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FILED
DEC 16 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____ Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF CONTRA COSTA

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12 **THE PEOPLE OF THE STATE OF CALIFORNIA,**

13 Plaintiff,

14 v.

15 **SFPP, L.P.,**

16 Defendant.
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Case No. 01-197674-5

PLEA AGREEMENT

20 **PARTIES**

21 1. The People of the State of California, by and through Rob Bonta, Attorney General of
22 California, Brett J. Morris, Supervising Deputy Attorney General, and SFPP, L.P. (referred to
23 herein as "Defendant"), by and through counsel of record Elliot Peters and Brook Dooley,
24 understand and enter into the following Plea Agreement:

25 **CHARGES**

26 2. Defendant is presently charged in a Complaint filed in Contra Costa County Superior
27 Court, case number 01-197674-5, with one count of Government Code Section 8670.64,
28 subdivision (c)(2)(A), Failing to Immediately Report a Discharge of Oil in Waters of the State, a

1 Misdemeanor, and one count of Fish and Game Code Section 5650, subdivision (a)(1), Water
2 Pollution, a Misdemeanor. The charged offenses are alleged to have occurred in Contra Costa
3 County on or about and between November 20, 2020 through December 8, 2020, as set forth in
4 the Complaint.

5 **ADVICE OF COUNSEL**

6 3. Defendant has discussed with its attorney the facts of this case, any defenses it may
7 have, and the potential sentences that could result if convicted of the offenses with which it is
8 presently charged.

9 4. After speaking with its attorney, it is Defendant's desire to plead no contest to the
10 charged crimes pursuant to the terms of this Plea Agreement.

11 5. Defendant understands that a change of plea pursuant to this Plea Agreement is
12 subject to the approval of the sentencing judge. Defendant further understands that if convicted of
13 one or more of the charged crimes at trial, its sentence would be determined by the judge after
14 hearing the trial.

15 **CONSTITUTIONAL RIGHTS**

16 6. By pleading no contest to the charged offenses, Defendant understands and gives up
17 the following rights:

- 18 a. The right to be presumed innocent and to persist in a plea of not guilty.
- 19 b. The right to a speedy and public trial by a court or jury, where the burden of
20 proof is upon the Attorney General to prove Defendant is guilty beyond a reasonable doubt.
- 21 c. The right to assistance of counsel at trial, including the right to court-appointed
22 counsel, if Defendant cannot afford an attorney.
- 23 d. The right to confront and cross-examine witnesses.
- 24 e. The right against self-incrimination. That is, the right to remain silent and not be
25 compelled to testify.
- 26 f. The right to present evidence and to subpoena witnesses on Defendant's behalf.
- 27 g. The right to appeal this plea to a higher court, based on any grounds, including
28 constitutional, jurisdictional, and procedural grounds.

TERMS OF PLEA AGREEMENT

7. Defendant SFPP, L.P., will enter a plea of No Contest to the following criminal charges:

a. Count 1 in the Complaint, a violation of Government Code section 8670.64, subdivision (c)(2)(A), the crime of Failing to Immediately Report a Discharge of Oil in Waters of the State, a Misdemeanor, as more fully charged in the Complaint; and,

b. Count 2 in the Complaint, a violation of Fish and Game Code section 5650, subdivision (a)(1), the crime of Water Pollution, a Misdemeanor, as more fully charged in the Complaint.

8. Defendant will be placed on informal unsupervised probation for a term of eighteen (18) months. Defendant agrees that its subsidiaries and divisions, and any agent, employee, representative and all persons, partners, corporations, or other entities acting by, through under, or on behalf of Defendant shall commit no further violations of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, codified at Government Code sections 8670.1 *et seq.*, and shall commit no further violations of the Fish and Game Code.

9. As to Count 1, Defendant agrees to entry of judgment against it, and agrees as part of its sentence to be fined for the violation of Government Code Section 8670.64, subdivision (c)(2)(A), in a total penalty amount of \$1,000,000.00, which includes a base misdemeanor criminal fine pursuant to Government Code Section 8670.64, subdivision (c)(1), plus all applicable Penal Code and Government Code penalty assessments, plus a \$200.00 fine amount for the Victims' Restitution Fund pursuant to Penal Code section 1202.4, subdivision (b).

10. As to Count 2, Defendant agrees to entry of judgment against it, and agrees as part of its sentence to be fined for the violation of Fish and Game Code Section 5650, subdivision (a)(1), in the total penalty amount of \$1,000,000.00. This fine will be apportioned as follows:

a. A misdemeanor criminal fine of \$8,000 pursuant to Fish and Game Code Section 12002(b)(4), including all applicable Penal Code and Government Code penalty assessments.

b. An additional fine of \$500,000 pursuant to Fish and Game Code Section 12011, subdivision (a)(1). This additional fine once collected by the county shall be deposited pursuant to

1 Fish and Game Code section 13003. This additional fine is not subject to Penal Code and
2 Government Code penalty assessments.

3 c. An additional fine of \$492,000 pursuant to Fish and Game Code Section 12011,
4 subdivision (a)(2), an amount equivalent to the costs incurred by the state and local agencies for
5 cleanup and abatement and to fully mitigate actual damages to fish, plant, bird or animal life and
6 habitat. This additional fine once collected by the county shall be deposited pursuant to Fish and
7 Game Code section 13003. This additional fine is not subject to Penal Code and Government
8 Code penalty assessments.

9 11. Defendant also agrees to pay \$300,000.00 to the Department of Fish and Wildlife's
10 Office of Spill Prevention and Response, as partial restitution for reimbursement of costs of
11 response and criminal investigation, of which \$225,214 has been previously paid by Defendants.

12 12. Defendant also agrees to pay restitution in the amount of \$200,000 to fully mitigate
13 damages to fish, plant, bird or animal life and habitat and other economic losses caused by
14 Defendants' criminal conduct. This restitution payment shall be delivered to the OSPR Office in
15 Sacramento for deposit in the Department of Fish and Wildlife Account 379.

16 13. Defendant agrees to the following conditions to be imposed as probation terms:

17 a. Within 60 days of Defendant's entry of the no contest pleas, Defendant shall ensure
18 that each and every employee and agent is trained and instructed to immediately notify and
19 update all appropriate response agencies, including the Office of Emergency Services, and any
20 local unified environmental program or agency, of any release or threatened release of a
21 hazardous material or pollutant substance from any pipeline, conveyance system, facility, or any
22 other operation of Defendants in the State of California, as required by law.

23 b. By May 20, 2023, Defendant shall install a leak detection system on its pipeline
24 known as LS-16 that provides the Best Achievable Protection using the Best Achievable
25 Technology, as those terms are defined in Title 14 of the California Code of Regulations, section
26 790, subdivision (b)(5), and section 790, subdivision (b)(6).

27 c. Defendant shall eliminate the use of the Release Volume Estimator
28 Spreadsheet/Liquid Spill Calculator - Cell Phone App, as set forth in Defendant's L-O&M 159

1 form, to determine the release volume of any spills from the LS-16 pipeline occurring after
2 November 20, 2021. Defendant shall calculate spill volumes using Over/Short Reports obtained
3 for meter analysis, batch management or other appropriate measurement data available to the
4 Control Center. This analysis must done within one hour of the incident generating notice of a
5 release or a threatened release from the LS-16 pipeline.

6 14. Defendant forfeits all evidence seized by the California Department of Fish and
7 Wildlife as part of this investigation.

8 15. Defendant acknowledges that except as set forth in the terms of this "Plea
9 Agreement", there are no other promises, understandings, or agreements between the Defendant
10 and the Attorney General.

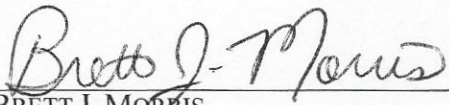
11 16. Defendant understands and agrees that this Plea Agreement does not cover any future
12 criminal actions. In other words, if Defendant commits a new crime after the signing of this Plea
13 Agreement, Defendant can and should anticipate being prosecuted for any such crime.

14 17. Defendant stipulates that the factual basis for this Plea Agreement is the factual basis
15 set forth in Attachment A and is incorporated by reference as part of this Plea Agreement. The
16 factual basis will be entered into the record during the entry of Defendant's Plea in this matter.

17 SENTENCING

18 18. The parties mutually request that the court sentence Defendants immediately.

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20 **For the People:**
21 ROB BONTA
22 Attorney General of California

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25 BRETT J. MORRIS
26 Supervising Deputy Attorney General

12-16-21
DATE

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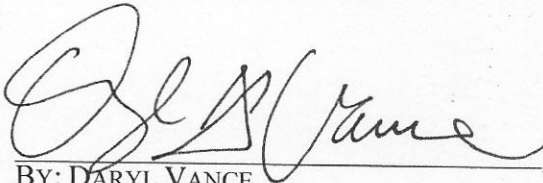
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For SFPP, L.P.:

I, as an officer of Kinder Morgan Operating LLC "D," the general partner of SFPP, L.P., have read this Plea Agreement and carefully discussed every part of it with an attorney. I understand the terms of this Plea Agreement, and I, on behalf of Defendant SFPP, L.P., voluntarily agree to its terms. Our attorney has advised us of our rights, of possible defenses, and of all consequences of entering into this Plea Agreement. No promises or inducements have been made other than those contained in this Plea Agreement. No one has threatened or forced Defendant, in any way, to enter this plea or sign this Plea Agreement, and I am satisfied with the representations of our attorney in this matter.

SFPP, L.P.

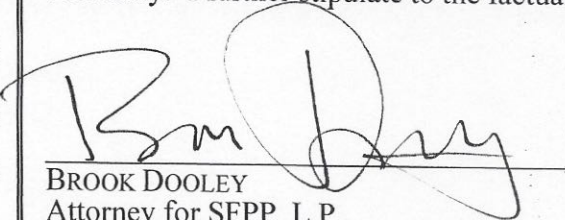
By: Kinder Morgan Operating LLC "D", the general partner



BY: DARYL VANCE
TITLE: VICE PRESIDENT

12/16/2021
DATE

I am the attorney for Defendant SFPP, L.P. I have carefully discussed every part of this Plea Agreement with my client, and I have fully advised the company of its rights, of all possible defenses, and of the consequences of entering a plea and signing this Plea Agreement. To my knowledge, my client's decision to enter into this Plea Agreement is fully informed and voluntary. I further stipulate to the factual basis stated in this Plea Agreement.



BROOK DOOLEY
Attorney for SFPP, L.P.

12/16/21
DATE

ATTACHMENT A

ATTACHMENT A TO PLEA AGREEMENT
People v. SFPP, Case No. 01-197674-5

Defendant SFPP operates oil and gas pipelines throughout the Bay Area to transport and distribute petroleum products. During the morning hours of November 20, 2020, pipeline operators at SFPP noticed that its Line Section 16 (LS-16) – a pressurized pipeline that transports petroleum materials 51 miles from Concord to San Jose – was running “short,” meaning that more barrels of gasoline were being metered into LS-16 at Concord than barrels of gasoline were being metered out at the San Jose receiving facility. These “shorts” were within the expected range and were considered normal based on historical operation of LS-16.

LS-16 continued to run short in the afternoon of November 20. These shorts were not expected. As a result, at approximately 3:50 p.m., LS-16 operators shut down the pipeline. A pressure test at 6:40 p.m. indicated a loss of pressure in LS 16. At that point, SFPP pipeline data, known as Stream Sheets, showed that the gasoline metered into LS-16 had been short by 211 barrels between 12:00 p.m. and 3:50 p.m. At 7:15, SFPP employees initiated an Emergency Response Line (“ERL”) meeting to discuss the status for LS-16. Following the ERL call, SFPP notified OES and the NRC of a “threatened release” at 7:48 p.m. and 7:57 p.m., respectively. The caller said the volume of gasoline released was “unknown.”

Over the next several days, SFPP investigated the threatened release. On November 22, LS-16 was repressurized so that additional pressure testing could be performed. The loss of pressure condition continued. By segregating portions of the pipeline, SFPP was able to locate a section most likely facing integrity concerns. On the evening of the November 24th, a SFPP line patroller smelled gasoline on South Broadway in Walnut Creek. Later that night, SFPP located a crack in a section of the pipeline where a bend had been installed to avoid a tree. SFPP notified OES that a release had been “confirmed” but did not provide an estimate of any amount released. On November 25, 2020, crews arrived to remove soil determined to be contaminated by gasoline.

On November 26, 2020, SFPP updated its release notification to OES and NRC by reporting the estimated volume of gasoline released as 8.1 barrels. Then, SFPP used the next two weeks to review operations data to re-analyze the amounts of gasoline actually received at the San Jose facility.

On December 2, 2020, complaints of gasoline odors were reported along a trail that runs along the same corridor as the LS-16 pipeline in Walnut Creek. Response by government agencies led to the discovery of gasoline sheening in the San Ramon Bypass Drainage Channel up the trail from where LS-16 is located. Subsequent testing confirmed that the gasoline in the channel matched the product that was released from LS-16 between November 20 and November 24, 2020. On December 8, 2020, SFPP reported an updated estimated spill volume of 1,000 barrels to OES and NRC.