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12
 13 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA, and the PEOPLE
 15 OF THE STATE OF CALIFORNIA, *ex rel.*
 DEPARTMENT OF FISH AND WILDLIFE,
 16 PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.*
 CENTRAL COAST REGIONAL WATER QUALITY
 CONTROL BOARD, *ex rel.* CALIFORNIA
 18 DEPARTMENT OF PARKS AND RECREATION, *ex*
 19 *rel.* CALIFORNIA STATE LANDS COMMISSION,
ex rel. CALIFORNIA DEPARTMENT OF
 20 FORESTRY AND FIRE PROTECTION'S OFFICE
 OF STATE FIRE MARSHAL, and THE REGENTS
 21 OF THE UNIVERSITY OF CALIFORNIA,

22 Plaintiffs,

23 v.

24 PLAINS ALL AMERICAN PIPELINE, L.P. and
 25 PLAINS PIPELINE, L.P.,

26 Defendants.
 27
 28

Civil Action No.
 2:20-cv-02415

CONSENT DECREE

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1 A. WHEREAS, on or about May 19, 2015, a hazardous liquid pipeline
2 known as the Line 901 pipeline (“Line 901”) owned and operated by Plains
3 Pipeline, L.P., a wholly owned subsidiary of Plains All American Pipeline, L.P.,
4 (jointly, “Plains” or “Defendants”), failed and discharged approximately 2,934
5 barrels of heavy crude-oil (“Refugio Incident”) in Santa Barbara County,
6 California. A portion of the oil reached the Pacific Ocean and coastal areas such
7 as Refugio State Beach. The Refugio Incident adversely impacted Natural
8 Resources belonging to, managed by, held in trust by, appertaining to, or
9 otherwise controlled by the United States and the State of California
10 (“California” or the “State”).

11 B. WHEREAS, cleanup actions began immediately after the Refugio
12 Incident at the direction of a Unified Command established by the United States
13 Coast Guard (“USCG”) and the State of California Department of Fish and
14 Wildlife (“CDFW”), Office of Spill Prevention and Response (“OSPR”). The
15 Unified Command was comprised of the United States, State agencies, the
16 County of Santa Barbara, and Plains.

17 C. WHEREAS, on May 21, 2015, the United States Department of
18 Transportation’s Pipeline and Hazardous Materials Safety Administration
19 (“PHMSA”) issued Plains a Corrective Action Order (“Original CAO”), CPF No.
20 5-2015-5011H, which was subsequently amended on June 3, 2015 (“CAO
21 Amendment No. 1”), November 12, 2015 (“CAO Amendment No. 2”), and June
22 16, 2016 (“CAO Amendment No. 3”), (collectively, “the PHMSA CAO”). The
23 PHMSA CAO directed Plains, among other things, to purge Line 901 and a
24 portion of the adjoining Line 903 pipeline (“Line 903”), between Plains’ Gaviota
25 and Pentland pump stations, and to keep Line 901 and the purged sections of
26 Line 903 shut down until the actions required by the PHMSA CAO were
27 satisfactorily completed.
28

1 D. WHEREAS, on May 19, 2016, PHMSA issued a Failure
2 Investigation Report, which included PHMSA’s findings of the “proximate or
3 direct” causes and the “contributing” causes of the Refugio Incident.

4 E. WHEREAS, Defendants reimbursed Plaintiffs’ costs incurred for
5 cleanup, and Plaintiffs have no known unreimbursed claims for cleanup costs
6 arising from the Refugio Incident.

7 F. WHEREAS, CDFW incurred certain additional costs arising from
8 the administration and civil enforcement of pollution laws, including attorneys’
9 fees that have been reimbursed by Plains.

10 G. WHEREAS, Plains represents that it has implemented and will
11 continue to utilize an electronic tracking tool and software for maintenance
12 activities, including those activities related to mainline valves. The software
13 tracks which maintenance activities are performed, who performs the activity,
14 when prior notifications of maintenance activities by field personnel are received,
15 when problems requiring maintenance are first discovered, and when
16 maintenance problems are corrected. Plains maintains a separate software
17 program to track the training and qualifications of all maintenance personnel.

18 H. WHEREAS, Plains represents that, following the Refugio Incident
19 and pursuant to PHMSA’s CAO, Plains performed a comprehensive review of its
20 Emergency Response Plan and Training Program, and revised and updated its
21 Response Plan for Onshore Oil Pipelines for Line 901 and Line 903 (“Bakersfield
22 District Response Zone Plan”) to reflect modifications resulting from the review
23 and the incorporation of lessons learned. As part of the revision, Plains identified
24 the locations of culverts along the pipelines’ rights-of-way and provided
25 containment and recovery techniques for responding to spills that may occur near
26 those culverts. Plains provided drafts of the updated Bakersfield District
27 Response Zone Plan to PHMSA, incorporated comments provided by PHMSA,
28 and received approval of the revised plan from PHMSA on September 26, 2017.

1 I. WHEREAS, Plains represents that it also created a more detailed
2 Geographic Information System (“GIS”) based online Tactical Response Plan for
3 its onshore oil pipelines in Southern California, including Line 2000 and the
4 operational portion of Line 903, that, among other things, identifies culverts
5 along the pipelines’ rights-of-way, potential receptors and the equipment,
6 supplies and resources that would be necessary to respond to a spill occurring at
7 any given location along those pipelines, identifies the sources and locations for
8 obtaining those resources, and, in some instances, establishes stored inventories
9 of those resources in specific locations. Plains represents that it intends to keep
10 its Tactical Response Plan updated and available for use in drills and spill
11 response, and that it will make the Tactical Response Plan available to the
12 Plaintiffs upon reasonable request and as needed in connection with a drill or
13 response to a spill.

14 J. WHEREAS, Plains represents that Plains personnel responding to
15 incidents that trigger the standup of an incident command structure (“ICS”) have
16 been provided ICS training appropriate to their responsibilities.

17 K. WHEREAS, the relevant Natural Resources trustees (“Trustees”) for
18 the Refugio Incident are the United States Department of the Interior (“DOI”);
19 United States Department of Commerce, on behalf of the National Oceanic and
20 Atmospheric Administration (“NOAA”); CDFW; California Department of Parks
21 and Recreation (“CDPR”); California State Lands Commission (“CSLC”); and
22 The Regents of the University of California (“UC”).

23 L. WHEREAS, pursuant to Section 1006 of the Oil Pollution Act
24 (“OPA”), 33 U.S.C. 2701, *et seq.*, the United States and the State Trustees
25 allege that oil from the Refugio Incident caused injuries to Natural Resources,
26 including birds, marine mammals, shoreline and subtidal habitats, and also had
27 an impact upon human uses of Natural Resources and other public resources.
28 The Federal Trustees are designated pursuant to the National Contingency Plan,

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1 40 C.F.R. § 300.600 and Executive Order 12777. CDFW and CDPR are
2 designated state trustees pursuant to the National Contingency Plan, 40 C.F.R.
3 § 300.605, and the Governor's Designation of State Natural Resource Trustees
4 pursuant to Section 1006(b)(3) of OPA and the Comprehensive Environmental
5 Response, Compensation and Liability Act of 1980. In addition, CDFW has state
6 natural resource trustee authority pursuant to California Fish and Game Code
7 §§ 711.7 and 1802 and the Lempert-Keene-Seastrand Oil Spill Prevention and
8 Response Act (California Government Code § 8670.1 *et seq.*). CDPR and UC
9 have jurisdiction over natural resources within the state park system and the UC
10 Natural Reserve System, respectively, which are held in trust for the people of
11 the State of California. CSLC is a state trustee pursuant to its jurisdiction under
12 Public Resources Code § 6301 and Civil Code § 670.

13 M. WHEREAS, after the Refugio Incident, the Trustees and Defendants
14 entered into a cooperative Natural Resource Damage Assessment process
15 pursuant to 15 C.F.R. § 990.14, whereby the Trustees and Defendants jointly and
16 independently planned and conducted a number of injury assessment activities.
17 These activities included gathering and analyzing data and other information that
18 the Trustees used to determine and quantify resource injuries and damages. As a
19 result of this process and other activities, the Trustees identified several
20 categories of injured and damaged Natural Resources, including birds, marine
21 mammals, and shoreline and subtidal habitats, as well as effects to human
22 use/recreation resulting from impacts on these Natural Resources, and determined
23 the cost to restore, rehabilitate, replace, or acquire the equivalent of injured
24 Natural Resources. By entering this Consent Decree, Defendants do not admit or
25 agree that the Trustees' NRD findings and determinations are accurate.

26 N. WHEREAS, due to the specific facts surrounding the Refugio
27 Incident, including the timing, degree, and nature of the spill and the affected
28

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1 environment, the Trustees will not seek additional damages, costs, or expenses
2 for Natural Resources resulting from the Refugio Incident.

3 O. WHEREAS, Plains agrees to reimburse costs incurred by the
4 Trustees in connection with the NRDA through November 15, 2018, and will not
5 reimburse costs incurred by the Trustees in connection with the NRDA after that
6 date.

7 P. WHEREAS, by entering into this Consent Decree, Plains does not
8 admit the allegations in the Complaint filed in this action, or any liability to the
9 Plaintiffs.

10 Q. WHEREAS, on January 28, 2019, PHMSA initiated a regularly-
11 scheduled “Integrated Inspection” of a portion of Defendants’ Regulated
12 Pipelines, as described below, and other pipeline facilities and records, pursuant
13 to 49 U.S.C. § 60117.

14 R. WHEREAS, the Parties agree that settlement of this matter without
15 further litigation is in the public interest and that the entry of this Consent Decree
16 is the most appropriate means of resolving this action.

17 S. WHEREAS, the Parties agree and the Court by entering this Consent
18 Decree finds, that this Consent Decree: (1) has been negotiated by the Parties at
19 arm’s-length and in good faith; (2) will avoid prolonged litigation between the
20 Parties; (3) is fair and reasonable; and (4) furthers the objectives of the federal
21 and state environmental protections, and the federal and state pipeline safety
22 laws.

23 **I. BACKGROUND**

24 The United States, on behalf of PHMSA, the United States Environmental
25 Protection Agency (“EPA”), DOI, NOAA, and USCG; and the People of the
26 State of California *Ex Relazione* CDFW, CDPR, CSLC, UC, the California
27 Central Coast Regional Water Quality Control Board (“RWQCB”), and the
28 California Department of Forestry and Fire Protection’s - Office of the State Fire

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1 Marshal (“OSFM”), filed a Complaint in this matter pursuant to the Clean Water
2 Act (“CWA”), 33 U.S.C. §§ 1251 *et seq.*, and associated regulations and orders;
3 OPA, 33 U.S.C. §§ 2701 *et seq.*, and associated regulations and orders; the
4 federal Pipeline Safety Laws, 49 U.S.C. §§ 60101 *et seq.*, and associated
5 regulations and orders; the Lempert-Keene-Seastrand Oil Spill Prevention and
6 Response Act, California Government Code §§ 8670.1 *et seq.* and associated
7 regulations; California Fish and Game Code §§ 2014, 5650, 5650.1, 12016,
8 13013; California Water Code §§ 13350, 13385; and the Elder California
9 Pipeline Safety Act of 1981, California Government Code §§ 51010 *et seq.* The
10 Complaint against Plains, *inter alia*, asserts allegations of violations, and seeks
11 penalties, injunctive relief, and Natural Resource Damages.

12 NOW, THEREFORE, before the trial of any claims and without
13 adjudication or admission of any issue of fact or law and with the consent of the
14 Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

15 II. JURISDICTION AND VENUE

16 1. This Court has jurisdiction over the subject matter of the United
17 States’ claims in this action pursuant to Section 311(b)(7)(E) and (n) of the CWA,
18 33 U.S.C. § 1321(b)(7)(E) and (n), Section 1017(b) of OPA, 33 U.S.C. § 2717(b);
19 Sections 60120 and 60122 of the Pipeline Safety Laws, 49 U.S.C. §§ 60120 and
20 60122; and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental
21 jurisdiction over the State law claims pursuant to 28 U.S.C. § 1367. To the extent
22 the OPA presentment requirement described in 33 U.S.C. § 2713 applies, the
23 United States and the State Agencies have satisfied the requirement.

24 2. Venue is proper in this District pursuant to Section 311(b)(7)(E) of
25 the CWA, 33 U.S.C. § 1321(b)(7)(E), Section 1017(b) of OPA,
26 33 U.S.C. § 2717(b); Section 60120 of the Pipeline Safety Laws,
27 49 U.S.C. § 60120; and 28 U.S.C. §§ 1391 and 1395(a), because Plains
28

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1 does business in this District and the alleged claims occurred in this District.

2 3. For purposes of this Consent Decree or any action to enforce this
3 Consent Decree, Defendants consent to the Court's jurisdiction over this Consent
4 Decree for such action and Defendants consent to venue in this judicial district.
5 For purposes of this Consent Decree and without admission of liability,
6 Defendants agree that the Complaint states claims upon which relief may be
7 granted.

8 **III. APPLICABILITY**

9 4. Subject to the terms herein, the obligations of this Consent Decree
10 apply to and are binding upon the Parties and any successors, assigns, as well as
11 any other entities or persons otherwise bound by law to comply with this Consent
12 Decree.

13 5. Defendants shall provide a copy of this Consent Decree to all
14 officers, employees, and agents whose duties might reasonably include ensuring
15 compliance with any provision of this Consent Decree, as well as to any
16 contractor retained for the purpose of performing work required under this
17 Consent Decree. Defendants shall condition any such contract upon performance
18 of the work in conformity with the terms of this Consent Decree by specifying
19 that contractors are obligated to perform work in compliance with this Consent
20 Decree.

21 6. In any action to enforce this Consent Decree, Defendants shall not
22 raise as a defense the failure by any of their officers, directors, employees,
23 agents, or contractors to take any actions necessary to comply with the provisions
24 of this Consent Decree.

25 **IV. DEFINITIONS**

26 7. Terms used in this Consent Decree that are defined in the CWA,
27 OPA, Pipeline Safety Laws, the Lempert-Keene-Seastrand Oil Spill Prevention
28 and Response Act, and the Elder California Pipeline Safety Act of 1981 shall

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1 have the meanings assigned to them in these statutes and their regulations, unless
2 otherwise provided in this Consent Decree. Whenever the terms set forth below
3 are used in this Consent Decree, the following definitions shall apply:

4 “Appendix A” is the set of maps that generally depict Lines 901, 903, and
5 2000;

6 “Appendix B” is the Injunctive Relief that Plains is required to perform
7 under this Consent Decree;

8 “Appendix C” is intentionally left blank;

9 “Appendix D” is the list of remaining corrective actions from the PHMSA
10 CAO that Plains is still required to implement under this Consent Decree. For
11 the terms of the PHMSA CAO, *see*
12 [https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_520155011H](https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_520155011H.html?nocache=4888#_TP_1_tab_1)
13 [.html?nocache=4888#_TP_1_tab_1](https://primis.phmsa.dot.gov/comm/reports/enforce/CaseDetail_cpf_520155011H.html?nocache=4888#_TP_1_tab_1);

14 “CDFW” shall mean the California Department of Fish and Wildlife and
15 any of its successor departments or agencies;

16 “CDPR” shall mean the California Department of Parks and Recreation
17 and any of its successor departments or agencies;

18 “Complaint” shall mean the Complaint filed by the Plaintiffs in this action;

19 “Consent Decree” shall mean this Consent Decree and all Appendices
20 attached hereto;

21 “Control Room Management Plan” shall mean Plains’ Control Room
22 Management Plan, dated October 2019, and delivered to PHMSA electronically
23 on October 21, 2019, from counsel for Defendants;

24 “Control Center General Procedures” shall mean Plains’ Control Center
25 General Procedures, dated October 2019, and delivered to PHMSA electronically
26 on October 21, 2019, from counsel for Defendants;

27 “CSLC” shall mean the California State Lands Commission and any of its
28 successor departments or agencies;

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1 “Day” shall mean a calendar day unless expressly stated to be a working
2 day. In computing any period of time under this Consent Decree, the rules set
3 forth in Rule 6 of the Federal Rules of Civil Procedure shall apply;

4 “Defendants” shall mean Plains All American Pipeline, L.P. and Plains
5 Pipeline, L.P.;

6 “Delivery Lines” as stated in Appendix B shall mean any pipeline that
7 generally operates to move oil from a delivery meter on a pipeline or facility to
8 another pipeline or facility in close proximity;

9 “DOI” shall mean the United States Department of the Interior, including
10 its bureaus and agencies, and any of its successor departments or agencies;

11 “Elder California Pipeline Safety Act” shall mean the Elder California
12 Pipeline Safety Act of 1981, California Government Code §§ 51010 *et seq.*;

13 “EPA” shall mean the United States Environmental Protection Agency and
14 any of its successor departments or agencies;

15 “Effective Date” shall have the definition provided in Section XXI
16 (Effective Date);

17 “Federal Trustees” shall mean DOI and NOAA in their capacities as
18 Natural Resource Trustees;

19 “Integrity Management Plan” or “IMP” shall mean Plains’ Integrity
20 Management Plan, dated September 2019, as delivered to PHMSA by letter dated
21 November 19, 2019, from counsel for Defendants;

22 “Line 901” is Defendants’ 24-inch diameter crude-oil pipeline that
23 extends approximately 10.7 miles in length from the Los Flores Pump Station to
24 the Gaviota Pump Station, in Santa Barbara County, California, as generally
25 depicted in Appendix A;

26 “Line 903” is Defendants’ 30-inch diameter crude-oil pipeline that extends
27 approximately 129 miles in length from the Gaviota Pump Station in Santa
28 Barbara County, California to the Emidio Pump Station in Kern County,

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1 California, with intermediate stations at Sisquoc Mile Post 38.5 and Pentland
2 Mile Post 114.57, as generally depicted in Appendix A;

3 “Line 2000” is Defendants’ 20-inch diameter pipeline that extends
4 approximately 130 miles in length and transports crude-oil produced in the outer
5 continental shelf and the San Joaquin Valley. Line 2000 runs from Bakersfield,
6 California, over the Tehachapi Mountains and through the Grapevine I-5 corridor
7 and extends to delivery locations in the Los Angeles metropolitan area, as
8 generally depicted in Appendix A;

9 “Mainline pipeline” as stated in Appendix B shall mean the principal
10 pipeline or the parallel pipeline in a given pipeline system, excluding connected
11 lateral lines or branch lines that are used locally to deliver product either into the
12 mainline pipeline from, or out of the mainline pipeline to, a nearby facility or a
13 third-party line;

14 “Natural Resource” and “Natural Resources” shall mean land, fish,
15 mammals, birds, wildlife, biota, air, water, ground water, drinking water supplies,
16 and other such resources belonging to, managed by, held in trust by, appertaining
17 to, or otherwise controlled by the United States and/or the State or any
18 subdivision thereof, and shall also mean the services provided by such resources
19 to other resources or to humans;

20 “Natural Resource Damages” or “NRD” shall mean all damages, including
21 restoration or rehabilitation costs, recoverable by the United States or State
22 Trustees for injuries to, destruction of, loss of, or loss of use of, natural resources
23 including any services such natural resources provide, including the reasonable
24 costs of assessing the damage, as described in 33 U.S.C. § 2702(b)(2)(A),
25 resulting from the Refugio Incident;

26 “Natural Resource Damage Assessment” or “NRDA” shall mean the
27 process of collecting, compiling, and analyzing information, statistics, or data
28 through prescribed methodologies to determine damages for injuries to Natural

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1 Resources, as described in 15 C.F.R. Part 990, resulting from the Refugio
2 Incident;

3 “NRD Payment” shall mean the payment Defendants are required to pay
4 for the Natural Resource Damages as described in Section VI (Natural Resource
5 Damages);

6 “Natural Resource Trustees” or “Trustees” are those federal and state
7 agencies or officials designated or authorized pursuant to the CWA, OPA, and/or
8 applicable state laws to act as Trustees for the Natural Resources belonging to,
9 managed by, controlled by, or appertaining to the United States or the State.

