969, for a term beginning April 15, 1989 and ending December 31, 2003.

5. Payment of the Settlement Amount shall discharge and release Transwestern from any and all liability for, and shall constitute full compensation to the Navajo Nation for, Transwestern's use and possession of the rights-of-way for the main pipeline and radio tower site for the periods following expiration of Transwestern's original rights-of-way for such facilities and ending December 31, 2003. This settlement does not, however, discharge Transwestern of any tax liability it may have, if any, to the Navajo Nation.

6. The Navajo Nation further agrees that, if notified in writing by Transwestern, it will consent to any application duly filed by Transwestern within ten years from and after January 1, 1984 to acquire rights-of-way or permits sufficient to allow Transwestern to complete all or part of its existing natural

gas loop line pipeline, as nearly as practicable parallel to and associated with Transwestern's existing main line across lands of the Navajo Nation, upon payment by Transwestern to the Navajo Nation of additional consideration in the amount of Three Million Three Hundred and Thirty-Seven Thousand Five Hundred (\$3,337,500) if Transwestern elects to complete the existing loop line for a length of 22,250 rods. In the event Transwestern elects to partially complete its loop line or to add additional loop line in excess of 22,250 rods, the consideration under this Paragraph shall be adjusted up or down from \$3,337,500 by the proportion the length of additional loop line actually constructed bears to 22,250 rods. The compensation provided for in this paragraph is subject to adjustment based upon changes from the annual average increase in the preceding year (s) in the Consumer Price Index (CPI) as published by the United States Bureau of Labor Statistics, for all urban consumers, United States city average, all items (1967 = 100). The first such adjustment will be effective on January 1, 1985, based on the changes from January 1, 1984, and such adjustments will then occur on each January 1, thereafter. It is agreed and understood that the decision to apply for any such additional loop line easements or right-of-way permits shall be in the sole discretion of Transwestern, that any such application shall be subject to any required approval of the Secretary of the Interior or his designate, and that Transwestern shall have no obligation to complete any portion of its loop line.

The Navajo Nation shall be under no obligation to forego the use of any land, nor to refrain from otherwise authorizing any other use of such land, except as specifically limited in any right-of-way easement. In the event Transwestern elects to complete the loop line or any portion thereof pursuant to this Paragraph, it is understood that an appropriate application, with a specific description of the land, will be submitted to the Secretary of the Interior or his designate for approval, and a copy sent to the Navajo Nation, subject to the terms

and conditions of this Memorandum of Understanding and such other terms as may be required by the Secretary of the Interior, other than any requirement of Tribal consent or compensation additional to that provided for herein. It is also understood that the compensation provided for in this Paragraph shall not preclude the payment for any actual physical damages to the surface of the lands of the Navajo Nation resulting from construction of such additional loop line and any required filing fees, but shall otherwise constitute full compensation for the rights-of-way, permits, and other authorizations required for the construction, operation, repair, maintenance and replacement of such loop lines.

7. The permits, rights-of-way, and authorizations consented to in this Memorandum of Understanding shall be assignable by Transwestern subject to the following terms and conditions:

A. Transwestern may assign all or any portion of such permits, rights-of-way, and authorizations to any corporate or other entity in which Transwestern or Texas Eastern Corporation owns directly or indirectly 50% or more of such corporation's or entity's common stock or assets.

B. Transwestern shall have the right to make partial assignment of the permits, rights-of-way, and authorizations provided for herein to persons or entities not related to Transwestern upon approval by the Navajo Nation; provided, however, such approval shall not be unreasonably withheld and shall be granted in all situations unless the intended assignee or assignees cannot reasonably be expected to perform the responsibilities of Transwestern under such permits, rights-of-way, or other authorizations.

In the event that Transwestern sells or conveys all of its interests in the permits, rights-of-way and authorizations for facilities granted or approved pursuant to this Memorandum of Understanding, Transwestern agrees to notify the Navajo Nation of the name and address of such third party purchaser and to provide written notice to such third party purchaser of Transwestern's obligations under this Memorandum of Understanding. The Navajo Nation authorizes complete assignment, pursuant to these conditions, and no further consideration or consent will be required for such assignment.

Transwestern shall have the unqualified right to pledge, mortgage, or assign the permits, rights-of-way, and other authorizations which are the subject of this Memorandum of Understanding to secure loans or otherwise finance its operations or those of its subsidiaries or affiliates.

8. This Memorandum of Understanding shall constitute full settlement of all claims by and between the Navajo Nation and Transwestern, including without limitation all alleged damages for trespass or other allegedly unauthorized use of lands of the Navajo Nation, and is made in full and complete settlement and compromise of disputed claims between the parties. The parties intend by this Memorandum of Understanding to settle and resolve Transwestern's rights with respect to the rights-of-way and authorizations referred to in this Memorandum of Understanding for the time periods described herein in accordance with the terms of this Memorandum of Understanding. The dismissal of the related law suits is intended to be "without prejudice" merely to avoid any possible res judicata effect as to the legal principles at issue. Both parties agree that the claims raised in those law suits, as they relate to the specific rights-of-way which are the subject of this Memorandum of Understanding, will not be refiled during the effective period of this Memorandum of Understanding. However, neither the

execution of this Memorandum of Understanding nor the dismissal of the Pending Actions shall be construed to waive or prejudice the right to assert in any other context any right or contention of the parties, not related to the rights-of-way, authorizations or permits included herein, including without limitation the assertion by Transwestern that tribal consent is not a prerequisite to the grant or renewal of rights-of-way across other lands of the Navajo Nation and the assertion by Transwestern of the invalidity of regulations of the Secretary of the Interior or other similar matters.

9. It is agreed and understood that the Transwestern Compressor Site Leases are valid leases of lands of the Navajo Nation and contain specific renewal terms. The Navajo Nation has previously agreed to the renewal of such leases for a Twenty-Five year term upon payment of the consideration specified in those leases and on compliance with the terms thereof.

10. It is agreed and understood that the terms and conditions of this Memorandum of Understanding are applicable only to the lands held in trust by the United States for the Navajo Nation and shall not apply to any lands which have been allotted to individual members of the Navajo Nation.

11. It is further agreed that this Memorandum of Understanding shall be valid and effective upon execution by duly authorized representatives of Transwestern and the Navajo Nation, but shall terminate and be of no force and effect, and any consents or other actions taken by the Navajo Nation pursuant hereto shall be deemed withdrawn, if all events listed in Paragraph 3, above, have not occurred within 120 days of the date of the execution of this Memorandum of Understanding unless such time period is extended by written agreement of the parties or such condition is waived by the written agreement of the parties. Any such waiver of one condition shall not be deemed to waive any other.

12. The Navajo Nation acknowledges that any future dispute concerning

the right of Transwestern to possess and use the rights-of-way subject to this agreement will involve a federal question of law. In the event that the parties cannot otherwise resolve such dispute by negotiation, the Navajo Nation acknowledges that it may be appropriate that such dispute be resolved in United States District Court. Accordingly, the Navajo Nation consents to be amenable to such federal suit to enforce any provision of this Memorandum of Understanding or any grant of right-of-way, permit, or other authorization consented to in this Memorandum of Understanding and hereafter executed, granted, or approved. This consent is limited to suits for declaratory, mandamus, or injunctive relief and not for any claim for money damages. The foregoing does not waive any defense other than that of immunity from suit.

