



C A L I F O R N I A

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April 3, 2026

**Via [www.regulations.gov](http://www.regulations.gov)**

Linda Daugherty  
Acting Associate Administrator of Pipeline Safety  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
Docket Operations, M-30  
West Building Ground Floor, Room W12-140,  
1200 New Jersey Avenue SE,  
Washington, DC 20590

RE: COMMENTS OF ATTORNEY GENERAL OF CALIFORNIA  
*Pipeline Safety: Request for Special Permit; Sable Offshore Corp. (Sable)*, 91 Fed.Reg.  
8949 (Feb. 24, 2026)  
Docket No. PHMSA-2026-0464

Dear Acting Administrator Daugherty:

The Attorney General of the State of California (hereinafter referred to as “California”), acting in his independent capacity to protect the state’s public interest, public health and the environment, submits the following comments to the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) on Sable Offshore Corp.’s (“Sable”) special permit application (“Application”). The Application requests a waiver of the requirement in 49 C.F.R. § 195.452(h)(4)(iii)(H) to remediate certain longitudinal seam weld corrosion on hazardous liquid pipelines within 180 days of discovery. The waiver would apply to Lines CA-324 and CA-325 (including CA-325A and CA-325B) (hereinafter collectively referred to as “Lines CA-324/325”).

PHMSA published notice of the Application on the Federal Register on February 24, 2026, setting a deadline of March 26, 2026, for public comments. On March 20, 2026, PHMSA published a notice extending the comment deadline to April 3, 2026. 91 Fed.Reg. 13698.

## **I. EXECUTIVE SUMMARY**

California urges PHMSA to deny Sable’s Application for a special permit that would waive the requirement in 49 CFR 195.452(h)(4)(iii)(H) to evaluate and remediate longitudinal

seam weld corrosion on Lines CA-324/325 within 180 days of discovery. First, PHMSA is without authority to grant such a special permit because Lines CA-324/325 are intrastate pipelines and California regulators have sole regulatory oversight over any attempt to restart these Lines and issue state waivers. Second, California has vested interests in ensuring Lines CA-324/325 operate safely and PHMSA's proposed special permit would dilute the higher state safety standards that were imposed on Sable and therefore it is inconsistent with pipeline safety. 49 C.F.R. § 190.341(d). Third, given the fact Line CA-324 already failed and caused a catastrophic oil spill in 2015 in Santa Barbara County, even if PHMSA had authority to issue a special permit (which it does not), a more robust environmental analysis needs to be performed. Fourth, PHMSA unlawfully invokes the Endangered Species Act's emergency consultation procedures and has given no indication that it will consult with the National Marine Fisheries Service, in violation of the Act. Finally, Secretary Wright's March 13, 2026, order ("DPA Order") does not change anything about the propriety of the Application, because the DPA Order itself is unlawful.

## **II. THE STATE OF CALIFORNIA HAS SOVEREIGN AND LEGAL INTERESTS**

### **A. California Has an Interest in the Enforcement of its Laws**

The State of California has an interest in the enforcement of its own laws. *Missouri v. Holland*, 252 U.S. 416, 431 (1920); *Maine v. Taylor*, 477 U.S. 131, 137 (1986). Under California law, the Office of the State Fire Marshal is granted "exclusive safety regulatory and enforcement authority over intrastate . . . hazardous liquid pipelines" and tasked with implementing the federal Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. Sec. 60101 et seq.) ("Pipeline Safety Act") and federal pipeline safety regulations and obtaining annual federal certification. Cal. Gov. Code § 51010. The Pipeline Safety Act expressly forbids PHMSA<sup>1</sup> from prescribing or enforcing standards and practices for an intrastate pipeline facility to the extent that they are regulated by a State authority that submits an annual certification for the facility. 42 U.S.C. § 60105(a). PHMSA may reject a certification and assert jurisdiction only if it decides that the State authority is not satisfactorily enforcing compliance with applicable safety standards. 42 U.S.C. § 60105(f). However, prior to rejecting any certification and assuming regulatory control, PHMSA must first provide the State authority with notice and an opportunity for a hearing before taking final action. *Id.* Here, PHMSA has not rejected the State's certification and the State Fire Marshal and the State of California have and continue to dutifully enforce compliance with all applicable safety standards.

On May 18, 2016, approximately one year after the 2015 Refugio Beach Oil Spill,<sup>2</sup> and after Plains Pipeline, LP ("Plains"), the then operator, cancelled its Federal Energy Regulatory

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<sup>1</sup> The Secretary of Transportation's duties related to pipeline transportation and safety were delegated to PHMSA by the Norman Y. Mineta Research and Special Programs Improvement Act (P.L. 108-426, November 30, 2004).

<sup>2</sup> The National Oceanic and Atmospheric Administration describes some of the damage caused by the 2015 Refugio Beach Oil Spill at the following webpage: <https://darrp.noaa.gov/oil-spills/refugio-beach-oil-spill>.

Commission (“FERC”) tariffs, PHMSA re-designated Lines CA-324/325 as intrastate, and identified the Office of the State Fire Marshal as the safety regulator pursuant to state certification. 49 U.S.C. § 60105; Letter from Zach Barrett, Director for State Programs, PHMSA, to Bob Gorham Program Manager, Pipeline Safety Division, California State Fire Marshal (May 18, 2016) (“May 2016 MOU”). As intrastate hazardous liquid pipelines, Lines CA-324/325 are subject to the Elder California Pipeline Safety Act of 1981, California Government Code Section 51010, et seq.