10 Participating Trustees in the Natural Resource Damage Assessment and in this
11 Consent Decree are DOI, NOAA, CDFW, CDPR, CSLC, and UC;

12 “NOAA” shall mean the National Oceanic and Atmospheric
13 Administration and any of its successor departments or agencies;

14 “Oil Spill Liability Trust Fund” or “OSLTF” shall mean, *inter alia*, the
15 fund established pursuant to 26 U.S.C. § 9509, including the claim-
16 reimbursement provisions set forth in 33 U.S.C. § 2712;

17 “OSFM” shall mean the California Department of Forestry and Fire
18 Protection’s - Office of the State Fire Marshal and any of its successor
19 departments or agencies;

20 “Paragraph” shall mean a portion of this Consent Decree identified by an
21 Arabic numeral;

22 “Parties” shall mean the Plaintiffs and Defendants, collectively;

23 “PHMSA” shall mean the United States Department of Transportation,
24 Pipeline and Hazardous Materials Safety Administration and any of its successor
25 departments or agencies;

26 “PHMSA Corrective Action Order” or “PHMSA CAO” shall mean the
27 Original CAO issued on May 21, 2015, by PHMSA, which was subsequently
28 amended on June 3, 2015, November 12, 2015, and June 16, 2016;

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1 “Pipeline Safety Laws” shall mean 49 U.S.C. §§ 60101 *et seq.*, and
2 regulations promulgated thereunder, including 49 C.F.R. Parts 190-199;

3 “Plaintiffs” shall mean the United States and the State Agencies;

4 “Refugio Incident” shall mean the release of approximately 2,934 barrels
5 of crude-oil from Plains’ Line 901 Pipeline, in Santa Barbara County, California
6 on or about May 19, 2015;

7 “Regulated Pipeline” shall mean any pipeline operated by Plains subject to
8 regulation under 49 C.F.R. Subchapter D, 19 California Code of Regulations Div.
9 1 Ch. 14, or the pipeline safety regulations of any other state certified by PHMSA
10 pursuant to 49 U.S.C. § 60105, but excludes facilities other than pipelines;

11 “Requests for Information” or “RFI” shall mean PHMSA’s RFIs dated
12 August 19, 2015, August 21, 2015, and September 1, 2016. RFIs shall also refer
13 to PHMSA’s subpoenas issued to Plains dated July 27, 2016 and June 2, 2017;

14 “Restore” or “Restoration” shall mean any action or combination of actions
15 to restore, rehabilitate, replace or acquire the equivalent of any Natural Resource
16 and its services, including Natural Resource-based recreational opportunities that
17 were injured, lost, or destroyed as a result of the Refugio Incident;

18 “RWQCB” shall mean the California Central Coast Regional Water
19 Quality Control Board and any of its successor departments or agencies;

20 “Section” shall mean a portion of this Consent Decree identified by a
21 Roman numeral;

22 “Segment” as stated in Appendix B shall mean any contiguous portion of a
23 pipeline system for which a single hydrostatic test or ILI may be performed, as
24 determined by Defendants;

25 “State Agencies” shall mean the People of the State of California, *Ex*
26 *Relatione* CDFW, CDPR, CSLC, OSFM, RWQCB, and UC. The State Agencies
27 do not include any entity or political subdivision of the State of California other
28 than those agencies herein designated the “State Agencies”;

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1 “State Trustees” shall mean CDFW, CDPR, CSLC, and UC in their
2 capacities as Natural Resource Trustees;

3 “United States” shall mean the United States of America, on behalf of
4 PHMSA, EPA, DOI, NOAA, and USCG;

5 “UC” shall mean The Regents of the University of California and any of its
6 successor departments or agencies; and

7 “USCG” shall mean the United States Coast Guard and any of its
8 successor departments or agencies.

9 **V. CIVIL PENALTIES**

10 A. Within thirty (30) Days after the Effective Date, Defendants shall pay to
11 the United States, CDFW, and RWQCB a total civil penalty of twenty-four
12 million dollars (\$24,000,000), together with interest accruing from the date on
13 which the Consent Decree is lodged with the Court, at a rate specified in 28
14 U.S.C. § 1961 (the “Penalty Payment”). The Penalty Payment shall be allocated
15 as follows:

16 8. Penalty Payment to the United States (PHMSA). For violations of
17 the Pipeline Safety Laws alleged in the United States’ Complaint, Defendants
18 shall pay to the United States a civil penalty of fourteen million five hundred
19 thousand dollars (\$14,500,000), together with a proportionate share of the interest
20 accrued on the Penalty Payment. The Penalty Payment shall be made as follows:

- 21 a. Thirteen million two hundred fifty thousand dollars
- 22 (\$13,250,000) attributed to Plains’ alleged Pipeline Safety Law
- 23 violations; and
- 24 b. One million two hundred fifty thousand dollars (\$1,250,000)
- 25 attributed to Plains’ alleged non-compliance with the RFIs.
- 26 c. Payment shall be made by FedWire Electronic Funds Transfer
- 27 (“EFT”) to the United States Department of Justice in accordance
- 28 with written instructions to be provided to Defendants by the

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1 Financial Litigation Unit (“FLU”) of the United States Attorney’s
2 Office for the Central District of California Western Division after
3 the Effective Date. The payment instructions provided by the FLU
4 will include a Consolidated Debt Collection System (“CDCS”)
5 number, which Defendants shall use to identify all payments
6 required to be made in accordance with this Consent Decree. The
7 FLU will provide the payment instructions to:

8 Megan Prout
9 Senior Vice President
10 Commercial Law and Litigation
11 Plains All American Pipeline, L.P.
12 333 Clay Street, Suite 1600
Houston, TX 77002

13 on behalf of Defendants. Defendants may change the individual to
14 receive payment instructions on their behalf by providing written
15 notice of such change to the United States in accordance with
16 Section XX (Notices).

17 d. At the time of payment, Defendants shall send a copy of the
18 EFT authorization form and the EFT transaction record, together
19 with a transmittal letter, which shall state the payment is for the civil
20 penalty owed pursuant to this Consent Decree in the *United States of*
21 *America and the People of the State of California v. Plains All*
22 *American Pipeline, L.P., et al.*, and shall reference the Civil Action
23 Number assigned to this case, CDCS Number, and DOJ case number
24 90-5-1-1-11340, to the United States in accordance with Section XX
25 (Notices).

26 9. Penalty Payment to the United States (EPA) shared with CDFW and
27 RWQCB. The Penalty Payment shall be allocated as follows:

28 a. As a CWA penalty for violations of 33 U.S.C. § 1321(b) and

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1 the California statutes alleged in the Complaint other than California
2 Government Code § 8670.66(b), Defendants shall pay a civil penalty
3 of nine million four hundred fifty thousand dollars (\$9,450,000),
4 together with a proportionate share of the interest accrued on the
5 Penalty Payment. The Penalty Payment shall be made as follows:

6 1) To CDFW, one million twenty-five thousand dollars
7 (\$1,025,000), together with a proportionate share of the
8 interest accrued on the Penalty Payment. The Penalty
9 Payment shall be made by check payable to California
10 Department of Fish and Wildlife. The check shall be sent by
11 overnight or certified mail to:

12 California Department of Fish and Wildlife
13 Office of Spill Prevention and Response
14 Attn: Katherine Verrue-Slater, Senior Counsel
15 P.O. Box 160362
16 Sacramento, California 95816-0362

17 The check shall reference the “Refugio Oil Spill.” CDFW
18 shall deposit the money as follows: one million dollars
19 (\$1,000,000) into the Environmental Enhancement Fund
20 pursuant to California Government Code § 8670.70; and
21 twenty-five thousand dollars (\$25,000) into the Fish and
22 Wildlife Pollution Account pursuant to California Fish and
23 Game Code §§ 12017 and 13011.

24 2) To RWQCB, two million five hundred thousand dollars
25 (\$2,500,000), together with a proportionate share of the
26 interest accrued on the Penalty Payment. The Penalty
27 Payment shall be made by check payable to the “State Water
28 Pollution Cleanup and Abatement Account” and sent to:

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1 State Water Resources Control Board
2 Division of Administrative Services, ATTN: Civil
3 Liability Payment
4 P.O. Box 1888
5 Sacramento, California 95812-1888

6 The check shall reference the “Refugio Oil Spill.”

7 3) To the United States, five million nine hundred twenty-
8 five thousand dollars (\$5,925,000), together with a
9 proportionate share of the interest accrued on the Penalty
10 Payment, by EFT to the United States Department of Justice, in
11 accordance with instructions to be provided to Defendants by
12 the FLU of the United States Attorney’s Office for the Central
13 District of California Western Division. Such monies are to be
14 deposited in the OSLTF. The Penalty Payment shall reference
15 the Civil Action Number assigned to this case, DOJ case
16 number 90-5-1-1-11340, and USCG reference numbers FPNs
17 A15017 and A15018, and shall specify that the payment is
18 made for CWA civil penalties to be deposited into the OSLTF
19 pursuant to 33 U.S.C. § 1321(s), Section 4304 of Pub. L. No.
20 101-380, and 26 U.S.C. § 9509(b)(8). Any funds received after
21 11:00 a.m. Eastern Standard Time shall be credited on the next
22 business day. Defendants shall simultaneously provide notice
23 of payment in writing, together with a copy of any transmittal
24 documentation to EPA and the United States in accordance with
25 Section XX (Notices) of this Consent Decree, and to EPA by
26 email to acctsreceivable.CINWD@epa.gov and to EPA and the
27 National Pollution Funds Center at the following addresses:
28

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1 U.S. Environmental Protection Agency
2 Cincinnati Finance Office
3 26 Martin Luther King Drive
4 Cincinnati, Ohio 45268

5 and

6 Patricia V. Kingcade
7 Attorney Advisor
8 National Pollution Funds Center
9 U.S. Coast Guard
10 2703 Martin Luther King Jr. Avenue SE
11 Washington, D.C. 20593-7605

12 10. Penalty Payment to be Paid to CDFW. For alleged violations of
13 California Government Code § 8670.25.5, Defendants shall pay a civil penalty
14 pursuant to California Government Code § 8670.66(b) of fifty thousand dollars
15 (\$50,000) together with a proportionate share of the interest accrued on the
16 Penalty Payment. The Penalty Payment shall be made by check payable to
17 California Department of Fish and Wildlife. The check shall be sent by overnight
18 or certified mail to:

19 California Department of Fish and Wildlife
20 Office of Spill Prevention and Response
21 Attn: Katherine Verrue-Slater, Senior Counsel
22 P.O. Box 160362
23 Sacramento, California 95816-0362

24 The check shall reference the “Refugio Oil Spill.” CDFW shall deposit the
25 money into the Environmental Enhancement Fund pursuant to California
26 Government Code § 8670.70.

27 11. Defendants shall not deduct or capitalize any penalties paid under
28 this Section or under Section XI (Stipulated Penalties) in calculating their federal
or state income taxes.

VI. NATURAL RESOURCE DAMAGES

12. Within thirty (30) Days after the Effective Date, Defendants shall
pay an NRD Payment of twenty-two million three hundred twenty-five thousand

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1 dollars (\$22,325,000) together with interest accruing from November 16, 2018, at
2 a rate specified in 28 U.S.C. § 1961. The NRD Payment shall be allocated as
3 follows:

4 a. To DOI, eighteen million four hundred twenty-two thousand
5 dollars (\$18,422,000) together with a proportionate share of the
6 interest accrued on the NRD Payment. Such payment shall be used
7 by the Trustees for the purposes set forth in Section VII (Trustees'
8 Management and Applicability of Joint NRD Funds). Defendants
9 shall make such payment by EFT to the United States Department of
10 Justice in accordance with instructions that the FLU of the United
11 States Attorney's Office for the Central District of California
12 Western Division shall provide to Defendants following the
13 Effective Date of this Consent Decree by this Court. At the time of
14 payment, Defendants shall simultaneously send written notice of
15 payment and a copy of any transmittal documentation to the
16 Trustees in accordance with Section XX (Notices) of this Consent
17 Decree and to:

18 Department of the Interior
19 Natural Resource Damage Assessment and
20 Restoration Program
21 Attention: Restoration Fund Manager
22 1849 "C" Street, N.W. Mail Stop 4449
23 Washington, D.C. 20240

24 The EFT and transmittal documentation shall reflect that the
25 payment is being made to the Department of the Interior Natural
26 Resources Damage Assessment and Restoration Fund ("Restoration
27 Fund"), Account Number 14X5198. DOI will maintain these funds
28 as a segregated subaccount named REFUGIO BEACH OIL SPILL
NRD Subaccount within the Restoration Fund.

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1 b. To CDPR, two million eighty-four thousand dollars
2 (\$2,084,000) together with a proportionate share of the interest
3 accrued on the NRD Payment, for deposit into the State Park
4 Contingent Fund. Payment shall be made by check payable to the
5 California Department of Parks and Recreation. At the time of
6 payment, Defendants shall simultaneously send written notice of
7 payment and a copy of any transmittal documentation to the
8 Trustees in accordance with Section XX (Notices) of this Consent
9 Decree. The check shall be sent by overnight or certified mail to:

10 The California Department of Parks and
11 Recreation
12 Attn: Laura Reimche, Senior Counsel
13 1416 Ninth Street, Room 1404-6
 Sacramento, California 95814

14 The check shall reference the “Refugio Beach Oil Spill” and reflect
15 that it is a payment to the State Parks Contingent Fund. CDPR shall
16 use such monies to fund appropriate projects within State Parks’
17 properties from Gaviota to El Capitan State Park to compensate for
18 recreation losses resulting from the Refugio Incident. CDPR shall
19 manage such monies in accordance with Section VIII (Trustees’
20 Management of Recreational Use Funds).

21 c. To the National Fish and Wildlife Foundation (“NFWF”), one
22 million seven hundred ninety-three thousand dollars (\$1,793,000)
23 together with a proportionate share of the interest accrued on the
24 NRD Payment, on behalf of the State Trustees for deposit into the
25 California South Coast Shoreline Parks and Outdoor Recreational
26 Use Account established by NFWF. Payment shall be made by
27 check payable to the National Fish and Wildlife Foundation. At the
28 time of payment, Defendants shall simultaneously send written

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1 notice of payment and a copy of any transmittal documentation to
2 the Trustees in accordance with Section XX (Notices) of this
3 Consent Decree. The check shall be sent by overnight or certified
4 mail to:

5 California Department of Fish and Game
6 Office of Spill Prevention and Response
7 Attn: Katherine Verrue-Slater, Senior Counsel
8 P.O. Box 160362
9 Sacramento, California 95816-0362

10 The check shall reference the “Refugio Beach Oil Spill” and reflect
11 that it is a payment to the California South Coast Shoreline Parks
12 and Outdoor Recreational Use Account. The California South Coast
13 Shoreline Parks and Outdoor Recreational Use Account shall be
14 managed in accordance with the South Coast Shoreline Parks and
15 Outdoor Recreational Use Account Memorandum of Agreement
16 among the State Trustees and NFWF and shall be used by the
17 Trustees for the purposes set forth in Section VIII (Trustees’
18 Management of Recreational Use Funds).