13. The following provisions shall be included unless inappropriate in any and all grants of rights-of-way or easements issued or approved pursuant to this Memorandum of Understanding:

A. These rights-of-way shall be subject to the condition that the exercise hereof will not preclude the leasing and administration by the United States and the Navajo Nation of lands of the Navajo Nation covered hereby for the development of oil, gas and other minerals therefrom, and Transwestern agrees and consents to the reasonable use of such portion of the right-of-way not actually occupied by its pipelines, compressor stations, or related facilities for the drilling, mining, development and production of oil, gas or other minerals; provided, however, such use shall not interfere with the use, maintenance and operation of any facilities maintained, operated or installed by Transwestern pursuant to this Memorandum of Understanding and the permits

issued pursuant to it, and no mining operations will be permitted which would impair the integrity of Transwestern's pipeline system or threaten its continued operation.

B. Transwestern agrees that, where soil deterioration or erosion is caused by its activities on the right-of-way, it will take such action as shall be required by the Secretary of the Interior or his duly authorized representative or the Chairman of the Navajo Tribal Council, within the scope of usual and reasonable soil conservation practices, to correct or repair such deterioration and minimize such hazard.

C. Any construction authorized by this grant of right-of-way shall be carried out in coordination with a qualified archaeological supervisor, acceptable to the Navajo Nation, pursuant to Navajo Nation and federal laws, with the cost of such supervisor paid by Transwestern.

D. In the event that Transwestern engages in any construction, repair, or maintenance pursuant to the authorization of this grant of right-of-way, it will be obligated to do the following:

1. To pay promptly all damages and compensation due to landowners, users, occupants, or lessees in the event that such construction involves the use or disturbance of additional land or surface interest not presently used.

2. To reconstruct or repair such roads, fences, and trails as may be destroyed or damaged by construction work and to build and maintain

necessary and suitable crossings for all roads and trails that intersect the facilities so constructed.

3. To restore the lands to their original condition, as nearly and as promptly as may be reasonable practicable upon the completion of construction, repair or maintenance, to the extent compatible with the purposes for which the right of way was granted.

F. In the construction of any pipeline or other improvements across or on Navajo Nation lands and the maintenance and operation of improvements on Navajo Nation lands, Transwestern agrees to abide by the laws of the Navajo Nation regarding manpower utilization and preference in obtaining materials, equipments, goods, services and transportation. Preference will be given to Navajos, to the extent required by applicable Navajo Nation and Federal guidelines and regulations in the employment of all labor, skilled and unskilled. Wages paid to Navajos shall not be less than those paid to non-Navajos of comparable experience and seniority for comparable work.

G. Transwestern shall hold the Navajo Nation harmless and indemnify it against any and all claims against the Navajo Nation or losses incurred by the Navajo Nation for any damage to property or the injury to or death of any person directly or indirectly caused by the negligent or reckless conduct of Transwestern in the construction, operation or maintenance of

its pipeline or by any breach by Transwestern of any provision of this grant of right-of-way.

H. Transwestern agrees to refrain from making any use of the Navajo lands subject to these grants of right-of-way except as may be reasonable and proper to fulfill the purposes for which the rights-of-way are granted, i.e. the operation and maintenance of a natural gas pipeline system. The Navajo Nation may use such lands for such other purposes as may be consistent or compatible with Transwestern's authorized use of these lands and will refrain from making or authorizing any use that may be inconsistent or incompatible therewith.

I. Upon written application from the authorized representatives of the Navajo Nation, Transwestern will apply for Federal Energy Regulatory Commission authorization to cause natural gas to be furnished for domestic use on lands of the Navajo Nation under terms and conditions as may be agreed upon similar to those currently in effect under other gas tap arrangements approved by the FERC. The gas shall be furnished and measured at the mainline at rates and under the rules and regulations that may be applicable. Taps shall be established at approximate intervals of 5 miles at such specific locations as may be requested. Transwestern agrees to furnish or cause to be furnished such gas for the term of the right of way. Subject to compliance with applicable regulations, Transwestern shall also transport on an interruptible basis Navajo Nation owned gas delivered to its mainline if there is sufficient capacity in the system to do so, provided such gas meets or exceeds the quality of the gas in Transwestern's system at the delivery point, and provided such gas be

introduced under sufficient pressure to enter Transwestern's pipeline at the delivery point. The rates for transporting Navajo owned gas shall be those approved by the FERC and shall not exceed the rates Transwestern charges in the region for the same or similar services.

14. Nothing contained in this Memorandum of Understanding shall operate to delay or prevent a termination of Federal trust responsibilities with respect to any lands of the Navajo Nation subject to this right-of-way during the term of this Memorandum of Understanding. Termination of such responsibilities, however, shall not affect the rights, duties, and obligations of Transwestern and the Navajo Nation under this Memorandum of Understanding.

15. This Memorandum of Understanding represents the entire agreement of the parties, and shall not be modified except by a writing signed by the duly authorized representatives of both parties.

16. This agreement and any rights-of-way, permits or authorizations granted or approved hereunder shall be binding upon, and shall inure to the benefit of, the assigns or successors in interest of the parties.

17. The term of this Memorandum of Understanding shall be for a period beginning on January 1, 1984 and concluding December 31, 2003.

Executed as of October 31, 1984.

TRANSWESTERN PIPELINE COMPANY

By: James G. Malven  
James G. Malven, Manager  
Rights-of-Way and Land  
Department  
Transwestern Pipeline Company

ATTEST:

[Signature]  
[Signature]  
John McKinstry

NAVAJO NATION

By: Pete Zah  
Peterson Zah, Chairman  
Tribal Council of the Navajo Nation

ATTEST:

Carl Boyal  
[Signature]

RESOLUTION  
OF THE RESOURCES COMMITTEE  
OF THE NAVAJO NATION COUNCIL

Approving an Extension Agreement Between the Navajo Nation  
and Transwestern Pipeline Company Providing for the  
Extension of and Modifications to Certain Existing  
Instruments Between the Parties Pertaining to  
Transwestern's Natural Gas Pipeline and Appurtenant  
Facilities Currently Situated Upon Rights-of-Way Crossing  
Navajo Nation Trust Lands and Navajo Nation-Owned Fee Lands

WHEREAS:

