

ORDER NUMBER: 534
DATED: April 11, 1977

BEFORE THE WASHINGTON STATE ENERGY
FACILITY SITE EVALUATION COUNCIL

In the Matter of Application)	
No. 76-2 of the)	
)	
NORTHERN TIER PIPELINE COMPANY)	ORDER DENYING
A MONTANA CORPORATION)	MOTION FOR RECONSIDERATION
.)	OF COUNSEL FOR THE
		ENVIRONMENT

On March 21, 1977, Leland T. Johnson, Assistant Attorney General, as Counsel for the Environment under RCW chapter 80.50 in the above-cited matter, filed with the Council a motion for reconsideration of the final order of the Council entered February 28, 1977, and served on the parties on March 7, 1977.

The motion is supported by argument of counsel and citations to law and rules. In effect, the motion challenges certain portions of the cited order, and further, seeks to inform the Council of failure to make certain findings and conclusions primarily related to environmental impacts of the proposed project under Application No. 76-2. Particularly, reference is made to the Shorelines Management Act of the State of Washington (RCW chapter 90.58). The argument of Counsel for Environment is set forth in three major parts, with the following conclusion:

"For the Council to cut the Gordian knot by holding that locally enacted shoreline programs are not land use plans or zoning ordinances within the meaning of RCW 80.50.090(2) is to deprive county intervenors of the full measure of participation in the siting process to which they are entitled and to invite possible remand of the Council's order of this issue alone if on no other. Counsel therefore requests that reconsideration be given to the order with modification of its findings and conclusions in accordance with the positions expressed herein and in counsel's previously submitted motion for reconsideration."

Movant asserts that the Shoreline Master Program is essentially identical in structure and in function to other land use plans or zoning ordinances; that there is no viable legal basis for excluding consideration of the Shoreline Master Programs in the Council's order; and that the issue of preemption of plans and zoning ordinances, if done by the Council in its order, requires appropriate findings and conclusions.

The Council is appreciative of the scholarly argument presented by Counsel for the Environment, and in reviewing the comments supporting the motion is of the opinion that the major issues raised by the motion will be the subject of inquiry during the contested case in the above cited proceeding. The issues include the nature of the Shorelines Management Act, and the law relating to authority of the Council to effect preemption as aforementioned.

It is not the intent of the Council in its final orders, referred to above, to foreclose the issues raised by Counsel for the Environment, and it is the belief of the Council that it is the duty and obligation of the Counsel for the Environment to raise the various issues during the contested case in Application No. 76-2.

A review of the instant motion in view of the record herein leads to the conclusion that denial of the motion thereof does not jeopardize the position of the Counsel for the Environment. The Council, under authority of RCW chapter 80.50 and RCW chapter 90.58, is of the opinion that its final order of February 28, 1977, comports with the record made in the several hearing sessions cited in said order, and that the motion of Counsel for the Environment should be denied.

ORDER

It is ordered that the motion of Counsel for the Environment, aforementioned, for the reasons set forth above, be, and the same is hereby, denied.

Dated at Olympia, Washington, and effective this 11th day of April 1977.

WASHINGTON STATE ENERGY FACILITY
SITE EVALUATION COUNCIL

BY Lawrence B. Bradley
Lawrence B. Bradley
Chairman

ATTEST:

BY Bill Polzin
for Roger Polzin
Executive Secretary

APPROVED AS TO FORM:

BY Thomas F. Carr
Thomas F. Carr
Assistant Attorney General