

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Civil Action No. 22-00089-DLH-CRH

UNITED STATES OF AMERICA, and
STATE OF NORTH DAKOTA,

Plaintiffs,

v.

BELLE FOURCHE PIPELINE COMPANY,

Defendant.

PARTIAL CONSENT DECREE

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	9
II.	APPLICABILITY	10
III.	DEFINITIONS.....	11
IV.	CIVIL PENALTY AND COST RECOVERY	15
V.	COMPLIANCE REQUIREMENTS.....	17
VI.	REPORTING REQUIREMENTS	21
VII.	STIPULATED PENALTIES	22
VIII.	FORCE MAJEURE	26
IX.	DISPUTE RESOLUTION	28
X.	INFORMATION COLLECTION AND RETENTION; ACCESS TO PROPERTIES.....	31
XI.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS	33
XII.	DISMISSAL OF MONTANA ACTION BY UNITED STATES	38
XIII.	COSTS	38
XIV.	NOTICES AND SUBMISSIONS.....	39
XV.	RETENTION OF JURISDICTION	41
XVI.	MODIFICATION	41
XVII.	TERMINATION.....	42
XVIII.	PUBLIC PARTICIPATION	43
XIX.	SIGNATORIES/SERVICE.....	43
XX.	INTEGRATION	43
XXI.	APPENDIX.....	44
XXII.	26 U.S.C. SECTION 162(F)(2)(A)(II) IDENTIFICATION.....	44
XXIII.	FINAL JUDGMENT	44

WHEREAS, Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) and the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (“PHMSA”), and the State of North Dakota, on behalf of the Department of Environmental Quality (“NDDEQ”) (the “State”), filed a complaint in this action on May 23, 2022 alleging that Belle Fourche Pipeline Company (“Belle Fourche”) is liable for violations of Sections 301(a) and 311(b)(3) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a) and 1321(b)(3), and of certain safety standards prescribed under Section 60102 of the federal Pipeline Safety Laws, 49 U.S.C. § 60101 *et seq.*, including 49 C.F.R. §§ 195.401 and 195.452; and of N.D.C.C. ch. 61-28 (the “North Dakota Complaint”). NDDEQ is also alleging that Belle Fourche is liable for NDDEQ’s costs under N.D.C.C. ch. 23.1-10.

WHEREAS, the North Dakota Complaint specifically alleges that Belle Fourche is liable for civil penalties and injunctive relief under the CWA and the Pipeline Safety Laws related to the unlawful discharge of crude oil from its Bicentennial Pipeline into a tributary of Ash Coulee Creek near Belfield, North Dakota, which was discovered on December 5, 2016 (the “Ash Coulee Incident”).

WHEREAS, Plaintiff United States of America, on behalf of EPA and PHMSA, filed an amended complaint in the District of Montana, Case No. 22-cv-00043, on May 23, 2022 alleging that Bridger Pipeline LLC (“Bridger”) is liable for violations of Sections 301(a) and 311(b)(3) of the CWA, 33 U.S.C. §§ 1311(a) and 1321(b)(3), and of certain safety standards prescribed under Section 60102 of the federal Pipeline Safety Laws, 49 U.S.C. § 60101 *et seq.*, including 49 C.F.R. § 195.452 (the “Montana Complaint”).

WHEREAS, the Montana Complaint specifically alleges that Bridger is liable for civil

penalties and injunctive relief under the CWA and the Pipeline Safety Laws related to an unlawful discharge of crude oil from its Poplar Pipeline into the Yellowstone River near Glendive, Montana, which was discovered on January 17, 2015 (the “Poplar Incident”).

WHEREAS, Bridger entered into an Administrative Order on Consent with the Montana Department of Environmental Quality (“MDEQ”) *In The Matter of Violations of the Montana Water Quality Act by Bridger Pipeline LLC, and Remedial Action under the Montana Comprehensive Environmental Cleanup and Responsibility Act at Poplar Pipeline, Glendive, Dawson County, Montana (FID 2405)*, Docket No. WQ-15-12, in which it agreed to pay a \$200,000 cash penalty to the state of Montana and implement \$800,000 in Montana DEQ-approved supplemental environmental projects.

WHEREAS, PHMSA inspected Bridger and Belle Fourche’s (together, “Defendants”) centralized control room located in Casper, Wyoming from which Defendants’ pipelines are operated in 2018-2019 and identified alleged violations of the Pipeline Safety Laws related to control room management for which Defendants are liable for civil penalties and injunctive relief.

WHEREAS, Defendants represent that they have taken the following steps since the Ash Coulee and Poplar Incidents, to minimize the risk of future unauthorized discharges of crude oil:

Bridger and Belle Fourche, Applicable to Operations in Multiple States.

- A. Defendants designed and built a new, 3800 square foot state of the art control room facility. The new facility includes enhanced consoles for the controllers, and includes two additional consoles, one of which is partially and will be fully staffed with four new controllers which allows for a third controller on each shift. The new facility also includes a dedicated training console.

- B. Defendants have partnered with an affiliated company to apply artificial intelligence and machine learning to operational data collected on several pipeline segments, enabling a more robust solution for leak detection. The “Flowstate” system leverages artificial intelligence algorithms, statistical analysis, and signal processing to monitor real-time field measurements and status updates in order to assess the likelihood that a potential commodity release has occurred. Flowstate models are capable of learning signal propagation latency, meter offsets, and complicated packing/unpacking signatures, among many other variables. In order to maintain sensitivity while minimizing false positives, the system iterates hundreds to thousands of possible parameter configurations to find the optimal set of parameters to detect leaks. The Flowstate system is onboarded on approximately 1300 miles of Defendants’ pipelines, including several segments in North Dakota and Montana that are through the testing phase and operational in the control room. The Flowstate system is used as an enhancement to the SCADA-based line balancing system currently used by the controllers.
- C. Defendants between 2020 and 2021 hired a third-party consulting firm to conduct an in-depth review of their Integrity Management Program (“IMP”) under 49 C.F.R. § 195.452 for all regulated pipeline segments operated by the Defendants, resulting in a revised IMP.
- D. Defendants have further segmented their pipelines in seven locations and added meters to shorten leak detection segments and thereby enhance leak detection capabilities. This evaluation and segmentation is ongoing for all pipelines including non-regulated pipelines.
- E. In 2018, PHMSA began an inspection of the Defendants’ control room. Defendants have

since made several changes and improvements to their control room management (CRM) procedures, including but not limited to:

- i. Enhanced their existing management of change (MOC) process to include a control room specific MOC which is used either in a stand-alone fashion or as part of the comprehensive MOC process. This was intended to ensure that certain requirements of API 1168 are clearly addressed.
- ii. As noted above, to further support, through enhanced training, procedures, instrumentation, and communication, the Defendants, in 2021, completed the construction of a new control room. The control room staff has increased by over 50% since the inspection was initiated, including 4 new controllers for the additional console. Five additional SCADA network technicians also enhance control room SCADA functionality.
- iii. One of the new control room positions included the hiring of two console supervisors with responsibilities for relief controller duties and as trainers. Training specifically includes understanding communication regarding any changes to the pipeline system or the SCADA network, and specifically addresses MOCs.
- iv. Defendants updated their procedures and documentation for the monthly review of alarms.
- v. Defendants updated their review of controller workload and revised methods to capture this information more clearly.
- vi. Defendants supplemented their annual CRM review process, including means to review the above as well as other factors affecting the control room.

- vii. Defendants developed a software-based work order system to track and maintain records of maintenance and repair of safety related devices including meters.
 - viii. Each of the above changes is reflected in revised procedures and new or revised forms for recording and retention.
- F. Defendants have an ongoing program to evaluate pipeline water crossings to classify them according to risk and perform mitigation as necessary, which has resulted as of March 2023 in 26 replacement pipeline crossings using horizontal directionally drilled (HDD) technology, replacement of four other crossings, and use of HDD technology at 31 other crossings for new pipeline construction.
- G. In 2019, Defendants facilitated EPA’s multi-day oil response training, backwater-fastwater practical course for industry, local responders, state agencies and EPA personnel. Defendants provided spill response boats and equipment, classroom space, and other resources, and Defendants presented case studies from the spills at issue in this case.

Bridger Pipeline LLC

- A. Bridger has complied with PHMSA Corrective Action Order (CAO) (CPF 5-2015-5003H, January 23, 2015), resulting in a closure letter stating that “this case is now closed and no further action is contemplated with respect to the matters involved in this case” (Letter from PHMSA to Bridger, December 4, 2017). The CAO tasks included the following:
- i. Bridger conducted metallurgical testing, root cause failure analysis and related tasks.
 - ii. Bridger replaced the ruptured segment of pipeline with a horizontal directional

drilled segment crossing the Yellowstone River, based on geotechnical studies.

- iii. Bridger performed an in-line inspection (ILI) in 2016 of the entire Poplar Pipeline and made repairs of anomalies necessary, which was followed by another ILI in 2021 as required by rule.
- iv. Bridger reviewed and assessed the effectiveness of the response to the spill and oil spill response plan.
- v. Bridger documented the inspection and repair criteria to prioritize, excavate, evaluate, and repair anomalies, imperfections, and other identified integrity threats present on the Poplar Pipeline.
- vi. Bridger examined whether conditions similar to those contributing to the failure on January 17, 2015, were likely to exist elsewhere on the pipeline, including a risk assessment of all water crossings greater than 100 feet and an analysis of whether HDD crossings should be installed at these locations.

- B. Subsequent to the spill, Bridger promptly responded to the spill and completed the response to the satisfaction of EPA and the Montana Department of Environmental Quality (“MDEQ”). MDEQ acknowledged that Bridger worked cooperatively with DEQ, promptly and diligently responded to the Discharge, and complied fully with MDEQ’s requirements regarding the Discharge. *In Re: Violations of the Montana Water Quality Act by Bridger Pipeline LLC, and Remedial Action Under the Montana Comprehensive Environmental Cleanup and Responsibility Act at Poplar Pipeline, Glendive, Dawson County, Montana* (Administrative Order on Consent, Docket No. WQ-15-12, February 8, 2017, at 6).
- C. Bridger conducted an after-action review with the involved agencies to inform

stakeholders about effective spill response.

- D. Bridger reimbursed EPA and MDEQ remedial action costs and paid a civil penalty to the State of Montana in the amount of \$1,000,000, a portion of which included MDEQ-approved Supplemental Environmental Projects.
- E. Bridger entered into a Natural Resource Damages settlement and consent decree with two trustees to address natural resources injury arising from the spill. Bridger paid a total of \$2,280,000 in reimbursement and future restoration costs.

Belle Fourche Pipeline Co.

- A. Belle Fourche performed the following tasks including tasks performed under PHMSA Consent Agreement and Order (CPF No. 5-2016-5013H, July 2, 2018):
 - i. Belle Fourche conducted a root-cause failure analysis, which PHMSA approved.
 - ii. Belle Fourche completed a geo-hazard evaluation and analysis of the other HDD pipe segments on the Bicentennial Pipeline, the surrounding subsoil conditions, and any related waterways, to ensure that existing HDD pipe segments have been installed in such a manner as to minimize potential damage to the pipeline.
 - iii. Belle Fourche performed a risk assessment of all slopes in proximity to the Skunk Hill to Bicentennial Station segment of the Bicentennial Pipeline that are steeper than 3H:1V, to determine whether slope movement could damage the pipeline, and mitigated as necessary.
- B. Prior to PHMSA's issuance of the Consent Agreement and Order, Belle Fourche shut-down the approximately 19-mile segment of the Bicentennial Pipeline where the rupture occurred (the "Skunk Hill-to-Treetop Segment"). Belle Fourche has no current plans to restart the Skunk Hill-to-Treetop Segment. If Belle Fourche restarts the Skunk Hill-to-

Treetop Segment, it must first seek approval from PHMSA under the Consent Agreement and Order (CPF No. 5-2016-5013H, July 2, 2018).