Four years later, in 2020, the United States and the State of California, through their respective agencies, including PHMSA and the State Fire Marshal, entered into a Consent Decree with Plains and its parent company Plains All American Pipeline, L.P. See Consent Decree, *United States, et al. v. Plains All American Pipeline, L.P., et al.*, No. 2:20-cv-02415 (C.D. Cal. Mar. 13, 2020) (“Consent Decree”). The Consent Decree conveyed “sole regulatory oversight” over the restart of Lines CA-324/325 to the State Fire Marshal and requires the owner of the pipelines<sup>3</sup> to obtain state waivers providing conditions in lieu of modern safety regulations for cathodic protection. See Consent Decree, Appendices B and D. The Consent Decree also assigns the State Fire Marshal with exclusive authority to approve a restart plan after the pipelines’ owner complies with the conditions set out in the Consent Decree, including obtaining state waivers through the State Fire Marshal for the limited effectiveness of cathodic protection. Consent Decree, Appendix B at 75 and Appendix D at 92-93. As part of its acquisition of Lines CA-324/325, Sable agreed to be bound by the Consent Decree. Letter from Megan B. Prout, Senior Vice President, Commercial Law and Litigation, Plains All American, L.P., to Joshua Cleaver, Staff Counsel, Legal Services Office, California Department of Forestry and Fire Protection (Oct. 14, 2022); Letter from Andrew Craig, Venture Manager, ExxonMobil Pipeline Company LLC, to Joshua Cleaver, Staff Counsel, Legal Services Office, California Department of Forestry and Fire Protection (Feb. 19, 2024).

To date, the Consent Decree remains the final judgment of the Central District of California. As such, PHMSA and the State Fire Marshal, as well as all other parties, remain bound by the Consent Decree’s terms and conditions, including its conveyance of authority to the State Fire Marshal. See *Mi Familia Vota v. Fontes*, 111 F.4th 976, 982 (9th Cir. 2024); *Hook v. State of Ariz., Dep’t of Corr.*, 972 F.2d 1012, 1017 (holding that a state agency was bound by a consent decree the agency was a party to until the court ruled otherwise); see also *Moore v. Deal*, 240 F.Supp.1004, 1006 (E.D. Pa. 1965).

## **B. California’s Proprietary and Other Interests**

California has a panoply of property, financial, economic, and other interests that have already been harmed by corrosion of Line CA-324 that should be safeguarded from future potential future harm.

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<sup>3</sup> The Consent Decree applies not only to the parties to it but to “any successors, assigns, as well as any other entities or persons otherwise bound by law to comply with this Consent Decree.”

From Point Conception in Santa Barbara County southward to Los Angeles County, California State Parks has several state parks and beaches that are frequented by Californians and non-Californians alike. Among them are Gaviota State Park, Refugio State Beach, El Capitan State Beach, Carpinteria State Beach, Emma Wood State Beach, San Buenaventura State Beach, McGrath State Beach, Mandalay State Beach, Point Mugu State Park, Leo Carrillo State Park, Robert H. Meyer Memorial State Beach, Point Dume State Beach, Malibu Lagoon State Beach, Will Rogers State Beach, Santa Monica State Beach, Dockweiler State Beach, and more.<sup>4</sup> Many of these state parks and beaches were within the 2015 Refugio Beach Oil Spill affected area, including Gaviota State Park and Refugio State Beach. The state parks and beaches “along the Gaviota coast provide the public with unique camping and recreational opportunities that are highly sought after and are booked well in advance.” Cal. Dep’t of Fish and Wildlife, et al., Refugio Beach Oil Spill Final Damage Assessment and Restoration Plan/Environmental Assessment at 30 (June 2021) (“Final Damage Assessment”).<sup>5</sup> They are special to many, not only because “they are among the few places on the California coast where one can camp immediately adjacent to the beach[,]” but also because these are places where Californians form lifelong memories with their loved ones. They are also home to countless flora and fauna.

The area that was affected by the 2015 Refugio Beach Oil Spill “has one of the most diverse and abundant assemblages of marine organisms in the world.” Final Damage Assessment at 31. The various flora and fauna that live or migrate through the area affected by the spill are too numerous to list here but they include: kelp forests; seals; sea lions; gray, blue, and humpback whales; dolphins; otters, including the threatened southern sea otter; birds, including brown pelicans, gulls, California least terns, horned larks, and western snowy plovers; fish, including gopher rockfish, giant kelp fish, cabezon, anchovies, sardines, the federally endangered Southern California Coast Distinct Population Segment of steelhead trout, coho salmon, Chinook salmon, and giant black sea bass; lobsters; invertebrates and insects like sandcastle worms, sea stars, and sea urchins; algae such as surfgrass and eelgrass; and many more. *Id.* at 31-37. Among the threatened or endangered species in the area, it is known that “[a]t least three state- and/or federally-listed species were exposed to [Line CA-324] oil from the spill: the threatened western snow plover, the endangered black abalone, and the endangered humpback whales.” *Id.* at 37. However, other “state- and federally-listed or protected species occur in areas exposed to the spill[]” and could face mortality from potential future spills. *Id.*

California and its people also have important archeological and cultural resources that were affected by the 2015 Refugio Beach Oil Spill and that must be protected from another potential oil spill. “The density of Native American sites is particularly high within the central response area along the western Santa Barbara Channel, where the narrow coastal plain concentrated settlement within a thin band of land. The area also contains numerous historical

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<sup>4</sup> The public may view a map of California state parks, beaches, and other sites at <https://csparks.maps.arcgis.com/apps/instant/basic/index.html?appid=065b067caa204e8da48d4b53c9483ab0> (last visited on March 25, 2026).

