

Katherine Douglas *General Public Comment - Environmental Defense Center*

From: Linda Krop <lkrop@environmentaldefensecenter.org>
Sent: Tuesday, September 10, 2024 8:30 AM
To: sbcob
Cc: Plowman, Lisa; Briggs, Errin; Mary Pat Barry
Subject: Sable settlement
Attachments: EDC Letter to Planning Dept re Valve Settlement_2024_09_06.pdf

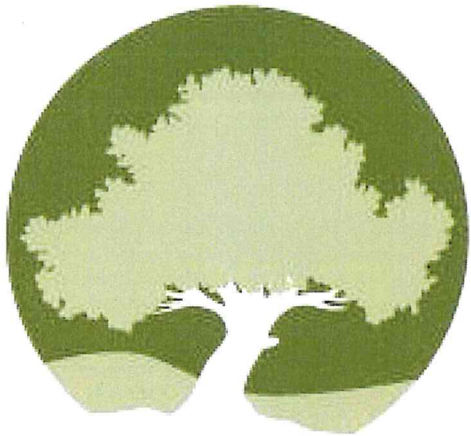


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Dear Clerk of the Board,
I intend to speak during public comment today regarding the County's settlement with Sable. I would appreciate it if you could distribute the attached letter which was sent to the Planning and Development Department last Friday.
Thank you very much,
LK

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September 6, 2024

Ms. Lisa Plowman, Director
Mr. Erin Briggs, Deputy Director of Energy Minerals & Compliance
Planning & Development
County of Santa Barbara
123 E. Anapamu St.
Santa Barbara, CA 93101
Via Email: lplowman@countyofsb.org; ebriggs@countyofsb.org

Re: Response to Pacific Pipeline Company's August 30, 2024 Letter; County Jurisdiction Over Underground Activities

Dear Ms. Plowman and Mr. Briggs:

On August 30, 2024, Sable Offshore Corp. and Pacific Pipeline Company's (together, "Sable") sent a letter to the Planning and Development Department ("P&D") requesting that the County acknowledge it lacks jurisdiction over Sable's revised plan to install underground valves on Lines 901 and 903 (the "Revised Plan"). On September 4, 2024, P&D granted Sable's request, conceding in a response letter that the County does not have permit authority over the Revised Plan (the "Acknowledgment").

In its letter, Sable claimed, without explanation, that the County is preempted from exercising jurisdiction over its Revised Plan under (1) the federal Pipeline Safety Act ("PSA") and its implementing regulations, and (2) the settlement agreement in *Celeron Pipeline Company of California v. County of Santa Barbara* (the "Celeron Agreement").¹ However, each of these authorities only purport to limit the County's authority to regulate *interstate* pipelines. Because Lines 901 and 903 were reclassified from interstate to intrastate pipelines, Sable is incorrect that the County's jurisdiction is preempted here, and thus P&D's Acknowledgment was erroneous.

¹ As discussed further below, while P&D's acknowledgment alludes to state law requiring safety valves, Sable did not ask P&D to acknowledge that the County's jurisdiction is preempted by any such state law.

Accordingly, on behalf of Get Oil Out! (“GOO!”), Santa Barbara County Action Network (“SBCAN”), and the Environmental Defense Center (“EDC”),² we ask that P&D immediately retract the Acknowledgment and, should it further consider Sable’s request, hold a public hearing on the matter.

I. The PSA and Its Implementing Regulations Only Preempt State Regulation of Safety Standards in Interstate Pipelines.

The PSA and its implementing regulations, on which Sable relies, only expressly preempt state regulation of *interstate* pipelines, and only to the extent such regulation concerns safety standards. Lines 901 and 903, however, are not interstate pipelines; they were redesignated as *intrastate* pipelines following the Refugio Oil Spill.

As relevant here, the PSA includes an express preemption provision, which provides:

A State authority may not adopt or continue in force safety standards for *interstate* pipeline facilities or *interstate* pipeline transportation.