19 d. To UC, twenty-six thousand dollars (\$26,000) together with a
20 proportionate share of the interest accrued on the NRD Payment, for
21 deposit into Natural Reserve System Account. Payment shall be
22 made by check payable to The Regents of the University of
23 California. At the time of payment, Defendants shall simultaneously
24 send written notice of payment and a copy of any transmittal
25 documentation to the Trustees in accordance with Section XX
26 (Notices) of this Consent Decree. The check shall be sent by
27 overnight or certified mail to:
28

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1 The Regents of the University of California
2 Attn: Michael Kisgen, Associate Director
3 Natural Reserve System
4 University of California, Office of the President
5 1111 Franklin Street, 6th Floor
6 Oakland, California 94607-5200

7 The check shall reference the “Refugio Beach Oil Spill” and reflect
8 that it is a payment to the Natural Reserve System Account. The
9 University of California Natural Reserve System will administer the
10 monies to fund projects selected by the University of California in
11 coordination with the Trustees. The projects shall address the
12 research, education, and outreach missions of the University of
13 California. UC shall manage such monies in accordance with
14 Section VIII (Trustees’ Management of Recreational Use Funds).

15 13. The NRD Payment is in addition to the NRDA costs incurred by the
16 Trustees through November 15, 2018, which have been separately reimbursed by
17 Defendants. To date, Plains has paid approximately ten million dollars
18 (\$10,000,000) for NRDA costs incurred by the Trustees through November 15,
19 2018.

20 **VII. TRUSTEES’ MANAGEMENT AND APPLICABILITY OF JOINT**
21 **NRD FUNDS**

22 14. DOI shall, in accordance with law, manage and invest funds in the
23 REFUGIO BEACH OIL SPILL NRD Subaccount, paid pursuant to Paragraph
24 12, and any return on investments or interest accrued on the REFUGIO BEACH
25 OIL SPILL NRD Subaccount for use by the Natural Resource Trustees in
26 connection with Restoration of Natural Resources affected by the Refugio
27 Incident. DOI shall not make any charge against the REFUGIO BEACH OIL
28 SPILL NRD Subaccount for any investment or management services provided.

15. DOI shall hold all funds in the REFUGIO BEACH OIL SPILL NRD

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1 Subaccount, including return on investments or accrued interest, subject to the
2 provisions of this Consent Decree.

3 16. The Natural Resource Trustees commit to the expenditure of the
4 funds set forth in Paragraph 12 for the design, implementation, permitting (as
5 necessary), monitoring, and oversight of Restoration projects and for the costs of
6 complying with the requirements of the law to conduct a Restoration planning
7 and implementation process. The Natural Resource Trustees will use the funds to
8 Restore, rehabilitate, replace or acquire the equivalent of any Natural Resource
9 and its services, including lost human use of such services, injured, lost, or
10 destroyed as a result of the Refugio Incident and for the administration and
11 oversight of these Restoration projects.

12 17. The specific projects or categories of projects will be contained in a
13 Restoration Plan prepared and implemented jointly by the Trustees, for which
14 public notice, opportunity for public input, and consideration of public comment
15 will be provided. Plains shall have no responsibility nor liability for
16 implementation of the Restoration Plan or projects relating to the Refugio
17 Incident, including any future project costs other than the payments set forth in
18 Section VII herein. The Trustees jointly retain the ultimate authority and
19 responsibility to use the funds in the REFUGIO BEACH OIL SPILL NRD
20 Subaccount to Restore Natural Resources in accordance with applicable law, this
21 Consent Decree, and any memorandum or other agreement among them.

22 **VIII. TRUSTEES' MANAGEMENT OF RECREATIONAL USE**
23 **FUNDS**

24 18. CDPR shall allocate the monies paid pursuant to Paragraph 12 for
25 projects providing human use benefits and for the oversight of those projects in
26 accordance with a Restoration Plan prepared and implemented jointly by the
27 Trustees, this Consent Decree, and in accordance with applicable law and any
28 Trustee memorandum or other agreement among them.

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1 4) Section 11.3, “Conducting Preventive and Mitigative
2 Evaluation Meetings;”

3 5) Section 11.4, “Documentation of P&M Evaluation
4 Meetings;” and

5 6) Section 11.6, “Implementation of P&M
6 Recommendations.”

7 For purposes of this Paragraph, the term “material change” refers to
8 any substantive modification in the IMP Procedures that could affect
9 the outcome or effect of a particular procedure or requirement.

10 b. At least thirty (30) Days prior to making a material change to
11 the above sections of the IMP, Defendants shall provide written
12 notice to PHMSA that includes a copy of the proposed change(s). In
13 the event PHMSA provides a written objection to Defendants’ notice
14 prior to the effective date of the material change and they cannot
15 informally resolve the matter, Defendants shall have the right to
16 submit the issue to Dispute Resolution (Section XIII).

17 c. In the event Plains cannot reasonably provide the thirty (30)
18 Day notice of material modification to the IMP described in
19 Subparagraph 22.b due to an unanticipated emergency, Plains shall
20 provide written notice to PHMSA within seven (7) Days of the
21 material change, stating the basis for the abbreviated notice. In the
22 event PHMSA provides a written objection to Defendants’
23 modification, Defendants shall have the right to submit the issue to
24 Dispute Resolution (Section XIII).

25 d. In the event PHMSA provides a written objection to a
26 material modification of Defendants’ IMP, PHMSA and Defendants
27 shall have sixty (60) Days for informal consultation. The parties
28 may mutually agree to extend the period by no more than thirty (30)

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1 Days. Following the notice period specified in Subparagraphs 22.b
2 and 22.c, Defendants may implement the modification until the
3 dispute is resolved. If the dispute is not resolved as a result of the
4 informal consultation, PHMSA or Defendants may invoke Dispute
5 Resolution pursuant to Section XIII. Stipulated penalties shall not
6 accrue during the informal consultation period described in this
7 Paragraph.

8 23. Material Changes in Control Room Management Plan and Control
9 Center General Procedures.

10 a. Plains' Control Room Management Plan and Control Center
11 General Procedures (collectively, "Control Center Plan and
12 Procedures") shall serve as the baseline Control Center Plan and
13 Procedures for purposes of this Consent Decree. Plains agrees that it
14 will not make any material changes to sections 6.5.5, 6.6.8, 8, 9.6.4,
15 9.6.9, 9.6.13, and 9.6.14 of its Control Room Management Plan and
16 procedures 100-2, 100-8, 100-9, 200-1, 300-1, 300-3, 300-5, 400-0,
17 and 500-12 of its Control Center General Procedures throughout the
18 term of this Consent Decree without following the process set forth
19 in this Paragraph. For purposes of this Paragraph, the term "material
20 change" refers to any substantive modification in the Control Center
21 Plan and Procedures that could affect the outcome or effect of a
22 particular procedure or requirement.

23 b. At least thirty (30) Days prior to making a material
24 modification to the above sections of its Control Room
25 Management Plan and Control Center General Procedures,
26 Defendants shall provide written notice to PHMSA that includes a
27 copy of the proposed change(s). In the event PHMSA provides a
28 written objection to Defendants' notice prior to the effective date of

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1 the material change(s), Defendants shall have the right to submit the
2 issue to Dispute Resolution (Section XII).

3 c. In the event Plains cannot reasonably provide the thirty (30)
4 Day notice of material modification to the Control Room
5 Management Plan and Control Center General Procedures described
6 in Subparagraph 23.b due to an unanticipated emergency, Plains
7 shall provide written notice to PHMSA within seven (7) Days of the
8 material modification, stating the basis for the abbreviated notice. In
9 the event PHMSA provides a written objection to Defendants'
10 modification, Defendants shall have the right to submit the issue to
11 Dispute Resolution (Section XIII).

12 d. In the event PHMSA provides a written objection to a
13 material modification of Defendants' Control Room Management
14 Plan and Control Center General Procedures, PHMSA and
15 Defendants shall have sixty (60) Days for informal consultation.
16 The parties may mutually agree to extend the period by no more
17 than thirty (30) Days. Following the notice period specified in
18 Subparagraphs 23.b and 23.c, Defendants may implement the
19 modification until the dispute is resolved. If the dispute is not
20 resolved as a result of the informal consultation, PHMSA or
21 Defendants may invoke Dispute Resolution pursuant to Section XIII.
22 Stipulated penalties shall not accrue during the informal consultation
23 period described in this Paragraph.

24 24. Where any compliance obligation under this Consent Decree requires
25 Defendants to obtain a federal, state, or local permit or approval, Defendants shall
26 submit timely applications and take all other actions reasonably necessary to obtain
27 all such permits or approvals. Defendants may seek relief under the provisions of
28 Section XII (Force Majeure) for any delay in the performance of any such

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1 obligation resulting from a failure to obtain, or a delay in obtaining, any permit or
2 approval required to fulfill such obligation, if Defendants have submitted timely
3 applications and have taken all other actions reasonably necessary to obtain all
4 such permits or approvals.

5 **X. CORRECTIVE ACTION ORDER**

6 25. Upon the Effective Date of this Consent Decree, the PHMSA CAO
7 shall close and be of no further force or effect. All outstanding terms and
8 obligations under the PHMSA CAO as of the Effective Date and which Plains is
9 still required to implement under this Consent Decree are set forth in Appendix D.

10 **XI. STIPULATED PENALTIES**

11 26. Unless excused under Section XII (Force Majeure), Defendants shall
12 be liable for stipulated penalties for violations of this Consent Decree as specified
13 below. A violation includes failing to perform any obligation required by the
14 terms of this Consent Decree according to all applicable requirements of this
15 Consent Decree and within the specified time schedules established by or
16 approved under this Consent Decree.

17 27. Late Payment of Civil Penalties and NRD Payment.

18 a. If Defendants fail to pay any portion of the Penalty Payment
19 to the United States required under Section V (Civil Penalties) when
20 due, Defendants shall pay to the United States a stipulated penalty of
21 ten thousand dollars (\$10,000) per Day for each Day payment is
22 late.

23 b. If Defendants fail to pay any portion of the Penalty Payment
24 to the CDFW and/or RWQCB as required under Section V (Civil
25 Penalties) when due, Defendants shall pay to the CDFW and/or
26 RWQCB a stipulated penalty of ten thousand dollars (\$10,000) each,
27 as applicable, per Day for each Day payment is late.

28 c. If Defendants fail to pay any portion of the NRD Payments

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1 required under Section VI (Natural Resource Damages) when due,
2 Defendants shall pay a stipulated penalty of five thousand dollars
3 (\$5,000) to the United States, and five thousand dollars (\$5,000) to
4 the State Trustees, per Day for each Day payment is late.

5 28. Stipulated Penalties for Non-Performance of Injunctive Relief.

6 Unless excused under Section XII (Force Majeure), the stipulated penalties
7 described in this Paragraph shall accrue per violation per Day for Defendants'
8 failure to perform the following injunctive relief required under Section IX
9 (Injunctive Relief) when due:

- 10 a. For failure to timely submit to OSFM the applications for
11 State waivers as specified in paragraphs 1.A, 1.B, 1.C, and 1.D of
12 Appendix B;
- 13 b. For failure to implement the Integrity Management provisions
14 as specified in paragraphs 4.A.1.a, e, f, g, h, and 4.A.2 of Appendix
15 B;
- 16 c. For failure to timely submit to OSFM the EFRD analyses as
17 specified in paragraphs 5.A-5.B of Appendix B;
- 18 d. For failure to timely submit to OSFM the risk analysis as
19 specified in paragraph 6.A of Appendix B;
- 20 e. For failure to timely submit to PHMSA the modified Section
21 9.5 of Plains' IMP, as specified in paragraph 9.A.3 of Appendix B;
- 22 f. For failure to timely submit to PHMSA the modified P&M
23 Recommendation forms, as specified in paragraph 9.B of Appendix
24 B;
- 25 g. For failure to timely conduct EFRD analyses for all Regulated
26 Pipelines for which Plains has not previously conducted an EFRD
27 analysis, as specified in paragraph 10.A of Appendix B;
- 28

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- 1 h. For failure to timely have in place revised valve maintenance
2 procedures, as specified in paragraph 10.B of Appendix B;
- 3 i. For failure to timely create a list of rupture detection methods
4 utilized, as specified in paragraph 11.A of Appendix B;
- 5 j. For failure to timely conduct annual training for controllers on
6 attributes and benefits of various methods of leak detection,
7 including Analog High/Low Threshold, Alarm Deadband, Creep
8 Deviation, and Analog Rate of Change, as specified in paragraph
9 11.B of Appendix B;
- 10 k. For failure to timely submit to PHMSA the computational
11 pipeline monitoring (“CPM”) systems analysis, as specified in
12 paragraph 11.C of Appendix B;
- 13 l. For failure to timely submit to PHMSA the selection of leak
14 detection method procedure, as specified in paragraph 11.D of
15 Appendix B;
- 16 m. For failure to hold or document periodic (at least annual)
17 meetings regarding potential improvements to leak detection, as
18 provided in paragraph 11.E of Appendix B;
- 19 n. For failure to timely have in place a procedure for tracking
20 when instrumentation has been impeded, as provided in paragraph
21 11.F of Appendix B;
- 22 o. For failure to complete, prior to resuming operations on Lines
23 901 or 903, the items identified in paragraph 12.A.1-4 of Appendix
24 B;
- 25 p. For failure to timely submit to OSFM confirmation that all
26 alarm descriptors are accurate, as specified in paragraph 12.B of
27 Appendix B;
- 28 q. For failure to timely conduct the surveys and update the

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1 emergency response plans, as specified in paragraph 13.B.1 of
 2 Appendix B;

3 r. For failure to timely provide emergency response training to
 4 employees, as specified in paragraph 13.B.2 of Appendix B;

5 s. For failure to timely provide control room supervisor training,
 6 as specified in paragraph 13.B.4 of Appendix B;

7 t. For failure to timely submit to PHMSA and/or OSFM, and/or
 8 OSPR, as applicable, notice of drills, as specified in paragraph
 9 13.B.5 of Appendix B, provided that the penalty under this
 10 subsection shall not exceed one Day per drill;

11 u. For failure to timely submit to PHMSA the third-party Safety
 12 Management System report, as specified in paragraph 14.A.1 of
 13 Appendix B;

14 v. For failure to timely review and revise the drug and alcohol
 15 misuse plans, as specified in paragraph 15 of Appendix B;

16 w. For failure to timely submit to PHMSA notice of any material
 17 modification to the IMP, as required by Paragraph 22; and

18 x. For failure to timely submit to PHMSA notice of any material
 19 modification to the Control Room Management Plan or Control
 20 Center General Procedures, as required by Paragraph 23;

21 y. The penalties stipulated in this Section shall accrue as
 22 follows:

Penalty Per Violation	Per Day Period of Noncompliance
\$2,000 penalty per Day	1st to 30th Day
\$4,000 penalty per Day	31st to 60th Day
\$5,500 penalty per Day	61st Day and beyond

1 29. Stipulated Penalties for Non-Compliance with Corrective Action
2 Order Terms. Unless excused under Section XII (Force Majeure), the stipulated
3 penalties described in this Paragraph shall accrue per violation per Day for
4 Defendants' failure to perform the following injunctive relief required under
5 Section X (Corrective Action Order) when due:

- 6 a. For operation of Line 901 in violation of paragraph 1.a of
7 Appendix D;
- 8 b. For failure to timely submit to OSFM a Line 901 Restart Plan,
9 as specified by paragraph 1.b of Appendix D;
- 10 c. For failure to comply with the operating pressure restriction,
11 including requirements for removal of the pressure restriction, for
12 Line 901 specified by paragraphs 1.c and 1.d of Appendix D;
- 13 d. For operation of Line 903, in violation of paragraph 1.e of
14 Appendix D;
- 15 e. For failure to timely submit to OSFM a Line 903 Restart Plan,
16 as specified by paragraph 1.f of Appendix D;
- 17 f. For failure to comply with the operating pressure restriction,
18 including requirements for removal of the pressure restriction, for
19 Line 903 specified by paragraphs 1.g and 1.h of Appendix D;
- 20 g. For failure to timely submit to OSFM any notification
21 specified by paragraph 1.i of Appendix D; and
- 22 h. For failure to submit to OSFM a final Appendix D
23 Documentation Report, as specified by paragraph 1.j of Appendix D.
- 24 i. The penalties stipulated in this Section shall accrue as
25 follows:
- 26
- 27
- 28

Penalty Per Violation	Per Day Period of Noncompliance
\$2,000 penalty per Day	1st to 30th Day
\$4,000 penalty per Day	31st to 60th Day
\$5,500 penalty per Day	61st Day and beyond

30. Defendants shall pay stipulated penalties due pursuant to this Section within thirty (30) Days of a written demand.

31. For stipulated penalties accrued pursuant to Subparagraphs 27.a, 28.e, 28.f, 28.g, 28.h, 28.i, 28.j, 28.k, 28.l, 28.m, 28.n, 28.s, 28.t, 28.u, 28.v, 28.w, or 28.x of this Consent Decree, the United States shall have the right to issue a written demand for stipulated penalties, and Defendants must pay to the United States the full amount of any stipulated penalties due and will not be liable to the State Agencies for any such stipulated penalties.

32. For stipulated penalties accrued pursuant to Subparagraph 27.b of this Consent Decree, only CDFW and RWQCB shall have the right to issue a written demand for stipulated penalties and Defendants must pay to the CDFW and RWQCB the full amount of any stipulated penalties due and will not be liable to United States for any such stipulated penalties.

33. For stipulated penalties accrued pursuant to Subparagraphs 28.a, 28.b, 28.c, 28.d, 28.o, 28.p, or Paragraph 29 of this Consent Decree, only OSFM shall have the right to issue a written demand for stipulated penalties, and Defendants must pay to OSFM the full amount of any stipulated penalties due and will not be liable to United States for any such stipulated penalties.

34. For stipulated penalties accrued pursuant to Paragraphs 28.q, 28.r, 28.t, or Paragraph 30 of this Consent Decree, the United States, CDFW, OSFM, or all, may demand stipulated penalties by sending a joint or individual written demand to Defendants, with a copy simultaneously sent to the other Plaintiff(s).