<sup>5</sup> The Final Damage Assessment is available at <https://www.nfwf.org/sites/default/files/2022-09/refugio-beach-oil-spill-final-damage-assessment-restoration-plan-2-03-2021.pdf> (last visited on April 1, 2026).

sites dating to the Spanish, Mexican, and American periods . . .” Final Damage Assessment at 38.

California’s recreational offerings are well known throughout the world and represent a valuable sector of California’s economy. Recreational activities in Santa Barbara, Ventura, and Los Angeles Counties include “camping, sunbathing, beach combing, exercising, swimming, wildlife viewing, as well as more specialized activities such as fishing, diving, boating, and surfing.” Final Damage Assessment at 151-152. The 2015 Refugio Beach Oil Spill caused popular state campgrounds and day use areas to close for up to 59 days in Santa Barbara County, as well as beach closures as far south as Los Angeles County. It was estimated that there were “140,000 lost recreational user days in Santa Barbara and Ventura Counties; six days of beach closures in Los Angeles County; and lost research, education, and outreach opportunities at the University of California, Santa Barbara Coal Oil Point Natural Reserve.” Final Damage Assessment at 3. Financially, the estimated total lost consumer surplus value to the public was \$4,468,707.

A potential future oil spill from the lack of adequate evaluation and remediation of corrosion on Lines CA-324/325 may impact California’s economy as well. The 2015 Refugio Beach Oil Spill resulted in the closure of commercial fisheries and impacted businesses dependent on the recreational economy. Cal. Dep’t of Fish and Wildlife, et al., Refugio Beach Oil Spill Natural Resource Damage Assessment Update (Nov. 2015) (“RBOS NRDA Update”).<sup>6</sup> There are also numerous other businesses that depend on the resources and activity offerings of the Southern California coast. Any disruption may cause damage to these businesses.

### **III. PHMSA HAS NO AUTHORITY TO ISSUE A SPECIAL PERMIT TO SABLE FOR LINES CA-324/325**

The Attorney General objects to Sable’s special permit Application, because PHMSA has no authority to issue such a permit. Pursuant to the Pipeline Safety Act, Lines CA-324/325 are intrastate hazardous liquid pipeline facilities and the Act expressly forbids PHMSA from prescribing or enforcing safety standards and practices for them. *See* 49 U.S.C. § 60105(a). In addition, pursuant to the Consent Decree, the owner of Lines CA-324/325 must apply for a state waiver through, and receive such waiver from, the State Fire Marshal, not PHMSA. Accordingly, PHMSA lacks authority to issue a special permit, because the authority is vested in the State Fire Marshal.

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<sup>6</sup> The RBOS NRDA Update is available at <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://nrm.dfg.ca.gov/FileHandler.ashx%3FDocumentID%3D111070&ved=2ahUKEwiZn7qQ88-TAxVEPEQIHTL2AEIQFnoECBoQAQ&usq=AOvVaw3tZnYzEabglahiYJcCWxyF> (last visited on April 1, 2026).

### **A. Under the Pipeline Safety Act, Lines CA-324/325 are Intrastate Hazardous Liquid Pipeline Facilities**

An “interstate hazardous liquid pipeline facility” is a pipeline facility that transports hazardous liquid “between (i) a place in a State and a place outside that State; or (ii) places in the same State through a place outside the State.” 49 U.S.C. § 60101(a)(8)(B). Conversely, “‘intrastate hazardous liquid pipeline facility’ means a hazardous liquid pipeline facility that is not an interstate hazardous liquid pipeline facility.” 49 U.S.C. § 60101(a)(10). The term “facility” is not defined in the Pipeline Safety Act, but a “facility” is generally understood as “[s]omething that is built or installed to perform some particular function . . . .”<sup>7</sup> *See Facility*, Black’s Law Dictionary (6th ed. 1990); *see also Facility*, Black’s Law Dictionary (5th ed. 1979); *Facility*, Black’s Law Dictionary (4th ed. 1968); *Hooks v. Clark Cnty. Sch. Dist.*, 228 F.3d 1036, 1040 (9th Cir. 2000) (quoting Webster’s II, New Riverside University Dictionary 460 (1994)) (“a ‘facility’ can be commonly defined as ‘[s]omething created to serve a particular function[.]’”). “Transporting hazardous liquid,” in turn:

(A) means—

(i) the movement of hazardous liquid by pipeline, or the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline, in or affecting interstate or foreign commerce; and

(ii) the movement of hazardous liquid through regulated gathering lines; but

(B) does not include moving hazardous liquid through—

(i) gathering lines (except regulated gathering lines) in a rural area;

(ii) onshore production, refining, or manufacturing facilities; or

(iii) storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities;

49 U.S.C. § 60101(a)(22).

Lines CA-324/325 originate onshore in Santa Barbara County, California, and terminate in the Central Valley in Kern County, California, without passing through any other state. PHMSA, U.S. Dep’t of Transp., Emergency Special Permit (Dec. 23, 2025) (“ESP Conditions”). At the time of their construction in the early 1990s, the plans for Lines CA-324/325 indicated an intention to cross Arizona and New Mexico and to connect to refineries in Texas. *See* Letter from Julie Teel Simmonds, Senior Counsel, Center for Biological Diversity, to Tristan Brown, Deputy Administrator PHMSA, and Joe Tyler, Director, CalFIRE (Dec. 23, 2024) citing the Final Environmental Impact Report/Environmental Impact Statement, Cal. State Lands Comm’n, et al. (Jan. 1985) (1985 EIR/EIS). However, the line to Texas was never built; instead, Lines CA-324/325 terminate at Pentland, in Kern County, where they connect to other pipelines. Letter from J. Caldwell Flores, President and COO, Sable Offshore Corp., to Linda Daugherty, Acting Associate Administrator for Pipeline Safety, PHMSA (Nov. 26, 2025) (“Sable’s Request for

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<sup>7</sup> All three relevant editions of Black’s Law Dictionary also note that facility “also means something that promotes the ease of any action or course of conduct.” This second definition is not applicable.

