

Landowners' Appeal of Planning Commission's Decision Approving (1) Permit Transfer; (2) Change of Guarantor, and (3) Change of Operator for the Plains Pipeline System

Board has authority to add conditions of approval or modify existing conditions

- Permit expressly allows addition/modification of conditions
 - Condition B-2 – County may conduct a “comprehensive review of permit conditions” at any appropriate time and can impose “additional reasonable conditions” where existing conditions are inadequate.
 - Condition A-2 – Planning Commission can “revoke, amend, alter, delete, or add conditions to the permit” where operator not in compliance
 - Condition A-7 – “New or modified permit” required where modification of:
 - procedures
 - operating techniques
 - design
 - equipment
 - Condition A-13 – Operator “shall obtain a new or modified permit” prior to engaging in activities which result in significant changes to impact on the County, e.g. Las Flores GHG Emissions

Board has authority to add conditions of approval or modify existing conditions

- Decision of consequence – not just “ministerial”
- Staff has been overly deferential to Plains, a convicted felon, and Exxon/PPC, a mass polluter
- County Petroleum Code requires
 - Protect “health, safety, public welfare, physical environment and natural resources
- SBMC Chapter 25b [Governing Change of Ownership]
 - Protect public health and safety and safeguard the natural resources and environment
 - Safe operation
 - Adequate financial responsibility,
 - Compliance with all applicable county laws and permits
 - During and after all changes of owner, operator or guarantor

Plains/PPC lacks property rights to operate its pipeline

- Permit requires Operator to acquire and maintain property rights
- No question easements have lapsed
 - Easement Language : “It is agreed that all rights and privileges herein granted and given Grantee **shall automatically end and terminate** in the event that Grantee, or its successors and assigns shall fail to install or operate and maintain said pipeline for a period of five (5) consecutive years.”
- No land rights, no restart and no new pipeline
- Failure to enforce permit to protect third-party beneficiaries
 - Landowners are third-party beneficiaries and will enforce their rights in court if necessary

Board must
include safety
measures in
permit
following
environmental
review

- False statements have been made since the Pipeline was built:
 - “County lacks jurisdiction/oversight”
 - “County can’t do x, y, z”
 - “Approve or we’ll go around you”
- Solution
 - Incorporate Consent Decree into Permit
 - Require “best available technology” including Automatic Shutoff Valves
 - Require Environmental Impact Report
 - Enforce new safeguards on Las Flores mitigating GHG

CEQA Review is Mandatory

- Definition of “Project”
 - An Action which has potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment
- Existing Conditions
 - Non-operational pipeline
- Restart inevitable, not just “foreseeable”
 - What company buys a defunct, non-operational pipeline if not to restart?
 - PPC statements – cannot do replacement project

Safety measures must include ASVs and effective cathodic protection following environmental review

- Issue:
 - Cathodic Protection – complete failure
 - Plains' lack of maintenance – criminal failure
- Solution
 - Require *effective* cathodic protection
 - If not feasible, require replacement non-insulated pipeline
 - Implement County oversight/reporting
 - Require Environmental Impact Report

Additional Studies Needed

- Ancient EIR
- Changed Circumstances
 - Risks of Spill – massively increased
 - Mitigation Measures – out of date
 - Impact - evidence from Refugio Oil Spill
- GHG Emissions
 - Never considered in original EIR, must be considered now
 - LFC restart – 40% of County’s GHG emissions
- Environmental Review required to protect public health and safety and safeguard environment

Financial Guarantee must reflect reality

- Issue:
 - \$100 MM guarantee inadequate
 - Plains spent nearly \$1 billion in clean-up and compensation costs
 - Plains' insurance companies denied coverage for substantial portions
 - Plains disputed claims in every venue
 - Many victims remain uncompensated or forced to accept fractions of their actual losses
- Solution
 - Require financial guarantee of \$1 billion (or more)
 - Cash / Bond
 - Ongoing County oversight/audits