- C. Belle Fourche added volume information to the SCADA system from all lease automated custody transfer (“LACT”) units that input to the Bicentennial Pipeline. All production from east of the Little Missouri River has been disconnected such that the active segment of the Bicentennial Pipeline no longer crosses the Little Missouri River, and the remaining active LACTs (which have volume information to the SCADA system) currently inject a small volume of oil into the operating segment of the Bicentennial Pipeline.
- D. Subsequent to the Ash Coulee Incident, Belle Fourche installed a back-pressure valve on the Bicentennial Pipeline and has installed back-pressure valves on regulated transmission pipeline segments where engineering evaluation has indicated that such valves are necessary and appropriate, an engineering evaluation that continues.
- E. Promptly following notice of the release, Belle Fourche initiated emergency spill response actions. These actions primarily included containment of the spill, oil recovery and in-situ burning, all in consultation with the Unified Command, including EPA and NDDEQ. Subsequent to the initial spill response, Belle Fourche has conducted numerous additional remedial actions, including action to prevent residual contamination from impacting the creek, reconstruction of the hillside to facilitate safe remediation, installation of over 50 wells, soil remediation activities, pilot tests, fluid extraction, nutrient injections, and other work, all in consultation with NDDEQ. Belle Fourche also conducted numerous additional remedial investigations in connection with its remedial actions, again in consultation with NDDEQ, including initial site characterization in 2017

associated with the hillside reconstruction, sampling from the installed wells, and soil borings. The amount of oil recovered at the site each year has decreased over time. In 2021, Belle Fourche recovered less than 2.1 barrels and is continuing to monitor the collection areas and wells and remove oil as needed.

WHEREAS, Defendants do not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the North Dakota and Montana Complaints.

WHEREAS, the Parties recognize, and the Court by entering this Partial Consent Decree (“Consent Decree” or “Decree”) finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest, and furthers the objectives of the federal and state environmental laws and the federal Pipeline Safety Laws.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 33 U.S.C. §§ 1319(b), 1321(b)(7)(E), 1321(n); and 49 U.S.C. § 60120; and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental jurisdiction over the State law claims asserted by the State of North Dakota pursuant to 28 U.S.C. § 1367.

2. Venue lies in this District pursuant to 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E), 49 U.S.C. § 60120, and 28 U.S.C. §§ 1391 and 1395, because the violations alleged in the North Dakota Complaint are alleged to have occurred in, and Defendants conduct business in, this

judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district. For purposes of this Consent Decree only, Defendants agree that the North Dakota and Montana Complaints state claims upon which relief may be granted.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of any Pipeline, whether in compliance with the procedures of this Paragraph or otherwise, relieves Defendants of their obligation to ensure that the terms of the Decree are implemented. At least 30 days prior to such transfer, Defendants shall provide a copy of this Consent Decree to the proposed transferee and must simultaneously provide written notice of the prospective transfer, together with (i) a description of the proposed transfer agreement and (ii) the portions of the agreement relevant to the implementation of the requirements of this Consent Decree, to the United States and, in the case of any Pipeline in North Dakota, the State, in accordance with Section XIV (Notices and Submissions). Any attempt to transfer ownership or operation of a Pipeline without complying with this Paragraph constitutes a violation of this Decree.

5. Defendants shall provide a copy of this Consent Decree to any President, General Counsel, Environmental Manager, and other managers or field supervisors who will be responsible for implementing the terms of this Consent Decree, and shall ensure that any employees and contractors whose duties might reasonably include compliance with any

provision of this Consent Decree are made aware of this Consent Decree and specifically aware of the requirements of this Consent Decree that fall within such person's duties. In any action to enforce this Consent Decree, Defendants may not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

6. Terms used in this Consent Decree that are defined in the CWA or the Pipeline Safety Laws or in regulations promulgated pursuant to the CWA or Pipeline Safety Laws have the meanings assigned to them in the CWA or Pipeline Safety Laws or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

- a. "Affiliated Entities" means Butte Pipe Line Company, and members and owners of Defendants and Butte Pipe Line Company.
- b. "Agencies" means EPA, PHMSA, and NDDEQ.
- c. "Ash Coulee Spill" means the discharge or release of crude oil from a rupture on Belle Fourche's Bicentennial Pipeline into an unnamed tributary to Ash Coulee Creek in Billings County, North Dakota approximately 17.4 pipeline miles west of the Skunk Hill station, reported on December 5, 2016.
- d. "Consent Decree" or "Decree" means this Partial Consent Decree and all appendices attached hereto.
- e. "Control Room" means any location where Defendants' personnel have the primary responsibility to monitor, operate and control the Pipelines using a SCADA system. Defendants currently have one control room, located in Casper, Wyoming.

f. “Day” means a calendar day unless expressly stated to be a business day.

In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period runs until the close of business of the next business day.

g. “Defendants” means Belle Fourche Pipeline Company and Bridger Pipeline LLC.

h. “Effective Date” means the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court’s docket.

i. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.

j. “Geotechnical Evaluations Program” means the ongoing program whereby Defendants have engaged a third-party geotechnical consultant to perform a technical geohazard review of potential slope failure to identify and manage risks to pipeline integrity. A written summary of the Geotechnical Evaluations Program was provided to Plaintiffs on March 17, 2023.

k. “Idled” means a pipeline that is not currently in operation and has been purged with inert gas but that may be used in the future.

l. “Interest” means interest at the rate specified in 28 U.S.C. § 1961. The applicable rate of interest is the rate in effect at the time the interest accrues.

m. “Lead Agencies” or “Lead Agency” mean, with respect to oversight of the requirements of:

(1) Section V of this Consent Decree, PHMSA;

(2) Section VIII (Force Majeure), Section IX (Dispute Resolution), and Section XVI (Modification), only the Lead Agency separately responsible for the matters identified in (m)(1) above.

n. “Montana Action” refers to the civil action filed in the United States District Court for the District of Montana, captioned United States of America v. Bridger Pipeline LLC, case number 22-00043-BLG-SPW.

o. “Montana Complaint” means the amended complaint filed by the United States in the Montana Action, docket number 10.