PHMSA Jurisdiction”). The purpose of constructing Lines CA-324/325 was to transport crude oil from Santa Barbara County to Kern County. 1985 EIR/EIS at Abstract. That purpose remains to this day.

In a May 18, 2016, letter agreement, PHMSA re-designated Lines CA-324/325, as intrastate, and identified the State Fire Marshal as the safety regulator. May 2016 MOU. After the Refugio Beach Oil Spill, state and federal agencies, including PHMSA, engaged with Plains regarding harm from the spill, projects to remedy that harm, and civil penalties. Those efforts culminated in 2020 with the agreed Consent Decree, filed in and approved by the Central District of California (Hon. Philip S. Gutierrez). Consent Decree. In seeking approval of the Consent Decree, the United States itself identified Lines CA-324/325 as intrastate. United States’ Memorandum in Support of Motion to Enter Consent Decree, *United States of America, et al. v. Plains All American Pipeline, L.P., et al.*, No. 2:20-cv-02415 (C.D. Cal., Aug. 19, 2020) (“Motion to Enter Consent Decree”). The Consent Decree considered Lines CA-324/325 to be intrastate and assigned to the State Fire Marshal regulatory authority over Lines CA-324/325, including authority to issue state waivers—the state equivalent of a special permit. Consent Decree. Removing any ambiguity about whose job it was to regulate Lines CA-324/325, in October 2020, PHMSA sent a letter to Plains:

Upon entry, the Consent Decree . . . transferred all outstanding corrective actions in PHMSA’s closed CAO, and amendments, to the **sole regulatory oversight of the California Department of Forestry and Fire Protection’s - Office of the State Fire Marshal.**

Letter from Dustin B. Hubbard, Director, Western Region, PHMSA, to Patrick D. Hodgins, VP Health, Safety & Environmental, Plains All American (Oct. 29, 2020) (emphasis added).

PHMSA ostensibly asserts jurisdiction over Lines CA-324/325 by attempting to re-cast the pipelines as part of a single “pipeline facility” that also includes an offshore pipeline, as well as a processing, treatment and storage facility. The offshore pipeline transports an emulsion of oil, water, and other hydrocarbons from the Santa Ynez Unit drilling platforms (the “Offshore Emulsion Pipeline”), located in federal waters on the Outer Continental Shelf, to the Las Flores Canyon oil processing and treatment facilities (the “LFC Facilities”) immediately onshore in Santa Barbara County, California. Letter from Linda Gail Daugherty, Acting Associate Administrator for Pipeline Safety, PHMSA, to J. Caldwell Flores, President and COO, Sable Offshore Corp. (Dec. 17, 2025); Inspection Output Report (Dec. 28, 2025). The LFC Facilities—located on a 113-acre parcel approximately a mile inland from the coastline—process, treat, and store gas and crude oil and remove water for return and reinjection on the Outer Continental Shelf. Sable’s Request for PHMSA Jurisdiction; *see* Sable Offshore Corp., Spill Prevention, Control, and Countermeasure (“SPCC”) Plan at 8 (Mar. 2025). As described by Sable’s subsidiary, Pacific Pipeline Company, in its Complaint filed last fall in Kern County Superior Court:

The onshore facilities in Las Flores Canyon separate oil, propane, butane, sulfur products, and fuel quality gas. The natural gas is dried, treated, compressed, and

delivered to a local utility company. Oil is transferred through the Las Flores Pipelines to a refinery for final processing.

Complaint, *Pacific Pipeline Co. v. California*, No. BCV-25-103508 (Kern County Sup. Court, Sept. 29, 2025), ¶ 19). In addition to gas and oil processing plants, the LFC Facilities also include, among other infrastructure, a cogeneration power plant, a biologic water treatment plant, two 270,000-gallon capacity crude oil storage tanks, a warehouse, a laboratory, and office buildings. SPCC Plan at Figs. 2-5, and F-4.

Historically, the LFC Facilities have consistently been treated as separate from Lines CA-324/325. For instance, they were reviewed in an Environmental Impact Report and Environmental Impact Statement separate from Lines CA-324/325. *See* Letter from Julie Teel Simmonds, Senior Counsel, Center for Biological Diversity to Joe Tyler, Director/Fire Chief, CalFIRE, et al. (Sept. 24, 2024) citing to 1985 EIR/EIS. The LFC Facilities also have been historically regulated separately from Lines CA-324/325 by the County of Santa Barbara. *See, e.g.,* Verified Petition for Writ of Mandamus and Complaint, *Sable v. California*, Case No. 26WM000036 at 9 (Sacramento Sup. Ct., Feb. 17, 2026). Notably, prior to December 2025, no federal, state, or local authority had ever asserted that Lines CA-324/325, the Offshore Emulsion Pipeline, and the LFC Facilities are all part of a single interstate “pipeline facility.”