1. Pursuant to 2 N.N.C. § 691, the Resources Committee of the Navajo Nation Council is established and continued as a standing committee of the Navajo Nation Council; and
2. Pursuant to 2 N.N.C. § 695 (B) (7), the Resources Committee of the Navajo Nation Council is authorized to oversee and regulate all activities within Navajo Nation lands which may involve disposition or acquisition of resources, surface disturbance or alteration of the natural state of the resource; and
3. Pursuant to 2 N.N.C. § 695 (B) (2), the Resources Committee of the Navajo Nation Council shall give final approval of any land exchanges or, mineral leases, subleases or assignments of leases of Navajo land, rights-of-way, prospecting permits, sand and gravel permits, including royalty rates and bonding rates of such permits, integration of tracts and unitization of approved mineral agreements, missions site leases, and other licenses and usufructuary interests in Navajo land, including unrestricted (fee) land, in accordance with applicable federal and Navajo Nation laws; and
4. Federal law and regulations require the consent of the Navajo Nation to the issuance by the Secretary of the Interior of any right-of-way for gas pipelines across Navajo Nation lands; and

5. Since 1960, Transwestern Pipeline Company has owned and operated a natural gas pipeline and appurtenant facilities situated upon Navajo Nation lands pursuant to rights-of-way issued by the Secretary of the Interior; and

6. Certain "Existing Instruments" consisting of two Memoranda of Understanding, rights-of-way grants, and a Revocable Use Permit, as more particularly described in Exhibit "A", attached hereto, govern the relationship between the Navajo Nation and Transwestern regarding Transwestern's existing pipeline rights-of-way across Navajo Nation lands; and

7. Currently the rights-of-way grants and corresponding Memoranda of Understanding expire on December 31, 2003 and the Revocable Use Permit has no expiration date; and

8. Transwestern seeks to extend the expiration date of its pipeline rights-of-way and the corresponding Memoranda of Understanding, and Transwestern and the Navajo Nation both seek to establish an expiration date for the Revocable Use Permit; the proposed new expiration date for all the "Existing Instruments" is November 18, 2009; and

9. Transwestern has agreed to pay the Navajo Nation good and adequate consideration for the Nation's consent to the extension of the terms of the "Existing Instruments" with certain modifications thereto as provided in the "Extension Agreement", attached hereto as Exhibit "A"; and

10. The "Extension Agreement" does not involve any expansion of Transwestern's right-of-way or use of additional Navajo Nation lands by Transwestern; and

11. The "Extension Agreement" does not involve any new land disturbance and therefore, said Agreement does not require the renewed or additional consent of area land users or new environmental or archaeological clearances; and

12. It is in the best interest of the Navajo Nation to enter into the "Extension Agreement" with Transwestern, thereby permitting the company to continue the operation of

its natural gas transportation business across the Navajo Nation and enabling the Navajo Nation to receive a substantial consideration.

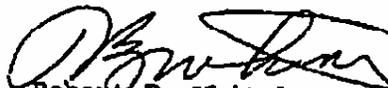
NOW THEREFORE BE IT RESOLVED THAT:

1. The Resources Committee of the Navajo Nation Council hereby approves the "Extension Agreement" between the Navajo Nation and Transwestern Pipeline Company, attached hereto as Exhibit "A".

2. The Resources Committee of the Navajo Nation Council hereby authorizes and directs the President of the Navajo Nation to execute said Extension Agreement and all other documents as necessary to fulfill the intent of this resolution.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained, this 10th day of May, 2001.

  
Robert B. Whitehorse  
Vice Chairperson  
Resources Committee

Motion: Jones Begay  
Second: Jack Colorado

# EXHIBIT A

## EXTENSION AGREEMENT

This Extension Agreement ("Agreement") is made and entered into by and between Transwestern Pipeline Company ("Transwestern"), a Delaware corporation, and the Navajo Nation, a federally-recognized Indian Nation, hereinafter jointly referred to as "Parties."

### WHEREAS,

- A. Transwestern and the Navajo Nation are Parties to five existing instruments pursuant to which grants and consents to grants of easements, permits, and/or rights-of-way were given, which are:
1. a Memorandum of Understanding dated October 31, 1984 ("**1984 MOU**" attached hereto as "**Exhibit NN-A**") pertaining to Transwestern's Mainline and Loopline facilities described in the Renewal of Grant of Easement for Rights-of-Way dated April 26, 1985 ("**Renewal Grant**" attached hereto as "**Exhibit NN-A-1**"), to the Amendment No. One to Grant of Easement for Rights-of-Way dated September 11, 1991 ("**Amendment**" attached hereto as "**Exhibit NN-A-2**"), and to the Grant of Easement for Right-of-Way dated October 23, 1991 ("**1991 Grant**" attached hereto as "**Exhibit NN-A-3**"); and
  2. a Memorandum of Understanding dated March 4, 1991 ("**1991 MOU**" attached hereto as "**Exhibit NN-B**") pertaining to the San Juan Lateral described in the Grant of Easement for Right-of-Way dated September 6, 1991, as amended April 29, 1999, ("**San Juan Lateral Grant**" attached hereto as "**Exhibit NN-B-1**") covering Navajo Nation trust lands; and
  3. an Agreement for Grant of Easement for Right-of-Way, dated July 25, 1985 ("**1985 Grant**" attached hereto as "**Exhibit NN-C**") covering Navajo Nation owned fee lands; and
  4. a Renewal of Grant of Easement for Communications Facilities, dated April 25, 1985 ("**Communications Facilities Renewal Grant**" attached hereto as "**Exhibit NN-D**") covering the St. Michaels radio tower site located on Navajo Nation trust lands; and
  5. a Revocable Use Permit, dated November 21, 1966 ("**Permit**" attached hereto as "**Exhibit NN-E**"), covering the Na-Ah-Tee radio tower site located on Navajo Nation owned fee lands.
- Collectively, all five documents are hereinafter referred to as the "**Existing Instruments**" and all shall expire (or, in the case of the Permit, may expire) according to their terms on December 31, 2003.
- B. Transwestern seeks to extend the term of existing rights-of-way across particular Navajo Nation trust lands, and to extend the term of existing rights-of-way for the use of approximately 3.122 miles of lands held in fee by the Navajo Nation, and seeks to define the term of use for two radio tower sites (the St. Michaels and Na-Ah-Tee sites).

- C. It is recognized that certain provisions of the 1984 MOU and the 1991 MOU were unique to the circumstances of the Parties at the time the MOU's were entered into and such provisions are no longer applicable, and that the consideration provided for has been paid and the rights-of-way and Permit have been issued.
- D. In light of the numerous complex and difficult issues that currently exist respecting the development of new terms and conditions pertaining to rights-of-way and permits for use of Navajo Nation trust and fee lands, the Parties have agreed to defer these issues by executing this Agreement which simply extends the terms of the Existing Instruments with certain negotiated and agreed to modifications.
- E. As provided for in this Agreement, the Navajo Nation consents to the extension of the terms of the Existing Instruments, and to the establishment of an expiration date for the Permit in lieu of a 90-days' notice provision.