49 U.S.C. § 60104(c) (emphasis added). Notably, as to intrastate pipelines, the PSA expressly vests state authorities with the discretion to “adopt additional or more stringent safety standards,” so long as “those standards are compatible with the minimum standards prescribed under this chapter.” (*Id.*)

At the time of the Refugio Oil Spill, Plains All American Pipeline (“Plains”) operated Line 901 and Line 903 under a Federal Energy Regulatory Commission (“FERC”) certificate of economic regulatory jurisdiction that was issued in 1987.³ Based on the FERC filing, Lines 901 and 903 were classified as interstate pipelines, pursuant to 49 U.S.C. § 60101(7), as facilities used to transport hazardous liquid in interstate or foreign commerce, and as such, were regulated by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) as interstate pipelines.⁴

However, following the spill, Plains cancelled the FERC certificates for Lines 901 and 903, stating that the transportation service was no longer available in interstate commerce.⁵

² GOO! was formed in the wake of the 1969 Santa Barbara Oil Spill and continues to work to protect California from further oil and gas development and exploitation. SBCAN is a countywide grassroots organization that works to promote social and economic justice, to preserve our environmental and agricultural resources, and to create sustainable communities. EDC is a nonprofit public interest law firm that defends nature and advances environmental justice on California’s Central Coast through advocacy and legal action.

³ Pipeline and Hazardous Materials Safety Administration, *Failure Investigation Report, Plains Pipeline, LP, Line 901, Crude Oil Release, May 19, 2015, Santa Barbara County, California*, pp. 5 (May 2016) [hereinafter “PHMSA Report”], available at: https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/PHMSA_Failure_Investigation_Report_Plains_Pipeline_LP_Line_901_Public.pdf.

⁴ *Id.*

⁵ *Id.* at 5-6.

Thus, the pipelines were effectively redesignated as *intrastate* pipelines. Hence, the Office of the State Fire Marshal (“OSFM”) — not PHMSA — now has regulatory oversight over the pipelines.⁶

Because these pipelines are not interstate pipelines, the County’s regulation of these pipelines — even on matters concerning safety standards — is not expressly preempted by the PSA or its implementing regulations. (*See, e.g., Washington Gas Light Co. v. Prince George’s County Council* (Md. 2012) 2012 WL 832756 (“The PSA has an express preemption provision, but it is only applicable to interstate . . . facilities.”)) In other words, the federal regulations that Sable relies on do not in any way affect the County’s jurisdiction here.

Moreover, even if these were interstate pipelines, the County’s jurisdiction would only be preempted to the extent the County was adopting or attempting to implement safety standards — e.g., by regulating the design or use of the valves or other pipeline equipment. (*See* 49 U.S.C. § 60104(c).) But regulating the installation and siting of the valves is purely a land use decision; any connection to or effect on pipeline safety is merely incidental. (*See Washington Gas Light Co. v. Prince George’s County Council* (4th Cir. 2013) 711 F.3d 412, 420-21 (“[B]ecause the County Zoning Plans are not safety regulations, they do not come within the express preemption provision of the PSA.”); *Texas Midstream Gas Servs. V. City of Grand Prairie* (5th Cir. 2010) 608, F.3d 200, 211 (Holding that even though it has an incidental effect on safety, a setback requirement is not a “safety standard,” and thus setback requirements are not preempted by the PSA.)) Thus, even if the PSA’s express preemption provision applied here — which it does not, since these are not interstate pipelines — it would not broadly limit the County’s jurisdiction in the way Sable contends.

II. Nor Does the Celeron Agreement Preclude County Review.

The Celeron Agreement arose from a dispute regarding whether the County was preempted by the PSA and its implementing regulations from imposing certain conditions on Celeron’s permits. Importantly, at the time of the dispute, Lines 901 and 903 were still considered interstate pipelines directly under PHMSA authority.

Accordingly, the purpose of the Celeron Agreement was to identify and agree on the scope of County authority over *interstate* pipelines. Hence, the parties acknowledged at the outset of the agreement only “that the jurisdiction of the County over an *interstate* pipeline is limited and partially preempted by the provisions of the federal Hazardous Liquids Pipeline Safety Act and 49 CFR Part 195” (Celeron Agreement, ¶ 2.1, emphasis added.)