1 a. Where only one or two of the Plaintiffs referenced in
2 Paragraph 35 demand stipulated penalties under Paragraph 35, a
3 copy of the demand will simultaneously be sent to the remaining
4 Plaintiff(s) and they will have forty-five (45) Days to join in the
5 demand.

6 b. Where multiple Plaintiffs referenced in Paragraph 35 demand
7 stipulated penalties for the same violation, Defendants shall pay fifty
8 (50) percent to each of the demanding Plaintiffs (when two Plaintiffs
9 join in the demand); one third to each demanding Plaintiff (when all
10 three Plaintiffs join in the demand); or as allocated by the United
11 States, CDFW, and OSFM.

12 c. Where only one Plaintiff referenced in Paragraph 35 demands
13 stipulated penalties, and the other Plaintiffs do not join in the
14 demand within forty-five (45) Days of receiving the demand,
15 Defendants shall pay one hundred (100) percent to the Plaintiff
16 making the demand.

17 d. If a Plaintiff joins in the demand within forty-five (45) Days
18 but subsequently elects to waive or reduce stipulated penalties, in
19 accordance with Paragraphs 38 or 39 for that violation, Defendants
20 shall not be liable for such portion of the stipulated penalties waived
21 or reduced by such Plaintiff and shall be liable for any stipulated
22 penalties due to the other Plaintiffs joining such demand pursuant to
23 the allocation set forth in Subparagraph 34(b).

24 35. For stipulated penalties arising from a failure to perform obligations
25 pursuant to Subparagraph 27.c, the United States and the State Trustees may
26 demand stipulated penalties by sending a joint written demand to Defendants.

27 36. For all payments made pursuant to this Section, Defendants must
28 follow the payment instructions set forth in Section V (Civil Penalties). Any

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1 transmittal correspondence shall state that payment is for stipulated penalties and
2 shall identify the date of the written demand to which the payment corresponds.

3 37. Stipulated penalties under this Section shall begin to accrue on the
4 Day after the performance is due or on the day a violation occurs, whichever is
5 applicable, and shall continue to accrue until performance is satisfactorily
6 completed, or until the violation ceases. Stipulated penalties shall accrue
7 simultaneously for separate violations of this Consent Decree.

8 38. The United States may, in the unreviewable exercise of its
9 discretion, reduce or waive stipulated penalties otherwise due to the United States
10 under this Consent Decree.

11 39. The applicable State Agencies may, in the unreviewable exercise of
12 their discretion, reduce or waive stipulated penalties otherwise due to the
13 applicable State Agencies under this Consent Decree.

14 40. Stipulated penalties shall continue to accrue as provided in
15 Paragraphs 27 through 29, during any Dispute Resolution, but need not be paid
16 until the following:

17 a. If the dispute is resolved by agreement or by a decision of the
18 United States or the State Agencies, as applicable, that is not
19 appealed to the Court, Defendants shall pay accrued penalties
20 determined to be owing to the United States or the State Agencies,
21 as applicable, together with interest, within thirty (30) Days of the
22 effective date of the agreement or the receipt of the United States' or
23 the State Agencies' decision.

24 b. If the dispute is appealed to the Court and the Plaintiffs
25 prevail in whole or in part, Defendants shall pay all accrued
26 penalties determined by the Court to be owing, together with
27 interest, within sixty (60) Days of receiving the Court's decision or
28 order, except as provided in Subparagraph c, below.

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1 c. If any Party appeals the Court’s decision and a Plaintiff
2 prevails in whole or in part, Defendants shall pay all accrued
3 penalties determined to be owing, together with interest, within
4 fifteen (15) Days of receiving the final appellate court decision.

5 41. If Defendants fail to pay stipulated penalties according to the terms
6 of this Consent Decree, Defendants shall be liable for interest on such penalties,
7 as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.
8 Nothing in this Paragraph shall be construed to limit the United States or the
9 State Agencies from seeking any remedy otherwise provided by law for
10 Defendants’ failure to pay any stipulated penalties.

11 42. The payment of stipulated penalties, if any, shall not alter in any
12 way Defendants’ obligation to complete the performance of the requirements of
13 this Consent Decree.

14 43. Subject to the provisions of Section XVII (Effect of
15 Settlement/Reservation of Rights) of this Consent Decree, the stipulated penalties
16 provided for in this Consent Decree shall be in addition to any other rights,
17 remedies, or sanctions available to the United States or the State Agencies
18 (including, but not limited to, statutory penalties, additional injunctive relief,
19 mitigation or offsets measures, and/or contempt) for Defendants’ violation of this
20 Consent Decree or applicable laws.

21 **XII. FORCE MAJEURE**

22 44. “Force Majeure,” for purposes of this Consent Decree, is defined as
23 any event arising from causes beyond the control of Defendants, of any entity
24 controlled by Defendants, or of Defendants’ contractors that delays or prevents
25 the performance of any obligation under this Consent Decree despite Defendants’
26 best efforts to fulfill the obligation. The requirement that Defendants exercise
27 “best efforts to fulfill the obligation” includes using best efforts to anticipate any
28 potential Force Majeure event and best efforts to address the effects of any

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1 potential Force Majeure event (a) as it is occurring and (b) following the potential
2 Force Majeure, such that the delay and any adverse effects of the delay are
3 minimized. “Force Majeure” does not include Defendants’ financial inability to
4 perform any obligation under this Consent Decree.

5 45. If any event occurs or has occurred that may delay the performance
6 of any obligation under this Consent Decree, whether or not caused by a Force
7 Majeure event, Defendants shall provide notice orally or by electronic
8 transmission to the relevant Plaintiff(s), within five (5) Days of when Defendants
9 first knew that the event might cause a delay. Within ten (10) Days thereafter,
10 Defendants shall provide in writing to such Plaintiffs an explanation and
11 description of the reasons for the delay; the anticipated duration of the delay; the
12 actions taken or to be taken to prevent or minimize the delay; a schedule for
13 implementation of any measures to be taken to prevent or mitigate the delay or
14 the effect of the delay; Defendants’ rationale for attributing such delay to a Force
15 Majeure event if it intends to assert such a claim; and a statement as to whether,
16 in the opinion of Defendants, such event may cause or contribute to an
17 endangerment to public health, welfare or the environment. Defendants shall
18 provide with any notice the documentation that Defendants are relying on to
19 support the claim that the delay was attributable to a Force Majeure event.

20 Failure to comply with the above requirements shall preclude Defendants from
21 asserting any claim of Force Majeure for that event for the period of time of such
22 failure to comply, and for any additional delay caused by such failure.

23 Defendants shall be deemed to know of any circumstance of which Defendants,
24 any entity controlled by Defendants, or Defendants’ contractors knew or should
25 have known.

26 46. If Plaintiffs agree that the delay or anticipated delay is attributable to
27 a Force Majeure event, the time for performance of the obligations under this
28 Consent Decree that are affected by the Force Majeure event will be extended by

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1 Plaintiffs for such time as is necessary to complete those obligations. An
2 extension of the time for performance of the obligations affected by the Force
3 Majeure event shall not, of itself, extend the time for performance of any other
4 obligation. Plaintiffs will notify Defendants in writing of the length of the
5 extension, if any, for performance of the obligations affected by the Force
6 Majeure event.

7 47. If Plaintiffs do not agree that the delay or anticipated delay has been
8 or will be caused by a Force Majeure event, Plaintiffs will notify Defendants in
9 writing of their decision.

10 48. If Defendants elect to invoke the Dispute Resolution procedures set
11 forth in Section XIII (Dispute Resolution), in response to Plaintiffs'
12 determination in Paragraph 47 above, it shall do so no later than thirty (30) Days
13 after receipt of Plaintiffs' notice. In any such proceeding, Defendants shall have
14 the burden of demonstrating by a preponderance of the evidence that the delay or
15 anticipated delay has been or will be caused by a Force Majeure event, that the
16 duration of the delay or the extension sought was or will be warranted under the
17 circumstances, that best efforts were exercised to avoid and mitigate the effects
18 of the delay, and that Defendants complied with the requirements of Paragraphs
19 44 and 45. If Defendants carry this burden, the delay at issue shall be deemed not
20 to be a violation by Defendants of the affected obligation of this Consent Decree
21 identified to Plaintiffs and the Court.

22 **XIII. DISPUTE RESOLUTION**

23 49. Unless otherwise expressly provided for in this Consent Decree, the
24 Dispute Resolution procedures of this Section shall be the exclusive mechanism
25 to resolve disputes arising under or with respect to this Consent Decree.
26 Defendants' failure to seek resolution of a dispute under this Section shall
27 preclude Defendants from raising any such issue as a defense to an action by
28 Plaintiffs to enforce any obligation of Defendants arising under this Consent

1 Decree.

2 50. Informal Dispute Resolution. Any dispute subject to Dispute
3 Resolution under this Consent Decree shall first be the subject of informal
4 negotiations. The dispute shall be considered to have arisen when Defendants
5 send the relevant Plaintiff(s) a written Notice of Dispute. Such Notice of Dispute
6 shall state clearly the matter in dispute. The period of informal negotiations shall
7 not exceed thirty (30) Days from the date the dispute arises, unless that period is
8 modified by written agreement. If the parties cannot resolve a dispute by
9 informal negotiations, then the position advanced by Plaintiffs shall be
10 considered binding unless, within forty-five (45) Days after the conclusion of the
11 informal negotiation period, Defendants invoke formal Dispute Resolution
12 procedures as set forth below.

13 51. Formal Dispute Resolution. Defendants shall invoke formal Dispute
14 Resolution procedures, within the time period provided in the preceding
15 Paragraph, by serving on Plaintiffs a written Statement of Position regarding the
16 matter in dispute. The Statement of Position shall include, but need not be
17 limited to, any factual data, analysis, or opinion supporting Defendants' position
18 and any supporting documentation relied upon by Defendants.

19 52. Plaintiffs shall serve their Statement of Position within forty-five
20 (45) Days of receipt of Defendants' Statement of Position. Plaintiffs' Statement
21 of Position shall include, but need not be limited to, any factual data, analysis, or
22 opinion supporting that position and any supporting documentation relied upon
23 by Plaintiffs. Plaintiffs' Statement of Position shall be binding on Defendants,
24 unless Defendants file a motion for judicial review of the dispute in accordance
25 with the following Paragraph.

26 53. Defendants may seek judicial review of the dispute by filing with the
27 Court and serving on the relevant Plaintiff(s), in accordance with Section XX
28 (Notices), a motion requesting judicial resolution of the dispute. The motion

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1 must be filed within thirty (30) Days of receipt of Plaintiffs' Statement of
2 Position pursuant to the preceding Paragraph. The motion shall contain a written
3 statement of Defendants' position on the matter in dispute, including any
4 supporting factual data, analysis, opinion, or documentation, and shall set forth
5 the relief requested and any schedule within which the dispute must be resolved
6 for orderly implementation of this Consent Decree.

7 54. Plaintiffs shall respond to Defendants' motion within the time period
8 allowed by the Local Rules of this Court or by a schedule set by the Court.
9 Defendants may file a reply memorandum to the extent permitted by the Local
10 Rules.

11 55. Except as otherwise provided in this Consent Decree, in any dispute
12 brought under Paragraph 51, Defendants shall bear the burden of demonstrating
13 that its position complies with this Consent Decree, based on the Statements of
14 Position, and under applicable standards of review.

15 56. The invocation of Dispute Resolution procedures under this Section
16 shall not, by itself, extend, postpone, or affect in any way any obligation of
17 Defendants under this Consent Decree, unless and until final resolution of the
18 dispute so provides. Stipulated penalties with respect to the disputed matter shall
19 continue to accrue until the final resolution of the dispute. Payment shall be
20 stayed pending resolution of the dispute. If Defendants do not prevail on the
21 disputed issue, stipulated penalties shall be assessed and paid as provided in
22 Section XI (Stipulated Penalties).

23 **XIV. REPORTING**

24 57. After the Effective Date, by March 31 and September 30 of the
25 following years until termination of this Consent Decree per Section XXIV
26 (Termination), Defendants shall submit to the Plaintiffs in accordance with
27 Section XX (Notices) bi-annual reports that shall describe the status of
28 Defendants' compliance with the Consent Decree, including implementation of

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1 the injunctive relief requirements set forth in Appendices B and D. The report
2 will be organized to show the measures taken to comply with each of the
3 requirements set forth in Appendices B and D, whether the measures were taken
4 timely, the status of any permitting action that may affect compliance with the
5 Consent Decree, and whether the measures taken have achieved compliance with
6 the requirement.

7 **XV. CERTIFICATION**

8 58. Each report submitted by Defendants under Section XIV (Reporting)
9 shall be signed by either the Chief Executive Officer, the President, an Executive
10 Vice President, a Senior Vice President, or General Counsel who is an authorized
11 representative of Defendants, and must contain the following statement:

12 I certify under penalty of law that this document and all
13 attachments were prepared under my direction or
14 supervision in accordance with a system designed to
15 assure that qualified personnel properly gather and
16 evaluate the information submitted. Based on any
17 personal knowledge and my inquiry of the person or
18 persons who manage the system, or those persons
19 directly responsible for gathering the information, the
20 information submitted is, to the best of my knowledge
and belief, true, accurate, and complete. I am aware that
there are significant penalties for submitting false
information, including the possibility of fine and
imprisonment for knowing violations.

21 **XVI. INFORMATION COLLECTION AND RETENTION**

22 59. Plaintiffs and their representatives shall have the right of entry into
23 any facility covered by this Consent Decree, at all reasonable times and upon
24 reasonable notice, upon presentation of credentials, to:

- 25 a. monitor the progress of activities required under this Consent
26 Decree;
- 27 b. verify any data or information submitted to the Plaintiffs in
28 accordance with the terms of this Consent Decree;

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- 1 c. obtain documentary evidence, including photographs and
- 2 similar data; and
- 3 d. assess Defendants' compliance with this Consent Decree.

4 60. Until one (1) year after the termination of this Consent Decree,
5 Defendants shall retain, and shall instruct their contractors and agents to preserve
6 or deliver to Plains, all non-identical copies of all documents, records, or other
7 information (including documents, records, or other information in electronic
8 form) in their or their contractors' or agents' possession or control, or that come
9 into their or their contractors' or agents' possession or control, and that relate in
10 any manner to Defendants' performance of their obligations under this Consent
11 Decree. At any time during this information-retention period, upon request by
12 the Plaintiffs, Defendants shall provide copies of any documents, records, or
13 other information required to be maintained under this Paragraph.

14 61. This Consent Decree in no way limits or affects any right of entry
15 and inspection, or any right to obtain information, held by the United States or
16 the State Agencies pursuant to applicable federal or state laws, regulations, or
17 permits, nor does it limit or affect any duty or obligation of Defendants to
18 maintain documents, records, or other information imposed by applicable federal
19 or state laws, regulations, or permits.

20 62. For any documents, records, or other information required to be
21 submitted to Plaintiffs pursuant to this Consent Decree, Plains may assert a claim
22 of business confidentiality or other protections applicable to the release of
23 information by Plaintiffs, covering part or all of the information required to be
24 submitted to Plaintiffs pursuant to this Consent Decree in accordance with, as
25 applicable, 49 C.F.R. Part 7, 49 C.F.R. Part 190, and 40 C.F.R Part 2. Plains
26 must mark the claim of confidentiality in writing on each page, and include a
27 statement specifying the grounds for each claim of confidentiality.

28 63. The federal agency Plaintiffs are subject to applicable laws

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1 governing the disclosure of information under the Freedom of Information Act
2 (“FOIA”) (5 U.S.C. § 552 *et seq.*). If a federal agency Plaintiff receives a request
3 pursuant to FOIA for records produced pursuant to the Consent Decree, that
4 Plaintiff will, to the extent permitted by law, treat those records as exempt from
5 disclosure, and give Defendants a reasonable opportunity to identify portions of
6 documents Defendants have claimed as confidential and that may be subject to
7 the request, and to specify the grounds for each claim of confidentiality. In
8 accordance with applicable regulations, if the federal agency Plaintiff determines
9 that the records are not exempt from disclosure, the Plaintiff shall provide notice
10 of the determination to Defendants prior to making any record available to the
11 public.

12 64. For documents provided to PHMSA under this Consent Decree,
13 Defendants need not provide redacted copies when the documents are produced.
14 Within fourteen (14) Days of notification from PHMSA of a FOIA request, or
15 such other time as agreed upon, Defendants will provide a copy of the relevant
16 records with confidential information redacted along with explanations of the
17 asserted grounds for confidentiality.

18 65. State Agency Plaintiffs are subject to the California Public Records
19 Act (“CPRA”) (California Government Code §§ 6250 *et seq.*). If a State Agency
20 Plaintiff receives a request pursuant to the CPRA for records produced pursuant
21 to the Consent Decree, that Plaintiff will, to the maximum extent permitted by
22 law, treat those records as exempt from disclosure, and give Defendants a
23 reasonable opportunity to submit redacted copies of the requested records. If the
24 Plaintiff determines that the records are not exempt from disclosure, the Plaintiff
25 shall provide notice of the determination to Defendants prior to making any
26 record available to the public.

27 66. The requirements of this Paragraph apply to Defendants’ production
28 of documents to PHMSA only. Defendants shall produce all documents required

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1 to be produced in connection with this Consent Decree in, at Defendants’ option,
2 either native format via electronic media or secure file transfer protocol (“FTP”).
3 Any encryption or access restriction shall be on a container level only, *i.e.*, only
4 the electronic media or the top-level folder containing the documents shall be
5 encrypted and Plaintiffs shall have unrestricted access to the files/folders within
6 the electronic media or the top-level folder without need for additional decryption
7 or access codes. Regardless of production method or encryption, individual
8 documents shall be produced in a manner that allows the Plaintiffs to view, print,
9 copy, save, download, and share each document within Plaintiffs’ own
10 environment without restriction, tracking or monitoring by Defendants, or
11 automatically generated changes to the document (*e.g.*, without entering access
12 codes prior to each download, and without automatically generated watermarks
13 stating the download date and time).