p. “NDDEQ” means the North Dakota Department of Environmental Quality and any of its successor departments or agencies. NDDEQ is the successor agency of the North Dakota Department of Health’s Environmental Health Section (“NDDH-EHS”). NDDH-EHS’s interest in the causes of action stemming from the Ash Coulee Spill was assigned to NDDEQ under 2017 N.D. Sess. Laws ch. 199, § 1.

q. “North Dakota Complaint” means the complaint filed by the United States and the State in this action.

r. “Paragraph” means a portion of this Decree identified by an Arabic numeral.

s. “Parties” means the United States, the State, and Defendants.

t. “PHMSA” means the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration and any of its successor departments or agencies.

u. “Pipeline” or “Pipelines” means the pipelines that are listed on Appendix A that are not Idled. Because the status of a pipeline can change from Idled to non-Idled (i.e.

active) and vice-versa, the Parties acknowledge that a particular line could fall in or out of this definition during the term of the Consent Decree.

v. “Pipeline Safety Laws” means 49 U.S.C. §§ 60101 *et seq.*, and regulations promulgated thereunder at 49 C.F.R. Part 195.

w. “Plaintiffs” means the United States and the State of North Dakota.

x. “Poplar Spill” means the discharge or release of crude oil from a rupture on Bridger’s Poplar Pipeline into the Yellowstone River approximately six miles upstream from Glendive, Montana, reported on January 17, 2015.

y. “Remediation Abandonment” occurs if (1) Belle Fourche fails to perform or ceases to comply with a remediation plan that is (a) memorialized in or developed in accordance with a consent decree and/or (b) approved or imposed by the Court, or, (2) prior to the existence of such a remediation plan, ceases its ongoing efforts to address the effects of the Ash Coulee Spill as generally described in the annual reports submitted by Belle Fourche to the State.

z. “Section” means a portion of this Decree identified by a Roman numeral.

aa. “State” means the State of North Dakota, acting on behalf of NDDEQ.

bb. “United States” means the United States of America, acting on behalf of EPA and PHMSA.

cc. “USDOJ” means the United States Department of Justice.

dd. “Water Crossings Program” means the ongoing program used by Defendants to identify and manage risks to pipeline integrity at water crossings. A written summary of the Water Crossings Program was provided to Plaintiffs on March 17, 2023.

IV. CIVIL PENALTY AND COST RECOVERY

7. Within 30 days after the Effective Date, Defendants shall collectively pay the sum of \$12,500,000 as a civil penalty, together with Interest accruing from the date on which the Consent Decree is lodged with the Court (“date of lodging”), as provided in this Section.

8. Payments to the United States.

a. For violations of the Pipeline Safety Laws alleged in the North Dakota and Montana Complaints and violations of the Pipeline Safety Laws related to control room management identified during the 2018-2019 inspection by PHMSA of Defendants’ Casper, Wyoming control room, Defendants shall collectively pay \$2,700,000 to the United States, together with Interest accrued on this amount, by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice account, in accordance with the instructions provided by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of North Dakota after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants must use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Kevin Cook, General Counsel
True Companies
PO Drawer 2360
Casper, WY 82602
Tel. (307) 237-9301
Kevin.Cook@Truecos.com

Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States.

b. For violations of the CWA alleged in the North Dakota and Montana

Complaints, Defendants shall collectively pay \$5,212,500 to the United States, together with Interest accrued on this amount, by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice account in accordance with the instructions provided by the FLU of the United States Attorney’s Office for the District of North Dakota after the Effective Date. This payment is to be deposited in the Oil Spill Liability Trust Fund.

c. The payments made in accordance with Paragraphs 8.a and 8.b shall reference the civil action numbers assigned to this case and the Montana Action and DOJ case numbers 90-5-1-1-11262 and 90-5-1-1-11262/2. Any funds received after 11:00 a.m. Eastern Time will be credited on the next business day.

d. At the time of each payment, Defendants shall send notice in the form of a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which must state that the payment is for the civil penalties owed pursuant to this Consent Decree in *United States v. Bridger Pipeline LLC* and *United States and the State of North Dakota v. Belle Fourche Pipeline Co.*, and shall reference the civil action numbers, CDCS Number, and DOJ case numbers 90-5-1-1-11262 and 90-5-1-1-11262/2 to the United States in accordance with Section XIV (Notices and Submissions). In addition, for the payment made in accordance with Paragraph 8.b, Defendants shall also provide such notice of payment to EPA by email to acctsreceivable.CINWD@epa.gov and to EPA and the National Pollution Funds Center at the following addresses:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

and

Patricia V. Kingcade
Attorney Advisor
National Pollution Funds Center
U.S. Coast Guard
2703 Martin Luther King Jr. Avenue SE
Washington, DC 20593-7605

9. Payment of Civil Penalty to the State. For violations of state law alleged in the North Dakota Complaint, Belle Fourche shall pay \$4,587,500, together with Interest accrued on this amount, by certified check or cashier's check made payable to the "North Dakota Department of Environmental Quality" sent to the attention of L. David Glatt, Director, North Dakota Department of Environmental Quality, 4201 Normandy Street, Bismarck, ND 58503-1324. To receive proper credit, the check must reference *United States of America and State of North Dakota v. Belle Fourche Pipeline Company*.

10. Payment of Past Response Costs to the State. Within 30 days after the Effective Date, Belle Fourche shall pay to the State \$98,637.17, together with Interest accrued on this amount, for response costs incurred by the State through the date of lodging. Payment shall be made by certified check or cashier's check made payable to the "North Dakota Department of Environmental Quality – Cost Recovery" sent to the attention of L. David Glatt, Director, North Dakota Department of Environmental Quality, 4201 Normandy Street, Bismarck, ND 58503-1324. To receive proper credit, the check must reference *United States of America and State of North Dakota v. Belle Fourche Pipeline Company*.

11. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating their federal or state or local income tax.

V. COMPLIANCE REQUIREMENTS

During the term of this Consent Decree, Defendants shall perform the following

compliance requirements for the Pipelines.

A. Control Room Operations

12. Control Room Management. Within 180 days of the Effective Date, Defendants shall implement API Recommended Practice 1168 (Pipeline Control Room Management) (2008 edition) for the Pipelines.

