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OFFICE OF THE STATE FIRE MARSHAL

CALIFORNIA NATURAL RESOURCES AGENCY
AUDITORIUM
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SACRAMENTO, CALIFORNIA

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3:09 P.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063
APPEARANCES

STAFF:
Mr. Joshua Cleaver, Legal Counsel

ALSO PRESENT:
Mr. Robert Gore, The Gualco Group
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PROCEDINGS

FACILITATOR CLEAVER: Good afternoon, everybody. Thanks for showing up. My name is Josh Cleaver. I'm a staff attorney with CalFire, and working with the State Fire Marshal's Pipeline Safety Division on the AB 864 regulations that we're all here to talk to you -- talk about today.

Before I get started, just a quick safety note and bathroom note. There's an emergency exit over here to my right, and then back where we just came in at. If you need to use the restroom while we're going through the presentation or comment period, it's going be out those doors we came in through, and just make a right, and another right. It's going to be behind kind of an aluminum looking door, and just down the hall on the left from there.

Before I get started, you know, I appreciate everybody showing up here today, and those who are participating on the webcast. It's important the public participate in these regulations. I think it's something that adds value definitely to what we're trying to do here today. And what we're about to go through in the draft regulations and the procedures that we're going to show you really represent a significant amount of work on part of some very good professional staff here at the State
Fire Marshal's Office, Pipeline Division, as well as some coordinated efforts with Fish and Wildlife's Oil Spill Prevention Response, OPSR, as well as a large -- a good contingent of experts from NGOs and industry, as well as other cities and counties.

So with that, I'd like to get started.

(Thereupon an overhead presentation was presented as follows.)

FACILITATOR CLEAVER: So this is just a quick overview of what we're going to be doing today. Of course, it's -- we're going to cover the purpose behind the public workshop, a little background into why AB 846 came into existence, and then we'll touch on the legislation itself, and then the draft regulation language and developments process we went through on there. And then following that, we'll open it up for public comment.

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FACILITATOR CLEAVER: So this is our kick-off to the informal public process. This is our very first meeting on the draft regulations. And this is -- the primary purpose is informational workshop with no real formal action being taken by the State Fire Marshal's Office.

But the objective here is really to bring in the public and have them come and make comments on what we
have for our draft proposed regulatory language. And, of course, look for some input on any alternatives that parties might have for the draft approach as it is now, as well as comments or suggestions or recommendations on regulatory language, with the ultimate goal of looking at ways to protect environmentally and ecologically sensitive areas in the coastal zone, and comments related to economic impacts on pipeline operators, as well as what we could anticipate seeing with the State of California are also welcome.

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FACILITATOR CLEAVER: As we all know, the AB 864 legislation came about in May of -- or following the spill in May of 2015 down in Santa Barbara County. And a large amount of that oil from that spill made it's way into the ocean and proceeded to move down about 25 miles of the coastline affecting ocean water, and species, and beaches along the way.

The impacts that we all know now are obviously devastating both to the environment, and economically speaking as well.

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FACILITATOR CLEAVER: The legislation itself sets out two real primary components, which is that by January 1 of 2018, any new or replacement pipeline that would be
near ecologically and environmentally sensitive areas, which we are kind of dubbing EESAs, because it's a mouthful to say ecologically and environmentally sensitive area a lot.

But those pipelines that are new or replacement shall be using best available technologies to reduce the amount of oil released and oil spills to protect the State waters and wildlife.

Likewise, there is a similar provision for existing pipelines that are located near ecologically and environmentally sensitive areas in the coastal zone. Along those lines, that by July 1 of 2018, operators of those existing pipelines will need to submit a plan to retrofit their pipelines by January 1 of 2020 with best available technologies.