Part III of the agreement, entitled “presumptions of preemption,” was intended to “aid in determining what is preempted by Part 195 and what is a valid area for the County to enter based upon the terms of this Agreement.” (Celeron Agreement, ¶ 3.1.) Paragraph 3.1.3 — apparently at issue here — states as follows: “[i]t shall be presumed that the County is

⁶ *See generally* Consent Decree, Appendixes B, D, available at <https://www.epa.gov/sites/default/files/2020-03/documents/plainsallamericanpipelinelp.pdf>.

preempted . . . [i]f the activity to be performed is one foot or more below the surface of the ground. . . .”

As noted above, the entire purpose of the Celeron Agreement was to stake out the bounds of County authority over *interstate* pipelines, including via Paragraph 3.1.3, in light of the PSA’s preemptive effect on such pipelines. It was not intended to limit the County’s authority over *intrastate* pipelines, which, as explained above, is not preempted by the PSA or its implementing regulations. Indeed, the agreement does not even once allude to the County’s jurisdiction over intrastate pipelines.

Because Lines 901 and 903 are intrastate pipelines, the Celeron Agreement — which, again, strictly concerns the County’s authority over interstate pipelines — has no bearing on the County’s jurisdiction here.

In any event, the County retains authority under the Celeron Agreement to exercise its powers to address an imminent danger, which these pipelines pose. Specifically, it states that “[n]otwithstanding the provisions of Paragraphs 3.1 and 3.2, the County shall retain its police powers as necessary to prevent present and imminent danger to persons or property.” (Celeron Agreement, ¶ 3.3.)

As we unfortunately now know, Sable’s onshore pipelines do not have effective protection against corrosion, which is ultimately what caused the 2015 spill. Yet despite that lack of protection, Sable plans to restart these pipelines rather than replace them, setting us up for a repeat of the 2015 disaster.

Recently, Sable sued EDC and the California Department of Fish and Wildlife (“CDFW”) to try and withhold from the public vital information about the risks of operating these pipelines. After prevailing in court, we received the information that it sought to keep out of public view. One of the things we learned is that, per Sable’s estimate, a worst-case spill from these pipelines could be 14x the volume of the Refugio Oil Spill. And that, we believe, is a highly conservative estimate.

While that alone is cause for concern, the corroded state of these pipelines makes that estimate all the more alarming. Without protection from corrosion, another spill from these pipelines is not a matter of if, but when. In fact, when the County was in the process of considering a proposal to replace these pipelines, it estimated that restarting these pipelines could result in a spill once a year, and a rupture once every four years — and that is even with the installation of additional valves.⁷ (See Exhibit A.)

⁷ Administrative Draft of Draft EIR for Plains Pipeline Replacement Project, Section 5.6, p. 79, available at https://www.environmentaldefensecenter.org/wp-content/uploads/2024/08/DEIR_PlainsReplacementPipeline_03.21.22.pdf.

Because Sable’s restart plans pose an imminent danger to County land and residents, even if the Celeron Agreement is applicable here, the County is excused from compliance pursuant to Paragraph 3.3.

III. Sable Did Not Ask the County to Acknowledge that Its Jurisdiction is Preempted by State Law, and Its Not Preempted by State Law.

In its Acknowledgment, P&D “confirm[ed] it does not have permit authority over the [Revised Plan] because [the valves] . . . are related to the operation of an interstate pipeline, and one foot or more underground.” As explained above, this is incorrect, since these are not interstate pipelines, and the Celeron Agreement has no bearing here.

However, as a further and third basis for the Acknowledgment, P&D also “confirm[ed]” that the County lacks jurisdiction here because the valves “are required by state law.” Sable never asked P&D to make such an acknowledgement. It only asked P&D to acknowledge that the County was preempted from regulating the Revised Plan under the PSA and the Celeron Agreement. Thus, the Acknowledgment exceeds Sable’s request and should be conformed to remove this finding.

Moreover, it is unsettled whether the County is actually preempted under Gov. Code section 51013.1 — the state law the purportedly requires safety valves.