**B. The Consent Decree Conveys the Authority and Responsibility to Review, Approve, and Issue State Waivers to the State Fire Marshal, Not PHMSA**

The Application states that Sable is seeking relief from 49 C.F.R. § 195.452(h)(4)(iii)(H) to “implement Appendix B, Article I.1.A and Appendix D, Section 1.b.10 and 1.f of the Consent Decree[.]” Application at 1 and 18-19. According to Sable, PHMSA’s designation of Lines CA-324/325 as interstate removes “any regulatory jurisdiction of OSFM over these pipelines” and instead requires obtaining a special permit from PHMSA. Letter from J. Caldwell Flores, President and COO, Sable Offshore Corp., to Linda Daugherty, Acting Associate Administrator for Pipeline Safety, PHMSA at 14 (Dec. 19, 2025). However, Sable’s assertion is false. PHMSA, as an arm of the Executive, does not have the authority to revise, overturn, or refuse faith and credit to a final judgment of the district court. *Taylor v. U.S.*, 181 F.3d 1017, 1024 (1999) (“[O]nce court decisions achieve finality they ‘may not lawfully be revised, overturned or refused faith and credit by another Department of Government.’” (citations omitted)). Appendix B.1.A. and B of the Consent Decree explicitly dictates that an application for a State Waiver shall go through, and be reviewed and approved by, *the State Fire Marshal*, not PHMSA.

PHMSA has no authority to unilaterally modify the Consent Decree. To lawfully issue a special permit for Lines CA-324/325, PHMSA would need to first modify or terminate the Consent Decree through the proper process. *See Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 388 (1992). The Consent Decree provides that a modification may occur only “by a subsequent written agreement signed by the Parties.” Consent Decree at 54-55. If the modification is a “material change” then it must be approved by the district court. *Id.* If there are disputes concerning modification, then the Consent Decree provides dispute resolution procedures that must be followed. *Id.* The party seeking relief from a consent decree “bears the

burden of establishing that a significant change in circumstances warrants revision of the decree.” *Rufo*, 502 U.S. at 383.

On March 30, 2026, the United States filed a motion to terminate or modify the Consent Decree. The motion is set for hearing on June 1, 2026. However, as of the date of this comment letter, PHMSA has obtained a modification of the Consent Decree and it remains the final judgment of the district court. As a government agency and party to the Consent Decree, PHMSA is bound by it and cannot unilaterally assert regulatory jurisdiction over Lines CA-324/325 in contravention of the Consent Decree’s express delegation of that authority to the State Fire Marshal. *Hook. v. State of Ariz., Dep’t of Corr.*, 972 F.2d 1012, 1017 (holding that a state agency was bound by a consent decree the agency was a party to until the court ruled otherwise). The fact that the United States filed a motion to terminate or modify the Consent Decree only supports that the United States understands that PHMSA is bound by the Consent Decree and has no authority to issue a special permit. As such, PHMSA should deny Sable’s Application.

#### **IV. PHMSA SHOULD NOT ISSUE A SPECIAL PERMIT WHILE IT REFRAINS FROM TAKING ENFORCEMENT ACTION**

According to its own regulations, a special permit may only be issued by PHMSA if the Associate Administrator determines that the application complies with the requirements of 49 C.F.R. § 190.341 and “that the waiver of the relevant regulation or standard is not inconsistent with pipeline safety[.]” 49 C.F.R. § 190.341(d). As part of the overall special permit scheme, the regulations contemplate enforcement action for non-compliance with any terms and conditions of a special permit. *See* 49 C.F.R. § 190.341. This is in line with the Pipeline Safety Act’s express purpose “to provide adequate protection against risks to life and property posed by pipeline transportation . . .” 49 U.S.C. § 60102(a)(1). Yet, on January 12, 2026, PHMSA issued a Notice of Limited Enforcement Discretion and Statement of Policy for Issuing Special Permits in Response to National Energy Emergency (“Limited Enforcement Discretion Policy”), announcing that it “will refrain from taking any enforcement action against a regulated party who defers the performance of an activity that would otherwise be required under the Federal pipeline or hazardous materials safety regulations” if: (1) performing the required activity would contribute to the purported national energy emergency by adversely impacting the transportation of energy, (2) the “regulated party demonstrates that deferring the performance of the required activity will not create an unreasonable risk to public safety, property, or the environment,” and (3) the regulated party “files an application for a special permit promptly, but no later than 45 days after determining that the required activity should not be performed in response to the national energy emergency.” Limited Enf. Disc. Policy at 2. (Jan. 12, 2026).<sup>8</sup> While the second criterion appears to require a demonstration that deferring the required activity will not create a reasonable risk, the Limited Enforcement Discretion Policy makes it clear that PHMSA will not take enforcement action even if a special permit application is denied for failing to make such a demonstration:

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<sup>8</sup> The Limited Enforcement Discretion Policy is available at <https://www.phmsa.dot.gov/regulatory-compliance/phmsa-guidance/notice-limited-enforcement-discretion-and-statement-policy> (last visited on April 2, 2026).

if the application for a special permit is denied, PHMSA will continue to refrain from taking any enforcement action for a reasonable period of time thereafter, so that the party who sought the waiver or exemption can take appropriate action to perform the required activity without incurring any additional enforcement risk.

Limited Enforcement Discretion Policy at 2-3. In other words, whether a special permit applicant follows PHMSA's safety regulations or not is immaterial because PHMSA will take no enforcement action regardless. Instead, PHMSA has made it clear that regulated parties "may rely on this notice as a temporary safeguard from PHMSA regulatory enforcement . . ." Limited Enforcement Discretion Policy at 3. If PHMSA is going to enact this policy, it should refrain from exercising jurisdiction over Sable's Application because it has already predetermined that it will not enforce its own regulations. Instead, granting the Application and issuing special permits to Sable will defeat the express purpose and requirements of the Pipeline Safety Act and will only endanger the safety of California's environment and public health.