13. Shift Changes During Abnormal Operations. Defendants shall continue to implement a written process that requires that all Abnormal Operations that begin during a shift, regardless of status at the end of the shift (i.e. open or closed), be recorded and communicated from the out-going controller to the in-coming controller. This written process also requires that all open Abnormal Operations, regardless of when they begin, be communicated between controllers as part of each shift change. This written process is contained in the Defendants' Operation and Maintenance Procedure Control Room Management (CRM) Section 9.5 Shift Change and Handover. Defendants shall maintain this provision in all revisions to the Defendants' Operation and Maintenance Procedures, or one that provides an equivalent or greater level of safety. Defendants' Control Room Controller Shift Change form also requires that the process set forth in this Paragraph be followed. Defendants shall continue to use this form or one with an equivalent requirement.

14. Alarm Procedures. Defendants have a written procedure in CRM Section 9.7.2 to verify the accuracy of safety-related points on a control room screen at least once each calendar year not to exceed 15 months. These procedures require that instrumentation and equipment values presented to the controller (e.g. pressure and flow readings) have accurate critical safety-related alarms (such as HiHi), and other safety-related alarms. These procedures also require that correct safety-related alarm setpoint values and alarm descriptions be verified, in accordance

with 49 C.F.R. § 195.446(e)(3). Defendants shall maintain these provisions in all revisions to the Defendants' Control Room Management Plan, including Alarm Management and Operation and Maintenance Procedures, or ones that provide an equivalent or greater level of safety. Nothing in this Paragraph applies to alarms that are designed to be moved by controllers routinely to provide notification of when the process has operationally moved outside of the controller's selected settings (such as hi or lo alarms on flows or pressures).

15. Control Room Notifications and False Alarms. When making changes to equipment and instrumentation that affect Control Room operations, including before it is moved, changed, calibrated, tested or taken out of service, field and maintenance personnel shall notify the Control Room as soon as practicable prior to making such changes to equipment and instrumentation. While advance notice of planned field operational and maintenance activities can occur at an interval selected by Defendants, the field shall contact the controller on shift prior to actions being performed. If the Control Room is not contacted in advance and a controller receives an alarm as a result of the field operations or maintenance activity, this shall be designated as a false alarm, recorded accordingly, and reviewed on a monthly basis with appropriate operations personnel.

16. Management of Change. Defendants have a management of change process in Appendix 4 of their Operation and Maintenance Procedures. Defendants have supplemented this process with the addition of Section 9.9 (Management of Change) to their Control Room Management procedures, which is specific to control room operations. Collectively, Appendix 4 and Section 9.9 (Management of Change) address each of the requirements set forth in Section 7 of API Recommended Practice 1168 as required by 49 C.F.R. § 195.446(f) (including addressing alarm setpoints or parameter changes, such as adding a Rate of Change alarm or deviation alarm,

and alarm description changes). Defendants shall maintain Section 9.9 (Management of Change) in all revisions to the Defendants' Control Room Management plan and Appendix 4 Operation and Maintenance Procedures, or revisions that provide an equivalent or greater level of safety. Defendants must maintain records demonstrating that their controllers received advanced written notice of changes sufficient to allow time for training in advance of implementation.

17. Meter Management. Defendants must continue to implement a meter management system on the Pipelines that includes written installation and calibration processes for each meter system, data sheets to capture this information, a formal records retention process, and a maintenance scheduling process (either preventive maintenance or predictive maintenance).

B. Training

18. Defendants shall conduct annual training of employees with responsibilities for Control Room operations on procedures relating to control room operations and alarms.

19. Training must be documented in a single location and documentation made available to the Agencies upon request.

C. Water Crossings Program

20. Water Crossings Program. Defendants shall continue to implement the Water Crossings Program for a period of two years from the Effective Date.

D. Geotechnical Evaluations

21. Geotechnical Evaluations of Pipeline Rights of Way. Defendants shall continue to implement the Geotechnical Evaluation Program for a period of two years from the Effective Date.

E. Integrity Management Program

22. Between 2020 and 2021, Defendants hired a third-party consulting firm to conduct an in-depth review of their Integrity Management Program (“IMP”) under 49 C.F.R. § 195.452 for all regulated pipeline segments operated by the Defendants, resulting in a revised IMP. Defendants shall incorporate into the IMP the analyses and results of the Water Crossing and Geotechnical Evaluations Programs conducted pursuant to Sections V.C and V.D and of this Consent Decree.

VI. REPORTING REQUIREMENTS

23. Defendants must submit an annual report by March 31 of each year to the Agencies that includes the following information as it pertains to the preceding calendar year:

- a. Description of the training done pursuant to Paragraph 18;
- b. The status of implementation of the Water Crossings Program;
- c. The status of implementation of the Geotechnical Evaluations Program;
- d. Revisions to Defendants’ Control Room Management procedures and Integrity Management Plan;
- e. The change in status of any pipeline identified on Appendix A (i.e. a change from Idled to active or vice-versa);
- f. Any known violation of any requirement of this Consent Decree, the duration of the violation, the remedial steps taken, or to be taken, to prevent or minimize such violation, and a full explanation of the cause of the violation; and
- g. The status of implementation of any other Consent Decree requirements under Section V (Compliance Requirements), and problems encountered or anticipated, together with implemented or proposed solutions.

24. All written reports or submissions required of Defendants under this Consent Decree must be signed by an official of the Defendants and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

25. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the CWA or implementing regulations, the Pipeline Safety Laws or implementing regulations, the North Dakota Century Code or implementing regulations, or any other federal, state, or local law, regulation, permit, or other requirement.

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

VII. STIPULATED PENALTIES

27. Defendants shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure).

a. Compliance Requirements.

Consent Decree Violation	Stipulated Penalty
Failure to continue to implement a written process that requires that Abnormal Operations be recorded and communicated, as required by Paragraph 13 (Shift Changes During Abnormal Operations)	\$1,000 per day for the first 30 days of noncompliance; \$2,500 per day thereafter.