Section 51013.1 only mandates that pipeline operators use “best available technology, including, but not limited to” safety valves. Although the statute contemplates the use of best available technology (“BAT”), it says nothing about the permitting jurisdiction of local authorities, and it does not expressly purport to limit such jurisdiction. A reasonable interpretation of the statute is simply that operators must use BAT, but it is up to the operator to secure any necessary local permits for installation. In other words, the BAT requirement is just a condition on an operator’s continued use of a pipeline in the coastal zone, but it does not preempt County authority.

Relatedly, what the County and Sable appear to be largely ignoring is that Sable has an alternative path to restarting the Santa Ynez Unit: replacing the pipelines. Plains previously proposed to replace the pipelines, and the County had made substantial progress in reviewing the proposal, including by nearly completing a Draft EIR. Replacing Lines 901 and 903 with pipelines that have effective protection against corrosion is perhaps the only way Sable can truly ensure that it is using the *best* available technology.

Again, whether Section 51013.1 preempts local permitting authority is an unsettled question that is best left for the courts to determine. P&D’s finding here may be incorrect, as explained above, and could bind the County to an erroneous interpretation of the law before the issue can be properly litigated. Especially considering that Sable never requested that P&D make such a finding, it should be retracted from the Acknowledgment.

IV. Conclusion

At first blush, burying the valves may appear to be a convenient way for Sable to escape County oversight. But it is a little too neat, which is likely why previous operators never seriously considered it. The PSA and its implementing regulations do not preempt County jurisdiction here because Lines 901 and 903 are intrastate, not interstate, pipelines. Similarly, the Celeron Agreement — which only contemplates County jurisdiction over interstate pipelines — does not apply here to limit the County's jurisdiction.

Accordingly, we urge P&D to immediately retract the Acknowledgment and, should it further consider Sable's request, hold a public hearing on the matter. At the very least, we urge P&D to remove from the Acknowledgment its finding regarding state law preemption to conform with Sable's more narrow request.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Krop".

Linda Krop,
Chief Counsel

A handwritten signature in black ink, appearing to read "Jer J".

Jeremy Frankel,
Staff Attorney

EXHIBIT A

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Impacts related to Hazardous Materials and Risk of Upset would only be related to maintenance and construction activities and these maintenance activities would have a minor impact on risk due to the potential for localized spills of hydraulic or diesel oils. **Impact RISK.1, RISK.2, RISK.3** would not be applicable and mitigation measures RISK.2-1 through RISK.2-7 would not be applicable. Impacts would therefore be **insignificant**.

Construction activities related to valve stations, pump stations and some segments of the pipeline that could be abandoned could potentially produce an increased risk of wildfires during construction, and **RISK.4** would still be applicable and mitigation measures RISK.4-1 through RISK.4-4 would still be applicable. Impacts related to **Impact RISK.4** and wildfires would therefore be **significant but mitigable**.

No Project, Existing Pipeline Restart Alternative

Under this alternative, the existing pipeline would be utilized instead of a new pipeline being installed, and transportation of crude oil would occur through the existing pipeline. The existing pipeline would be brought into compliance with existing requirements related to AB 864 and CSFM best available technologies (BAT), including the installation of additional valves along the pipeline route. The Applicant would have to apply to the CSFM for a waiver to utilize the existing pipeline since the existing pipeline is subject to corrosion under insulation, which could affect the efficacy of cathodic protection systems. Generally, a pipeline is not allowed to operate with ineffective cathodic protection systems. There is uncertainty as to whether the Applicant could demonstrate to the CSFM that the pipeline could be operated safely, and therefore this variation and the variation above (no Project, No Pipeline Alternative) are both addressed.

Assuming that a CSFM waiver is granted, the Applicant would have to install additional valves along the pipeline in order to comply with AB 864 and BAT requirements, similar to the proposed Project pipeline design. The installation of these additional valves would require some construction activities and some limited clearing at multiple locations along the pipeline ROW.

The existing pipeline is insulated, and therefore there would be no need for heaters at the Sisquoc Pump Station or the installation of the gas pipeline.

The installation of valves would most likely be at locations similar to the proposed Project valve installations as the pipeline would follow a similar ROW and similar terrain.