14 67. At the conclusion of the information-retention period, Defendants
15 shall provide ninety (90) Days’ notice to Plaintiffs of Defendants’ resumption of
16 internal document destruction policies for documents, records, or other information
17 subject to the requirements of Paragraph 60.

18 68. [*Intentionally left blank.*]

19 **XVII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

20 69. This Consent Decree resolves the civil claims of the United States
21 and the State Agencies for the matters alleged in the Complaint filed in this
22 action for the Refugio Incident.

23 70. Subject to the reservations of rights specified in Paragraph 71, this
24 Consent Decree also resolves all civil and administrative penalty claims that
25 could be brought by PHMSA, for violations of the Pipeline Safety Laws specified
26 below that occurred on any of Defendants’ Regulated Pipelines prior to January
27 28, 2019, the date that PHMSA’s ongoing “Integrated Inspection” of a portion of
28 Defendants’ Regulated Pipelines and other pipeline facilities began. The specific

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1 Pipeline Safety Laws subject to this Paragraph are the following (including other
2 regulations expressly incorporated therein):

- 3 a. 49 C.F.R. Part 194 Subpart B – Response Plans;
- 4 b. 49 C.F.R. Part 195 Subpart B – Reporting;
- 5 c. 49 C.F.R. Part 195 Subpart E – Pressure Testing;
- 6 d. 49 C.F.R. Part 195 Subpart F – Operation and Maintenance,
7 sections 195.402, 195.403, 195.404, 195.406, 195.408, 195.412,
8 195.420, 195.422, 195.428, 195.436, 195.442, 195.444, 195.446,
9 195.452;
- 10 e. 49 C.F.R. Part 195 Subpart G – Qualification of Pipeline
11 Personnel, as it relates to valve maintenance;
- 12 f. 49 C.F.R. Part 195 Subpart H – Corrosion Control;
- 13 g. 49 C.F.R. Part 199 – Drug and Alcohol Testing; and
- 14 h. All recordkeeping, documentation, and document production
15 requirements in the provisions listed in subsections 70.a-70.g, and
16 49 C.F.R. section 190.203 and Part 195.

17 71. The United States, on behalf of PHMSA, reserves all legal and
18 equitable remedies to address violations of the Pipeline Safety Laws described in
19 Paragraph 70 that occur on or after January 28, 2019, including violations that
20 may have begun prior to such date and continued subsequent to January 28, 2019.
21 A separate violation of the Pipeline Safety Laws occurs for each day that the
22 violation continues, pursuant to 49 U.S.C. § 60122(a).

23 72. This Consent Decree also resolves all civil and administrative
24 penalty claims that could be brought by OSFM against Defendants for violations
25 of the Pipeline Safety Laws and the Elder California Pipeline Safety Act
26 as specified below relating to Line 901, Line 903, or Line 2000 that occurred
27 prior to January 28, 2019. OSFM reserves all legal and equitable remedies to
28 address violations of the specified Pipeline Safety Laws that occur on or after

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1 January 28, 2019, including violations that may have begun prior to such date
2 and continued subsequent to January 28, 2019. The specific Pipeline Safety
3 Laws and Elder California Pipeline Safety Act subject to this Paragraph are:

- 4 a. The Pipeline Safety Laws specified in Paragraph 70; and
- 5 b. California Government Code §§ 51012.3, 51013, 51013.5,
6 51014, 51015, 51015.4, 51015.5 (for Line 901 and Line 903 only),
7 and 51018.

8 73. For any reportable pipeline accident, as defined in 49 C.F.R.
9 § 195.50, occurring on or after January 28, 2019, on any of Defendants’
10 Regulated Pipelines, Paragraphs 70 and 72 shall not limit the right of PHMSA
11 and OSFM to sue or pursue administrative or other remedies for violations
12 (including penalties) under the Pipeline Safety Laws and the Elder California
13 Pipeline Safety Act for such accident. Nothing in Paragraphs 70 through 72 shall
14 be construed to limit the legal and equitable remedies of the United States or
15 State Agencies, other than PHMSA and OSFM.

16 74. The United States and the State Agencies reserve all legal and
17 equitable remedies available to enforce the provisions of this Consent Decree.
18 This Consent Decree shall not be construed to limit the rights of the United States
19 or the State Agencies to obtain penalties, injunctive relief, or other administrative
20 or judicial remedies under the CWA, OPA, Pipeline Safety Laws, or under other
21 federal or state laws, regulations, or permit conditions, except as specified in
22 Paragraphs 69, 70, and 72.

23 75. The United States reserves all legal and equitable remedies to address
24 any imminent and substantial endangerment or threat to the public health or
25 welfare or the environment arising at, or posed by, Defendants’ operations,
26 whether related to the violations addressed in this Consent Decree or otherwise.
27 PHMSA further reserves the right to issue to Defendants corrective action orders
28 pursuant to 49 C.F.R § 190.233; emergency orders pursuant to 49 C.F.R.

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1 § 190.236; and safety orders pursuant to 49 C.F.R. § 190.239. The State Agencies
2 reserve all legal and equitable remedies under California Government Code
3 §§ 8670.57, 8670.69.4, 51013.5, 51015.5, 51018.6, 51018.7 and 51018.8,
4 California Water Code §§ 13301, 13304, 13340, and 13386, and California Health
5 & Safety Code § 13107.5 to address (1) conditions threatening to cause or creating
6 a substantial risk of an unauthorized discharge of oil into waters of the State of
7 California, (2) a discharge of waste threatening to cause a condition of pollution or
8 nuisance, or (3) a discharge which poses a substantial probability of harm to
9 persons, property or natural resources.

10 76. This Consent Decree also shall not be construed to in any way limit or
11 waive the claims set forth in the case entitled *California State Lands Commission,*
12 *et al. v. Plains Pipeline, L.P., et al.*, Case No. 18CV02504 (Cal. Sup. Court) and
13 Case No. B295632 (Cal. Ct. App.).

14 77. In any subsequent administrative or judicial proceeding initiated by
15 the United States or the State Agencies for injunctive relief, civil penalties, other
16 appropriate relief relating to Defendants' violations alleged in Plaintiffs'
17 Complaint, Defendants shall not assert, and may not maintain, any defense or
18 claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue
19 preclusion, claim preclusion, claim-splitting, or other defenses based upon any
20 contention that the claims raised by the United States or the State Agencies in the
21 subsequent proceeding should have been brought in the instant case, except with
22 respect to claims that have been specifically resolved pursuant to Paragraphs 69,
23 70, and 72.

24 78. This Consent Decree is not a permit, or a modification of any
25 permit, under any federal, state, or local laws, or regulations. Defendants are
26 responsible for achieving and maintaining full compliance with all applicable
27 federal, state, and local laws, regulations, and permits; and Defendants'
28 compliance with this Consent Decree shall be no defense to any action

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1 commenced pursuant to any such laws, regulations, or permits, except as set forth
2 herein. The United States and the State Agencies do not, by their consent to the
3 entry of this Consent Decree, warrant or aver in any manner that Defendants'
4 compliance with any aspect of this Consent Decree will result in compliance with
5 provisions of the CWA, OPA, Pipeline Safety Laws, or with any other provisions
6 of federal, state, or local laws, regulations, or permits.

7 79. This Consent Decree does not limit or affect the rights of Defendants
8 or of the United States or the State Agencies against any third-parties, not party
9 to this Consent Decree, nor does it limit the rights of third-parties, not party to
10 this Consent Decree, against Defendants, except as otherwise provided by law.

11 80. This Consent Decree shall not be construed to create rights in, or
12 grant any cause of action to, any third-party not party to this Consent Decree.

13 81. Plaintiffs will not submit any claim for restitution for Natural
14 Resource Damages in *The People of the State of California v. Plains All*
15 *American Pipeline, L.P.*, Case No. 1495091 (Cal. Sup. Court).

16 82. By entering into this settlement, Defendants do not admit the
17 Pipeline Safety Laws violations alleged in the Complaint or described in this
18 Consent Decree by the United States on behalf of PHMSA; therefore, any
19 allegations of violations of these Pipeline Safety Laws do not constitute a finding
20 of violation and may not be used in any civil proceeding of any kind as evidence
21 or proof of any fact, fault or liability, or as evidence of the violation of any law,
22 rule, regulation, order, or requirement, except in a proceeding to enforce the
23 provisions of this Consent Decree. However, the allegations of violations set
24 forth in the Complaint may be: (1) considered by PHMSA to constitute prior
25 offenses in any future PHMSA enforcement action brought by the agency against
26 Plains, and (2) used for statistical purposes to identify violations that PHMSA
27 deems as causal to an incident or to increase the consequences of an incident.
28 Notwithstanding the forgoing, alleged violations subject to Paragraph 70 shall not

United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
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1 be considered by PHMSA to constitute prior offenses in any future PHMSA
2 enforcement action brought by the agency against Plains.

3 83. By entering into this settlement, Defendants do not admit the
4 allegations of California Water Code §§ 13350 and 13385 violations set forth in
5 the Complaint; therefore, any allegations of violations of these statutes do not
6 constitute a finding of violation and may not be used in any civil proceeding of
7 any kind as evidence or proof of any fact, fault or liability, or as evidence of the
8 violation of any law, rule, regulation, order, or requirement, except in a
9 proceeding to enforce the provisions of this Consent Decree. However, the
10 allegations of California Water Code §§ 13350 and 13385 violations set forth in
11 the Complaint may be considered by the State Water Resources Control Board or
12 Regional Water Quality Control Boards to constitute prior offenses in any future
13 enforcement action brought by any of these agencies against Plains.

14 84. Subject to the terms of this Consent Decree, no provision contained
15 herein affects or relieves Plains of their responsibilities to comply with all
16 applicable requirements of the CWA, OPA, the Pipeline Safety Laws, federal or
17 state laws, and the regulations and orders issued thereunder. Subject to the terms
18 of this Consent Decree, nothing herein shall limit or reduce the Plaintiffs' right of
19 access, entry, inspection, and information-gathering or their authority to bring
20 enforcement actions against Defendants pursuant to the CWA, OPA, the Pipeline
21 Safety Laws, federal or state laws, the regulations and orders issued thereunder,
22 or any other applicable provision of federal or state law.

23 85. Defendants hereby covenant not to sue Plaintiffs for any claims
24 related to the Refugio Incident, or response activities in connection with the
25 Incident, pursuant to the CWA, OPA, the Pipeline Safety Laws, federal or state
26 laws, or any other law or regulation for acts or omissions through the date on
27 which this Consent Decree is lodged with the Court.

28 86. Defendants covenant not to sue and agree not to assert any direct or

*United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

Consent Decree

1 indirect claim for reimbursement related to the Refugio Incident from the OSLTF
2 or pursuant to any other provision of law.

3 87. The United States reserves the right to seek reimbursement from
4 Defendants for claims relating to the Refugio Incident paid after the date on
5 which the Consent Decree is lodged with the Court from the OSLTF pursuant to
6 33 U.S.C. § 2712.

7 **XVIII. TRANSFER AND ACQUISITION OF ASSETS**

8 88. In the event Defendants sell or transfer ownership of or operating
9 responsibility for Lines 901, 903, or 2000, or any lines built to replace Lines 901
10 or 903, Defendants will obtain from the transferee an agreement to be bound by
11 those provisions of this Consent Decree and Appendices B and D that are
12 specifically applicable to the asset(s) acquired, unless Defendants have already
13 completed the required action or unless OSFM agrees to relieve the transferee of
14 the obligations of any otherwise applicable provision. Those provisions of
15 Appendix B are:

- 16 a. For existing but non-operational segments of Lines 901 and
17 903, paragraphs 1.A, 1.B, 1.E, 2.B, 2.C., 4, 5, 6, 7.A, 12.A of
18 Appendix B;
- 19 b. For the operational segment of Line 903 from Pentland to
20 Emidio, paragraphs 1.C, 1.E, 4, 5, 6, 7.A of Appendix B;
- 21 c. For any lines built to replace Lines 901 or 903, paragraphs
22 2.A.1, 5, 7.B, 12.A of Appendix B; and
- 23 d. For Line 2000, paragraphs 1.D, 1.E, 4, 5, 6, 7.A, 12.B. of
24 Appendix B.

25 89. In the event Defendants sell or transfer ownership of or operating
26 responsibility for Lines 901, 903, or 2000, or any lines built to replace Lines 901
27 or 903, Defendants shall provide a copy of this Consent Decree to the prospective
28 transferee at least fourteen (14) Days prior to such transfer. Defendants shall

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1 provide written notice of any such transfer to OSFM within ten (10) Days after
2 the date Defendants publicly disclose the transaction or the date the transaction is
3 closed, whichever is earlier. Prior to the transfer, Defendants may notify OSFM
4 that Defendants have completed certain required actions of this Consent Decree,
5 or request that OSFM relieve the transferee of certain obligations of otherwise
6 applicable provisions, such that the transferee will not be bound by those
7 requirements. Defendants shall provide to Plaintiffs documentation
8 demonstrating the transferee’s agreement to be bound by the relevant provisions
9 of the Consent Decree. Defendants shall provide to the transferee copies of those
10 portions of relevant emergency response plans that relate to the transferred asset.

11 90. In the event of the sale or transfer pursuant to an arm’s-length
12 transaction of Defendants’ Regulated Pipelines other than Lines 901, 903, or
13 2000, or any lines built to replace Lines 901 or 903, to an independent third-party
14 transferee, the transferee shall not be subject to the requirements of this Consent
15 Decree. Defendants shall provide a copy of this Consent Decree to the transferee
16 at least fourteen (14) Days prior to such transfer. Defendants shall provide
17 written notice of any such transfer, including documentation demonstrating that
18 the Consent Decree was provided to the transferee, to PHMSA within ten (10)
19 Days after the date Defendants publicly disclose the transaction or the date the
20 transaction is closed, whichever is earlier. Defendants’ obligations under this
21 Consent Decree with respect to all non-transferred assets shall not be affected.

22 91. For all Regulated Pipeline assets that Defendants assume operating
23 responsibility for after the Effective Date, Plains is obligated to apply Article II
24 (Company Wide Provisions) of Appendix B of this Consent Decree to the newly
25 acquired assets.

26 **XIX. COSTS**

27 92. Except as otherwise stated in this Consent Decree, the Parties shall
28 bear their own costs related to this action and this Consent Decree, including

1 attorneys' fees; provided, however, the United States and the State Agencies shall
2 be entitled to collect the costs (including attorneys' fees) incurred in any action
3 necessary to collect any portion of the civil penalty or any stipulated penalties
4 due but not paid by Defendants.

5 **XX. NOTICES**

6 93. Unless otherwise specified in this Consent Decree, whenever
7 notifications, submissions, reports, or communications are required by this
8 Consent Decree, they shall be made in writing, sent electronically by email
9 provided by the Parties, and addressed to all Parties as follows:

10 As to the United States by email: eescdcopy.enrd@usdoj.gov
11 Re: DJ # 90-5-1-1-11340

12 As to the United States by mail: EES Case Management Unit
13 Environment and Natural Resources
14 Division
15 U.S. Department of Justice
16 P.O. Box 7611
17 Washington, D.C. 20044-7611
18 Re: DJ # 90-5-1-1-1130

19 As to PHMSA: James M. Pates
20 Assistant Chief Counsel
21 for Pipeline Safety
22 U.S. Department of Transportation
23 Pipeline and Hazardous Materials
24 Safety Administration
25 1200 New Jersey Ave. SE. E-26
26 Washington, DC. 20590

27 As to EPA: Andrew Helmlinger
28 Attorney Advisor
U.S. EPA Region IX
75 Hawthorne Street (ORC-3)
San Francisco, California 94104

*United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*
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As to DOI:

Clare Cragan
U.S. Department of the Interior
Office of the Solicitor
755 Parfet St., Suite 151
Lakewood, Colorado 80215

As to NOAA:

National Oceanic and Atmospheric
Administration
Office of General Counsel
Natural Resources Section
ATTN: Christopher J. Plaisted
501 W. Ocean Blvd, Suite 4470
Long Beach, California 90802

As to USCG:

Patricia V. Kingcade
Attorney Advisor
National Pollution Funds Center,
US Coast Guard
2703 Martin Luther King Jr. Ave SE
Washington, DC 20593-7605

As to the State Agencies:

Michael Zarro
Deputy Attorney General
Office of the Attorney General
Natural Resources Law Section
300 S. Spring St., Suite 11220
Los Angeles, California 90013

As to CDFW:

California Department of Fish
and Wildlife
Office of Spill Prevention and Response
Attn: Katherine Verrue-Slater
Senior Counsel
P.O. Box 160362
Sacramento, California 95816-0362

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As to CDPR: California Department of Parks and Recreation
Attn: Laura A. Reimche, Senior Counsel
1416 Ninth Street, Room 1404-6
Sacramento, California 95814

As to CSLC: California State Lands Commission
Attn: Patrick Huber, Legal Division
100 Howe Avenue, Suite 100-South
Sacramento, California 95825

As to OSFM: California Department of Forestry and Fire Protection
Legal Services Office
Attn: Joshua Cleaver, Staff Counsel
P.O. Box 944246
Sacramento, California 94244-2460

As to RWQCB: California Central Coast Regional Water Quality Control Board
Attn: Naomi Rubin, Attorney III
801 K Street
Sacramento, California 95814

As to UC: Barton Lounsbury, Senior Counsel
University of California
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, California 94607

As to Defendants: Megan Prout
Senior Vice President
Commercial Law and Litigation
333 Clay Street, Suite 1600
Houston, Texas 77002

Henry Weissmann
Daniel B. Levin
Colin Devine
Munger, Tolles & Olson LLP
350 S. Grand Ave, 50th Floor
Los Angeles, California 90071

Steven H. Goldberg
Nicole Granquist
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, California 95814

94. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

95. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, or emailing unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XXI. EFFECTIVE DATE

96. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, or a motion to enter this Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XXII. RETENTION OF JURISDICTION

97. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of effectuating or enforcing compliance with the terms of this Consent Decree.