Consent Decree Violation	Stipulated Penalty
Failure to have a written procedure to verify the accuracy of safety-related points, as required by Paragraph 14 (Alarm Procedures)	\$1,000 per day for the first 30 days of noncompliance; \$2,500 per day thereafter.
Failure to provide notice of field operational or maintenance activities, as required by Paragraph 15 (Control Room Notifications and False Alarms)	\$500 per violation for the first five violations in a calendar year; \$1000 per violation thereafter.
Failure to maintain records demonstrating that controllers received advanced written notification of changes, as required by Paragraph 16 (Management of Change)	\$500 per violation for the first five violations in a calendar year; \$1000 per violation thereafter.
Failure to implement meter management system, as required by Paragraph 17 (Meter Management)	\$1,000 per day for the first 30 days of noncompliance; \$1,500 per day thereafter.
Failure to conduct or document training, as required by Paragraphs 18-19	\$1,000 per employee with responsibilities under Decree, not to exceed \$100,000 per year.
Failure to continue to implement the Water Crossings Program, as required by Paragraph 20	\$2,500 per day per Water Crossing for the first 30 days of noncompliance; \$5,000 per day per Water Crossing thereafter.
Failure to continue to implement the Geotechnical Evaluations Program, as required by Paragraph 21	\$2,500 per day per Pipeline segment for the first 30 days of noncompliance; \$5,000 per day per Pipeline segment thereafter.
Failure to incorporate the analyses and results of the Water Crossing and/or Geotechnical Evaluations Programs into IMP, as required by Paragraph 22 (Integrity Management Program)	\$1,500 per day per Water Crossing or Pipeline segment for the first 30 days of noncompliance; \$3,000 per day thereafter.

b. Periodic Reports.

Consent Decree Violation	Stipulated Penalty
Failure to submit an Annual Report as required by Paragraph 23	\$1,500 per day for the first 30 days of noncompliance; and \$3,000 per day thereafter.

28. Late Payment. If Defendants fail to make any payment required under Section IV (Civil Penalty and Cost Recovery) when due, Defendants shall pay a stipulated penalty of \$2,500 per day for each day that the payment is late.

29. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

30. Defendants shall pay stipulated penalties to the United States and the State within 30 days of a written demand by either Plaintiff. For violations of the requirements in Section V.A (Control Room Operations) and Paragraph 22 (Integrity Management Program), Defendants shall pay 100% of the total stipulated penalty amount due to the United States. For violations of the requirements in Section V.B (Training), Defendants shall pay 50% of the total stipulated penalty amount due to the United States and 50% to the State. For violations of Section V.C (Water Crossings Program) and V.D (Geotechnical Evaluations) involving water crossings or Pipeline ROWs in Montana, Defendants shall pay 100% of the total stipulated penalty amount due to the United States. For violations of Section V.C (Water Crossings Program) and V.D (Geotechnical Evaluations) involving water crossings or Pipeline ROWs in North Dakota, Defendants shall pay 50% of the total stipulated penalty amount due to the United States and 50% to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

31. Either Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

32. Stipulated penalties shall continue to accrue as provided in Paragraph 29 during any Dispute Resolution, but need not be paid until:

a. If the dispute is resolved by agreement of the Parties or by a decision of the United States and the State that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with Interest, to the United States and the State within 30 days of the effective date of the agreement or the receipt of the United States' and the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with Interest, within 15 days of receiving the final appellate court decision.

33. Defendants shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 8(a). At the time of payment, Defendants shall send notice that payment has been made to the United States Department of Justice, in accordance with Section XIV (Notices and Submissions). Such notice must state that the payment is for stipulated penalties owed pursuant to the Consent Decree in *United States and the State of North Dakota v. Belle Fourche Pipeline Company*, must state for which violation(s) the penalties are being paid, and must reference the civil action number, CDCS Number, and DOJ case numbers 90-5-1-1-11262 and 90-5-1-1-11262/2.

34. Defendants shall pay stipulated penalties owing to the State in the manner required by Paragraph 9, except that the check must be accompanied by a transmittal letter stating that the payment is for stipulated penalties and must state for which violation(s) the penalties are being paid.

35. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall pay Interest on such penalties accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

36. The payment of penalties and Interest, if any, will not alter in any way Defendants' obligation to complete the performance of the requirements of this Consent Decree.

37. Non-Exclusivity of Remedy. Stipulated penalties are not Plaintiffs' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), each Plaintiff expressly reserves the right to seek any other relief it deems appropriate for Defendants' violation of this Decree.

VIII. FORCE MAJEURE

38. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the

delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Defendants’ financial inability to perform any obligation under this Consent Decree or unanticipated or increased costs or expenses associated with the performance of Defendants’ obligations under this Consent Decree.

39. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Defendants shall provide notice orally or by email to the Lead Agencies, as soon as practicable, but in no event later than 72 hours of when Defendants first knew that the event might cause a delay. Within 10 days thereafter, Defendants shall provide in writing to the Lead Agencies an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants’ rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which either Defendant, any entity controlled by Defendants, or Defendants’ contractors knew or should have known.

40. If the Lead Agencies agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that

are affected by the Force Majeure event will be extended by the Lead Agencies for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event will not, of itself, extend the time for performance of any other obligation. The Lead Agencies will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

41. If the applicable Lead Agencies do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, the Lead Agencies will notify Defendants in writing of their decision.

42. If Defendants elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), they must do so no later than 30 days after receipt of notice pursuant to Paragraph 41. In any such proceeding, Defendants will have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 38 and 39. If Defendants carry this burden, the delay at issue will be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree.

IX. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an

action by the United States or the State to enforce any obligation of Defendants arising under this Decree.

44. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute and Defendants' position. The period of informal negotiations shall not exceed 45 days from the date the dispute arises, unless that period is modified by written agreement by all Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States and the State will be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

45. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position must include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

46. The United States and the State shall serve their Statement of Position within 60 days of receipt of Defendants' Statement of Position. The United States and the State's Statement of Position must include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and the State. The United States and the State's Statement of Position will be binding on

Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

47. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XIV (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of receipt of the United States and the State's Statement of Position pursuant to the preceding Paragraph. The motion must contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and must set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

48. The United States and the State shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

49. Standard of Review. Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree and better furthers the objectives of the Decree.

50. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 32. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION; ACCESS TO PROPERTIES

51. The United States and their representatives, including attorneys, contractors, and consultants, upon reasonable notice and presentation of credentials, shall have the right of entry at all reasonable times to any Pipeline (to the extent Defendants are authorized to provide right of entry) or Control Room covered by this Consent Decree in order to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples regarding the Ash Coulee Spill;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Decree.

52. Defendants may assert that certain documents, records, or other information subject to Paragraph 51 are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree (including, without limitation, such documents, records, or other information Defendants retain under Paragraph 54 below to demonstrate compliance) shall be withheld on grounds of privilege.

53. Upon request, Defendants shall provide EPA and the State or their authorized representatives splits of any samples taken by Defendants or their representatives, contractors, or consultants regarding the Ash Coulee Spill. Upon request, EPA and the State shall provide Defendants splits of any samples taken by EPA or the State regarding the Ash Coulee Spill.

54. Defendants shall retain, and shall instruct their contractors and agents to preserve, documents, records, or other information (including documents, records, or other information in electronic form) sufficient to demonstrate compliance with their obligations under this Consent Decree, until three years after the termination of this Consent Decree. This information-retention requirement will apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants must provide copies of any documents, records, or other information required to be maintained under this Paragraph.

55. At the conclusion of the information-retention period provided in Paragraph 54, Defendants must notify the United States at least 90 days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendants must deliver any such documents, records, or other information to the United States.

56. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2, 49 C.F.R. Part 7, and 49 C.F.R. Part 190. As to any information that Defendants seek to protect as CBI, Defendants must follow the procedures set forth in 40 C.F.R. Part 2, 49 C.F.R. Part 7, and 49 C.F.R. Part 190.

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

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

58. This Consent Decree resolves the civil claims of the United States against Bridger for the violations alleged in the Montana Complaint.

59. Except as provided in Paragraphs 63 and 64 below, this Consent Decree also resolves the civil claims of the United States and the State against Belle Fourche for the violations alleged in the North Dakota Complaint.

60. Subject to the conditions and reservations of rights set forth in this Paragraph, the United States covenants not to sue or assert against Defendants or their Affiliated Entities any civil or administrative claims that could be brought under 49 C.F.R. § 195.402 or 49 C.F.R. § 195.446 of the Pipeline Safety Laws that occurred on or before the date of lodging of the Consent Decree, including the 12 claims identified in PHMSA’s February 24, 2021 presentation. The United States reserves all legal and equitable remedies to address other violations of these Pipeline Safety Laws that occur after the date of lodging, including violations that may have begun before such date and continued after the date of lodging.

61. Except as provided in Paragraph 63 below, the United States covenants not to sue or assert against Defendants or their Affiliated Entities any civil or administrative claims that could have been brought under the CWA, the Pipeline Safety Laws, or Section 7003 of the Resource Conservation and Recovery Act (“RCRA Section 7003”), 42 U.S.C. § 6973, arising

from the Ash Coulee Spill. The United States also covenants not to sue or assert against Defendants or their Affiliated Entities any civil or administrative claims that could have been brought under the CWA or the Pipeline Safety Laws arising from the Poplar Spill.

62. Except as provided in Paragraph 64 below, the State covenants not to sue or assert against Defendants or their Affiliated Entities any civil or administrative claims brought or that could have been brought under federal law, or North Dakota law arising from the Ash Coulee Spill.

63. United States Reservation of Rights. The United States reserves all legal and equitable remedies available to address any imminent and substantial endangerment to the public health or welfare or the environment arising from the Ash Coulee Spill, provided the imminent and substantial endangerment also arises from (1) new or changed conditions at or near the location of the Ash Coulee Spill after the date of lodging or (2) existing conditions at or near the location of the Ash Coulee Spill that were not known by the Plaintiffs as of the date of lodging. For purposes of this Paragraph, information and conditions at or near the location of the Ash Coulee spill known to the Plaintiffs as of the date of lodging shall include only the information and conditions set forth in the EPA, PHMSA, and State files for the Ash Coulee Spill as of the date of lodging. Furthermore, for the purposes of this paragraph, the mere presence or migration of hydrocarbons within the subsurface three-dimensional area known to contain hydrocarbons as of the date of lodging, without more, shall not constitute new or changed conditions. The United States also reserves, and this Consent Decree does not resolve:

- a. those portions, and only those portions, of the Second Cause of Action in the North Dakota Complaint that seek injunctive relief for remediation of the Ash Coulee Spill; and

- b. claims for discharges or releases to surface water relating to the Ash Coulee Spill after the date of lodging.

In the event the United States brings any reserved claims under this Paragraph not already included in the North Dakota Complaint, before the claims in the North Dakota Complaint are finally resolved, the United States will either bring those claims as part of this action or seek to have any action bringing those claims consolidated with this action. Defendants and their Affiliated Entities reserve all defenses to and rights regarding the claims and remedies reserved in this Paragraph, including specifically as to liability and to the necessity, reasonableness, scope, and form of injunctive relief sought by the United States arising from the Ash Coulee Spill.

64. State Reservation of Rights. The State reserves all legal and equitable remedies available to address any imminent and substantial endangerment to the public health or welfare or the environment arising from the Ash Coulee Spill, provided the imminent and substantial endangerment also arises from (1) new or changed conditions at or near the location of the Ash Coulee Spill after the date of lodging or (2) existing conditions at or near the location of the Ash Coulee Spill that were not known by the Plaintiffs as of the date of lodging. For purposes of this Paragraph, information and conditions at or near the location of the Ash Coulee Spill known to the Plaintiffs as of the date of lodging shall include only the information and conditions set forth in the EPA, PHMSA, and State files for the Ash Coulee Spill as of the date of lodging. Furthermore, for the purposes of this paragraph, the mere presence or migration of hydrocarbons within the subsurface three-dimensional area known to contain hydrocarbons as of the date of lodging, without more, shall not constitute new or changed conditions. The State also reserves, and this Consent Decree does not resolve:

- a. the Seventh Cause of Action in the North Dakota Complaint, which is grounded in the liability allegations in the Fifth and Sixth Causes of Action, but only to the extent the Seventh Cause of Action seeks injunctive relief for remediation;
- b. the Eighth Cause of Action, but only to the extent it seeks future costs under N.D.C.C. chs. 23-31 and 23.1-10, provided, however, such costs do not exceed \$10,000 per year, unless there is a Remediation Abandonment, in which case the State reserves the right to seek all of its future costs under N.D.C.C. chs. 23-31 and 23.1-10. In the event of a Remediation Abandonment, the State reserves all its authorities and remedies under N.D.C.C. chs. 23-31 and 23.1-10;
- c. in the event of a Remediation Abandonment, claims relating to the abandonment of solid waste relating to the Ash Coulee Spill accruing on or after the date of the Remediation Abandonment; and
- d. claims for discharges or releases to surface water relating to the Ash Coulee Spill after the date of lodging under N.D.C.C. ch. 61-28.