Hazards are associated with risks to the public from a spill and subsequent fire, as well as impacts from a spill to the environment, impacts to schools and potential wildfire impacts. The existing pipeline is a larger diameter pipeline, and therefore the draindown spill volumes would be larger than the proposed Project. This results in potentially larger spills and larger fires, impacting more people, as well as larger spills to the environment. In addition, the frequency of a spill from the existing pipeline would be higher due to its age and the potential for the cathodic protection to be compromised by the insulation. These factors have been incorporated into the analysis presented below.

Risks to Public Safety

Impact RISK.1 describes the potential spill sizes and the estimated frequency of spills from the pipeline system and the potential for immediate (fires, etc.) health impacts on the public.

Crude Pipeline Spill Volumes

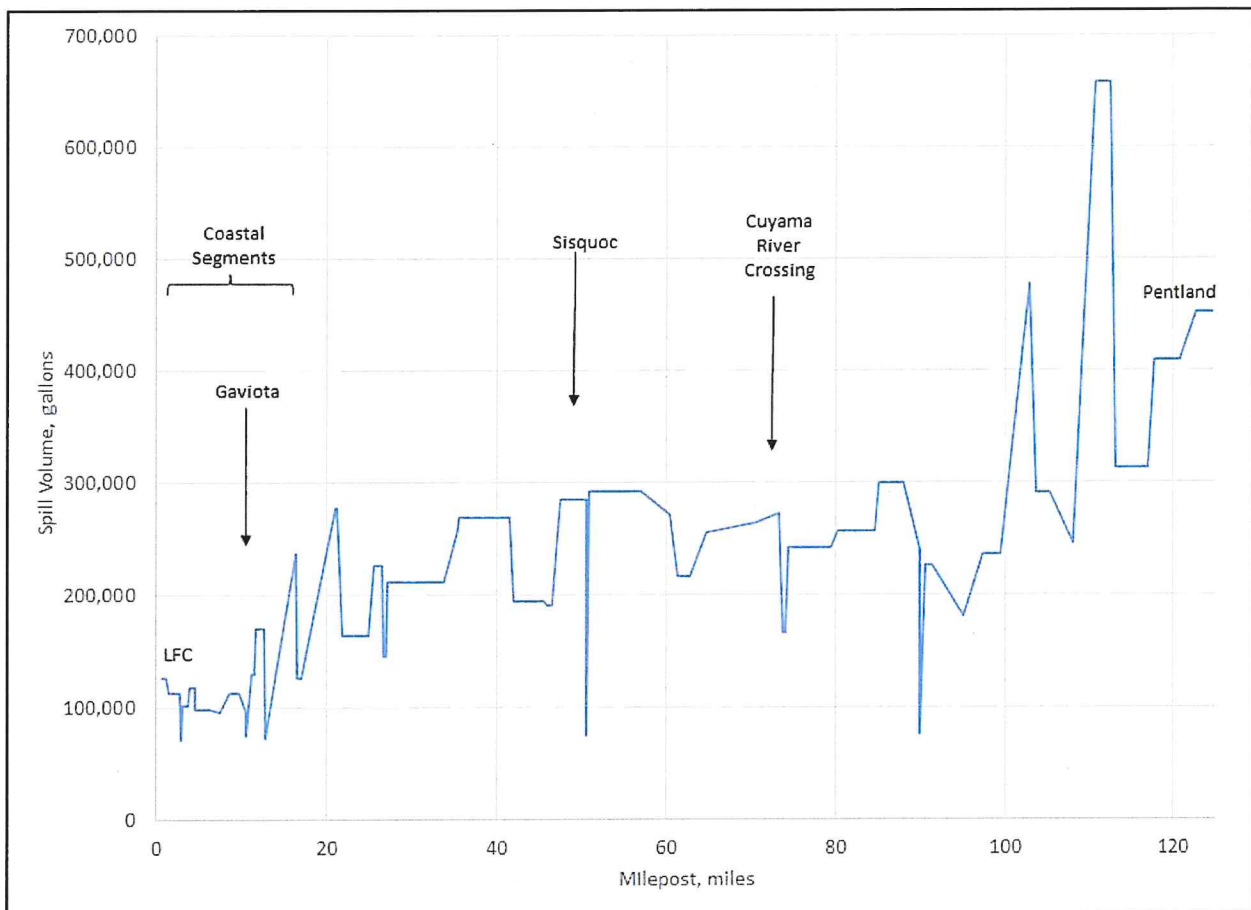
The spill volumes for this alternative were calculated based on the pipeline size, which would be larger than the proposed Project, and the associated terrain for different segments of the pipeline. The Applicant

