

1 Attorneys for Plaintiff:
2 GEORGE S. CARDONA, Acting United States Attorney
3 LEON W. WEIDMAN, Chief, Civil Division
4 MONICA L. MILLER, California Bar No: 157695
5 Assistant United States Attorney
6 E-mail: Monica.Miller@usdoj.gov
7 United States Attorney's Office
8 300 North Los Angeles Street, Room 7516, Los Angeles, CA 90012
9 Telephone: (213) 894-4061; Fax: (213) 894-7819

10 STEVEN O'ROURKE (Mass. Bar No. 565493)
11 Environmental Enforcement Section
12 P.O. Box 7611, Washington, DC 20044-7611
13 Tel: (202)514-2779; Fax: (202)514-2583
14 Email: Steve.o'rourke@usdoj.gov

15 Attorneys for Pacific:
16 SUSAN C. YU, California Bar No.: 195640
17 Email: yu@mesereauyu.com
18 THOMAS A. MESEREAU, JR., California Bar No.: 91182
19 Email: mesereau@mesereauyu.com
20 MESEREAU & YU, LLP
21 10390 Santa Monica Blvd., Suite 220
22 Los Angeles, CA, 90025
23 Telephone: (310) 789-1177
24 Facsimile: (310) 861-1007

25 UNITED STATES DISTRICT COURT
26 CENTRAL DISTRICT OF CALIFORNIA
27 Western Division

<p>28 UNITED STATES OF AMERICA, Plaintiffs, v. PACIFIC PIPELINE SYSTEMS, LLC, Defendant.</p>	<p>CV08-5768 DSF (SSx) CONSENT DECREE</p>
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1 Plaintiff United States of America, on behalf of the United States Environmental
2 Protection Agency ("EPA") filed a complaint in this action on September 4, 2008,
3 alleging that Pacific Pipeline Systems, LLC violated Sections 301(a) and 311(b) of the
4 Clean Water Act, 33 U.S.C. §§ 1311(a) and 1321(b), which provide for strict liability
5 (i.e. liability without a finding of fault or negligence). The United States filed this civil
6 action under the Clean Water Act (the "Act"), 33 U.S.C. §§ 1251–1387. The United
7 States seeks civil penalties under 33 U.S.C. § 1321(b)(7)(A), and injunctive relief
8 under 33 U.S.C. § 1319(b) against PPS.

9 Pacific has entered into this Consent Decree solely for the purposes of settlement
10 and compromise of disputed claims. By entering into this Consent Decree, Pacific
11 does not admit, and hereby denies all of the factual allegations or legal claims in the
12 Complaint except as otherwise specified in Section ---(Jurisdiction and Venue) of this
13 Consent Decree, nor does Pacific admit any liability to the United States or any third
14 party arising out of the Spill or out of the transactions or occurrences alleged in the
15 Complaint.

16 The Complaint against Pacific alleges that on March 23, 2005, approximately
17 3,393 barrels of crude oil were discharged from Pacific's Line 63 pipeline, some of
18 which reached Pyramid Lake, Posey Canyon Creek, and adjoining shorelines. The
19 discharge occurred when a landslide caused the pipeline to rupture.

20 In addition to the work to be undertaken pursuant to this Consent Decree, Pacific
21 certifies that it has taken the following steps to decrease the likelihood of other such
22 discharges:

- 23 1. Subsequent to the Discharge, Pacific responded to the Spill and completed the
24 response to the satisfaction of the EPA. Pacific incurred expenses of
25 approximately \$23 million on the response action.
- 26 2. Pacific performed permanent relocation of Line 63 at Mile Post 28.4 (Posey
27 Canyon repairs), using horizontal directional drilling ("HDD") to route 1,100
28 feet of the pipeline 30 feet below the landslide plane.

- 1 3. Pacific performed repair and stabilization of Line 63 at Mile Post 10.5
2 (Grapevine Creek repairs).
- 3 4. Pacific performed permanent relocation of Line 63 at Mile Post 50 (Castaic
4 Creek repairs) using HDD to route 1,900 feet of the pipeline under Castaic
5 Creek.
- 6 5. Pacific performed permanent relocation of Line 63 at Mile Post 32 (Vista Del
7 Lago repairs) using HDD to route 2,228 feet of the pipeline below the landslide
8 plane.
- 9 6. In 2006, Pacific conducted an in-line inspection of Line 63 to identify
10 deformations in the pipeline, and Pacific made subsequent repairs.
- 11 7. At Mile Posts 9.5, 11.5 and 13.3, Pacific relocated and buried exposed pipe.
- 12 8. At Gun Club Creek (Mile Post 39.09), the pipeline was in need of additional
13 protection at an exposed location across the creek. Pacific installed pipe
14 protection at this location in April 2009.
- 15 9. At Windage (Mile Post 39.17), the pipeline was in need of additional support
16 and protection at an exposed span. Pacific installed support and protection at
17 this location in April 2009.
- 18 10. At Windage (Mile Post 39.17), the pipeline was in need of additional support
19 and protection at an exposed span. Pacific installed support and protection at
20 this location in April 2009.
- 21 11. Pacific has relocated Line 2000 pipe and fiber optic cables at Line 2000 Mile
22 Post 46.5.
- 23 12. In addition to its usual aerial line inspections, Pacific increases its aerial line
24 inspections to twice per week, weather permitting, when the integrity of Line 63
25 could be at risk from landslides due to accumulated rainfall.
- 26 13. Pacific conducts emergency training exercises and has included lessons learned
27 from this landslide event in its spill response drills.
28

1 14. Pacific previously paid the State of California \$650,000 pursuant to California
2 Fish and Game Code Section 12017.

3 The Parties recognize, and the Court by entering this Consent Decree finds, that
4 this Consent Decree has been negotiated by the Parties in good faith and will avoid
5 litigation between the Parties and that this Consent Decree is fair, reasonable, and in
6 the public interest.

7 NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY
8 ADJUDGED, ORDERED, AND DECREED as follows:

9 I. JURISDICTION AND VENUE

10 1. This Court has jurisdiction over the subject matter of this action, pursuant
11 to 28 U.S.C. §§ 1331, 1345, and 1355, and the CWA, 33 U.S.C. § 1319(b) (Civil
12 actions); 33 U.S.C. § 1321(b)(7)(E) (Jurisdiction); and 33 U.S.C. § 1321(n)
13 (Jurisdiction), and over the Parties. Venue lies in this District pursuant to 33 U.S.C. §
14 1319(b) (Civil actions); 33 U.S.C. § 1321(b)(7)(E) (Jurisdiction), 33 U.S.C. § 1321(n)
15 (Jurisdiction), and 28 U.S.C. 1391 and 1395(a), because the violations alleged in the
16 Complaint are alleged to have occurred in, and Pacific conducts business in, this
17 judicial district. For purposes of this Decree, or any action to enforce this Decree,
18 Pacific consents to the Court's jurisdiction over this Decree and any such action and
19 over Pacific and consents to venue in this judicial district.

20 II. APPLICABILITY

21 2. The obligations of this Consent Decree apply to and are binding upon the
22 United States and upon Pacific and any successors, assigns, or other entities or persons
23 otherwise bound by law.

24 3. Subject to Paragraph 64 of this Consent Decree, no transfer of ownership
25 or operation of the Facilities, whether in compliance with the procedures of this
26 Paragraph or otherwise, shall relieve Pacific of its obligation to ensure that the terms of
27 the Decree are implemented.
28

1 a. Pacific's transfer of ownership or operation of any portion of the
2 Facilities on which work will be performed pursuant to this Consent Decree shall be
3 conditioned on the transferee's written agreement to undertake then uncompleted
4 obligations required by this Consent Decree, and such agreement shall be enforceable
5 by the United States as a third-party beneficiary. Provided, however, that the
6 provisions of this Paragraph 3 shall not apply to Pacific's transfer of a portion of the
7 ownership of the Facilities, where Pacific continues to hold a portion of the ownership
8 of the Facilities and Pacific continues to operate the Facilities.

9 b. At least thirty (30) Days prior to such transfer, Pacific shall provide
10 a copy of this Consent Decree to the proposed transferee and at least thirty (30) days
11 prior to such transfer shall provide written notice of the prospective transfer, together
12 with a copy of the proposed written agreement, to EPA, the United States Attorney for
13 the Central District of California, and the United States Department of Justice, in
14 accordance with Section XIV of this Decree (Notices).

15 c. Any attempt to transfer ownership or operation of the Facilities
16 without complying with this Paragraph constitutes a violation of this Decree.

17 4. Pacific shall provide a copy of this Consent Decree to all officers, and
18 provide a copy of Appendix A and the applicable work plans (or appropriate portion
19 thereof) developed pursuant to Appendix A to supervisory employees whose duties
20 include compliance with any provision of this Consent Decree, and agents, including
21 contractors who need to know the specifics of the work plan to perform their contract.
22 Pacific shall condition any such contract upon performance of the work in conformity
23 with the relevant portion of the terms of this Consent Decree or relevant portion of
24 Appendix A or relevant portion of applicable work plan.

25 5. In any action to enforce this Consent Decree, Pacific shall not raise as a
26 defense the failure by any of its officers, directors, employees, agents, including
27 contractors, to take any steps necessary to comply with the provisions of this Consent
28 Decree.

1 III. DEFINITIONS

2 6. Terms used in this Consent decree that are used or defined in the Act or in
3 regulations promulgated pursuant to the Act shall have the meanings assigned to them
4 in the Act or such regulations, unless otherwise provided in this Decree. Whenever the
5 terms set forth below are used in this Consent Decree, the following definitions shall
6 apply:

7 a. "Complaint" shall mean the complaint filed by the United States in
8 this action;

9 b. "Consent Decree" or "Decree" shall mean this Decree including
10 Appendix A, and any work plan or schedule approved under this Consent Decree or
11 Appendix A.

12 c. "Day" shall mean a calendar day unless expressly stated to be a
13 business day. In computing any period of time under this Consent Decree, where the
14 last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until
15 the close of business of the next business day;

16 d. "Pacific" shall mean Defendant Pacific Pipeline Systems, LLC.

17 e. "EPA" shall mean the United States Environmental Protection
18 Agency and any of its successor departments or agencies;

19 f. "Effective Date" shall have the definition provided in Section XV.

20 g. "Facilities" shall mean Pacific's "Line 63" pipeline and its
21 appurtenant fixtures and improvements, including but not limited to the pipeline,
22 pumpstations, retaining walls, supports and measuring devices, which are located in
23 Southern California.

24 h. "Paragraph" shall mean a portion of this Decree identified by an
25 arabic numeral;

26 i. "Parties" shall mean the United States and Pacific;

27 j. "Section" shall mean a portion of this Decree identified by a roman
28 numeral;

1 k. "Termination" shall have the meaning provided in Section XVIII.

2 l. "United States" shall mean the United States of America, acting on
3 behalf of EPA.

4 IV. CIVIL PENALTY

5 7. Within thirty (30) Days after the Effective Date of this Consent Decree,
6 Pacific shall pay the sum of \$1.3 million, as a civil penalty, together with interest
7 accruing from the date this Consent Decree is executed by all parties and this Consent
8 Decree is lodged with the Court, at the rate specified in 28 U.S.C Section 1961 as of
9 the date of lodging.

10 8. Pacific shall make the payment[s] described in the preceding paragraph
11 (Paragraph 7) by Fedwire Electronic Funds Transfer (EFT) to the United States
12 Department of Justice, in accordance with current EFT procedures and instructions
13 provided to Pacific by the Office of the United States Attorney for the Central District
14 of California. The payment shall reference the Civil Action Number assigned to this
15 case and DOJ Number 90-5-1-1-09019, and shall specify that the payment is made
16 toward CWA civil penalties to be deposited into the Oil Spill Liability Trust Fund
17 pursuant to 33 U.S.C. § 1321(s), § 4304 of Pub. L. No. 101-380, and 26 U.S.C. §
18 9509(b)(8). Any funds received after 11:00 a.m. Eastern Time shall be credited on the
19 next business day. Within 10 days of the date of the payment, Pacific shall submit to
20 the United States, as provided in Section XIV (Notices), notice of all payments made
21 pursuant to this Paragraph, and also to:

22 Stephen C. Ewart
23 NPFC-MS 7100
24 National Pollution Funds Center
25 4200 Wilson Blvd., Suite 1000
26 Arlington, Virginia 20598-7100

27 and
28

1 Commander Robert Bruce
2 United States Coast Guard
3 Office of Claims and Litigation
4 2100 Second Street, S.W.
5 Washington, D.C. 20593-0001.

6 9. Pacific shall not deduct any penalties, including interest, paid under this
7 Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its
8 federal income tax.

9 V. COMPLIANCE REQUIREMENTS

10 10. Pacific shall fund and perform all tasks described in, and comply with all
11 requirements of, Appendix A, which is incorporated herein.

12 11. Approval of Deliverables. After review of any plan, report, or other item
13 that is required to be submitted pursuant to this Consent Decree, EPA shall in writing:
14 a) approve the submission; b) approve the submission upon specified conditions; c)
15 approve part of the submission and disapprove the remainder; or d) disapprove the
16 submission.

17 12. If the submission is approved pursuant to Paragraph 11a, Pacific shall take
18 all actions required by the plan, report, or other document, in accordance with the
19 schedules and requirements of the plan, report, or other document, as approved. If the
20 submission is conditionally approved or approved only in part, pursuant to Paragraph
21 11 b or c, Pacific may request written consent from EPA to take all actions required by
22 the approved portions of the plan, report, or other document, in accordance with the
23 schedules and requirements of the plan, report, or other document, as approved.

24 13. If the submission is disapproved in whole or in part pursuant to Paragraph
25 11c or d, Pacific shall, within ninety (90) days or such other time as the Parties agree to
26 in writing, correct all deficiencies and resubmit the plan, report, or other item, or
27 disapproved portion thereof, for approval, in accordance with the preceding
28

1 Paragraphs. If the resubmission is approved in whole or in part, Pacific shall proceed
2 in accordance with the preceding Paragraph.

3 14. Any stipulated penalties as provided in Section VIII of this Decree
4 applicable to a required original submission, if any are submitted, as referenced in
5 Paragraph 11, shall accrue during the 90-Day period or other specified period, but shall
6 not be payable unless the resubmission is untimely or is disapproved in whole or in
7 part; provided that, if the original submission was so deficient as to constitute a
8 material breach of Pacific's obligations under this Decree, the stipulated penalties
9 applicable to the original submission shall be due and payable notwithstanding any
10 subsequent resubmission.

11 15. If a required resubmitted plan, report, or other item, or portion thereof, is
12 disapproved in whole or in part, EPA may again require Pacific to correct any
13 deficiencies, in accordance with the preceding Paragraphs, or may itself/themselves
14 correct any deficiencies, subject to Pacific's right to invoke Dispute Resolution and the
15 right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

16 VII. REPORTING REQUIREMENTS

17 16. Pacific shall submit the following reports:

18 a. Within thirty (30) Days after the end of each calendar semi-annual
19 period (*i.e.*, by July 30 and January 30) after lodging of this Consent Decree, until
20 termination of this Decree pursuant to Section XVIII (Termination), Pacific shall
21 submit by first class mail or substantially equivalent method a report for the preceding
22 semi-annual period that shall include the status of any construction or compliance
23 measures; completion of milestones; problems encountered or anticipated, together
24 with implemented or proposed solutions; status of permit applications; operation and
25 maintenance; and reports to state agencies.

26 b. The report shall also include a description of any non-compliance
27 with the requirements of this Consent Decree and an explanation of the alleged
28

1 violations and of the remedial steps taken, or to be taken, to prevent or minimize such
2 violation. If Pacific believes it violated any requirement of this Consent Decree,
3 Pacific shall notify the United States of such violation and its likely duration, in
4 writing, within ten (10) working Days of the Day Pacific first becomes aware of the
5 violation, with an explanation of the alleged violations and of the remedial steps taken,
6 or to be taken, to prevent or minimize such violation. If the cause of an alleged
7 violation cannot be fully explained at the time the report is due, Pacific shall so state in
8 the report. Pacific shall investigate the cause of the violation and shall then submit an
9 amendment to the report, including a full explanation of the cause of the violation,
10 within thirty (30) Days of the Day Pacific becomes aware of the cause of the violation.
11 Nothing in this Paragraph or the following Paragraph relieves Pacific of its obligation
12 to provide the notice required by Section IX of this Consent Decree (Force Majeure).

13 17. Whenever any violation of this Consent Decree or any other event
14 affecting Pacific's performance under this Decree, or the performance of its Facilities,
15 may pose an immediate threat to the public health or welfare or the environment,
16 Pacific shall notify EPA verbally or by electronic or facsimile transmission as soon as
17 possible, but no later than 24 hours after Pacific first knew of the violation or event.
18 This procedure is in addition to the requirements set forth in the preceding Paragraph.
19 Notifications required by this Paragraph shall be sent to:

20 U.S. Environmental Protection Agency
21 Region IX
22 Emergency Response Section (SFD-9-2)
23 75 Hawthorne Street
24 San Francisco, CA 94105
25 allen.harryl@epa.gov
26 (415) 972-3063 (telephone)
27 (415) 947-3570 (facsimile)
28

1 18. All reports shall be submitted to the persons designated in Section XIV of
2 this Consent Decree (Notices).

3 19. Each report submitted by Pacific under this Section shall be signed by an
4 official of the submitting party and include the following certification:

5 I certify under penalty of law that I have examined and am
6 familiar with the information submitted in this document and
7 all attachments and that this document and all attachments
8 were prepared either by me personally or under my direction
9 or supervision in a manner designed to assure that qualified
10 and knowledgeable personnel properly gather and present the
11 information contained therein. I further certify, based on
12 personal knowledge or on my inquiry of those persons
13 directly responsible for obtaining the information, that the
14 information submitted is, to my knowledge and belief, true,
15 accurate, and complete.
16

17 20. The reporting requirements of this Consent Decree do not relieve Pacific
18 of any reporting obligations required by the CWA or implementing regulations, or by
19 any other federal, state, or local law, regulation, permit, or other requirement.

20 21. Any information provided pursuant to this Consent Decree may be used
21 by the United States in any proceeding to enforce the provisions of this Consent Decree
22 and as otherwise permitted by law.

23 **VIII. STIPULATED PENALTIES**

24 22. Pacific shall be liable for stipulated penalties to the United States for
25 violations of this Consent Decree as specified below, unless excused under Section IX
26 (Force Majeure). A violation includes failing to perform any obligation required by the
27 terms of this Decree according to all applicable requirements of this Decree and within
28 the specified time schedules established by or approved under this Decree.

1 23. Late Payment of Civil Penalty. If Pacific fails to pay the civil penalty,
2 including interest, required to be paid under Section IV of this Decree (Civil Penalty)
3 when due, Pacific shall pay a stipulated penalty of \$1,500 per Day for each Day that
4 the payment is late.

5 24. The following stipulated penalties shall accrue per violation per Day for
6 each violation of the requirements of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1,000	15th through 30th Day
\$2,500	31st Day and beyond.

11 25. Stipulated penalties under this Section shall begin to accrue on the Day
12 after performance is due or on the Day violation occurs, whichever is applicable, and
13 shall continue to accrue until performance is satisfactorily completed or until the
14 violation ceases. Stipulated penalties shall accrue simultaneously for separate
15 violations of this Consent Decree.

16 26. Pacific shall pay any stipulated penalty within thirty (30) Days of
17 receiving the United States' written demand. Pacific shall be liable for interest on
18 stipulated penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date
19 payment becomes due.

20 27. The United States may in the unreviewable exercise of its discretion,
21 reduce or waive stipulated penalties otherwise due it under this Consent Decree.

22 28. Stipulated penalties shall continue to accrue as provided in Paragraph 25,
23 during any Dispute Resolution, but need not be paid until the following:

24 a. If the dispute is resolved by agreement, which may or may not
25 require payment of any stipulated penalty, or by a decision of EPA that is not appealed
26 to the Court, Pacific shall pay accrued penalties determined to be owing, together with
27 interest, to the United States within thirty (30) Days of the effective date of the
28 agreement or the receipt of EPA's decision or order.

1 any resulting delay to the greatest extent possible. "Force Majeure" does not include
2 Pacific's financial inability to perform any obligation under this Consent Decree.

3 33. If any event occurs or has occurred that may delay the performance of any
4 obligation under this Consent Decree, whether or not caused by a Force Majeure event,
5 Pacific shall provide notice verbally or by electronic or facsimile transmission to EPA,
6 within seventy two (72) hours of when Pacific first learned of, or by the exercise of due
7 diligence should have known that the event might cause a delay. Within six (6) days
8 thereafter, Pacific shall provide in writing to EPA an explanation and description of the
9 reasons for the delay; the anticipated duration of the delay; all actions taken or to be
10 taken to prevent or minimize the delay or mitigate the effect of the delay; a schedule
11 for implementation of any measures to be taken to prevent or minimize the delay or
12 mitigate the effect of the delay; Pacific's rationale for attributing such delay to a Force
13 Majeure event if it intends to assert such a claim; and a statement as to whether, in the
14 opinion of Pacific, such event may cause or contribute to an endangerment to public
15 health, welfare, or the environment. Pacific shall include with the explanation all
16 readily available documentation supporting the claim that the delay was attributable to
17 a Force Majeure and may provide further documentation. Failure to comply with the
18 above requirements shall preclude Pacific from asserting any claim of Force Majeure
19 for that event for the period of time of such failure to comply, and for any additional
20 delay caused by such failure. For purposes of this Section IX, Pacific shall be deemed
21 to know of any circumstance of which Pacific, or any of its officers, employees, agents
22 (whether or not contractors), or contractors, knew or should have known. Notifications
23 required by this Paragraph shall be sent to:

24 U.S. Environmental Protection Agency , Region IX
25 Emergency Response Section (SFD-9-2)
26 75 Hawthorne Street , San Francisco, CA 94105
27 allen.harryl@epa.gov
28 (415) 947-3570 (facsimile)

1 any such issue as a defense to an action by the United States to enforce any obligation
2 of Pacific arising under this Decree.

3 38. Informal Dispute Resolution. Any dispute subject to Dispute Resolution
4 under this Consent Decree shall first be the subject of informal negotiations. The
5 dispute shall be considered to have arisen when Pacific sends the United States a
6 written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in
7 dispute. The period of informal negotiations shall not exceed twenty (20) Days from
8 the date of such Notice, unless that period is modified by written agreement. If the
9 Parties cannot resolve a dispute by informal negotiations, then the position advanced
10 by the EPA shall be binding unless, within forty five (45) Days after the conclusion of
11 the informal negotiation period, Pacific invokes formal dispute resolution procedures
12 as set forth below.

13 39. Formal Dispute Resolution. Pacific shall invoke formal dispute resolution
14 procedures, within the time period provided 45 days of the cessation of informal
15 negotiation as discussed in the preceding Paragraph, by serving on the United States a
16 written Statement of Position regarding the matter in dispute. The Statement of
17 Position shall include, but need not be limited to, any factual data, analysis, or opinion
18 supporting Pacific's position and any supporting documentation relied upon by Pacific.

19 40. The United States shall serve its Statement of Position within forty-five
20 (45) Days of receipt of Pacific's Statement of Position. The United States' 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 by the
23 United States. The United States Statement of Position shall be binding on Pacific,
24 unless Pacific files a motion for judicial review of the dispute in accordance with the
25 following Paragraph.

26 41. Pacific may seek judicial review of the dispute by filing with the Court
27 and serving on the United States, in accordance with Section XIV of this Consent
28 Decree (Notices), a motion requesting judicial resolution of the dispute. The motion

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

7 42. The United States shall respond to Pacific's motion within the time period
8 allowed by the Local Rules of this Court. Pacific may file a reply memorandum, to the
9 extent permitted by the Local Rules.

10 43. Standard of Review

11 a. Disputes Concerning Matters Accorded Record Review. Except as
12 otherwise provided in this Consent Decree, in any dispute brought under Paragraph 41
13 pertaining to the adequacy or appropriateness of plans, procedures to implement plans,
14 schedules or any other items requiring approval by EPA under this Consent Decree; the
15 adequacy of the performance of work undertaken pursuant to this Consent Decree; and
16 all other disputes that are accorded review on the administrative record under
17 applicable principles of administrative law, Pacific shall have the burden of
18 demonstrating, based on the administrative record, that the position of the United
19 States is arbitrary and capricious or otherwise not in accordance with law.

20 b. Other Disputes. Except as otherwise provided in this Consent
21 Decree, in any other dispute brought under Paragraph 41, Pacific shall bear the burden
22 of demonstrating that its position complies with this Consent Decree and better further
23 the objectives of the Consent Decree. For purposes of this subparagraph 43b, the
24 Parties shall retain all of their rights allowed by law.

25 44. The invocation of dispute resolution procedures under this Section shall
26 not, by itself, extend, postpone, or affect in any way any obligation of Pacific under
27 this Consent Decree, unless and until final resolution of the dispute so provides.
28 Stipulated penalties and interest with respect to the disputed matter shall continue to

1 accrue from the first Day of noncompliance, but payment shall be stayed pending
2 resolution of the dispute. If Pacific does not prevail on the disputed issue, stipulated
3 penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

4 XI. INFORMATION COLLECTION AND RETENTION

5 45. The United States and its representatives, including attorneys, contractors,
6 and consultants, shall have the right of entry into any facility covered by this Consent
7 Decree, upon presentation of credentials, to:

8 a. monitor the progress of activities required under this Consent
9 Decree;

10 b. verify any data or information submitted to the United States in
11 accordance with the terms of this Consent Decree; and

12 c. obtain documentary evidence, including photographs and similar
13 data.

14 46. Until six (6) years after the termination of this Consent Decree, Pacific
15 shall retain, and shall instruct its contractors and other agents to preserve, all non-
16 identical copies of all documents, records, or other information (including documents,
17 records, or other information in electronic form) in its or its contractors' or other
18 agents' possession or control, or that come into its or its contractors' or other agents'
19 possession or control, and that relate in any manner to Pacific's performance of its
20 obligations under this Consent Decree. This information-retention requirement shall
21 apply regardless of any contrary corporate or institutional policies or procedures. At
22 any time during this information-retention period, upon request by the United States,
23 Pacific shall provide copies of any documents, records, or other information required to
24 be maintained under this Paragraph.

25 47. At the conclusion of the information-retention period provided in the this
26 Section, Pacific shall notify the United States at least ninety (90) Days prior to the
27 destruction of any documents, records, or other information subject to the requirements
28 of the preceding Paragraph and, upon request by the United States, Pacific shall deliver

1 any such documents, records, or other information to EPA. Pacific may assert that
2 certain documents, records, or other information is privileged under the attorney-client
3 privilege or any other privilege recognized by federal law. If Pacific asserts such a
4 privilege, it shall provide the following: (1) the title of the document, record, or
5 information; (2) the date of the document, record, or information; (3) the name and title
6 of each author of the document, record, or information; (4) the name and title of each
7 addressee and recipient; (5) a description of the subject of the document, record, or
8 information; and (6) the privilege asserted by Pacific. However, no final documents,
9 records, or other information required by this Consent Decree shall be withheld on
10 grounds of privilege.

11 48. Pacific may also assert that any information required to be provided under
12 this Consent Decree is protected as Confidential Business Information (“CBI”) under
13 40 C.F.R. Part 2. As to any information that Pacific seeks to protect as CBI, Pacific
14 shall follow the procedures set forth in 40 C.F.R. Part 2.

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

20 XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

21 50. This Consent Decree resolves the civil claims of the United States for the
22 violations alleged in the Complaint filed in this action through the date of lodging.

23 51. The United States reserves all legal and equitable remedies available to
24 enforce the provisions of this Consent Decree, except as expressly stated in this
25 Consent Decree. This Consent Decree shall not be construed to limit the rights of the
26 United States to obtain penalties or injunctive relief under the Act or implementing
27 regulations, or under other federal laws, regulations, or permit conditions, except as
28 expressly specified in this Consent Decree.

1 52. In any subsequent administrative or judicial proceeding initiated by the
2 United States for injunctive relief, civil penalties, other appropriate relief relating to the
3 Facilities, Pacific shall not assert, and may not maintain, any defense or claim based
4 upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim
5 preclusion, claim-splitting, or other defenses based upon any contention that the claims
6 raised by the United States in the subsequent proceeding were or should have been
7 brought in the instant case, except with respect to claims that have been specifically
8 resolved pursuant to Paragraph 50 of this Section.

9 53. This Consent Decree is not a permit, nor a modification of any permit,
10 under any federal, State, or local laws or regulation. Pacific is responsible for
11 achieving and maintaining compliance with all applicable federal, State, and local
12 laws, regulations, orders and permits; and Pacific's compliance with this Consent
13 Decree shall be no defense to any action commenced pursuant to any applicable laws,
14 regulations, orders or permits, except as set forth herein. The United States does not,
15 by its consent to the entry of this Consent Decree, warrant or aver in any manner that
16 Pacific's compliance with any aspect of this Consent Decree will result in compliance
17 with provisions of the CWA or with any other provisions of federal, State, or local
18 laws, regulations, orders or permits.

19 54. Pacific hereby covenants not to sue and agrees not to assert or further
20 pursue any claims related to the March 23, 2005 discharge from Pacific's Line 63
21 pipeline, or response activities in connection with that incident, against the United
22 States pursuant to the CWA, the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2701
23 *et seq.*, or any other federal or California law or regulation, including, but not limited
24 to, any direct or indirect claim for reimbursement from the Oil Spill Liability Trust
25 Fund, or pursuant to any other provision of law. Within 10 days of the Effective Date
26 of this Consent Decree, Pacific shall withdraw any and all pending claims against the
27 Oil Spill Liability Trust Fund.

28

1 Telephone: (415) 972-3904
2 Facsimile: (415) 947-3570
3 helmlinger.andrew@epa.gov
4

5 To Pacific:
6 Pacific Pipeline System LLC
7 333 Clay St., Ste. 1600
8 Houston, TX 77002
9 Attention: Lawrence J. Dreyfuss, Vice President
10 Telephone: 713-646-4143
11 E-mail: ljdreyfuss@paalp.com
12

13 With a copy to:
14 Susan Yu
15 Mesereau & Yu, LLP
16 10390 Santa Monica Blvd., Ste. 220, Los Angeles, CA 90025
17 E-mail: yu@mesereauyu.com

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

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

23
24 **XV. EFFECTIVE DATE**

25 61. The Effective Date of this Consent Decree shall be the date upon which
26 this Consent Decree is entered by the Court or a motion to enter the Consent Decree is
27 granted, whichever occurs first, as recorded on the Court's docket.
28

1 of this Consent Decree without further notice and agrees not to withdraw from or
2 oppose entry of this Consent Decree by the Court or to challenge any provision of the
3 Decree, unless the United States has notified Pacific in writing that it no longer
4 supports entry of the Decree.

5 XX. SIGNATORIES/SERVICE

6 66. Each undersigned representative of Pacific and the Assistant Attorney
7 General for the Environment and Natural Resources Division of the Department of
8 Justice certifies that he or she is fully authorized to enter into the terms and conditions
9 of this Consent Decree and to execute and legally bind the Party he or she represents to
10 this document.

11 67. This Consent Decree may be signed in counterparts, and its validity shall
12 not be challenged on that basis. Pacific agrees to accept service of process by mail
13 with respect to all matters arising under or relating to this Consent Decree and to waive
14 the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil
15 Procedure and any applicable Local Rules of this Court including, but not limited to,
16 service of a summons.

17 XXI. INTEGRATION

18 68. This Consent Decree constitutes the final, complete, and exclusive
19 agreement and understanding among the Parties with respect to the settlement
20 embodied in the Decree and supersedes all prior agreements and understandings,
21 whether verbal or written, concerning the settlement embodied herein. Other than
22 deliverables that are subsequently submitted and approved pursuant to this Decree, no
23 other document, nor any representation, inducement, agreement, understanding, or
24 promise, constitutes any part of this Decree or the settlement it represents, nor shall it
25 be used in construing the terms of this Decree.
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XXII. FINAL JUDGMENT

69. 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 United States and Pacific.

APPENDIX

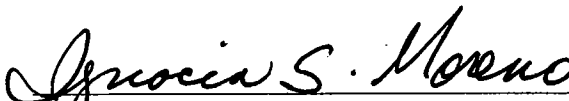
70. The following Appendix A is attached to and part of this Consent Decree. Appendix A is the Statement of Work to be Performed.

Dated and entered on: _____

HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE
CENTRAL DISTRICT OF CALIFORNIA

1 The undersigned party hereby enters into this Consent Decree in the matter of United
2 States v. Pacific Pipeline Systems, LLC, CV08-5768 DSF (SSx) (C.D. Cal.)

3
4 FOR THE UNITED STATES OF AMERICA (DOJ):

5
6 

7 Ignacia S. Moreno
8 Assistant Attorney General.
9 Environment and Natural Resources Division
10 United States Department of Justice

11 [Signature page for EPA continued on next page]
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1 The undersigned party hereby enters into this Consent Decree in the matter of
2 United States v. Pacific Pipeline Systems, LLC, CV08-5768 DSF (SSx) (C.D. Cal.)

3 FOR THE UNITED STATES OF AMERICA (DOJ):

4 JOHN C. CRUDEN
5 Deputy Assistant Attorney General.
6 Environment and Natural Resources Division
7 United States Department of Justice

8
9 By: _____

10 STEVEN O'ROURKE
11 Environmental Enforcement Section
12 Environment and Natural Resources Division
13 U.S. Department of Justice, P.O. Box 7611
14 Washington, DC 20044-7611
15 Steve.orourke@usdoj.gov

16 The undersigned party hereby enters into this Consent Decree in the matter of
17 United States v. Pacific Pipeline Systems, LLC, CV08-5768 DSF (SSx) (C.D. Cal.)

18 FOR THE UNITED STATES OF AMERICA (EPA Region 9):

19 Regional Administrator
20 Environmental Protection Agency
21 Region 9

22 By: 


23 Laura Yoshi
24 Acting Regional Administrator
25 Environmental Protection Agency
26 Region 9

27 [Signature page for EPA OECA continued on next page]
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The undersigned party hereby enters into this Consent Decree in the matter of United States v. Pacific Pipeline Systems, LLC, CV08-5768 DSF (SSx) (C.D. Cal.)

FOR THE UNITED STATES OF AMERICA (EPA OECA):



CYNTHIA GILES
Assistant Administrator for Enforcement and
Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C.

OF COUNSEL:

CHERYL ROSE
Senior Attorney
Water Enforcement Division
Office of Civil Enforcement - OECA
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

[Signature page for PPS continued on next page]

1 The undersigned party hereby enters into this Consent Decree in the matter of United
2 States v. Pacific Pipeline Systems, LLC, CV08-5768 DSF (SSx) (C.D. Cal.)

3 FOR PACIFIC PIPELINE SYSTEMS, LLC:
4

5
6 By: Harry N Pefanis
7 Harry N Pefanis
8 President
9 PACIFIC PIPELINE SYSTEMS, LLC
10


11
12
13 By: _____
14 Susan C. Yu
15 MESEREAU & YU, LLP
16 Attorneys for Pacific Pipeline Systems, LLC
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The undersigned party hereby enters into this Consent Decree in the matter of United States v. Pacific Pipeline Systems, LLC, CV08-5768 DSF (SSx) (C.D. Cal.)

FOR PACIFIC PIPELINE SYSTEMS, LLC:

By: _____
Harry N Pefanis
President
PACIFIC PIPELINE SYSTEMS, LLC

By:  _____
Susan C. Yu
MESEREAU & YU, LLP
Attorneys for Pacific Pipeline Systems, LLC

1 **APPENDIX A TO CONSENT DECREE**

2 **United States v. Pacific Pipeline Systems, LLC (CV08-5768 DSF (SSx))**

3 **Statement of Work to be Performed**

4
5 This Statement of Work (“SOW”) sets forth the obligations of Pacific Pipeline,
6 pursuant to Section V of the Consent Decree. Pacific shall fund and perform all of the
7 following tasks. Pacific shall conduct all tasks set out in this SOW using qualified and
8 certified personnel, in accordance with industry standards and applicable laws and
9 requirements. Pacific shall implement all work plans and other tasks in this Appendix
10 A as approved by EPA and in accordance with the approved schedule. Pacific shall
11 identify a project manager who shall oversee all tasks regarding this SOW and act as
12 point of contact with EPA.

13 Pacific shall purge and remove all oil, except for *de minimis* residue, from Line
14 63 between Mile Post 10.29 and Mile Post 80.9 by November 30, 2009, and this
15 section of Line 63 will remain purged of oil.

16 However, Pacific may put oil into and operate this section of Line 63 if it first
17 completes all of the tasks set forth herein.

18 Pacific is not required to complete tasks set forth herein if it does not put oil into
19 this section of Line 63, and it remains purged of oil.

20 Whenever a work plan is required by this Appendix, Pacific shall prepare and submit
21 for EPA approval a work plan and schedule to conduct the work, pursuant to Section V
22 of the Consent Decree. The work plans shall be consistent with the construction
23 standards and requirements applicable by law, regulation of the PHMSA and the USFS
24 and any applicable industry standards. The work plan and schedule shall provide a
25 time table for complete applications for any necessary permits and/or approvals, and
26 shall provide a time table for completion of the work within three years from receipt of
27 such permits and/or approvals (if granted). For any Task for which permits are
28 required, Pacific shall work in good faith to obtain all necessary permits. Nonetheless,

1 Pacific shall not be required to complete any tasks pursuant to this Appendix unless
2 and until all necessary permits are received. However, Pacific may not put oil into and
3 operate this section of Line 63 until it first completes all of the tasks set forth herein.

4 **Task 1. Third Party Review and Recommendations.**

5 Prior to submitting any work plan to EPA, Pacific shall select, subject to
6 EPA's approval, an independent third party ("ITP"), who shall review work plans for
7 implementation of Tasks 2 – 5 in this SOW consistent with industry standards (e.g.
8 applicable API Recommended Practices) and the purposes of the Clean Water Act. At
9 this time, Pacific proposes to use and EPA will consider approving any of the
10 following firms as the ITP, if they are available when needed:

- 11 1) SPEC Services, Inc., 17101 Bushard Street, Fountain Valley, CA
12 92708-2833,
- 13 2) Sun Engineering Services, Inc., 5405 Garden Grove Blvd., Suite
14 300, Westminster, CA 92683, or
- 15 3) Jacobs Field Services NA, 5757 Plaza Drive, Suite 100, Cypress,
16 CA 90630.
17

18 Subject to EPA's further approval, Pacific may replace the ITP with another
19 party.
20

21 Pacific shall contract with the ITP (the "ITP Contract") and be liable for all costs
22 of contracting with the ITP. In the ITP Contract, Pacific shall require the ITP's
23 prompt review of all documents provided to it pursuant to this Consent Decree, and
24 the ITP's review of Pacific's plans, procedures and activities to identify and address
25 risk to the Facilities from geologic movement, between Mile Post 10.3 and Mile Post
26 55. The ITP Contract also shall provide for the ITP's prompt delivery to the Parties of
27 the ITP's recommended revisions or modifications to any document, plan, procedure or
28 activity. The ITP's review shall measure the Pacific's efforts against, without

1 limitation, all applicable laws and regulations, industry standards and all appropriate
2 mechanical and geologic technical engineering standards. EPA shall review for
3 approval all recommendations and modifications from the ITP. Pacific and EPA may
4 discuss any recommendations and modifications with each other and/or jointly with the
5 ITP. Moreover, on EPA approval Pacific, if it wishes to proceed with re-opening the
6 closed section of Line 63, shall implement all EPA approved recommendations or
7 modifications.

8 **Task 2. Line 63 permanent relocation efforts at Mile Posts 35.6 and 36.9.**

9 Pacific shall relocate the following above-ground sections of Line 63 into
10 permanent below-ground locations: Mile Posts 35.6 and 36.9. These locations were
11 temporarily installed after prior landslides. Pacific shall prepare and submit for EPA
12 approval a work plan and schedule to conduct this relocation work.

13 **Task 3. Old Ridge Route Repairs (Located at Line 2000 Mile Post 46.5).**

14 Pacific shall study the segment of the Old Ridge Route road base impacted by its
15 operations and its Facilities. This task, *inter alia*, requires analysis regarding the
16 efficacy of support piers and walls, and a study of the feasibility of repairing the Old
17 Ridge Route road surface with concrete paving. Pacific shall make all appropriate
18 repairs to the Old Ridge Route as determined necessary by its study and consistent with
19 the applicable construction standards and requirements of law or regulation.

20 **Task 4. Repairs and Relocations.**

21 Pacific shall submit work plans for the following tasks and after EPA approval
22 shall implement the following:

- 23 • Mile Post 37.7 – Pacific shall relocate and bury 250 feet of buried
24 pipe.
- 25 • Mile Post 38.0 – 38.9 – Pacific shall lower or relocate 12 sections of
26 exposed pipe with spans ranging to 30 feet.
- 27
- 28

- 1 • Mile Post 39.06 – Pacific shall repair (if necessary as determined
2 under Task 4.2) and cover 28 feet of exposed pipe in creek bed.
- 3 • Mile Post 39.5 – Pacific shall lower 240 feet of exposed pipe.
- 4 • Mile Post 40.07-40.2 – Pacific shall relocate 700 feet of exposed
5 pipe at the bottom of a steep ravine.
- 6
- 7

8 **Task 5: Pipeline Integrity, Third-Party Auditing, Continued Programs.**

9 In addition to the requirements of its Integrity Management Plan, Pacific shall submit a
10 work plan, subject to ITP review and EPA approval, to perform increased oversight to
11 address risks to Line 63 between Mile Posts 10.3 and 55, including:

- 12 • Aerial Inspections. Increased aerial inspection frequency as needed
13 following significant rain events, weather permitting. Utilizing a helicopter
14 service for more detailed inspection of individual sites as needed, weather
15 permitting.
- 16 • Increased Ground Inspection. Field personnel visual inspection of
17 the right-of-way and specific areas of interest as needed during or
18 following significant rain events. Pacific hires contract geotechnical
19 personnel to inspect the right-of-way or specific locations of interest
20 following significant rain events, as needed.
- 21 • Shut down/Start up. Company operations personnel coordinate
22 efforts before and during significant storm events to determine whether to
23 operate or shut down the Facilities. Factors considered include cumulative
24 rainfall and observed field conditions. Company operations personnel will
25 periodically monitor winter storms via the National Weather Service
26 website satellite/radar or other similar source. Real-time weather
27 conditions will be confirmed by Company personnel, when needed and
28

1 safe to do so. Facilities could be out of service for multiple days if shut
2 down for a weather related event, until field reconnaissance is completed
3 depending on weather conditions, accessibility, and visibility. Prior to
4 start-up an inspection of the right-of-way will be completed. Start-ups may
5 only occur during daylight hours.

6
7 Pacific shall implement the approved work plan for, at a minimum, a total of
8 three years of operation after the initial re-opening the closed section of Line 63, for
9 each period of time that section of Line 63 is in operation during that period. Until
10 Termination, no less than annually, Pacific shall provide all results and reports
11 prepared under this work plan and any modification to its Integrity Management Plan
12 applicable to the Facilities to EPA and the ITP for review and potential modification of
13 the work plan to address risks to the integrity of the Facilities. Pacific shall implement
14 all modifications to this work plan approved by EPA. Pacific shall not make material
15 changes to its Integrity Management Plan, or to any Facilities, that, as may be
16 determined by EPA, are less protective of waters or adjoining shorelines within the
17 jurisdiction of 33 U.S.C. § 1321 without prior written approval from EPA. For the
18 purpose of this Consent Decree, “material changes” to its Integrity Management Plan
19 or to the Facilities shall mean:

20 1) the de-classification as of any portion of the Facilities that, as of
21 September 30, 2009, Pacific has designated as “could affect a” High Consequent Area,
22 in accordance with 49 C.F.R. § 195.452; or

23 2) the modification of pipeline assessment and repair criteria for the
24 Facilities established in Pacific’s Integrity Management Plan, where such modification
25 might result in: a) extending the timeframes or making less stringent the criteria for
26 pipeline assessment, excavation, repair or replacement with regard to risks of geologic
27 movement; b) changing repair and other remediation methods; c) reducing the
28 likelihood that a risk of geologic movement would be discovered or assessed.