XXIII. MODIFICATION

98. The terms of this Consent Decree, including any attached Appendices, may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval of the Court.

*United States of America and the People of the State of California v.
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Consent Decree

1 any dispute regarding termination until sixty (60) Days after receipt of the
2 Plaintiffs' response to Defendants' Request for Termination.

3 **XXV. PUBLIC PARTICIPATION**

4 103. This Consent Decree shall be lodged with the Court for a period of
5 not fewer than thirty (30) Days for public notice and comment in accordance with
6 28 C.F.R. § 50.7. The Parties agree and acknowledge that the final approval by
7 Plaintiffs and entry of this Consent Decree are subject to notice of lodging of the
8 Consent Decree and a public comment period. Plaintiffs reserve the right to
9 withdraw or withhold consent if the comments disclose facts or considerations
10 that indicate that this Consent Decree is inappropriate, improper, or inadequate.

11 104. Defendants consent to entry of this Consent Decree without further
12 notice and agree not to withdraw from or oppose entry of this Consent Decree by
13 the Court or to challenge any provision of the Consent Decree, unless Plaintiffs
14 have notified Defendants in writing that Plaintiffs no longer support entry of the
15 Consent Decree.

16 **XXVI. SIGNATORIES/SERVICE**

17 105. Each undersigned representative of Defendants, the State of
18 California Attorney General's Office, CDFW, CDPR, CSLC, OSFM, RWQCB,
19 UC, the Assistant Attorney General for the Environment and Natural Resources
20 Division of the Department of Justice, PHMSA, and EPA certifies that he or she
21 is fully authorized to enter into the terms and conditions of this Consent Decree
22 and to execute and legally bind the Party he or she represents to the terms of this
23 Consent Decree.

24 106. This Consent Decree may be signed in counterparts, and such
25 counterpart signature pages shall be given full force and effect. For purposes of
26 this Consent Decree, a signature page that is transmitted electronically (*e.g.*, by
27 emailed PDF) shall have the same effect as an original.

28
*United States of America and the People of the State of California v.
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XXVII. INTEGRATION

107. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXVIII. FINAL JUDGMENT

108. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties.

XXIX. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

109. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section III (Applicability), Paragraph 5; Section VI (Natural Resource Damages), Paragraph 12; Section IX (Injunctive Relief), Subparagraphs 22.a, 22.b, 22.c, 23.a, 23.b, 23.c, Paragraph 24, and related Appendix B; Section XIV (Reporting), Paragraph 57; Section XV (Certification), Paragraph 58; and Section XVI (Information Collection and Retention), Paragraphs 59, 60, and 66 is restitution or required to come into compliance with law to the extent it applies to federal agencies.

Dated and entered this _____ day of _____, 20__.

UNITED STATES DISTRICT JUDGE


*United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
Consent Decree*

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE UNITED STATES OF AMERICA:

3/12/2020
Date


BRUCE S. GELBER
Deputy Assistant Attorney General
Environment and Natural Resources
Division U.S. Department of Justice

3/13/2020
Date


BRADLEY R. O'BRIEN
ANGELA MO
Environmental Enforcement Section
Environment and Natural Resources

Division

United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 *United States of America and the People of the State of California v. Plains All*
3 *American Pipeline, L.P and Plains Pipeline, L.P.*

4 FOR THE UNITED STATES DEPARTMENT OF TRANSPORTATION,
5 PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION:

6
7 3 March 2020

8 Date



9 PAUL ROBERTI

10 Chief Counsel

11 U.S. Department of Transportation

12 Pipeline and Hazardous Materials Safety
13 Administration

14 1200 New Jersey Avenue, SE

15 Washington, DC 20590

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United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.

Consent Decree

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 *United States of America and the People of the State of California v. Plains All*
3 *American Pipeline, L.P. and Plains Pipeline, L.P.*

4 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

5
6 3-2-20

7 Date



SUSAN PARKER BODINE

Assistant Administrator

Office of Enforcement and Compliance

Assurance

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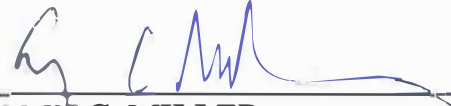
United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.

Consent Decree

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 United States of America and the People of the State of California v. Plains All
3 American Pipeline, L.P. and Plains Pipeline, L.P.

4 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

5
6 2/26/2020
7 Date

8 
9 AMY C. MILLER
10 Region 9 Director
11 Enforcement and Compliance Assurance
12 Division
13 U.S. EPA Region 9
14 Mail Code ENF-1
15 75 Hawthorne Street
16 San Francisco, CA 94105

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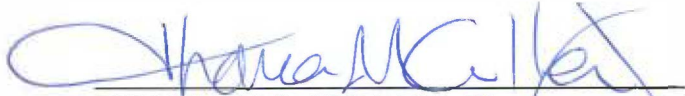
*United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*
Consent Decree

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE CALIFORNIA DEPARTMENT OF FISH and WILDLIFE:

3/4/2020
Date


THOMAS M. CULLEN, JR.
Administrator
Office of Spill Prevention and Response

United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
Consent Decree

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 *United States of America and the People of the State of California v. Plains All*
3 *American Pipeline, L.P. and Plains Pipeline, L.P.*

4 FOR THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION:

5
6 3/2/20
7 Date

8 Lisa Ann L Mangat
9 LISA ANN L. MANGAT
10 Director
11 California Department of Parks
12 and Recreation
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United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 *United States of America and the People of the State of California v. Plains All*
3 *American Pipeline, L.P. and Plains Pipeline, L.P.*

4 FOR THE CALIFORNIA STATE LANDS COMMISSION:

5
6 2/28/2020
7 Date

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9 _____
10 JENNIFER LUCCHESI
11 Executive Officer
12 California State Lands Commission
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United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
Consent Decree

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 *United States of America and the People of the State of California v. Plains All*
3 *American Pipeline, L.P. and Plains Pipeline, L.P.*

4 FOR THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE
5 PROTECTION'S - OFFICE OF THE STATE FIRE MARSHAL:

6 3/4/2020

7 Date

8 

9 THOMAS W. PORTER

10 Director

11 California Department of Forestry and
12 Fire Protection

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United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.

Consent Decree

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 *United States of America and the People of the State of California v. Plains All*
3 *American Pipeline, L.P. and Plains Pipeline, L.P.*

4 FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL
5 BOARD, CENTRAL COAST REGION:

6 March 2, 2020

7 Date

8 

9 JOHN ROBERTSON

10 Executive Officer

11 Central Coast Regional Water

12 Quality Control Board

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United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.

Consent Decree

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

Date

3 March 2020

Date

BARTON LOUNSBURY
Senior Counsel
Office of the General Counsel



PEGGY FIEDLER
Executive Director
UC Natural Reserve System

*United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*
Consent Decree

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*

FOR PLAINS ALL AMERICAN PIPELINE, L.P.

2/25/2020
Date



HARRY PEANIS
President 

United States of America and the People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
Consent Decree

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 *United States of America and the People of the State of California v. Plains All*
3 *American Pipeline, L.P. and Plains Pipeline, L.P.*

4 FOR PLAINS PIPELINE, L.P.

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6 2/25/2020
7 Date

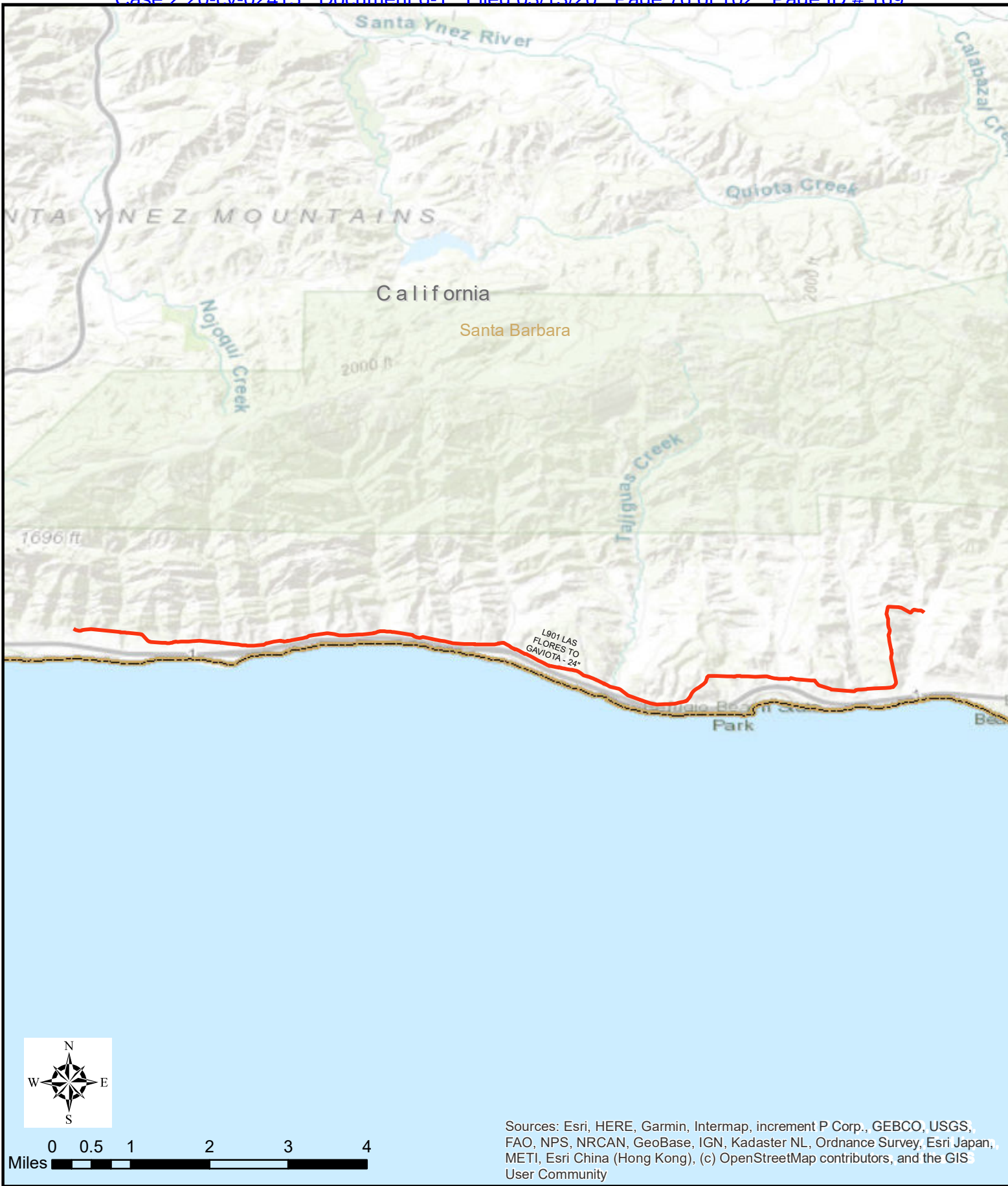
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HARRY PEFANIS
President *MBP*

APPENDIX A

*(Set of maps that generally depict Lines
901, 903, and 2000)*

*United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
Consent Decree*



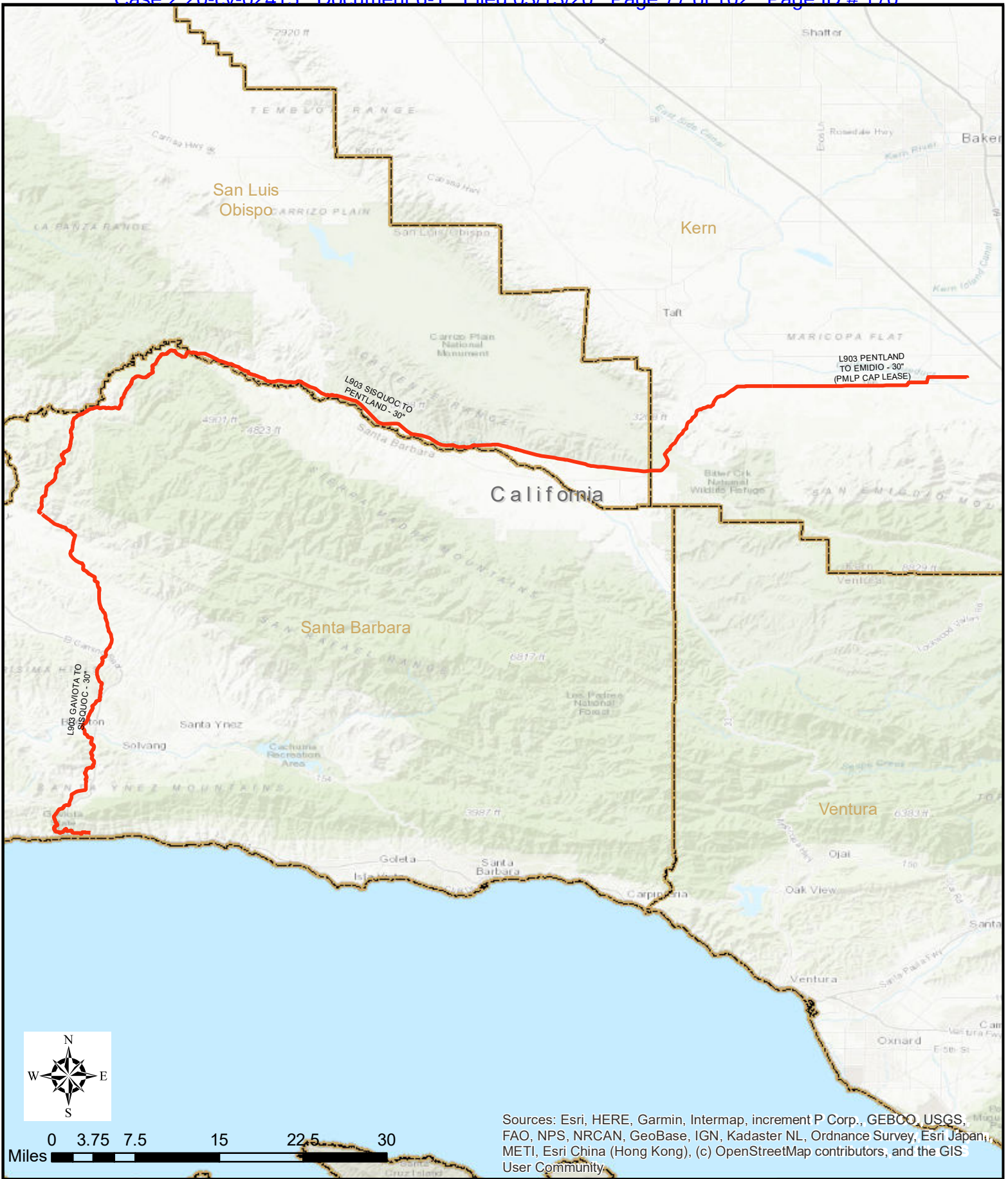
Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

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Appendix A – Line 901

Owner:

PLAINS
 ALL AMERICAN
 PIPELINE, L.P.



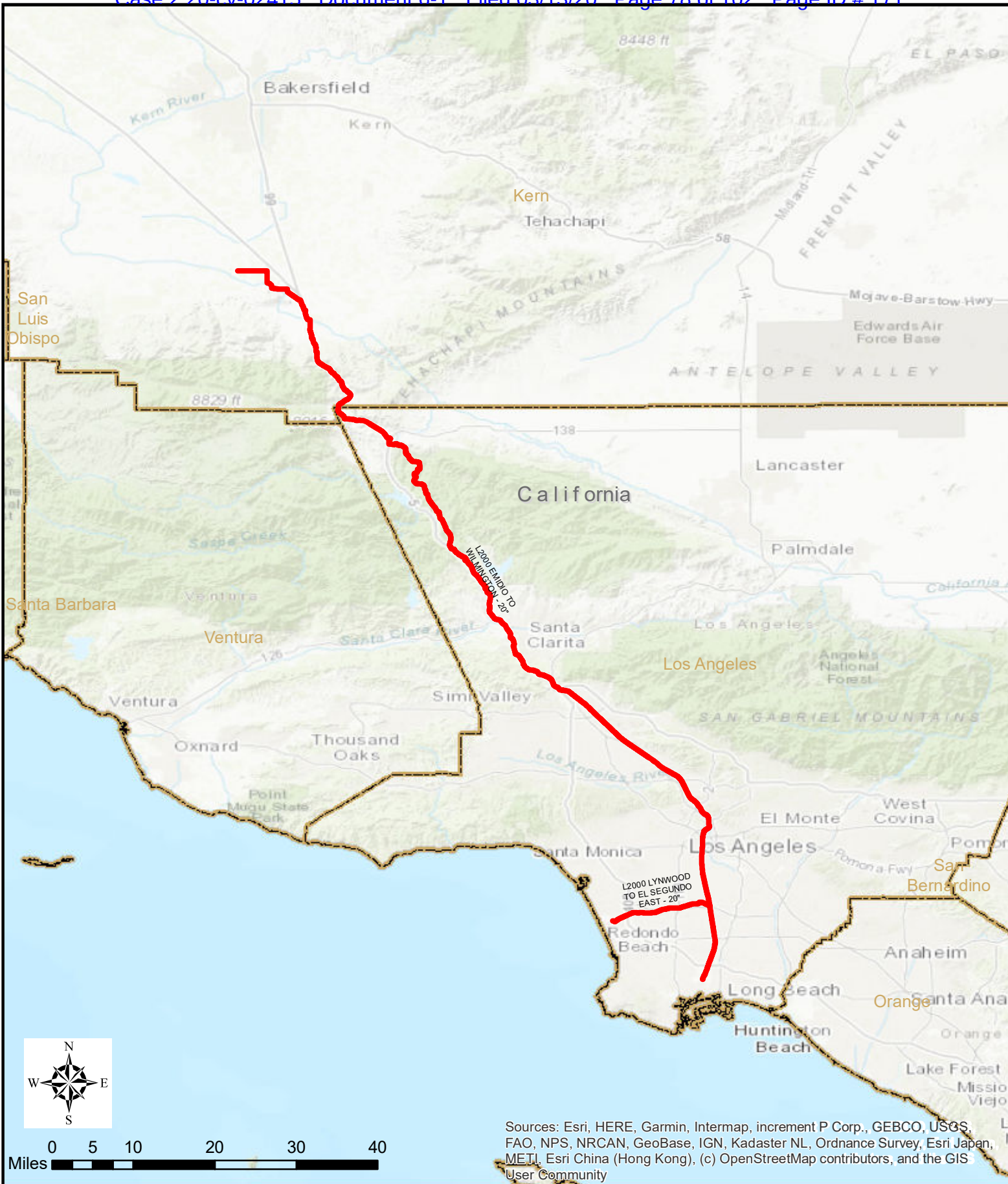
Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

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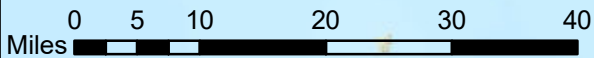
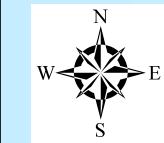
Appendix A – Line 903

Owner:

PLAINS
ALL AMERICAN
PIPELINE, L.P.