provided a risk assessment for the proposed Project and this analysis was utilized to estimate the spill volumes associated with a larger pipeline size. Figure 5.6-11 shows the estimated spill volumes along the pipeline route for each segment as a worst case for that segment. The worst-case sized spill volume is shown in Table 5.6-16 for the different portions of the crude oil pipeline alternative.

Crude Pipeline Spill Frequencies

Spill frequencies from a crude pipeline are based on the PHMSA failure rates for the California pipeline database. The PHMSA base failure rate for crude oil pipelines is shown in Table 5.6-17. The spill frequencies are adjusted for the pipeline potential higher failure rate due to the compromised cathodic protection system and the potential for corrosion under the insulation issues. This correction is based on the CSFM report (CSFM 1993) indicating a five times increase in failure frequencies for pipelines that are not equipped with cathodic protection over the average failure rate. In addition, because the existing pipeline is older, it could experience a higher failure rate due to age. However, the CSFM study indicated a minimal increase in failure rate for pipelines that are less than 40 years old and the PHMSA database used to estimate the base failure rate includes many older pipelines. Therefore, only the five times factor was applied as an estimate of the increased failure rate for this pipeline.

Figure 5.6-11 No Project – Existing Pipeline Restart Alternative Spill Volume by Segment Milepost



Source: based on Applicant QRA and EFRD 2019, with adjustments for the size of the existing pipeline.

Table 5.6-16 No Project – Existing Pipeline Restart Alternative Crude Pipeline Worst Case Spill Volumes

Location	Proposed Project - Maximum Spill Volume, gallons	Alternative - Maximum Spill Volume, gallons
LFC – Gaviota Plant	84,000	126,000
Gaviota – Sisquoc	131,040	284,594
Sisquoc - Pentland	198,030	657,893
Coastal Segments	117,600	237,344

Source: based on Applicant QRA and EFRD 2019, with modification to address spill duration of 60 minutes. Coastal segments include up to valve station 2-500. Includes the installation of additional valve stations as per the proposed Project locations.

Table 5.6-17 No Project – Existing Pipeline Restart Alternative Crude Pipeline Spill Frequencies

Location	Spill Frequency	Return Period, years rupture/leak/total
PHMSA California Crude oil base rate	1.62 per 1,000-mile years	-
Adjustment due to Pipeline Condition	5.3 factor	-
PHMSA Adjusted Rate	8.56 per 1,000-mile years	-
Failure rate for L901R (49.2 miles)	0.43 failures per year	9/3/2 years
Failure Rate for L903R (74.1 miles)	0.63 failures per year	6/2/2 years
Failure Rate for L901R + L903R	1.07 failures per year	4/1/1 years

Source: based on Applicant QRA and EFRD 2019 with CSFM 1991 adjustment factor. PHMSA data since 2010. The return period is the anticipated period between releases. Includes leaks and ruptures.

Crude Pipeline Population Densities

The population densities along the route are based on estimates for remote, rural, low density and high-density areas with some additions for highways. The population densities are similar to those used for the proposed Project except for the area through the City of Buellton, since the existing pipeline would pass through the City of Buellton and the proposed Project would pass around the City of Buellton to the west.

Crude Pipeline Fires

In the event of a spill of oil and subsequent ignition resulting in a pool fire, the heat (i.e., thermal radiation) from the fire could result in a serious injury or fatality. The assumptions for impacts would be the same as for the proposed Project.