## V. PHMSA SHOULD PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Even if PHMSA had the authority to act on Sable's Application (which it does not), the scope of the draft Environmental Assessment ("EA") prepared in connection with the Application is far too narrow. PHMSA should instead prepare and publish for public comment an environmental impact statement ("EIS"). The National Environmental Policy Act ("NEPA") requires the preparation of an environmental impact statement for "major Federal actions significantly affecting the quality of the human environment . . ." 42 U.S.C. § 4332(C). To the extent that an EIS was previously prepared, a supplemental environmental impact statement ("SEIS") is required if there is new information that is sufficient to show that the remaining action will "affect[t] the quality of the human environment" in a significant manner or to a significant extent not already considered. *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 374 (1989) (citations omitted). The Department of Transportation's own Procedures for Considering Environmental Impacts (DOT Order 5610.D) indicate that major federal actions may include "grants, construction, regulatory actions, certifications, licenses, **permits**, approval of policies and plans, adoption or implementation of programs, **waivers**, legislation proposed by DOT, and **any renewals or approvals of the above.**" U.S. Dep't of Transp., Procedures for Considering Environmental Impacts (Jul. 1, 2025) ("DOT Order 5610.1D") (emphasis added).<sup>9</sup>

### A. PHMSA Must Analyze All Reasonable Alternatives

NEPA requires project proponents to provide a "detailed statement" regarding the "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C)(iii). The requirement to consider reasonable alternatives "lies at the heart of any NEPA analysis." *California ex rel. Lockyer v. U.S. Dept. of Agric.*, 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006). The draft Environmental Assessment (Document No. PHMSA-2026-0464-0005\_attachment\_1) ("EA") states:

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<sup>9</sup> DOT Order 5610.1D is available at <https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts> (last visited on April 2, 2026).

PHMSA evaluates whether granting a special permit would provide an equal or greater level of safety compared to the operation of the pipeline in regular compliance with the federal pipeline safety regulations. PHMSA's environmental review associated with a special permit is limited only to impacts that would result from granting or denying a special permit.

EA at 1. The EA further states that "PHMSA's EA for the Emergency Special Permit and non-emergency [Special Permit] is limited to an evaluation of the significance of impacts associated with the Action Alternative, compared to those that would result under the No Action Alternative." EA at 15. The Action Alternative is the granting of the waiver and the No Action Alternative "involves the failure to issue a regulatory waiver and the construction of approximately 123 miles of new pipe at or near segments CA-324 and CA-325's existing right-of-way. . ." EA at 15. Yet these are not the only reasonable alternatives. The EA conspicuously ignores the alternative of granting a special permit that would retain compliance with 49 C.F.R. § 195.452(h)(4)(iii)(H). Additional reasonable alternatives that PHMSA should consider include: limiting the term of the special permit to a fixed number of years; allowing PHMSA to revoke the special permit if Sable does not comply with all conditions; allowing PHMSA to revoke, suspend, or modify the special permit under certain circumstances; among others.

### **B. The Purpose and Need Conveyed in the Draft EA for the Emergency Special Permit and Special Permit Inappropriately Relies on Executive Orders 14154 and 14156 to Justify the Inadequate Environmental Analysis**

NEPA requires an agency to analyze all "reasonably foreseeable environmental effects" and "make use of reliable data and resources in carrying" out its statutory obligation. *See* 42 U.S.C. § 4331(C)(i) and (E). Pursuant to PHMSA's regulations, an emergency special permit may be issued only if the Associate Administrator determines that: "(i) it is in the public interest to grant the waiver; (ii) the waiver is not inconsistent with pipeline safety; and (iii) the waiver is necessary to address an actual or impending emergency involving pipeline transportation, including an emergency caused by a natural or manmade disaster." 49 U.S.C. § 60118(c)(2)(A); *see also* 49 C.F.R. § 190341(g).

PHMSA provided scant reasoning for how the emergency special permit would address an actual or impending emergency. In its Special Permit Analysis and Findings, PHMSA stated that the Emergency Special Permit is necessary because it "would enable and facilitate the *special permit segments* to meet regional energy demands, reduce refinery feedstock prices, mitigate the risks of fuel shortages on the West Coast, and reduce United States dependency on imported oil and the associated energy security risks of such imports." U.S. Dep't of Transp., PHMSA, Special Permit Analysis and Findings, Emergency Special Permit at 3 (Dec. 19, 2025) (emphasis in original). However, PHMSA did not explain how the granting of the Emergency Special Permit will enable and facilitate, reduce, mitigate, or meet any of these purported needs. PHMSA gave no indication that it examined any data or considered any factors to conclude that the granting of an emergency special permit would indeed address the alleged energy

“emergency.” PHMSA only provided a few conclusory statements, which is insufficient to establish that the Emergency Special Permit indeed addresses an impending or actual emergency.

Similarly, neither the EA nor the other Application materials explain how PHMSA’s decision to grant the Emergency Special Permit addresses the “high energy costs” described in Executive Order 14154.

PHMSA should provide reliable data and resources to support *how* the granting of the Emergency Special Permit will address any emergency or the energy needs listed in the Executive Orders as well as the reasonably foreseeable environmental effects.