**ACCORDINGLY**, it is covenanted, agreed, and understood by and between the Parties as follows:

1. Notwithstanding the termination dates set forth in: (i) paragraphs 17 and 3 of the 1984 MOU and the 1991 MOU, respectively; (ii) paragraph 4 of the Renewal Grant; and (iii) the last paragraph of the 1985 Grant; and notwithstanding the perpetual term and termination provisions of paragraphs 2, 5, and 6 of the Permit to the contrary pertaining to the term of the Permit and to the cancellation rights of Transwestern upon 90-days' notice, the Parties hereby agree, with such agreement hereby expressly conditioned upon the modifications of the Existing Instruments as specifically described in this Agreement, to extend (and/or consent to the extension of, as applicable) the term of each of the respective Existing Instruments for a new term through and including November 18, 2009, and to eliminate the 90-days' notice provision of the Permit and in lieu thereof to establish its certain expiration date of and including November 18, 2009.
2. The Parties clarify that their intent under paragraphs 13A and 9 of the 1984 MOU and the 1991 MOU, respectively, is to refer to and proscribe "physical" interference with the use, maintenance, and operation of the pipeline, as distinguished from "economic" usage, which is not intended to be addressed by the referenced provisions.
3. The Parties agree that paragraphs 8 and 12 of the 1984 MOU are deleted without prejudice to any contention, argument, or position that the Navajo Nation or Transwestern may wish to take in the future with respect to the subject matter of such deleted paragraphs.
4. The Parties agree that paragraph 21 of the 1991 MOU is amended to delete the second sentence of this paragraph 21 and replace it with the following: "Any judicial

proceedings concerning this MOU shall be brought initially in the courts, or administrative tribunals as appropriate, of the Navajo Nation, with such review in the courts of the United States as may be available.”

5. The Parties acknowledge and agree that this Agreement pertains to the rights-of-way for Transwestern's existing natural gas pipeline system and all associated facilities that are, as of the date of execution of this Agreement, situated upon Navajo Nation lands, but does not include Transwestern's compressor stations which are covered by other agreements.
6. In consideration for the extension of the terms of the Existing Instruments, the establishment of an expiration date for the Permit, and the modifications of the Existing Instruments as specifically described in this Agreement, Transwestern shall pay the Navajo Nation as follows:
  - a. Initial Payment: Within ten days of execution of this Agreement by the President of the Navajo Nation, as authorized through resolution duly adopted by the Resources Committee of the Navajo Nation Council, Transwestern shall pay to the Navajo Nation the sum of [REDACTED] which the Navajo Nation shall immediately deposit into an interest-bearing suspense account designated by the Controller of the Navajo Nation. This amount is to be disbursed in accordance with the provisions of paragraph 6(b) below.
  - b. Suspense Account: The initial payment shall be retained in this account until final approval of the extension of the terms of the rights-of-way grants by the Secretary of the Interior or his/her designee. If the Secretary fails to give such final approval on or before ninety (90) days following the execution of this Agreement by the President of the Navajo Nation; or, alternatively, ten (10) days following the receipt by the Navajo Nation of written notification that the Secretary refuses such final approval, whichever occurs first, [REDACTED] initial payment shall be returned to Transwestern and the Navajo Nation shall retain any interest accrued on the initial payment.
  - c. Annual Payments: Subject to the approval by the Secretary of the extension of the terms of the rights-of-way grants, commencing on January 1, 2004, Transwestern shall pay to the Navajo Nation the sum of [REDACTED] annually for each of the calendar years 2004, 2005, 2006, 2007, 2008, and 2009. Each of these six payments shall be due on or before January 1 of each year.
  - d. Additional consideration for increased capacity: In the event that the FERC authorizes the modification of compressor facilities, which will increase the capacity of Transwestern's pipeline system, as described in the FERC filing

Docket No. CP01-115, published in Volume 66, Page 18238 of the Federal Register (dated April 6, 2001), or substantially similar filing, and modification of said facilities has been authorized and completed prior to or during any of the calendar years provided for in paragraph 6(c) above, then the annual payments due under said paragraph 6(c) above, commencing with the year that modification of said compressor facilities is completed, shall be increased by eleven percent (11%), thus creating a modified annual payment of [REDACTED]

[REDACTED] Any additional payments due hereunder for the year in which modification of said compressor facilities is completed shall be made within ten business days after completion of said modification.

- e. Adjustments for Consumer Price Index: Any annual payments provided for in either paragraph 6(c) or 6(d) above, whichever is applicable, shall be adjusted upwards, but shall not be decreased, annually according to the change in the United States Department of Labor Consumer Price Index, U.S. City Average for All Urban Consumers (Consumer Price Index) using the following formula: Annual payment multiplied by the Consumer Price Index for October of the calendar year immediately preceding the January 1 date that a payment is due, divided by the Consumer Price Index for October 2000.
7. The Navajo Nation agrees, without additional consideration other than that provided for in paragraph 6(e) above, to fully cooperate with, support and expedite any and all permitting, filings or clearances that may be required or associated with the construction of new compressor facilities as described above.
8. As modified herein, the Existing Instruments continue in full force and effect through and including November 18, 2009.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused the undersigned authorized representatives to execute this Extension Agreement as of the most recent date indicated below.

**THE NAVAJO NATION**

By: [Signature] dated: 5-21-01  
[REDACTED] President

**TRANSWESTERN PIPELINE COMPANY**

By: [Signature] dated: 5/2/01  
Vice President



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

~~XXXXXXXXXXXX~~  
Navajo Area Office

Navajo Region

P.O. Box 1060

Gallup, New Mexico 87305-1060

**JUL 12 2001**

IN REPLY REFER TO:  
ARES/542

Mr. David W. Sinclair  
Transwestern Pipeline Company  
A Delaware Corporation  
P.O. Box 1188  
Houston, Texas 77251-1188

Dear Mr. Sinclair:

Enclosed for your information and use are approved Amendments to the Grant of Easement for Rights-of-Way on the Navajo Tribal Trust lands. The amendments are to extend the term of the rights-of-way for the following:

1. Amendment No. One(1) to Communication Facilities.
2. Amendment No. Two (2) to 30" natural gas pipeline known as San Juan laterals.
3. Amendment No. Two (1) to 30" natural gas pipeline known as Loop "F".
4. Amcndment No. Two (2) to 30" natural gas pipeline known as Loop "E".
5. Amendment No. One (1) to 30" natural gas pipeline for the main and loop lines.

The easements requires compliance to the terms and conditions contained in the Resources Committee Resolution No. RCMY-76-01 and to the Extension Agreement dated May 11, 2001.

If you have any questions, please contact Ms. Arlene Benally, Realty Specialist at (520) 871-5922.

Sincerely,

Regional Director

TRIBAL: \_\_\_\_\_ XXX  
INDIVIDUALLY OWNED: \_\_\_\_\_  
GOVERNMENT OWNED: \_\_\_\_\_  
RIGHT-OF-WAY: T-132896  
REFERENCE NO.: AZ-85-20a

**AMENDMENT NO. One (1)  
GRANT OF EASEMENT FOR RIGHT-OF-WAY**

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America for and on behalf of the Indian Owners of the lands described in Exhibit "B" and "C" hereof, acting by and through the Regional Director, Navajo Region, Bureau of Indian Affairs, Department of the Interior, P.O. Box 1060, Gallup, New Mexico, hereinafter referred to as "Grantor", under authority contained in Secretarial Redelelegation Order 209 DM 8, DM8, 230 DM 1 and 3 IAM 4, and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. Sections 323-328), and Part 169, Title 25, Code Federal Regulations, in consideration of \$ 10.00 and other good and valuable consideration, the receipt of which is acknowledged, does hereby granted to TRANSWESTERN PIPELINE COMPANY, a Delaware Corporation, P.O. Box 1188, Houston, Texas 77251-1188, hereinafter referred to as "Grantee", an easement for a right-of-way for the following purpose(s), namely Operation, Maintenance, Repair and Replacement of Grantee's existing communication facilities, including radio tower and appurtenant facilities over, across, in and upon the following described lands located in the County of Apache State of Arizona.