Gas Pipeline

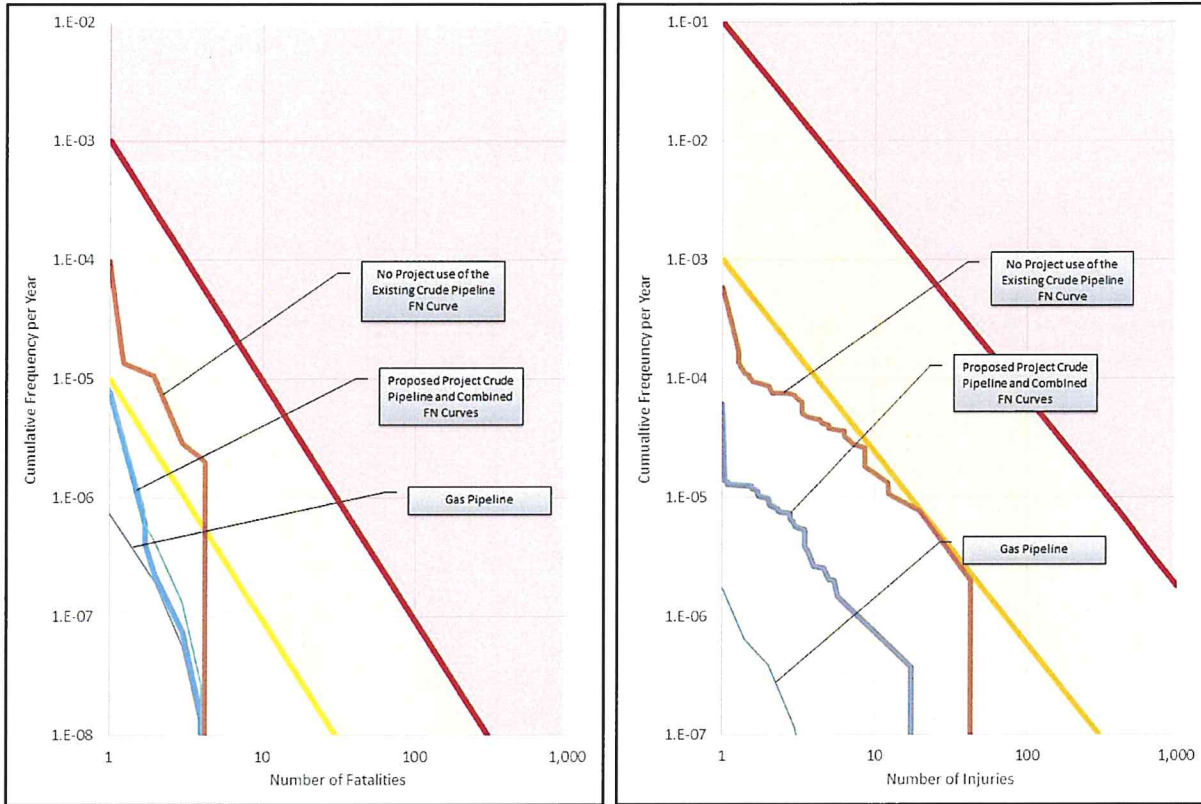
The proposed gas pipeline would not be installed as part of this alternative since heaters at Sisquoc would not be installed.

Alternative Pipeline: Public Safety Risk

The combination of scenario frequency and consequences is combined to estimate risk using FN curves. FN curves are depictions of the risk levels of a project and show the frequency (F) of scenarios that could produce a given fatality or injury level (N) or greater. These are presented for the proposed Project in **Impact RISK.1**. Santa Barbara County has established risk thresholds that use societal risk profiles (FN curves) to determine the significance of hazardous material releases. These FN curves address both injury and fatality. The Santa Barbara County’s adopted thresholds are generally applicable to fixed facilities and pipelines. The risk FN curves are shown in Figure 5.6-12 and are based on the FN curves developed as part of the Plains 2019 QRA analysis, with adjustments for the existing pipeline (increased pipeline diameter

and failure frequency). The FN curves would be located within the amber region, and the impacts to public health due to pipeline releases would be **significant and unavoidable**.

Figure 5.6-12 No Project – Existing Pipeline Restart Alternative Pipeline Risk FN Curves



Source: Plains 2019 with modifications

Risks to the Environment

A spill of crude oil from the pipeline could impact resources in the vicinity of the pipeline ROW. See Section 5.2 Biological Resources, Section 5.4 Cultural Resources and Section 5.9 Hydrology and Water Quality for a discussion of the impacts of a crude oil spill on biological, hydrological and cultural resources along the crude oil pipeline ROW.

Crude Pipeline Spill Volumes

The spill volumes are discussed above under **Impact RISK.1**. For the public health assessment under **Impact RISK.1**, a worst-case spill shutdown time of 15 minutes was used due to the already conservative analysis for fires and impacts to the public used in the QRA. However, for spills that could affect the environment, a longer duration is used. As evidenced by the May 2015 Refugio spill, there is the potential for a pipeline shutdown to take longer than 15 minutes.

Crude Pipeline SCADA System

The SCADA system used for the alternative would be the same as that used for the proposed Project since the SCADA system would be required to be updated per CSFM and AB864 requirements.

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Proposed Project Pipeline: Spills Affecting Marine Resources

Portions of the pipeline extend along the Santa Barbara County coastline. A crude oil spill could drain from the spill location through existing culverts or drainages and enter the marine environment. This is what occurred during the May 2015 Refugio Beach spill. An estimated 43 percent of the oil entered the ocean from the Refugio spill location, which was an estimated 750-foot pathway from the ocean shoreline. Because the proposed pipeline is located onshore at various distances from the shoreline, a rupture at different locations spilling the same amount of oil could allow for oil to enter the marine environment. Assuming a linear function of oil being trapped and adsorbed onshore with distance, the maximum amount of oil could enter the ocean where the pipeline is closest to the ocean and potential worst-case spill volumes are large. An estimated maximum amount of 71,621 gallons of crude oil could enter the ocean at the worst-case spill location. An estimated 11.8 miles of the 16.6-mile coastal portion (71 percent) of the pipeline would be vulnerable to spills entering the ocean if a spill were to occur along any of those segments and the adsorption rate were similar to that which occurred during the Refugio spill. This assumes that no rain event is occurring and that drainages are not flowing.

There are a number of variables affecting the amount of oil that could reach the ocean from an onshore spill, including the terrain, the location of drainages under the freeway and the railroad tracks, the soil type, and extent of rocky interfaces as well as the amount of moisture. During a rain event, when drainages and creeks are flowing, a spill into the waterways could follow the flow and enter the marine environment more readily. A spill under these conditions would also have more extensive terrestrial impacts and reach the marine environment more readily but would also be subjected to turbulence and mixing along the drainages.

For inland areas, the area with the largest potential impacts is along the Cuyama River. Based on the elevation profile and the spill volumes, the maximum spill volume along the Cuyama River segments of the pipeline (between proposed Project valve 3-800 and 5-400 nearest the Cuyama River) and using the absorption rate as seen in the Refugio spill, a spill along the Cuyama River portion of the pipeline could impact resources a distance as far as about 3,200 feet, which means that pipeline segments within about 3,200 feet of the Cuyama River could potentially impact the river in the event of a spill.

Potential Impacts

Depending on the location of the spill, the environmental conditions, and the biological resources present, Impact RISK.2 short and long-term effects to biological resources associated with a crude oil spill has the potential to be significant and unavoidable. Mitigation measures RISK.1-1 through RISK.1-7 would apply. Due to the increased size and frequency of spills, this significant and unavoidable impact would be a greater severity than that presented by the proposed Project.

Risks to Schools

For **Impact RISK.3** (schools), the pipeline construction activities for the existing pipeline would only affect areas near the proposed valve installations. The existing pipeline is located about 500 feet from the Oak Valley School in western Buellton. In order to address the risk levels to this school, the California Department of Education (CDE) school siting risk protocol was utilized to determine the risk levels.

The assessments demonstrated that the risk levels are acceptable under the CDE Risk Protocols with a Total Individual Risk/Individual Risk Criteria (TIR/IRC) ratio of 0.29, with a 1.0 TIR/IRC ratio being the CDE Protocol threshold. It is important to note that the CDE protocol examines the individual risk at the closest school and does not examine the risks cumulatively along the entire pipeline route. Because the CDE