### **C. The EA Improperly Relies on Past Environmental Statements or Analyses**

PHMSA “has a continuing duty to gather and evaluate new information relevant to the environmental impacts of its actions.” *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1024 (9th Cir. 1980). PHMSA cannot rely on past environmental statements and analyses for a determination on the Application. None of the past analyses considered a waiver like the one proposed by the Application. Additionally, PHMSA now has new information such as the known corrosion issues that Lines CA-324/325 suffer from, and the damage that already occurred from corrosion of Line CA-324.

The damage caused by corrosion on Line CA-324 in 2015 is well documented, including in the Final Damage Assessment. Despite the known corrosion issue and the extensive damage from the 2015 Refugio Beach Oil Spill, the EA states that granting a special permit “would not present significant impacts to biological resources due to potential oils spills.” EA at 23. This determination was made despite there being no indication in the EA that PHMSA consulted with the National Marine Fisheries Service (“NMFS”) even though it knows of damage to marine life. The EA also acknowledges that consultation with the California State Historic Preservation Office, Advisory Council on Historic Preservation, and Native American Tribes, all remain pending. EA 21-22.

In addition to the damage caused by the 2015 Refugio Beach Oil Spill, PHMSA fails to analyze other reasonably foreseeable environmental impacts from a potential granting of a special permit. For example, the EA acknowledges that the right-of-way segments for Lines CA-324/325 “have experienced forest and range fires, particularly during dry years and under strong easterly wind conditions[.]” but provides no analysis of how wildfires would impact the environment in light of the special permit and the lack of evaluation and remediation of corrosion on the pipelines. This is especially concerning when there have been wildfires caused by oil and gas pipeline ruptures or wildfires near oil and gas pipelines in recent years.<sup>10</sup> PHMSA must identify and thoroughly analyze all reasonably foreseeable impacts.

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<sup>10</sup> See <https://www.cbc.ca/news/canada/edmonton/tsb-report-edson-pipeline-rupture-9.6934226>; <https://www.reuters.com/business/environment/canada-wildfire-reaches-jasper-firefighters-work-protect-trans-mountain-oil-2024-07-25/>

## VI. USE OF THE ESA'S EMERGENCY CONSULTATION PROCEDURES IS IMPROPER

The record includes a letter from the U.S. Department of the Interior's ("Interior") Fish and Wildlife Service ("USFWS") (Document No. PHMSA-2026-0464-0004\_attachment\_1 hereinafter referred to as "USFWS Letter") acknowledging receipt of a request by PHMSA to consult pursuant to the emergency Endangered Species Act ("ESA") Section 7 consultation procedures, 50 C.F.R. § 402.05.<sup>11</sup> The USFWS Letter states that PHMSA "determined their action is an emergency based upon implementation of Executive Order 14156[.]" The request is improper because reliance on Executive Order 14156 alone does not provide a lawful justification for the use of the USFWS's emergency consultation procedures. The ESA and its implementing regulations do not allow agencies to routinely avoid and delay implementation of the ESA's protections of endangered and threatened species and their critical habitats.

The USFWS and NMFS (collectively "the Services") have adopted joint regulations on interagency consultation under the ESA. *See* 50 C.F.R. Part 402. The Services' joint regulations allow for expedited, informal consultation when emergency circumstances require them, i.e., "situations involving acts of God, disasters, casualties, national defense or security emergencies, etc." 50 C.F.R. § 402.05(a). They allow for a delay of the initiation of formal consultation until "as soon as practicable after the emergency is under control." *Id.* § 402.05(b). The Services' implementing regulations only allow for the use of emergency consultation procedures for emergency responses to sudden, unanticipated events, when necessary to prevent the loss of life, protect public safety, or avoid other imminent harm. *Washington Toxics Coal. v. U.S. Dep't of Interior, Fish & Wildlife Serv.*, 457 F. Supp. 2d 1158, 1195 (W.D. Wash. 2006) ("The overwhelming impression conveyed by [the examples of emergency used in 50 C.F.R. § 402.05] and by the general-purpose ordinary language meaning of 'emergency' itself includes the element of surprise and unexpectedness"); *Forest Serv. Emps. for Env't Ethics v. U.S. Forest Serv.*, 397 F. Supp. 2d 1241, 1257 (D. Mont. 2005) ("The emergency exception is meant for unexpected exigencies"). As the USFWS's Handbook on ESA Consultations explains, "[p]redictable events . . . usually do not qualify as emergencies under the section 7 regulations unless there is a significant unexpected human health risk."<sup>12</sup> Such an emergency is not presented by Executive Order 14156, and the letter from USFWS does not indicate that PHMSA provided any other justification for the application of the emergency procedures.

Rather than rely on Section 7 emergency consultation to decide the Application, PHMSA should comply with the clear mandates of the ESA before considering the Application. Section 7 of the ESA requires federal agencies, "in consultation with and with the assistance of the

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<sup>11</sup> The letter also references the Department of Interior's alternative procedures adopted pursuant to Executive Order 14516; however, Interior's alternative procedures for ESA consultations incorporate the ESA's implementing regulations at 50 C.F.R. § 402.05 so there is no real distinction between the two.

<sup>12</sup> U.S. Fish and Wildlife Service, Final ESA Section 7 Consultation Handbook 8-1 (March 1998), <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>.

[USFWS and the National Marine Fisheries Service (jointly referred to as “Services”), to] insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered [] or threatened species or result in the destruction or adverse modification of habitat of such species.” 16 U.S.C. § 1536(a)(2). Section 7 consultation is mandatory “if the applicant has any reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.” 16 U.S.C. § 1536(a)(3).