The said easement is granted with respect to the real property described in the narrative descriptions attached hereto and incorporated herein as Exhibit B and is further described by the maps definite location attached hereto and incorporated herein, as Exhibit C.

Said easement is subject to "Navajo Area Land Clearing, Excavation and Reclamation stipulations for Rights-of-Way over Indian Land".

Said easement is subject to terms and conditions contained in the Resolution of the Resources Committee of the Navajo Nation No. RCMY-76-01, dated May 10, 2001 and the Extension Agreement dated May 11, 2001.

This amendment does not change any of the terms and conditions, except as specifically set forth herein. All others terms and conditions shall remain in force and effect.

Said easement is subject to any valid existing rights or adverse claim and is for a term of years ending November 18, 2009, so long as said easement shall be actually used for the purpose specified; PROVIDED, that this right-of-way shall be terminable in whole or in part by the Grantor for any of the following causes upon 30 days written notice and failure of the Grantee within said notice period to correct the basis for termination (25 CFR 169.20):

- A. Failure to comply with any term or condition of the grant or the applicable regulations.
- B. A nonuse of the right-of-way for a consecutive two-year period for the purpose for which it was granted.
- C. An abandonment of the right-of-way.
- D. Failure to the Grantee, upon the completion of construction, to file with the Grantor an affidavit of completion pursuant to 25 CFR 169.16.
- E. Failure to comply with terms and conditions contained in the Navajo Nation Resources Committee Resolution No. RCMY-76-01, dated May 10, 2001.

The conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the heirs, representatives, successors, and assigns of the Grantee.

IN WITNESS WHEREOF, Grantor has executed this grant of easement this 12th day of July, 2001.

UNITED STATES OF AMERICA

BY: *Genni D. Daniels*  
ACTING Regional Director

Title

U.S. DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
Navajo Region  
P.O. Box 1060  
Gallup, New Mexico 87305

TRIBAL: \_\_\_\_\_ XXX  
INDIVIDUALLY OWNED: \_\_\_\_\_  
GOVERNMENT OWNED: \_\_\_\_\_  
RIGHT-OF-WAY: Loop "E"  
REFERENCE NO.: F-AZ-91-16a  
E-NM-91-24a

**AMENDMENT NO. One (1)**  
**GRANT OF EASEMENT FOR RIGHT-OF-WAY**

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America for and on behalf of the Indian Owners of the lands described in Exhibit "A" hereof, acting by and through the Regional Director, Navajo Region, Bureau of Indian Affairs, Department of the Interior, P.O. Box 1060, Gallup, New Mexico, hereinafter referred to as "Grantor", under authority contained in Secretarial Redelelegation Order 209 DM 8, DM8, 230 DM 1 and 3 IAM 4, and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. Sections 323-328), and Part 169, Title 25, Code Federal Regulations, in consideration of \$10.00 and other good and valuable consideration, the receipt of which is acknowledged, does hereby granted to TRANSWESTERN PIPELINE COMPANY, a Delaware Corporation, P.O. Box 1188, Houston, Texas 77251-1188, hereinafter referred to as "Grantee", an easement for a right-of-way for the following purpose(s), namely Construction, Operation and Maintenance of 30" natural gas pipeline known as "Loop E", over, across, in and upon the following described lands located in the Counties of McKinley and Apache, State of New Mexico and Arizona.

The said easement, as shown on Maps containing thirty-six (36) sheets, marked Exhibit "B", attached hereto, is limited to and more particularly described as 50 feet in width, 147,516.85 feet, 8,940.42 rods or 27.94 miles in length, containing 169.33 acres, more or less. Located on Navajo Tribal Trust lands, situated within various sections, Township 16 North, Ranges 20 and 21 West, NMPM, McKinley County, New Mexico; Township 25 North, Ranges 26, 27, 28 and 29 East and Townships 25 and 26 North, Ranges 30 and 31 East, G&SRM, Apache County, Arizona,

Said right-of-way is more particularly described in the right-of-way description marked "A" attached hereto which by this reference is made a part hereof.

Said easement is subject to "Navajo Area Land Clearing, Excavation and Reclamation stipulations for Rights-of-Way over Indian Land".

Said easement is subject to terms and conditions contained in the Resolution of the Resources Committee of the Navajo Nation No. RCMY-76-01, dated May 10, 2001 and the Extension Agreement dated May 11, 2001.

<sup>1</sup> Consideration for the right-of-way is in accordance with the terms and conditions set forth in the Extension Agreement dated May 11, 2001.

This amendment does not change any of the terms and conditions, except as specifically set forth herein. All other terms and conditions shall remain in force and effect.

Said easement is subject to any valid existing rights or adverse claim and is for a term of years ending November 18, 2009, so long as said easement shall be actually used for the purpose specified; PROVIDED, that this right-of-way shall be terminable in whole or in part by the Grantor for any of the following causes upon 30 days written notice and failure of the Grantee within said notice period to correct the basis for termination (25 CFR 169.20):

- A. Failure to comply with any term or condition of the grant or the applicable regulations.
- B. A nonuse of the right-of-way for a consecutive two-year period for the purpose for which it was granted.
- C. An abandonment of the right-of-way.
- D. Failure to the Grantee, upon the completion of construction, to file with the Grantor an affidavit of completion pursuant to 25 CFR 169.16.
- E. Failure to comply with terms and conditions contained in the Navajo Nation Resources Committee Resolution No. RCMY-76-01, dated May 10, 2001.

The conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the heirs, representatives, successors, and assigns of the Grantee.

IN WITNESS WHEREOF, Grantor has executed this grant of easement this 12th day of July, 2001.

UNITED STATES OF AMERICA

BY: Genni Dentone  
ACTING Regional Director

Title  
U.S. DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
Navajo Region  
P.O. Box 1060  
Gallup, New Mexico 87305

TRIBAL: \_\_\_\_\_ XXX  
INDIVIDUALLY OWNED: \_\_\_\_\_  
GOVERNMENT OWNED: \_\_\_\_\_  
RIGHT-OF-WAY: \_\_\_\_\_  
REFERENCE NO.: AZ-85-21a

**AMENDMENT NO. Two (2)**  
**GRANT OF EASEMENT FOR RIGHT-OF-WAY**

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America for and on behalf of the Indian Owners of the lands described in Exhibit "A" hereof, acting by and through the Regional Director, Navajo Region, Bureau of Indian Affairs, Department of the Interior, P.O. Box 1060, Gallup, New Mexico, hereinafter referred to as "Grantor", under authority contained in "Secretarial Redelelegation Order 209 DM 8, DM8, 230 DM 1 and 3 IAM 4, and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. Sections 323-328), and Part 169, Title 25, Code Federal Regulations, in consideration of \$ 10.00 and other good and valuable consideration, the receipt of which is acknowledged, does hereby granted to TRANSWESTERN PIPELINE COMPANY, a Delaware Corporation, P.O. Box 1188, Houston, Texas 77251-1188, hereinafter referred to as "Grantee", an easement for a right-of-way for the following purpose(s), namely Construction, Operation and Maintenance of 30" natural gas pipeline known as "Loop F", over, across, in and upon the following described lands located in the Counties of Navajo and Coconino, State of Arizona.

The said easement, as shown on Maps containing thirty-three (33) sheets, marked Exhibit "B-1", attached hereto, is limited to and more particularly described as 50 feet in width, 195,306.03 feet, 11,836.73 rods or 36.99 miles in length, located on Navajo Tribal Trust lands, situated within various sections, Township 22 North, Ranges 16 and 17 West, Township 23 and 24 North, Ranges 17, 18, 19, 20 and 21 West, G&SRM, Navajo and Coconino Counties, State of Arizona, containing 224.18 acres, more or less.

Said right-of-way is more particularly described in the right-of-way description marked "A" attached hereto which by this reference is made a part hereof.

Said easement is subject to "Navajo Area Land Clearing, Excavation and Reclamation stipulations for Rights-of-Way over Indian Land".

Said easement is subject to terms and conditions contained in the Resolution of the Resources Committee of the Navajo Nation No. RCMY-76-01, dated May 10, 2001 and the Extension Agreement dated May 11, 2001.

This amendment does not change any of the terms and conditions, except as specifically set forth herein. All others terms and conditions shall remain in force and effect.

<sup>1</sup> Consideration for the right-of-way is in accordance with the terms and conditions set forth in the extension agreement dated May 11, 2001.

Grantee within said notice period to correct the basis for termination (25 CFR 169.20):

- A. Failure to comply with any term or condition of the grant or the applicable regulations.
- B. A nonuse of the right-of-way for a consecutive two-year period for the purpose for which it was granted.
- C. An abandonment of the right-of-way.
- D. Failure to the Grantee, upon the completion of construction, to file with the Grantor an affidavit of completion pursuant to 25 CFR 169.16.
- E. Failure to comply with terms and conditions contained in the Navajo Nation Resources Committee Resolution No. RCMY-76-01, dated May 10, 2001.

The conditions of this easement shall extend to and be binding upon and shall insure to the benefit of the heirs, representatives, successors, and assigns of the Grantee.

IN WITNESS WHEREOF, Grantor has executed this grant of easement this 12th day of July, 2001.

UNITED STATES OF AMERICA

BY: *Lenni Peretone*  
**ACTING** Regional Director

Title

U.S. DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
Navajo Region  
P.O. Box 1060  
Gallup, New Mexico 87305

TRIBAL: \_\_\_\_\_  
INDIVIDUALLY OWNED: \_\_\_\_\_  
GOVERNMENT OWNED: \_\_\_\_\_  
RIGHT-OF-WAY: \_\_\_\_\_  
REFERENCE NO.: E-NM-91-022a

**AMENDMENT NO. Two (2)  
GRANT OF EASEMENT FOR RIGHT-OF-WAY**

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America for and on behalf of the Indian Owners of the lands described in Exhibit "A" hereof, acting by and through the Regional Director, Navajo Region, Bureau of Indian Affairs, Department of the Interior, P.O. Box 1060, Gallup, New Mexico, hereinafter referred to as "Grantor", under authority contained in Secretarial Redelelegation Order 209 DM 8, DMB, 230 DM 1 and 3 IAM 4, and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. Sections 323-328), and Part 169, Title 25, Code Federal Regulations, in consideration of \$ 10.00 and other good and valuable consideration, the receipt of which is acknowledged, does hereby granted to TRANSWESTERN PIPELINE COMPANY, a Delaware Corporation, P.O. Box 1188, Houston, Texas 77251-1188, hereinafter referred to as "Grantee", an easement for a right-of-way for the following purpose(s), namely Construction, Operation and Maintenance of 30" natural gas pipeline known as "San Juan Laterals", over, across, in and upon the following described lands located in the Counties of San Juan and McKinley, State of New Mexico.

The said easement, as shown on Maps containing seventy (70) sheets, marked Exhibit "B", attached hereto, is limited to and more particularly described as 50 feet in width, 421,939.84 feet, 25,572.11 rods or 79.90 miles in length, located on Navajo Tribal Trust lands, situated within various sections, Township 15,16, and 17 North, Ranges 16 and 17 West and Township 24,25,26,27 and 28 North, Ranges 11,12,13,14 West, NMPM, San Juan and McKinley Counties, New Mexico, containing 484.32 acres, more or less.

Said right-of-way is more particularly described in the right-of-way description marked "A" attached hereto which by this reference is made a part hereof.

Said easement is subject to "Navajo Area Land Clearing, Excavation and Reclamation stipulations for Rights-of-Way over Indian Land".

Said easement is subject to terms and conditions contained in the Resolution of the Resources Committee of the Navajo Nation No. RCMY-76-01, dated May 10, 2001 and the Extension Agreement dated May 11, 2001.

This amendment does not change any of the terms and conditions, except as specifically set forth herein. All others terms and conditions shall remain in force and effect.

<sup>1</sup> Consideration for the right-of-way is in accordance with the terms and conditions set forth in the extension agreement dated May 11, 2001.

Said easement is subject to any valid existing rights or adverse claim and is for a term of years ending November 18, 2009, so long as said easement shall be actually used for the purpose specified; PROVIDED, that this right-of-way shall be terminable in whole or in part by the Grantor for any of the following causes upon 30 days written notice and failure of the Grantee within said notice period to correct the basis for termination (25 CFR 169.20):

- A. Failure to comply with any term or condition of the grant or the applicable regulations.
- B. A nonuse of the right-of-way for a consecutive two-year period for the purpose for which it was granted.
- C. An abandonment of the right-of-way.
- D. Failure to the Grantee, upon the completion of construction, to file with the Grantor an affidavit of completion pursuant to 25 CFR 169.16.
- E. Failure to comply with terms and conditions contained in the Navajo Nation Resources Committee Resolution No. RCMY-76-01, dated May 10, 2001.

The conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the heirs, representatives, successors, and assigns of the Grantee.

IN WITNESS WHEREOF, Grantor has executed this grant of easement this 12th day of July, 2001.