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FACILITATOR CLEAVER: Continuing on with some of the requirements of AB 864. These regulations are to be adopted by the State Fire Marshal's office by July 1 of 2017. And within the legislation, it sets forth at least 4 specific requirements that need to be, I guess, promulgated in the regulations by the State Fire Marshal's office, including definitions for automatic shut-off systems, a process to assess the adequacy of an operator's risk analysis, a process for treatment of information that
operators might find inside of their risk analyses or plans that are submitted to the State Fire Marshal's office that potentially would contain confidential information; as well as a determination of how near an ecologically and environmentally sensitive area to a pipeline must be to be subject to regulations that are going to be promulgated under AB 864.

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FACILITATOR CLEAVER: Continuing on with some of the factors or items that are also in AB 864 legislation. We have notice, consultation requirements, as well as some of the definitions and terms that are also contained within the legislation.

As far as the notice goes, pipeline operators that have pipelines near ecologically and environmentally sensitive areas in the coastal zone need to notify the State Fire Marshal's office of any construction or retrofit of pipelines that would be subject to these regulations.

Under consultation, the State Fire Marshal's Office worked closely with the Office of Spill Prevention and Response, or OPSR, to consult on impacts of state water and wildlife.

And then as far as the definitions and terms provided, we have environmentally and ecologically
sensitive areas, which was directed to another section of
the California Government Code, which is largely OSPR's
responsibility under that section, but the definition is
shared across the legislation that we are, and the
regulations that we're working on right now.

And then, of course, there's a definition of best
available technology. It's a very -- it's a broad
definition. It's basically technology that's available
anywhere in the world that you could purchase anywhere in
the world. It could be used here.

The State Fire Marshal's Office would then look
at best available technologies that are included of risk
analyses of plans that are submitted to us, and make that
determination of whether it would be effective and
engineering feasibility, as well as whether that is
something that needs to be reviewed, or revised, or looked
at again within the risk analysis or plan that's submitted
to us.

And ultimately oil that was used in -- the oil as
the term was used in the legislation is also -- is beyond
just oil. It is defined in 49 CFR section 195.2.
Essentially, what that definition of oil is within that
and within the 195 section is that it includes things
beyond just crude oil. It includes liquids like carbon
dioxide, propane, and butane as well, among others.
And so you may be asking yourself what it is in ecologically and environmentally sensitive areas since the legislation really just kind of directs you too what the California Government Code section is. Then by looking at that code section, you can then look at the definitions that are also contained in there.

And the simple version is that EESA is defined by an area that would be found within contingency plans that are submitted to OPSR. It would -- it essentially means that -- or it could also be a contingency -- contingency plans or geographical response plans, but those plans are generated by Coast Guard, U.S. EPA, as well as by the OSPR administrator.

So within those contingency plans that are identified, these ecologically and environmentally sensitive areas, Coast Guard, U.S. EPA, and the OSPR administrator will look at things such as habitat, are there rare threatened and endangered species in the area, are there aquatic resources that could be impacted, and ecologically and environmentally sensitive areas like fish, amphibians, plants. It also includes terrestrial animals and plants as well, and in some cases, Migratory birds and migratory animals.

It's also important to note that even though these contingency plans that OPSR has that layout what
would comprise an EESA, they track this information, and I'll show it to you a little bit later in a map, but it's important to note that not all EESAs have been identified. And there is the potential, of course, to discover EESAs when you maybe encounter the species along a pipeline, or plant, or biota, or something along those lines.

So it's certainly not a fixed contingent, which is important to keep in mind, because if you discover something, it's -- it could potentially lead to further planning needs.

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FACILITATOR CLEAVER: So as we undertook this process to develop these draft regulations for AB 864, the State Fire Marshal's Office looked at interested parties that had commented on the legislation when it was moving through the process, various committees, and we assembled a stakeholder workgroup comprised of NGOs, local government and industry, and have been meeting with this group of stakeholders, in some cases, on a monthly basis, but very regularly since January of 2016.

The primary purpose of those workgroups were to -- the stakeholder workgroup was to define terms that weren't defined in the legislation, go through and look at typical standards, such as the API, or American Petroleum Institute, standards that are incorporated by reference in
the draft regulations; also to create guidance to the
procedures document that is also available on the website
that lays out how risk analysis and considerations that
are going to go into those risk analyses should be
developed by the operators; as well as how the State Fire
Marshal's Office will go back through and do an analysis
on the risk analysis and plans; and look at, of course,
the process for identifying what is best available
technologies; as well as setting forth the testing
requirements that the Fire Marshal's Office is going to
place on pipelines initially adopted in this retrofit
process, or if there's been new, or a replacement pipeline
to verify that what actually was proposed in the risk
analysis or the plan is actually delivering in the way
it's supposed to be delivering.

And, of course, as I mentioned, a process for
requesting confidential treatment of information that
might be contained in those risk analyses or plans.

As I mentioned previously, the State Fire
Marshal's Office was directed to consult with OPSR on
potential impacts of State water and wildlife, and sought
out their assistance as well in identifying ecologically
and environmentally sensitive areas in a coastal zone.

The next couple of slides are going to be some
maps of the information that we developed in conjunction
with OPSR on ecologically and environmentally sensitive
areas in a coastal zone.

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FACILITATOR CLEAVER: This map is -- well,
there's -- I mean, I have 3 more slides after this, but
this is just California. And then obviously, San
Francisco, Santa Barbara, and Los Angeles will have
separate maps come up for those as well. It's important
to keep in mind that the links on the Fire Marshal's Code
Development website will direct you to two options. One
is the ERMA viewer that will generate a map that should
look like this. And then there's an opportunity to
actually download the data that we use to develop these
maps representing EESAs in the coastal zone.

The downloadable information is only going to be
viewable if you have a GIS program that's already loaded
on your computer. It's just a file format. But what you
would end up getting out of the downloaded information
would be representative of what you actually get off of
the ERMA viewer as well. So there's a couple sources
there for it.

But quickly going through basically the key on
the bottom left here is that ecologically and
environmentally sensitive areas, as I mentioned, can be
pretty complex and they can cover information that's
considered sensitive, such as locations of endangered species.

So what you have in the green -- the green dots along the coastal zone are points, right? So it's point data, so it doesn't give specific locations of what might be considered endangered species. And then you have blue lines, which will be -- which are a little bit easier to see here where you see blue lines.

Those blue lines are typically rivers. And then we have polygon data too that's representative of a grid -- a grid pattern, and as well as the red part along the coastline is the coastal zone area, of course.

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FACILITATOR CLEAVER: So this is just a representative map of San Francisco, and the Bay Area. This is information that -- you know, that it -- it was challenging to compile to an extent, but OPSR worked hard and generated what we needed from them. Thankfully, they had a lot of the information already from their sea plans.

But what you can see out of the Bay Area here is that when you start looking at the points and the blue lines and then the polygon data that is what you'll see in the big circular areas, is that there is no one formulaic approach to what an EESA would look like.

The blue lines are rivers. They can extend
inland a good distance, but they would also terminate in
the coastal zone area that was identified in conjunction
with various entities to represent this map today.

Digging into the draft regulation language is
you're going to start looking at where are these EESAs
located, right? So all of those EESAs should originate
somehow in the coastal zone. The regulation language, as
we envision it right now, is that there will be a half
mile buffer that is added on to the coastal zone.

That buffer extends out beyond the coastal zone,
because there is a potential that, you know, a release
outside of the coastal zone could, of course, impact the
coastal zone, because hazardous, liquids, oil are in the
liquids. They can move with terrain and the potential for
it to migrate into the coastal zone and impact where the
ecologically and environmentally sensitive area exists.

So this half-mile buffer is aimed at capturing
pipelines that would be outside the coastal zone, but then
could impact the coastal zone. Those would be subject to
this regulation. So along those lines, when we start
looking at, say, a river that extends inland, say, for --
in the Santa Barbara example, you see a river up in the
top left area here.

--o0o--

FACILITATOR CLEAVER: So you see this river right
here. I'm sorry for people on the webcast that they can't seat it right now. But the river that I just identified is in the top left corner of this map, and that is, as you can tell, outside of the coastal zone in this part of it. But as it comes back in, it does touch into the coastal zone.

And as a result, in working with OPSR, is that the determination is that EESAs in a coastal zone, of course, can extend beyond the coastal zone. So if you have a leak in a pipeline or a release that's on an inland stream or outside the coastal zone, the potential for that to impact an ecologically and environmentally sensitive area in the coastal zone area does exist.

So there's the potential that these identified ecologically and environmentally sensitive areas not only just because they're beyond a half a mile, there would be, you know, maybe a land more release could impact the coastal zone here.

And for this scenario, and in these regulations, those river systems are going to be -- and the pipelines that would cross, you know, or potentially cross those rivers, or do cross those rivers they're identified as ecologically and environmentally sensitive areas, they're going to be subject to the regulations.

I think the primary takeaway here is that EESAs
do not just terminate at the end of the coastal zone boundary. So the potential for a pipeline outside the coastal zone to impact the coastal zone EESAs exists as part of the regulation.

As far as regulations applying to existing pipelines, and new pipelines, and replacement pipelines, it's fairly clear in the legislation. But there's also the potential that pipelines that are not jurisdictional in the State Fire Marshal's Office could be transferred into the State Fire Marshal's Office jurisdiction for interstate line, for example.

In those situations, the draft regulations layout how a pipeline would then potentially become the jurisdiction of the State Fire Marshal's Office, and there's a point in time where that pipeline would also be required to be compliant with the regulations that are applicable here.

And looking forward, if there are future releases from a pipeline that say was not subject to these regulations, but there is a release from that pipeline that does impact an ecologically and environmentally sensitive area in a coastal zone, that pipeline would then become subject to these regulations as well.

We've also looked at the fact of the need for exemptions. The reason why we incorporated this kind of
information, or this provision, into these draft regulations is, in some cases, where you have a river that is 40, 50, 60 miles inland, there's the potential that it may not actually reach an ecologically and environmentally sensitive area in a coastal zone. So there are provisions built into the draft regulations that would afford operators of the pipelines to essentially apply for an exemption from the applicability of the regulations.

The way that we see it working is that those pipelines that are outside the coastal zone but within a half mile of an ecologically and environmentally sensitive area can request an exemption. That request could take the form of something similar to what we're already looking for in the retrofit plan, which would be a risk analysis that would be submitted to the State Fire Marshal's Office, which would then be evaluated and potentially accepted. And then, at that point in time, that pipeline would be exempt from these regulations.

That exemption also does provide the ability for that pipeline that was exempt to come back into and be required to meet the regulation requirements, in the event that say that pipeline does later suffer a release that does then, in fact, impact the ecologically and environmentally sensitive area. So in the event that a pipeline were exempt, it could potentially be brought back
FACILITATOR CLEAVER: So this last slide is basically -- is just the Los Angeles/Long Beach area. And it's just a -- we try to capture about, you know, 3 different places along the coast that -- to get a representation of what areas have ecologically and environmentally sensitive areas in the coastal line, et cetera.

But I would encourage people to look to the ERMA website and explore and provide input, in the form of comments to us, if they need to.

FACILITATOR CLEAVER: So like I mentioned, this is the first of our plan workshops. We have two more that are anticipated. The next one coming up will be in Santa Barbara. It's going to be Thursday, February 2nd, 2017. We will be sending notices out for that shortly. We just have to set up a couple more logistical things. However, the location and times have all been set up, that way you can plan accordingly to participate. We'll have webcasts for those as well.

And then the third anticipated workshop is slated for the City of Long Beach Gas and Oil Department, February 16th. And a notice will go out for that one as
well, so you can lock in a couple more.

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FACILITATOR CLEAVER: We have some requirements
to take care of before we go there.

We're going to open it up for public comment
here. Just a couple of quick things. If you can, please
limit your oral comments to 3 minutes.

We're going to have Daniel over here, Daniel
Hastert. His contact information is here as well. If you
have written comments, please make sure that he gets them,
so that we can review them, and consider them, and make
sure that everything is heard from -- if you have comments
along those lines.

We also are then -- following that, we'll look at
written comments that are physically submitted before 5:00
p.m. on January 2nd. We -- it was a holiday observance
day, so in the event that you couldn't get your comments
in, please provide comments on the draft regulations and
procedures as well by no later that January 12th. Daniel
Hastert can receive those as well, and his contact
information is here. It's also on the notices that we've
sent out.

It's important too that everybody knows that any
sort of documentation that you provide or written or oral
comments or attachments that you give the State Fire
Marshal's Office, as well as contact information, including your address or phone number or email, these could become part of a Public Records Request -- Act request. So please keep in mind that any information you give to us may be released to the public in the event that there's a PRA associated with public comments we receive. That being said, let me go ahead and open it up to public comment. Does anybody have -- we'll just have you come up here and you can provide comment into the microphone here, and then make sure you provide Daniel or -- and as well as our recorder here with your name and the organization you represent. It's not required, but it helps us track the comments we receive. That way we can, if nee be, contact you as well.

So with that, please, we'll open it up for public comment.

MR. GORE: Good afternoon. I'm Robert Gore from the Gualco Group on behalf of the 550 small and medium energy producers who make up the California Independent Petroleum Association.

The statute in question, the assembly bill, has 2 admirably brief and directive clauses that were noted. Nowhere do they mention section 2035 in the proposed regulation, that is the State exemption process. It is our opinion it needs to be examined closely for legality
and authorization. We're not certain it's legal at all. Also, it would be good to recall that petroleum production is a statutory recognized beneficial use by the people of the State of California. Again, we would appreciate, as we continue, a timetable and continued collaboration to develop these regulations.

Personally, I've been involved in State regulations as an employee and a now as an advocate since 1984. And I find this proceeding relatively unique. Recently, I've had the privilege to work or lead working groups at the Water Resources Board, DWR, and Fish and Wildlife, the SWAN.

So I think a continued collaboration based on a timetable would be a good thing.

Thank you.

FACILITATOR CLEAVER: Anymore comments from the audience here?

Okay. Let me pull up and see if we have anything on-line. It appears there was an audio issue. Just so everybody is aware, we will be posting a transcript from this on-line as well. So unfortunately the audio was not coming through on the webinar side, so there will be an opportunity, of course, to see the presentation and any comments that were submitted as well.

Very well.
Likewise, if you have comments following this, of course, you have until January 12th to submit those for us. In the event that we're having other difficulties on the other end of the line, outside of the audio issue that we're encountering here, we'll, of course, consider those comments as well.

Going forward, as I mentioned, we're going to post the transcripts on the draft regulation language and related documents to the code development page for the State Fire Marshal's Office. The link was included in the previous notice. And it will be included as well in the upcoming notice, as well as a link to the webcast for the upcoming 2 events.

If you have not signed up for any of the upcoming workshop notifications, please make sure that you contact Daniel Hastert over here. You can submit information to him via email, and then we'll add you to our list that will provide you with the rolling updates, and the notifications with these -- with changes to the draft regulation language or procedures.

If you have any questions about public workshops or about the draft AB 864 regulations as well, please reach out to Ben Ho or Doug Allen. They are pipeline safety engineers and supervising pipeline safety engineers located up here in Sacramento. So hopefully, they can
answer any questions that you may have.

   And with that, thank you for attending. I hope it was informative. And, of course, if you have any comments or questions, feel free to reach out to us.

   Thank you.

   (Thereupon the California State Fire Marshal's Office hearing adjourned at 3:40 p.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Fire Marshal's Office hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of January, 2017.

JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063