Pursuant to the Services’ joint regulations, each federal agency “shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat.” 50 C.F.R. § 402.14(a). Biological assessments are “required” for major construction and must be prepared “before construction is begun.” *Id.* § 402.12(b). “Major construction activities” are defined as projects with physical impacts that are major federal actions “significantly affecting the quality of the human environment,” as the term is used in NEPA. 50 C.F.R. § 402.02. Formal consultation is required if the agency determines its “action may affect listed species or critical habitat” unless it “determines, with the written concurrence of the [agency’s] Director, that the proposed action is not likely to adversely affect any listed species or critical habitat.” 50 C.F.R. § 402.14(a), (b)(1). The biological assessment is then used to determine whether formal consultation with the agency is required. *Id.* § 402.12(k). Once consultation is initiated, agencies may not irreversibly commit resources that effectively foreclose reasonable and prudent alternatives to the proposed action. *Id.* § 402.09; *see also* 16 U.S.C. § 1536(d).

If formal consultation is required, the agency must provide the Service with a written description of the proposed action. It must contain “sufficient detail to assess the effects of the action on listed species and critical habitat,” a description of the effects of the action, information on listed species and habitat in the geographic area, and any other relevant information. 50 C.F.R. § 402.14(c).

The EA acknowledges that consultation is needed and states that “PHMSA is in the process of initiating non-emergency consultation with USFWS.” EA at 23. Because the request for emergency consultation is based on Executive Order 14156 rather than for a reason provided under the ESA, PHMSA should comply with the ESA’s formal interagency cooperation requirements. Additionally, PHMSA has not indicated that it will consult with NMFS.<sup>13</sup> PHMSA knows that in 2015 corrosion of Line CA-324 resulted in damage to marine life. It is more than reasonably foreseeable that a special permit that waives evaluation and remediation of corrosion on Lines CA-324/325 may lead to additional future harm. If granting the special permit “may effect” any species under the responsibility of NMFS, then PHMSA must also consult with NMFS.

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<sup>13</sup> To the extent that PHMSA has begun or plans to use emergency consultation procedures for endangered and threatened species under NMFS’ responsibility, it is unlawful for the same reasons explained above. NMFS is responsible for most marine species and anadromous fish species.

For the foregoing reasons, PHMSA must wait to decide on the Application until non-emergency ESA consultation with the Services is completed.

## **VII. SECRETARY WRIGHT’S ORDER PURSUANT TO THE DEFENSE PRODUCTION ACT IS UNLAWFUL**

In its second notice extending the deadline, PHMSA requested “public comments on any potential impact that the DPA order might have on this proceeding, including whether the special permit remains necessary and, if so, whether safety or environmental analysis should be adjusted in light of the restart of the pipeline segments.” 91 Fed.Reg. 13698, 13699. Secretary Wright’s DPA Order does not change this analysis—i.e., whether PHMSA should have granted an Emergency Special Permit or whether it should grant the Application—in that, for the reasons discussed above, PHMSA does not have the authority to grant an emergency special permit or special permit in the first place. Further, the DPA Order itself is unlawful. As alleged in California’s Complaint for Declaratory and Injunctive and Other Relief, No. 2:26-cv-3396 (C.D. Cal. Mar. 31, 2026), the DPA Order violates the Administrative Procedure Act because it is contrary to law, in excess of the Department of Energy’s Authority, and arbitrary and capricious. Additionally, the DPA Order violates the United States Constitution by impeding on the federal judiciary’s and Congress’ authority, and infringes upon California’s sovereign power to own, manage, and dispose of its property.

Even if PHMSA had the authority to issue a special permit (which it does not) and that the DPA Order were lawful (which it is not), then PHMSA must still comply with NEPA and other applicable laws. *See Nat. Res. Def. Council v. Winter*, 527 F.Supp.2d 1216, 1230-1232 (C.D. Cal., Feb. 4, 2008) (“it is well established that NEPA contains no ‘national security’ or ‘defense’ exception.” (citations omitted)). PHMSA must consider all reasonably foreseeable environmental impacts in an environmental impact statement and request public comments before deciding on the Application.

## **VIII. CONCLUSION**

For the foregoing reasons, California urges PHMSA to deny Sable’s application for a special permit. California concurs with the recommendations and statements made by the State Fire Marshal in his comment letter submitted on April 3, 2026. The State Fire Marshal’s comment that his office has jurisdiction over Lines CA-324/325 is correct. Pursuant to the Pipeline Safety Act and the Consent Decree, PHMSA had no authority to issue an emergency special permit for Lines CA-324/325 and has no authority to decide on the Application. Even if PHMSA had authority to decide on the Application (which it does not), it still must follow the requirements of NEPA and all other applicable laws. PHMSA has not done so because it has failed to consider all the reasonable alternatives, has not considered all the reasonably foreseeable environmental impacts, and improperly relies on inapplicable and outdated past environmental analyses. Further, PHMSA unlawfully invokes the ESA’s emergency consultation procedures and has given no indication that it will consult with NMFS. Lastly, the DPA Order does not affect PHMSA’s consideration of the Application because PHMSA has no authority to grant a special permit to begin with and the DPA Order itself is unlawful. Even if the DPA Order

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were lawful (which it is not), PHMSA must still comply with NEPA, the ESA, and all other applicable laws before deciding on the Application. For these reasons, PHMSA must deny the Application.

Sincerely,



RAFAEL J. HURTADO  
Deputy Attorney General

For ROB BONTA  
Attorney General

RH: