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15 SUPERIOR COURT OF CALIFORNIA

16 COUNTY OF SOLANO

17 THE PEOPLE OF THE STATE OF CALIFORNIA,

Case No. FCR 223544

18 Plaintiff

PLEA BARGAIN AGREEMENT

19 vs.

20 SFPP, L.P.,

21 Defendant.

22 INTRODUCTION

23 The People of the State of California (the “People”), by and through the Attorney General
24 of the State of California and by and through the District Attorney’s Office for Solano County
25 (the Plaintiff), and SFPP, L.P. (the Defendant), a subsidiary of Kinder Morgan Energy Partners,
26 L.P. , submit this Plea Bargain Agreement (“Plea Agreement”).
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1 1. On or about April 27, 2004, at 6:27 p.m. Defendant noticed an abnormal pressure
2 drop in a pipeline owned and operated by Defendant, which lead to the discharge of diesel, a
3 petroleum product, into the waters of the United States in Solano County, California. Defendant
4 shut down the pipeline and began an inspection of the pipeline. On April 28, 2004, at 12:19
5 p.m., after conducting additional inspections, Defendant began a pressure test of the pipeline by
6 injecting more diesel, or petroleum products, into the pipeline. Defendant stopped pumping at
7 12:40 p.m. after an aerial crew noticed two areas of discoloration in the Suisun Marsh in Solano
8 County.
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11 2. On April 27, and April 28, 2004, Defendant failed to notify the required
12 authorities of any release or threatened release of diesel into the environment prior to 2: 35 p.m.
13 on April 28, 2004. The People have filed a Complaint against Defendant in the above-captioned
14 action for alleged violations of the Government Code, the Water Code, and the Fish and Game
15 Code resulting from the Defendant's conduct and alleged failures to act on April 27, and April
16 28, 2004.
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18 3. On April 26, 2005, Plaintiff and the Defendant elected to preserve their
19 understanding as to the pleas that would be entered by Defendant and the recommended criminal
20 fines, penalties, assessments, restitution, costs payments, and other imposition of obligations to
21 be ordered upon the Defendant for the alleged violations in the Complaint.
22

23 PLEA BARGAIN AGREEMENT

24 I. Defendant agrees to plead GUILTY to the crime of FAILING TO NOTIFY THE
25 OFFICE OF EMERGENCY SERVICES IMMEDIATELY on April 27, 2004, when responsible
26 for the discharge or threatened discharge of oil in marine waters, in violation of
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1 GOVERNMENT CODE SECTION 8670.64(c)(1)(2)(A), a Misdemeanor, as more fully charged
2 in Count I of the Complaint.

3 II. Defendant agrees to plead GUILTY to the crime of FAILING TO NOTIFY THE
4 OFFICE OF EMERGENCY SERVICES IMMEDIATELY on April 28, 2004, when responsible
5 for the discharge or threatened discharge of oil in marine waters, in violation of
6 GOVERNMENT CODE SECTION 8670.64(c)(1)(2)(A), a Misdemeanor, as more fully charged
7 in Count II of the Complaint.

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9 III. Defendant agrees to plead GUILTY to the crime of WATER POLLUTION on April 27,
10 2004, for unlawfully depositing, permitting to pass into, or placing where it could pass into the
11 waters of the State of California a petroleum, acid, coal or oil tar, lampblack, aniline, asphalt,
12 bitumen, or residuary product of petroleum, or carbonaceous material or substance, in violation
13 of Section 5650(a)(1) of the Fish and Game Code, a Misdemeanor, as more fully charged in
14 Count VII of the Complaint.

15
16 IV. Defendant agrees to plead GUILTY to the crime of WATER POLLUTION on April 28,
17 2004, for unlawfully depositing, permitting to pass into, or placing where it could pass into the
18 waters of the State of California a petroleum, acid, coal or oil tar, lampblack, aniline, asphalt,
19 bitumen, or residuary product of petroleum, or carbonaceous material or substance, in violation
20 of Section 5650(a)(1) of the Fish and Game Code, a Misdemeanor, as more fully charged in
21 Count IX of the Complaint.

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23 V. Defendant agrees to be placed on informal unsupervised probation for a term of three
24 years. Defendant agrees that its subsidiaries and divisions, and any agent, employee,
25 representative and all persons, partners, corporations, or other entities acting by, through, under,
26 or on behalf of Defendant shall commit no further violations of the Lempert-Keene-Seastrand
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1 Oil Spill Prevention and Response Act, codified at Government Code sections 8670.1 *et seq.*,
2 and shall commit no further violations of the Porter-Cologne Water Quality Control Act, codified
3 at Water Code sections 13000 *et seq.*, except that no strict liability violation shall constitute a
4 violation of this condition of probation.
5

6 VI. Defendant agrees to entry of judgment against it in favor of the Plaintiff, and to be fined
7 for the violations of Government Code Section 8670.64(c)(1)(2)(a), in the amount of:

8 a) \$750,000.00, for the base misdemeanor criminal fines;
9 b) \$750,000.00, for penalty assessments pursuant to Penal Code section 1464(a);
10 c) \$525,000.00, for penalty assessments pursuant to Government Code section 76000;
11 d) \$150,000.00, for penalty assessments pursuant to Penal Code section 1465.7(a);
12 e) \$217,500.00, for penalty assessments pursuant to Government Code section 76104.6;
13 f) \$ 200.00, for the victims' Restitution Fund pursuant to Penal Code section 1202.4(b);
14 g) \$1,000,000.00, for partial payment of restitution, due to the impossibility of
15 identifying direct damages to the resources of California, to be provided in the form of a
16 donation to the Environmental Protection Prosecution Fund, in care of the Office of the Attorney
17 General.
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19 h) \$65,000.00, for the Attorney General's costs of investigation and litigation.
20
21 VII. Defendant agrees to entry of judgment against it in favor of the People, and to be fined
22 for the violations of Fish and Game Code Section 5650(a)(1), in the amount of:

23 a) \$100.00, for the base misdemeanor criminal fines;
24 b) \$100.00, for penalty assessments pursuant to Penal Code section 1464(a);
25 c) \$ 70.00, for penalty assessments pursuant to Government Code section 76000;
26 d) \$ 20.00, for penalty assessments pursuant to Penal Code section 1465.7(a);
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1 e) \$ 29.00, for penalty assessments pursuant to Government Code section 76104.6;
2 f) \$ 100.00, for the victims' Restitution Fund pursuant to Penal Code section 1202.4(b);
3 g) \$466,620.00, for an additional fine pursuant to Fish and Game Code section 12011(a);
4 h) \$480,000.00, for partial payment of restitution, due to the impossibility of identifying
5 direct damages to the County of Solano, to be provided in the form of supplemental
6 environmental projects for fish, wildlife, and habitat enhancement in the Suisun Marsh in the
7 County of Solano, to be approved by the Fish and Wildlife Commission of the County of Solano;
8 i) \$300,000.00, for partial payment of restitution, due to the impossibility of identifying
9 direct damages to the County of Solano, with \$200,000.00 payable to the California District
10 Attorneys Association's Environmental Project for the purpose of, among other things, statewide
11 environmental enforcement training, and with \$100,000.00 payable to the California District
12 Attorneys Association's Institute for the Advancement of Criminal Justice, to be used solely for
13 environmental enforcement training of prosecutors in the State of California.
14 j) \$100,000.00, for partial payment of restitution, due to the impossibility of identifying
15 direct damages to the County of Solano, to be provided in the form of a donation to the Solano
16 County Inter-Agency Haz-Mat Response Team, for the acquisition of a heavy duty hauler in
17 order to respond to releases and to haul hazardous materials equipment, rehab materials, and
18 suspect materials, and for the acquisition of a super duty Ford diesel pickup to pull the trailer, to
19 be provided to the Solano County Office of Emergency Services.
20 k) \$20,000.00, for partial payment of restitution, due to the impossibility of identifying
21 direct damages to the County of Solano, to be provided in the form of a donation to the Solano
22 County Department of Resources Management, Hazardous Material Section, to be used solely
23 for hazardous material enforcement training.
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1 l) \$325,000.00, for the Department of Fish and Game's costs of response and criminal
2 investigation, of which \$259,487.00 has been previously paid by Defendant.

3 m) \$12,500.00, for the Solano County Department of Resources Management, Hazardous
4 Material Section's costs of response.

5 n) \$50,000.00, for the Solano County Office of the District Attorney's costs of
6 investigation and litigation.

7
8 VIII. As a condition of probation, with regard to any release or threatened release of a
9 hazardous material or pollutant substance by Defendant from any of its pipelines, conveyance
10 systems, facilities, or any other operation of Defendant, within 60 days of Defendant's entry of
11 the guilty pleas, Defendant shall ensure that each and every employee and agent in the State of
12 California is trained and instructed to immediately notify all appropriate response agencies,
13 including the Office of Emergency Services, and any local unified environmental program or
14 agency, of any release or threatened release of a hazardous material or pollutant substance from
15 any of its pipelines, conveyance systems, facilities, or any other operation of Defendant in the
16 State of California, as required by law.

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19 IX. As a condition of probation, with regard to future analysis of pipelines and evaluation of
20 inspection indications performed in the State of California by Defendant of its pipelines,
21 Defendant shall ensure that flaw interaction is considered in the evaluation of inspection
22 indications, using recognized standards for flaw interaction. When prior inspection data are
23 available, Defendant shall make comparisons between prior and current data, and any
24 discrepancies, such as indications getting smaller, shall be evaluated to determine the reasons for
25 the discrepancies. This may require manual verification of indication sizes. Where no basis for
26 the discrepancy can be determined, the larger of the two sizes shall be used by Defendant to
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1 evaluate the integrity of the pipeline. The comparison between prior and current inspections
2 shall include a comparison of the raw data for the worst locations. When comparisons of prior
3 and current inspection data indicate that defects are growing, the growth rate shall be used to
4 estimate the size and severity of defects at the next scheduled inspection. If for any reason the
5 next inspection is not performed as scheduled, the growth shall be re-evaluated by Defendant to
6 estimate the size and severity of defects at the time that the next inspection is performed.

7 Defendant shall make available the analyses of that data and the conclusions of their analyses of
8 that data immediately to the Department of Fish and Game, Oil Spill Prevention and Response,
9 and to the State Fire Marshal, Office of Pipeline Safety, for review and further comment.
10

11 X. As a condition of probation, with regard to a pipeline mechanical integrity program,
12 Defendant shall perform an independent audit of the mechanical integrity program to ensure that
13 the program meets the requirements of all applicable regulations and that the program is being
14 implemented in the State of California. Defendant shall provide the audit immediately to the
15 Department of Fish and Game, Oil Spill Prevention and Response, and to the State Fire Marshal,
16 Office of Pipeline Safety.
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18 XI. As a condition of probation, when replacing or relocating any pipeline section or
19 installing any section of new pipeline greater than one mile in length in the State of California
20 which are located less than a mile from or within any area subject to the jurisdiction of the
21 Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, codified at Government Code
22 sections 8670.1 *et seq.*, Defendant shall, at a minimum, install sensor receipt points so that
23 electronic analysis can be obtained of thermal readings and pressure readings between every one-
24 mile length of pipe, and install a manual block valve every five-mile length of pipe, so that when
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1 readings of an abnormal situation or indication of pipeline failure are obtained, the ability to
2 manually segregate and seal that section shall be implemented by Defendant.

3 XII. Defendant agrees and understands that by pleading guilty to these offenses, the
4 convictions and the underlying facts supporting each of the convictions shall not be disputed by
5 Defendant in any subsequent criminal or civil proceeding that may be brought by the Plaintiff
6 and that the convictions can be used as evidence against the Defendant in any subsequent action
7 without the need to establish the underlying facts supporting each of the convictions.
8

9 XIII. Defendant agrees to a general time waiver of the right to a speedy trial under Penal Code
10 section 1382. Defendant agrees to waive the statute of limitations in Penal Code section 801 and
11 802, to the extent it is applicable to the offenses alleged in the Complaint filed in the above-
12 captioned proceeding. Defendant waives all rights of appeal on any and all issues, including
13 jurisdiction. Defendant's waiver is knowing, intelligent and voluntarily made. The waiver is
14 made for Defendant's benefit and after consultation with counsel. The waiver does not handicap
15 the defense or contravene any other public policy reasons.
16

17 XIV. Conditioned upon Defendant's full compliance with this Plea Bargain Agreement, the
18 People further agree not to commence, file or bring, whether by complaint, indictment,
19 information or otherwise, any criminal cases against Defendant, or any of its parent entities,
20 subsidiaries, partners, or affiliates pursuant to the Lempert-Keene-Seastrand Oil Spill Prevention
21 and Response Act, codified at Government Code sections 8670.1 *et seq.*, water pollution statutes
22 in the Fish and Game Code; and the Porter-Cologne Water Quality Control Act, codified at
23 Water Code sections 13000 *et seq.*, for the April 27, and April 28, 2004, conduct and failures to
24 act by Defendant with regard to the diesel spill in the Suisun Marsh. In light of Defendant's plea
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1 and the imposition of this recommended sentence and conditions of probation, the People will
2 dismiss all remaining counts contained in the Complaint in this action.

3 XV. Conditioned upon Defendant's full compliance with this Plea Bargain Agreement, the
4 Office of the Attorney General will not commence, file or bring, whether by complaint,
5 indictment, information or otherwise, any criminal cases against Defendant, or any of its parent
6 entities, subsidiaries, partners, or affiliates pursuant to the Lempert-Keene-Seastrand Oil Spill
7 Prevention and Response Act, codified at Government Code sections 8670.1 *et seq.*, water
8 pollution statutes in the Fish and Game Code; and the Porter-Cologne Water Quality Control
9 Act, codified at Water Code sections 13000 *et seq.*, for certain other known and investigated
10 conduct and failures to act by Defendant alleged to have been committed in other jurisdictions in
11 California, except for charges relating to a May 6, 2004, release at the Los Angeles Harbor,
12 Berth 118. Defendant and the Office of the Attorney General will set forth this understanding in
13 a separate document that will be entered in the action to be filed in the County of Los Angeles.
14

15 XVI. Defendant understands that it has certain constitutional rights including: (a) the right to a
16 speedy public jury trial at which it would be presumed innocent and could not be convicted
17 unless twelve impartial jurors were convinced of its guilt beyond a reasonable doubt, (b) the right
18 to confront witnesses and cross-examine witnesses, and (c) the right to produce evidence and
19 issue subpoenas to bring into court all witnesses and evidence favorable to it. Defendant further
20 understands that by pleading guilty, Defendant is giving up the right to a jury trial, the right to
21 confront and cross-examine witnesses and the right to produce evidence and witnesses on its own
22 behalf. Knowing this, Defendant freely and voluntarily enters into this Plea Agreement and
23 Defendant enters the plea of GUILTY.
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25 XVII. This Plea Agreement shall be effective on the date of Defendant's plea of GUILTY.
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1 XVIII. Agreed and Accepted.

2 THE PEOPLE OF THE STATE OF CALIFORNIA:

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4 Dated: April _____, 2005

BILL LOCKYER,
Attorney General of the State of California

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7 By: _____
Brett J. Morris, Deputy Attorney General

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9
10 Dated: April _____, 2005

DAVID W. PAULSON
District Attorney for Solano County

11
12 By: _____
Criselda Gonzalez, Deputy District Attorney

13
14 SFPP, L.P.

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16 DATED: _____

17 By: _____
THOMAS A. BANNIGAN
Vice President, Kinder Morgan Management, LLC

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19
20 I, as counsel for Defendant, have reviewed this Plea Agreement, and am authorized by
21 Defendant to enter into this Plea Agreement.

22 DATED: April _____, 2005

23 KEKER & VAN NEST LLP
ELLIOT R. PETERS

24
25
26 By: _____
ELLIOT R. PETERS
Attorneys for Defendant