UNITED STATES OF AMERICA

BY: *Genni Denetone*  
ACTING Regional Director

Title

U.S. DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
Navajo Region  
P.O. Box 1060  
Gallup, New Mexico 87305

TRIBAL: \_\_\_\_\_ XXX  
INDIVIDUALLY OWNED: \_\_\_\_\_  
GOVERNMENT OWNED: \_\_\_\_\_  
RIGHT-OF-WAY: \_\_\_\_\_  
REFERENCE NO.: T-13872a, AZ-85-21a  
& NM-85-131a

**AMENDMENT NO. One (1)**  
**GRANT OF EASEMENT FOR RIGHT-OF-WAY**

KNOW ALL MEN BY THESE PRESENTS:

That the United States of America for and on behalf of the Indian Owners of the lands described in Exhibit B-1, B-2, B-3, C-1 and C-2 hereof, acting by and through the Regional Director, Navajo Region, Bureau of Indian Affairs, Department of the Interior, P.O. Box 1060, Gallup, New Mexico, hereinafter referred to as "Grantor", under authority contained in Secretarial Redelelegation Order 209 DM 8, DMR, 230 DM 1 and 3 IAM 4, and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. Sections 323-328), and Part 169, Title 25, Code Federal Regulations, in consideration of \$ 10.00 and other good and valuable consideration, the receipt of which is acknowledged, does hereby granted to TRANSWESTERN PIPELINE COMPANY, a Delaware Corporation, P.O. Box 1188, Houston, Texas 77251-1188, hereinafter referred to as "Grantee", an easement for a right-of-way for the following purpose(s), namely Construction, Operation and Maintenance of 30" natural gas pipeline and 30" natural gas loop lines over, across, in and upon the following described lands located in the Counties of Coconino, Navajo and Apache counties, State of Arizona and McKinley County, State of New Mexico.

The said easement is granted with respect to the real property described in the narrative descriptions attached hereto and incorporated herein as Exhibit B-1 (main line description), Exhibit B-2 (loop line description) and Exhibit B-3 (description of existing cathodic protection units extending outside pipeline rights-of-way). The easement is further described by the maps definite location identified as BIA Nos. T13872 attached hereto and incorporated herein, as Exhibit C-1 (main and loop line pipelines of 34 sheets), and Exhibit C-2 (existing cathodic protection outside pipeline rights-of-way of 5 sheets).

Said easement is subject to "Navajo Area Land Clearing, Excavation and Reclamation stipulations for Rights-of-Way over Indian Land".

Said easement is subject to terms and conditions contained in the Resolution of the Resources Committee of the Navajo Nation No. RCMY-76-01, dated May 10, 2001 and the Extension Agreement dated May 11, 2001.

\_\_\_\_\_  
'Consideration for the right-of-way is in accordance with the terms and conditions set forth in the extension agreement dated May 11, 2001.

This amendment does not change any of the terms and conditions, except as specifically set forth herein. All other terms and conditions shall remain in force and effect.

Said easement is subject to any valid existing rights or adverse claim and is for a term of years ending November 18, 2009, so long as said easement shall be actually used for the purpose specified; PROVIDED, that this right-of-way shall be terminable in whole or in part by the Grantor for any of the following causes upon 30 days written notice and failure of the Grantee within said notice period to correct the basis for termination (25 CFR 169.20):

- A. Failure to comply with any term or condition of the grant or the applicable regulations.
- B. A nonuse of the right-of-way for a consecutive two-year period for the purpose for which it was granted.
- C. An abandonment of the right-of-way.
- D. Failure to the Grantee, upon the completion of construction, to file with the Grantor an affidavit of completion pursuant to 25 CFR 169.16.
- E. Failure to comply with terms and conditions contained in the Navajo Nation Resources Committee Resolution No. RCMY-76-01, dated May 10, 2001.

The conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the heirs, representatives, successors, and assigns of the Grantee.

IN WITNESS WHEREOF, Grantor has executed this grant of easement this 12th day of July, 2001.

UNITED STATES OF AMERICA

BY: Genni Denetore  
ACTING Regional Director  
Title

U.S. DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
Navajo Region  
P.O. Box 1060  
Gallup, New Mexico 87305

20<sup>th</sup> NAVAJO NATION COUNCIL

Second Year 2004

Mr. Speaker:

The **RESOURCES COMMITTEE** to whom has been assigned

**NAVAJO LEGISLATIVE BILL # 0663-04:**

An Action relating to Natural Resources; Approving Amendment NO. 1 to the Extension Agreement of May 11, 2001 Between the Navajo Nation and Transwestern Pipeline Company for the Construction, Operation and Maintenance of the New San Juan Lateral 36 inch loop line on, over and across Navajo Nation Trust Lands within the Navajo Nation *Sponsored by George Arthur, Council Delegate*

has had it under consideration and reports the same with the recommendation that It **DO PASS** without amendments.

Respectfully submitted,

  
LaVern Wagner, Vice Chairperson

Adopted:  Not Adopted: \_\_\_\_\_  
(Peggy Nahai, Legislative Advisor) (Advisor)

Date: 14 October 2004

The vote was 6 in favor 0 opposed  
Excused: Larry Noble  
Absent:

RESOLUTION OF THE RESOURCES COMMITTEE  
OF THE NAVAJO NATION COUNCIL

20<sup>th</sup> NAVAJO NATION COUNCIL - Second Year, 2004

AN ACTION

RELATING TO NATURAL RESOURCES; APPROVING AMENDMENT NO. 1 TO  
THE EXTENSION AGREEMENT OF MAY 11, 2001 BETWEEN THE NAVAJO  
NATION AND TRANSWESTERN PIPELINE COMPANY FOR THE  
CONSTRUCTION, OPERATION AND MAINTENANCE OF THE NEW SAN JUAN  
LATERAL 36 INCH LOOP LINE ON, OVER AND ACROSS NAVAJO NATION  
TRUST LANDS WITHIN THE NAVAJO NATION

**BE IT ENACTED:**

1. The Navajo Nation hereby approves Amendment No. 1 to the 2001 Extension Agreement, attached hereto and incorporated herein as Exhibit "A", thereby granting the right-of-way to Transwestern Pipeline Company to construct, operate and maintain a thirty-six (36) inch diameter natural gas loop pipeline known as the San Juan Lateral Loop Line for the transportation of natural gas on, over and across Navajo Nation Trust lands within the Navajo Nation, attached hereto as Exhibits "B", "C-1", "C-2", "D", and "E".

2. The Navajo Nation hereby approves Amendment No. 1 to the 2001 Extension Agreement thereby granting the right-of-way, for a term of five years (through November 18, 2009), to Transwestern Pipeline Company, subject to, but not limited to, the terms and conditions contained in Exhibit "A", attached hereto and incorporated herein by reference.

3. The Navajo Nation shall receive payments in accordance with the Amendment No. 1 (Exhibit "A" page 2), as follows:

- a. "Initial Payment: Within ten (10) business days of delivery to Transwestern [Pipeline Company] by the [Navajo] Nation of a fully executed copy of this AMENDMENT NO. 1, Transwestern [Pipeline Company] shall pay to the [Navajo] Nation a non-refundable sum of

b. "Second Payment: Subject to the approval by the Secretary of the Interior or his/her designee ("Secretary") of the grant of right-of-way associated with the New Pipeline, on or prior to January 10, 2005, Transwestern [Pipeline Company] shall pay to the [Navajo] Nation

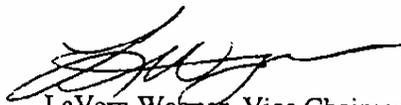
[REDACTED]

c. "Termination: Transwestern [Pipeline Company] shall have the right to terminate this AMENDMENT NO. 1 for the New Pipeline prior to January 10, 2005. In the event that Transwestern [Pipeline Company] is exercising such right, Transwestern [Pipeline Company] shall have no obligation to make the Second Payment to the [Navajo] Nation."

4. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to effectuate the intent and purpose of this resolution.

#### CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Resources Committee of the Navajo Nation Council at a duly called meeting at Churchrock, Navajo Nation (New Mexico), at which a quorum was present and that same was passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 14<sup>th</sup> day of October, 2004.



LaVern Wagner, Vice Chairperson  
Resources Committee

Motion: Harry J. Goldtooth  
Second: Amos F. Johnson

[REDACTED]

**EXHIBIT "A"**

**AMENDMENT NO. 1 to the EXTENSION AGREEMENT of MAY 11, 2001  
BETWEEN THE NAVAJO NATION and TRANSWESTERN PIPELINE  
COMPANY for the CONSTRUCTION of THE NEW SAN JUAN LATERAL  
36" LOOP LINE  
(AMENDMENT NO. 1)**

This AMENDMENT NO. 1 is made and entered into this 15th day of October, 2004, by and between Transwestern Pipeline Company ("Transwestern"), a Delaware corporation, and the Navajo Nation ("Nation"), a federally-recognized Indian Nation, hereinafter jointly referred to as "Parties." (Capitalized terms used herein not otherwise defined shall have the meaning set forth in the Extension Agreement dated May 11, 2001 between the Parties ("Extension Agreement").

**WHEREAS**, Transwestern and the Nation are Parties to the Extension Agreement;

**WHEREAS**, Transwestern seeks the Nation's consent for rights-of-way to construct, operate and maintain a thirty-six (36) inch diameter natural gas loop pipeline known as the San Juan Lateral Loop Line for the transportation of natural gas ("New Pipeline");

**WHEREAS**, Transwestern will make two (2) payments (in addition to surface damages payments to the land users), as set forth herein;

**WHEREAS**, this AMENDMENT NO. 1 and the attached EXHIBIT "B" shall govern the terms and conditions for the New Pipeline; and

**WHEREAS**, the Nation consents and approves this AMENDMENT NO. 1.

**ACCORDINGLY, IT IS COVENTED, AGREED AND UNDERSTOOD THAT:**

1. Subject to the terms and conditions specified in this AMENDMENT NO. 1, the Nation grants Transwestern the right to construct, including, but not limited to, the right to conduct all necessary or desirable pre-construction activities such as surveys, operate and maintain the New Pipeline, which shall be a thirty-six (36) inch diameter natural gas line generally parallel to Transwestern's existing San Juan Lateral and related facilities. The New Pipeline will be approximately twenty-one thousand four hundred and fifteen (21,415) rods in length. The Nation grants Transwestern the right to utilize a one hundred ten (110) foot wide right-of-way during the construction of the New Pipeline unless it is necessary to exceed this limit due to specific construction requirements, environmental or archaeological reasons. The right-of-way shall be fifty (50) feet wide after completion of construction. Transwestern proposes to construct the New Pipeline within existing Transwestern rights-of-way where practical. In certain areas along the existing pipeline route, additional pipeline construction and/or other obstructions may pose safety concerns and it may be necessary to deviate from the existing right of way to ensure safety during construction and

operations. The New Pipeline location and description are shown and described as an Exhibits C1 and C2 including access roads, crossovers, meter runs, launchers, receivers, valves and other appurtenant facilities necessary or desirable for the operation and maintenance of the New Pipeline.

2. The Effective Date of this AMENDMENT NO. 1 is the date this AMENDMENT NO. 1 is approved and executed by the Nation.

3. Transwestern shall make two payments to the Nation:

a. Initial Payment: Within ten (10) business days of delivery to Transwestern by the Nation of a fully executed copy of this AMENDMENT NO. 1, Transwestern shall pay to the Nation a non-refundable sum of [REDACTED]

b. Second Payment: Subject to the approval by the Secretary of the Interior or his/her designee ("Secretary") of the grant of right-of-way associated with the New Pipeline, on or prior to January 10, 2005, Transwestern shall pay to the Nation the sum of [REDACTED]

c. Termination: Transwestern shall have the right to terminate this AMENDMENT NO. 1 for the New Pipeline prior to January 10, 2005. In the event that Transwestern provides written notice the Nation that Transwestern is exercising such right, Transwestern shall have no obligation to make the Second Payment to the Nation.

4. Transwestern has submitted the necessary application for the grant of right-of-way and subsequent construction and operation of the New Pipeline to the Secretary in accordance with the regulations of the Bureau of Indian Affairs for the New Pipeline on July 16, 2004. A copy of said application has been provided to the Nation on this same date. The effective date of the right-of-way will be the date approved by the Secretary. The term of the right-of-way shall be through and including November 18, 2009.

5. As part of the consideration set out in paragraph 3, the Nation agrees to fully cooperate with, support and expedite any and all permitting, filings or clearances that may be required or associated with the construction of New Pipeline, and all related facilities as described above, including, without limitation, the timely participation in the Federal Energy Regulatory Commission's National Environmental Policy Act Pre-Filing Review Process and Transwestern's application for a Certificate of Public Convenience and Necessity and with the Secretary's office for approval of this right-of-way for the construction, operation and maintenance of the New Pipeline.

6. Notice to any party hereto shall be in writing addressed to the respective party as follows:

The Navajo Nation  
Division of Natural Resources  
P.O. Box 9000  
Window Rock, Arizona 86515  
Facsimile: (928) 871-7095

Bureau of Indian Affairs  
Navajo Area Office  
P.O. Box 1060  
Gallup, New Mexico 87305  
Facsimile: (505) 863-8324

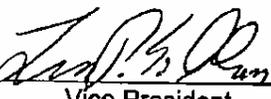
Transwestern Pipeline Company  
P.O. Box 4657  
Houston, Texas 77210-4657  
Attn: Right-of-Way Department  
Facsimile: (713) 646-7867

7. In all other respects the obligations of the Parties under this AMENDMENT NO. 1 shall be governed by the attached Exhibit "B" with respect to the New Pipeline and the associated right-of-way. This agreement shall not be modified except in writing, signed by the duly authorized representatives of the parties

**THE NAVAJO NATION**

By:  Dated: OCT 15 2004  
President

**TRANSWESTERN PIPELINE COMPANY**

By:  Dated: 10/15/04  
Vice President

**EXHIBIT "B"**

The Extension Agreement of May 11, 2001

Resolution of the Resources Committee (RCMY-76-01)

Memorandum of Understanding – 10/31/84

Memorandum of Understanding – 03/04/91

**EXHIBIT "C1 and C2"**

General Pipeline Route Map

Centerline Description & Plats