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community



Appendix A – Line 2000

Scale: 1:966,574

Sheet No: 1/1

Owner:



PLAINS
ALL AMERICAN
PIPELINE, L.P.

APPENDIX B
(PHMSA Injunctive Relief)

*United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
Consent Decree*

APPENDIX B

ARTICLE I – CALIFORNIA-SPECIFIC PROVISIONS

1. **State Waivers for Lines 901, 903, and 2000 (not to include any replacement lines):**

- A. Prior to restarting Line 901, Plains shall apply for a State Waiver through the OSFM for the limited effectiveness of cathodic protection on Line 901. Plains must receive a State Waiver from the OSFM prior to restarting Line 901.
- B. Prior to restarting non-operational segments of Line 903, Plains shall apply for a State Waiver through the OSFM for the limited effectiveness of cathodic protection on Line 903. Plains must receive a State Waiver from the OSFM prior to restarting Line 903.
- C. Within 90 days of entry of the Consent Decree (CD), Plains must apply for a State Waiver through the OSFM for the limited effectiveness of cathodic protection on Line 903. The State Waiver shall apply to the currently operational segment of Line 903 from Pentland to Emidio.
- D. Within 90 days of entry of the CD, Plains must apply for a State Waiver through the OSFM for the limited effectiveness of cathodic protection on Line 2000.
- E. To the extent that a State Waiver directly incorporates terms identified in section 4 (Integrity Management) below, as being applicable to Lines 901, 903, or 2000, Plains shall not contest the inclusion of those terms in the relevant State Waiver. Plains reserves its rights to contest on any grounds any additional terms that the OSFM may require as part of each State Waiver if one is received. Nothing in this CD shall be construed to limit the authority of the OSFM to require additional terms or conditions in the State Waiver. Further, nothing in the State Waiver shall be construed to limit the applicability of the terms set forth in the CD.

2. **Replacement, Restart, or Abandonment of Lines 901 and 903:**

- A. Plains shall replace the existing Line 901 and segments of Line 903 from Gaviota to Sisquoc and Sisquoc to Pentland with non-insulated pipe, if Plains is able to timely obtain: (1) agreements from shippers to transport sufficient quantities of product to make the cost of replacing the segments economically viable; (2) the Federal, State, and Local permits that may be required; and (3) whatever additional rights are needed, including rights-of-way that may be needed from landowners. Obtaining required commercial commitments, permits, rights-of-way, and any other rights necessary for replacement is the sole responsibility of Plains.

1. On any replacement segments of Lines 901 or 903, Plains shall, prior to commencing operation of such segment(s):
 - a. Test for potential AC/DC interference. Where potential AC/DC interference exists, proper mitigation of interference shall be designed and installed during construction of replacement lines.
 - b. Conduct a close interval survey (CIS) and AC/DC interference survey.
 - c. Based on the CIS and AC/DC interference surveys, place additional cathodic-protection test stations at locations where the surveys demonstrate potential cathodic-protection deficiencies, following review and consultation with the OSFM regarding proposed test station locations.
 - B. As an alternative to replacement of Line 901 and segments of Line 903 from Gaviota to Sisquoc and Sisquoc to Pentland, Plains may restart the existing pipelines in accordance with the CD (including Appendix D) and applicable law.
 - C. As an alternative to replacement or restart of Line 901 and segments of Line 903 from Gaviota to Sisquoc and Sisquoc to Pentland, Plains may abandon all or any segments in accordance with all applicable laws and regulations.
3. **Third-Party Analysis of Line 2000 ILI Data**
- A. Plains shall select, subject to OSFM's approval, a third-party consultant to review and analyze ILI data for Line 2000 and provide a report to the OSFM on its findings.
 - B. The consultant shall:
 1. Review all ILI results and reports that Plains has received from ILI vendors for Line 2000;
 2. Review Plains' processes and procedures for analyzing ILI data, and Plains' analysis of Line 2000 ILI results, and suggest potential improvements, if any, to Plains' current processes or procedures for analyzing ILI data;
 3. Analyze Plains' implementation of its ILI assessment procedures for Line 2000.
 4. Evaluate ILI vendor specifications to ensure that proper criteria and technology considerations are taken in to account in selecting the specific inspection tool(s) used in the future, with consideration given to best available technology for reliably detecting corrosion, general corrosion, selective seam-weld corrosion, and seam anomalies;

5. Consider disclosed industry standards and regulations, including, but not limited to: 49 CFR § 195.452, the California Elder Pipeline Safety Act, ASME B31.4 (Pipeline Transportation Systems for Liquids and Slurries), ASME B31G (Manual for Determining Strength of Corroded Pipelines) or RSTRENG, API 1160 (Managing System Integrity for Hazardous Liquid Pipelines), API 1163 (In-Line Inspection Systems Qualification), ANSI/ASNT ILI-PQ (In-Line Inspection Personnel Qualification and Certification), NACE SP0169 (Control of External Corrosion on Underground or Submerged Metallic Piping Systems), and the PRCI Pipeline Repair Manual;
 6. Comply with additional requirements specified in the scope of work.
- C. The third-party consultant shall prepare a written report reflecting its findings, conclusions, and any recommendations for improvement found in conducting the analysis.
1. The consultant may recommend improvements to Plains' ILI analysis process and procedures to improve the quality and integration of ILI data into its IMP going forward. Plains shall give due consideration to the results of the analysis and recommendations of the consultant but will maintain discretion over whether and how to implement any recommendations.
 2. The report shall include a list of documents and data reviewed in conducting the analysis, which shall be provided to the OSFM, if requested.
 3. Within 150 days of entry of the CD, the consultant shall provide a draft report to the OSFM and Plains for comment at the same time. Plains and the OSFM may provide comments to the consultant on the report within 21 days of receipt of the draft.
 4. Within 45 days after receiving comments (if any) from Plains and the OSFM, the consultant shall provide a final report to PHMSA, the OSFM and Plains.

4. **Integrity Management**

- A. For any operating segments of Lines 901, 903, and 2000 (not to include any replacement lines):
1. Plains shall implement the following measures and amend its IMP, as needed, to include the requirements of this section for the applicable lines:
 - a. In addition to other dig criteria specified by regulation or in its IMP, Plains shall remediate all internal or external metal loss anomalies that have an ILI reported depth of 40% or greater wall

loss, within one year of discovery. If Plains is unable to remediate such anomalies within one year of discovery, Plains shall notify OSFM and temporarily reduce the operating pressure and/or take further remedial action in accordance with 49 C.F.R. § 195.452 until the anomaly is remediated (or until otherwise authorized by OSFM).

- b. Analyze a sample of additional anomalies of varying amounts of metal loss between 10% and 40% for validation. The sample size shall be at least ten, unless fewer than ten anomalies are reported within that range, in which case Plains would examine the number of anomalies called.
- c. When sizing anomalies, apply interaction/clustering criteria of 6t by 6t for applicable ILI tools;
- d. Require its ILI tool vendor to include in the vendor's inspection report all metal loss anomalies of 10% or greater, based on raw data, prior to adding in any correction for tool tolerance;
- e. Any time a shrink sleeve is exposed during an anomaly investigation, remove the shrink sleeve, investigate circumferentially and longitudinally along the pipe for external corrosion and coating deterioration, and recoat with two-part epoxy;
- f. Send all field measurements to the tool vendor within 90 days of completing all digs for any ILI, provided that available data must be submitted prior to the next ILI run, and conduct annual meetings with the tool vendor to discuss tool performance;
- g. For any use of magnetic flux leakage (MFL) tools, require its ILI tool vendor to manually grade any metal loss anomalies initially identified by the ILI tool as greater than or equal to 20% of wall loss (i.e., have human eyes on the raw data and not simply rely on a computer algorithm), and require that the vendor's ILI report note any differences between what the computer algorithm reported and the vendor's manual grade;
- h. Where any ILI tool fails to record data for 5% or more of the external and/or internal surface area of the inspected segment, re-run the ILI tool to cover the area of failure;
- i. Integrate and analyze available data in its P&M process, including:
 - i. Assessment data from ILI tool runs;
 - ii. Dig and repair data;

- iii. Corrosion data, such as survey results, chemical treatments, and cleaning-pig results;
- iv. Operational data, such as pressure and flow data;
- v. Emergency response data, such as tactical response plans and results of recent drills on the pipeline, including locations of conduits to water, as identified in emergency response plans;
- vi. Evaluation of the capability of the leak detection system, which shall include identification of each leak detection segment between block valves, consideration of length and size of the pipeline, type of product carried, proximity to high consequence areas, swiftness of leak detection (the time period required for a leak to be operationally isolated and/or the pipeline to be shut down), type and location of valves, valve closure time, EFRD analysis results, the location of nearest response personnel, leak history, and risk assessment results;
- vii. Other pipeline characteristics, such as length, diameter, presence in HCAs and Environmentally and Ecologically Sensitive Areas (as defined in regulations promulgated pursuant to California Government Code § 8574.7(d), including 14 CCR 817.04(k)(3)(A)), maximum operating pressure, normal operating pressure, coating type, elevation data, water crossings, proximity to water bodies, casings, geohazard threats, maximum flow rate, and maximum rupture volume.

2. ILI Measures

- a. Initial ILI Runs. Each year during the first two years after entry of the CD, Plains shall conduct at least two ILIs using: (1) a high-resolution MFL tool; and (2) a UT tool with an inertial measurement unit (IMU). Plains shall compare both runs and evaluate all available information, including these tool runs and corresponding IMU data. If a UT tool run is unsuccessful, Plains shall identify the limitations that prevented the UT tool run from being successful, consider changes to increase the likelihood of a successful UT tool run, and use best efforts to rerun the UT tool within six months (subject to tool availability).
 - i. All ILI assessments in the first two years shall include a sizing tool and a tool capable of identifying dents.

- ii. In each of the first two years, Plains shall run the second ILI tool as soon as practicable after running the first ILI tool, but no later than 90 days after completion of the first ILI tool run. If one of the two tool runs is unsuccessful, Plains shall re-run the tool that was unsuccessful (but need not re-run the tool that was successful) even if the re-run of the unsuccessful tool run would occur more than 90 days from the successful tool run.
- b. Subsequent ILI Runs. After the first two years, Plains shall run at least one MFL or one UT tool every year, using a different ILI tool type (MFL or UT) in each alternating year. Alternatively, Plains may run a UT tool each year. If, however, any UT tool run is unsuccessful, Plains shall document the reasons why the UT tool was unsuccessful, consider changes to increase the likelihood of a successful UT tool run, and may use MFL technology to complete that year's ILI, but must run a UT tool the following year.
- c. All ILI Runs. Plains shall provide ILI results and reports to the OSFM within 30 days from its availability to Plains.

5. **Valves**

- A. Within one year after entry of the CD for any operating segments of Lines 901, 903, and 2000, and for any new pipeline segments replacing those lines, Plains shall conduct EFRD analyses, which shall include consideration of:
 - 1. Swiftness of leak detection and pipeline shutdown capabilities, type of commodity carried, rate of potential leakage, volume that can be released, topography or pipeline profile, potential for ignition (for spilled commodity), proximity to power sources, location of nearest response personnel, specific terrain between the pipeline and the HCA, and benefits expected by reducing the spill size.
 - 2. Valve placement and method of valve actuation for all valves (not including valves used for instrumentation purposes, such as on tubing on transmitter calibration manifolds).
- B. Plains shall submit the EFRD analyses to OSFM within one year of entry of the CD.
- C. Where practical, Plains shall confirm that check valves that are necessary for the safe operation of the pipeline are in good working order at intervals required by other valve maintenance activities and associated procedures.

6. **Risk Analysis**

- A. For any operating segments of Lines 901, 903, or 2000 (not to include any replacement lines):
 - 1. Plains shall submit a risk analysis under proposed regulation 19 CCR § 2111(c) to OSFM (dated January 17, 2019 and publicly noticed in the California Regulatory Notice Register on February 15, 2019), or the final version of such regulation as it may be made effective in the future, regardless of whether or not those lines would otherwise be subject to the proposed regulations.
 - a. The information in the risk analysis shall be limited to the information listed in proposed regulation 19 CCR § 2111(c).
 - b. Plains' responsibility under this subsection is limited to providing the risk analysis to OSFM; Plains will maintain discretion over whether and how to implement the results of the analysis. The OSFM may review and comment on the risk analysis submitted by Plains consistent with provisions found in the proposed regulations, 19 CCR 2100 et seq.
 - c. The risk analysis shall be due within one year from entry of the CD.

7. **Leak Detection**

- A. For any operating segments of Lines 901, 903, or 2000 (not to include any replacement lines), Plains shall confirm in writing to the OSFM within 30 days of entry of the CD that it has installed a Computational Pipeline Monitoring (CPM) Real Time Transient Model (RTTM) that is compliant with API 1130.
- B. Within 12 months after initiating operation of any replacement lines for Lines 901 or 903, Plains shall verify and certify to the OSFM that all Pipeline and Instrumentation Drawings (P&IDs) reflect correct "as-built" information.

8. **Non-waiver**

- A. Nothing in this CD shall excuse Plains from otherwise complying with the AB 864 regulations when they are promulgated.

ARTICLE II – COMPANY-WIDE PROVISIONS ON REGULATED PIPELINES

9. **Integrity Management**

- A. New Procedures for Interim Reviews and Assessments

1. Plains shall modify Section 9.5 of its Integrity Management Plan (“Continual Evaluation and Assessment of Pipeline Integrity”) to provide for an annual, but not to exceed 15 months, Interim Review of each pipeline segment it operates to determine whether, since the last assessment (whether it was an Interim Assessment or a full periodic assessment under Section 6), conditions have changed or new information has been obtained that could significantly impact already-identified threats or create new threats for that segment. If so, Plains shall evaluate whether it should implement any P&M measure(s) to address that threat prior to the next regularly-scheduled assessment. Section 9.5 shall list all the categories of potential threats to be considered as part of the Interim Review and the types of conditions, information and data that will be included in the information analysis conducted under 49 CFR § 195.452(g).
2. Plains shall modify Section 9.5 of its IMP to provide new forms for P&M measures or actions to be taken as a result of an Interim Review. Section 9.5 shall provide that Plains’ Integrity Engineer may recommend any P&M measures that may be appropriate, including any P&M measures that could be recommended following a full assessment performed under Section 6 of its IMP.
3. Plains shall submit its proposed modifications of Section 9.5 to PHMSA no later than 60 days after entry of the CD. If PHMSA does not object or request any modification within 60 days, Plains shall proceed to implement the revised procedures in Section 9.5, which shall be completed within 18 months from entry of the CD.

B. Documentation for P&M Recommendations

1. Within 90 days from entry of the CD, Plains shall revise Part B of its P&M Recommendation form (F11-2), to expand the scope and content of comments in the “Basis of Recommendation” field to provide a narrative explanation that reflects, at a minimum:
 - a. What drew the engineer’s attention and caused him or her to make the recommendation (such as an anomaly, pattern, trend or potential correlation observed in the data, a particular event or occurrence, a particular change in the operation or configuration of the line or in its surrounding environment, “lessons learned” from another event or occurrence, a corporate goal or initiative, etc.);
 - b. The specific risk (likelihood or consequence of failure, or both) or concern that the recommended measure is intended to investigate or address; and

- c. The goal or intended outcome that the recommended P&M measure is intended to achieve with regard to that specific risk or concern.
 2. In the new forms for the Interim Review procedure described in Paragraph A above, Plains shall likewise provide a narrative explanation of the bases for any recommended P&M measures.
 3. In Part B of its Preventive and Mitigative Evaluation Recommendation Form (F11-2), Plains shall continue to identify the anticipated completion date for the P&M measure in the column titled "Deadline Date."
- C. Tracking of P&M Measures

Plains shall document P&M measures recommended but not implemented. Plains shall document implemented P&M measures through to completion, whether undertaken pursuant to an Interim Review under Section 9.5 or a full assessment under Section 6, such that these actions will be properly documented under 49 CFR § 195.452(l).

10. **Valves and O&M**

- A. Within two years after entry of the CD, Plains shall conduct EFRD analyses for all Regulated Pipelines for which it has not previously completed an EFRD analysis.
- B. Within two years of entry of the CD, Plains shall develop and implement procedures to:
 1. If a valve fails to respond properly on first actuation command, document the failure and review historical records for that valve to identify any systemic issues.
 2. Adjust Plains' surge analyses and Emergency Response Plans, if necessary, to account for identified systemic issues associated with valve closure times.
 3. Timely communicate to the Control Room the status of valve maintenance activity for those valves on Regulated Pipelines that are capable of being operated by the Control Room.
 4. Verify that personnel assigned to operator-qualification tasks for valve maintenance are qualified to perform those tasks.
- C. Plains shall make all repairs necessary to keep valves in good working order within one year of discovery that the valve is not operating as intended, or, if not possible, Plains shall provide timely notification (including justification) to PHMSA or OSFM as applicable.

- D. For all field personnel who perform maintenance on facilities, equipment, or devices, Plains shall provide training:
 - 1. Within two years of entry of the CD, that addresses the importance of complying with Plains' policy requiring notification of Control Room personnel before beginning maintenance activities on any such facility, equipment, or device that could change the status of any pump, valve, CPM device, SCADA device, pressure or flow metering or rate that is monitored by the Control Room. Plains shall include in the training a requirement that employees shall notify the Control Room before entering a facility to perform maintenance, or, if not possible, immediately after entering.
- E. Plains shall improve existing valve maintenance recordkeeping to include confirmation whether the valve has been actually operated during maintenance.

11. **Leak Detection**

- A. Within 90 days after entry of the CD, Plains shall create and maintain a list of its regulated mainline pipelines, excluding gathering lines and Delivery Lines, to indicate which of the following three rupture-detection methods, if any, are used on each line: (1) Rate of Change Combination alarm; (2) low discharge pressure alarm; or (3) 5-minute computational pipeline monitoring (CPM) alarm.
 - 1. Within one year after entry of the CD, for any regulated mainline pipeline identified in the list created pursuant to this paragraph that does not utilize at least one of the three rupture detection methods, Plains shall implement at least one.
- B. For the term of the CD, Plains shall conduct annual training for controllers on attributes and benefits of various methods of leak detection, including Analog High/Low Threshold, Alarm Deadband, Creep Deviation, and Analog Rate of Change.
- C. Within 18 months of entry of the CD, for its CPM systems, Plains shall analyze and evaluate the use of accumulated deviation rolling time periods longer than 24 hours.
 - 1. Plains shall document its analysis and provide it to PHMSA for comment, but Plains shall maintain discretion over what actions to take, if any, and how to implement the results of its analysis.
- D. Within six months of entry of the CD, Plains shall have in place a written procedure for Selection of Leak Detection Method for its Regulated Pipelines.
 - 1. Plains shall provide the Selection of Leak Detection Method procedure to PHMSA for comment, but Plains shall maintain discretion over and be

responsible for the final content and implementation of the Selection of Leak Detection Method procedure.

- E. Plains will hold periodic (at least annual) meetings to solicit feedback from Control Room and operations maintenance personnel regarding potential improvements to leak detection. The results of the meetings will be documented and shared with appropriate personnel. The recommendations will be evaluated and documented.
- F. Instrumentation and Display
 - 1. To minimize and prevent false operating conditions from being displayed, Plains shall, per API 1175 (Pipeline Leak Detection – Program Management (1st Edition, December 2015)), within three years from entry of the CD or such earlier time as required by regulations:
 - a. Provide a procedure by which operations maintenance personnel and/or Control Room personnel identify and record when instrumentation has been impeded on an unplanned basis and is no longer providing accurate and updated values on pressure, flow, or temperature due to scheduled or planned maintenance activities.
 - b. Track these conditions through to resolution, including instrumentation relocation when necessary.

12. **Control Room Management**

- A. For Lines 901 and 903, prior to resuming operations on segments currently not in service or commencing operations on any replacement for those lines, Plains shall:
 - 1. Complete point-to-point verification reviews for all components of its SCADA system, including displays, alarm setpoint values, and alarm log descriptors;
 - 2. Update its piping and instrumentation diagrams, software, manuals, and operating procedures to accurately reflect the existing field configuration;
 - 3. Confirm that all Lo-Lo and Hi-Hi SCADA alarms are configured and programmed as critical safety related alarms for pressures and flows, and that alert notifications are correct and accurate; and
 - 4. Update the names of all facilities, equipment, devices, measurement points and locations in console displays, the Control Room Management Plan and Control Center General Procedures, shift reports, and form templates to reflect current operating conditions (updating or removing out-of-date names).

- B. For Line 2000, within six months after entry of the CD, Plains shall confirm to the OSFM that all Alarm Descriptors on the control console are accurate.
- C. Plains shall implement the Control Room Management Plan measures and Control Center General Procedures measures referenced in paragraph 23(a) of the CD.

13. **Emergency Response and Oil Spill Response Plans**

- A. California-Specific Provisions:
 - 1. Plains shall review and update its Bakersfield District Response Zone Plan periodically, as required by applicable regulations, including 14 CCR 816.05. Plains' review shall include the portions of its Response Plan that address identification of culverts along the pipelines' rights-of-way, potential receptors, access to potential spill sites, and procedures to assure protection of the environment from oil spills. To the extent that Plains has a Tactical Response Plan, Plains shall make it available to the Governments upon reasonable request and as needed in connection with a drill or response to a spill.
- B. Company-Wide Provisions
 - 1. Plains shall, at least once before two years from the date of entry of the CD, and at least one additional time prior to termination of the CD, survey its rights-of-way for all regulated mainline pipelines of at least 24" diameter, by foot or air patrol, to identify all culverts and shall ensure the emergency response plans covering those pipelines (a) reflect the locations of all culverts identified, and (b) address potential containment and recovery techniques for spills that may occur near identified culverts.
 - 2. Within 180 days of entry of the CD (or within 180 days of a new employee being hired, or an existing employee being assigned to relevant duties) Plains shall provide or confirm that it has provided all employees who may reasonably be involved in spill response with NIMS ICS training at the 100 and 200 levels. Within 180 days of entry of the CD, Plains shall also provide or confirm that it has provided ICS training at the 300 and 400 level to any employee who may reasonably be expected to coordinate with the Incident Management Team during a spill response. Plains shall provide refresher training to employees within two years after initial training and shall maintain certification of such training and make such documents available to Plaintiffs upon request.
 - 3. Going forward from the date of the CD, Plains shall include in its contracts with all Oil Spill Response Organizations (OSROs) a requirement that the OSROs' employees and contract employees receive training at the same level specified for Plains employees, based on their responsibilities, prior to participating in any incident response on behalf of

Plains. Plains shall require its OSRO contractors and subcontractors to register with a third-party online compliance verification system and shall use that online verification system to spot-check the NIMS ICS Training histories for randomly-selected OSRO personnel who participate in Plains' table-top drills. Plains' spot-check shall include a reasonable number of OSRO personnel participating in the drills to help ensure that all OSRO personnel participating in incident response are trained at the ICS levels specified herein.

4. Within 180 days of entry of the CD, Plains shall provide or confirm that it has provided all Control Room supervisors with training regarding the Control Room's emergency response responsibilities and procedures. Plains shall provide this training annually thereafter. Plains shall maintain auditable documentation that supervisors have received such training and shall make such documentation available to PHMSA upon request.
5. Plains shall notify PHMSA (and, for California Lines, California OSPR and OSFM) of company-sponsored and organized drills in accordance with applicable regulations, including table tops (either with or without equipment deployment). Plains shall provide PHMSA (and, for California Lines, California OSPR and OSFM) with after-action reports for each table-top drill involving equipment deployment within 90 days of completion of the drill. Plains shall include lessons learned in such after-action reports and shall consider such lessons learned for incorporation into future drills or exercises.
6. For the term of the CD, a representative of Plains' Control Room management team shall participate in any after-action or "hot wash" activity designed to identify areas of improvement following a release, and shall share, in documented form, the information obtained with relevant Control Room personnel.

14. **Safety Management System (SMS)**

- A. Plains shall continue to implement its SMS, which is based on recommended practices in American Petroleum Institute (API) RP 1173 (Pipeline Safety Management Systems (1st Edition, July 2015)).
 1. Prior to the termination of the CD, Plains shall hire a third party to assess the conformance of its SMS to API RP 1173. Plains shall direct the third party to transmit a copy of the final report to PHMSA. Plains' responsibility under this paragraph shall be limited to engaging the third party to prepare the report and providing the report to PHMSA. Any nonconformance identified by the third party shall not be a violation of the CD.

- B. Plains shall participate in the API Pipeline SMS Group to exchange ideas, information, and lessons learned about implementation of API RP 1173.

15. **Drug and Alcohol Program**

- A. Within one year of entry of the CD, Plains shall review and revise its drug and alcohol misuse plans to comply with post-accident and random drug and alcohol testing required by 49 C.F.R. §§ 199.105(b), (c), and 49 C.F.R. § 199.225(a). This shall include a review of all covered positions among Control Room personnel and field personnel for inclusion in the plans for post-accident testing. Covered positions shall include any person with authority to shut down a pipeline, including Control Room shift supervisors. Plains shall ensure adequate implementation and documentation for all post-accident drug/alcohol tests as required by 49 C.F.R. § 199.117(a)(5) and 49 C.F.R. §§ 199.227(b)(4), (c)(1)(v) and in accordance with its procedures. Should Plains determine that it is not possible to administer a post-accident drug/alcohol test on a covered employee whose performance of a covered function either contributed to the accident or could not be completely discounted as a contributing factor within the time specified in the regulations, Plains shall document why the test was not administered within such time.

APPENDIX C

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*United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
Consent Decree*

APPENDIX D

*(Remaining Corrective Actions from the
PHMSA CAO)*

*United States of America and the People of the State of California v.
Plains All American Pipeline, L.P. and Plains Pipeline, L.P.
Consent Decree*

APPENDIX D

1. All outstanding corrective actions in PHMSA's closed Corrective Action Order (CAO), CPF No. 5-2015-5011H, as amended, are hereby merged into this Consent Decree, as outlined below, and subject to the sole regulatory oversight of the OSFM.

- a. **Line 901 Shutdown.** Plains shall not operate Line 901 until authorized to do so by the OSFM.
- b. **Restart Plan for Line 901.** If Plains seeks to restart Line 901, Plains shall develop and submit, at least 60 days in advance of a scheduled restart, a written Restart Plan for Line 901 to the OSFM for review and approval. Once approved by the OSFM, the Restart Plan shall be incorporated by reference into this Consent Decree. The Restart Plan shall include:
 - 1) Documentation of the completion of all mandated actions, and a management of change plan to ensure that all procedural modifications are incorporated into Plains' operations and maintenance procedures manual;
 - 2) Provisions for adequate patrolling of Line 901 during the restart process and shall include incremental pressure increases during start-up, with each increment to be held for at least two hours;
 - 3) Sufficient surveillance of the pipeline during each pressure increment to ensure that no leaks are present when operation of the line resumes;
 - 4) A specific day-light restart that includes advance communications with local emergency response officials;
 - 5) Master Control Room enhancements, including:
 - a) Implementation of advanced leak-detection

capabilities that include mass balance and line pack calculations (the total volume of liquid present in a pipeline section). The leak-detection improvements shall include:

1. Revised alarm threshold adjustments;
 2. Additional required instrumentation; installation of additional safety valves as a result of Plains' EFRD evaluation;
- b) Review and update of the alarm set-point values of pressures and flows to account for hydraulics and the interaction of topography, pipeline status (running and shutdown), sensor location, and historical pressure and flow values by configuration, in order to provide a basic level of leak detection when the pipeline is down and not running. Dynamic alarm limits based on pipeline status shall be used if hydraulically required;
- c) Implementation of modifications to the existing alarm priority/severity system to incorporate low and high pressure and flow values in major or safety-related alarm (SRA) categories;
- d) Implementation of emergency shutdown programming associated with Line 901 that can be executed by the Shift Supervisor or Controller;
- e) Development and implementation of training associated with the emergency shutdown programming described above; and
- f) Provision of additional controller training that

incorporates awareness of abnormal operations and reduced-pressure operational characteristics, including alarm set-point revisions for conditions similar to the Refugio Incident.

- 6) Elimination and documentation of actions taken to prevent inappropriate uncommanded Valve 460 (Sisquoc Conoco) status and position changes;
- 7) Installation of additional safety valves as a result of Plains' EFRD evaluation;
- 8) Installation of additional pressure sensors as a result of Plains' surge study;
- 9) Initiation of a UT ILI within seven days after steady-state operation is achieved in accordance with an ILI schedule approved by the OSFM. The tool run shall be initiated during daylight hours. If the tool run does not collect a complete data set, the UT tool shall be promptly re-run. A report from the ILI tool vendor shall be completed within 30 days of running the tool. Plains shall complete its review and analysis of the ILI report within 15 days of receiving the report. Provisions shall be made to address any immediate repairs that result from an initial data analysis of the UT ILI run; and
- 10) **Corrosion Prevention.** Plains shall include a long-term plan to address corrosion under insulation (CUI) on Line 901 that meets the requirements of 49 C.F.R. Part 195, Subpart H, in any Restart Plan. Plains may address the inadequate corrosion prevention through any method approved by the OSFM, including but not limited to the provisions contained in CAO Amendment No. 3, Section 2(a)-(c).

- c. **Return to Service of Line 901.** After the OSFM approves the Restart Plan, Plains may return Line 901 to service but the operating pressure shall not exceed eighty percent (80%) of the actual operating pressure in effect immediately prior to the Refugio Incident on May 19, 2015.
- d. **Removal of Pressure Restriction of Line 901.** The OSFM may allow the removal or modification of the pressure restriction upon a written request from Plains demonstrating that restoring the pipeline to its pre-Refugio Incident operating pressure is justified, based on a reliable engineering analysis showing that the pressure increase is safe, considering all known defects, anomalies, and operating parameters of the pipeline. The OSFM may allow the temporary removal or modification of the pressure restriction upon a written request from Plains demonstrating that temporary Preventive and Mitigative (P&M) measures will be implemented prior to and during the temporary removal or modification of the pressure restriction. The OSFM's determination shall be based on consideration of the Refugio Incident's cause and Plains' evidence that P&M measures provide for the safe operation of Line 901 during the temporary removal or modification of the pressure restriction.
- e. **Line 903 Shutdown.** After purging Line 903, Plains shall not operate Line 903 between Gaviota and Pentland stations until authorized to do so by the OSFM.
- f. **Restart Plan for Line 903.** If Plains seeks to restart the Gaviota-to-Pentland segment of Line 903, Plains shall develop and submit, at least 60 days in advance of a scheduled restart, a written Restart Plan for the Gaviota-to-Pentland segment of Line

903 to the OSFM for review and approval. Once approved by the OSFM, the Restart Plan shall be incorporated by reference into this Consent Decree. In addition to all the requirements set forth in the above subparagraphs 1.b.1)-11), excluding subparagraph 1.b.6), the Restart Plan shall include:

- 1) Provisions for adequate patrolling during the restart process and the inclusion of incremental pressure increases during start-up, with each increment to be held for at least two hours;
- 2) Sufficient surveillance of the pipeline during each pressure increment to ensure that no leaks are present when operation of the line resumes; and
- 3) Provisions for a daylight restart and advance communications with local emergency response officials.

g. Line 903 Return to Service. After the OSFM approves the Restart Plan for the Gaviota-to-Pentland segment of Line 903, Plains may return that segment to service, but the operating pressure shall not exceed eighty percent (80%) of the highest pressure sustained for a continuous 8-hour period between April 19, 2015, and May 19, 2015, for Line 903 (Gaviota-to-Sisquoc and Sisquoc-to-Pentland segments).

h. Removal of Pressure Restriction for Line 903. After a return to service, Plains may request the OSFM to remove the pressure restriction for the Gaviota-to-Pentland segment of Line 903.

- 1) The OSFM may allow removal or modification of the pressure restriction upon a written request from Plains demonstrating that restoring the pipeline to its pre-Refugio Incident operating pressure is justified, based on a reliable

engineering analysis showing that the pressure increase is safe, considering all known defects, anomalies, and operating parameters of the pipeline.

2) The OSFM may allow the temporary removal or modification of the pressure restriction upon a written request from Plains demonstrating that temporary P&M measures will be implemented prior to and during the temporary removal or modification of the pressure restriction. The OSFM's determination shall be based on consideration of the Refugio Incident's cause and Plains' evidence that P&M measures provide for the safe operation of Line 903 during the temporary removal or modification of the pressure restriction. Requests for removal of the pressure restriction may be submitted by pipeline segment.

- i. **Notifications.** Plains shall provide notification to the OSFM within five business days of any of the following events: any investigation and remediation field actions for identified anomalies (i.e., digs and repairs), ILI tool runs, and/or startup dates.
- j. **Reporting Requirements for Lines 901 and 903.** If and when Plains has concluded all items in this Appendix D, Plains shall submit a final Appendix D Documentation Report to the OSFM for review and approval.
 - 1) The OSFM may approve the Appendix D Documentation Report incrementally without approving it in its entirety.
 - 2) Once approved by the OSFM, the Appendix D Documentation Report shall be incorporated by reference into this Consent Decree.

3) The Appendix D Documentation Report shall include but not be limited to:

- A. Table of Contents;
- B. [*intentionally left blank.*]
- C. [*intentionally left blank.*]
- D. Summary of all tests, inspections, assessments, evaluations, and analysis to the extent required under this Appendix D;
- E. [*intentionally left blank.*]
- F. [*intentionally left blank.*]
- G. Lessons learned while fulfilling the requirements of this Appendix D.