In the event the State brings any reserved claims under this Paragraph not already included in the North Dakota Complaint, before the claims in the North Dakota Complaint are finally resolved, so long as there is federal jurisdiction in the District of North Dakota, the State will either bring those claims as part of this action or seek to have any action bringing those claims consolidated with this action. The Court will exercise supplemental jurisdiction to the fullest extent authorized by 28 U.S. Code § 1367. Otherwise, if the District of North Dakota declines federal jurisdiction over any reserved claims under this Paragraph not already included in the North Dakota

Complaint, before the claims in the North Dakota Complaint are finally resolved, the State shall bring such claims only in the District Courts for the State of North Dakota, and Belle Fourche will consent to jurisdiction in those courts. Defendants and their Affiliated Entities reserve all defenses to and rights regarding the claims and remedies reserved in this Paragraph, including specifically as to liability and to the necessity, reasonableness, scope, and form of injunctive relief sought by the State arising from the Ash Coulee Spill.

65. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA, the Pipeline Safety Laws, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraphs 58-62.

66. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, or other appropriate relief relating to the Pipelines, the Control Room, or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraphs 58-62.

67. This Consent Decree is not a permit, or a modification of any permit, under federal, state, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any

action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, the Pipeline Safety Laws, the North Dakota Century Code, or with any other provisions of federal, state, or local laws, regulations, or permits.

68. This Consent Decree does not limit or affect the rights of Defendants and their Affiliated Entities or of the United States or the State against any third parties not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants or their Affiliated Entities, except as otherwise provided by law.

69. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. DISMISSAL OF MONTANA ACTION BY UNITED STATES

70. Following entry of this Consent Decree and after Defendants have made all payments required by Paragraph 8 (Payments to the United States), the United States will dismiss the Montana Action with prejudice by filing a stipulation of dismissal in the Montana Action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

XIII. COSTS

71. The Parties shall bear their own costs of this action and the Montana Action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIV. NOTICES AND SUBMISSIONS

72. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they must be made in writing and addressed as follows:

a. PHMSA

By email: lauren.clegg@dot.gov

By mail: Lauren Clegg
Deputy Assistant Chief Counsel, Office of Chief Counsel
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

b. EPA

By email: Hohman.Darla@usepa.gov

By mail: Darla Hohman
Mail code: 8ENF-RO-O
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202

c. USDOJ

By email: eesdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-11262

By mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Re: DJ # 90-5-1-1-11262

d. NDDEQ

By email: bsuess@nd.gov

By mail: Bill Suess
North Dakota Department of Environmental Quality
4201 Normandy Street
Bismarck, ND 58503-1324

e. North Dakota Attorney General.

By email: maiolson@nd.gov

By mail: Margaret Olson
North Dakota Office of Attorney General
500 N. 9th Street
Bismarck, ND 58501

f. United States. Notice to the United States shall be provided to EPA, PHMSA, and DOJ.

g. State. Notice to the State shall be provided to NDDEQ and the North Dakota Attorney General.

h. Defendants

By email: Kevin.Cook@Truecos.com

By mail: Kevin Cook, General Counsel
True Companies
PO Drawer 2360
Casper, WY 82602

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

74. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

75. Submissions to Plaintiffs under this Consent Decree must be made electronically and, upon request, Defendants must provide hard copies or originals of any materials provided electronically.

76. Any supporting documents used in the preparation of submissions to Plaintiffs must be maintained electronically and made available upon request.

XV. RETENTION OF JURISDICTION

77. The Court shall retain jurisdiction over this case and the Parties until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Section IX (Dispute Resolution) or Section XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

78. The Court shall also retain jurisdiction over this case and the Parties for the purpose of resolving those portions of the Second, Seventh, and Eighth (but only to the extent it seeks future costs) Causes of Action in the North Dakota Complaint that are expressly reserved in Paragraphs 63 and 64, in the event the Parties are unable to negotiate a later settlement of these claims.

XVI. MODIFICATION

79. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties, except that extensions of deadlines for compliance measures and deliverables will be effective upon written approval by the Lead Agencies. Where the modification constitutes a material change to this Decree, it will be effective only upon approval by the Court.

80. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution). The Party seeking the modification bears the burden of

demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

81. Request for Termination. Defendants may serve upon Plaintiffs a Request for Termination of this Consent Decree after: (a) making all payments required by Section IV (Civil Penalty and Cost Recovery); (b) paying any accrued stipulated penalties as required by Section VII (Stipulated Penalties); (c) complying with all applicable requirements under Section VI (Reporting Requirements); (d) demonstrating a three-year period of substantial compliance with the requirements in Section V (Compliance Requirements) other than Paragraphs 20 (Water Crossings Program) and 21 (Geotechnical Evaluations Program).

82. The Request for Termination must include all supporting documentation necessary to demonstrate compliance with applicable requirements of this Section XVII (Termination).

83. Following receipt by the United States and the State of the Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States and the State agree that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation for termination of the Decree.

84. If the United States and the State do not agree that the Decree may be terminated, Defendants may invoke Dispute Resolution under Section IX. However, Defendants may not seek Dispute Resolution of any dispute regarding termination until 60 days after service of their Request for Termination.

XVIII. PUBLIC PARTICIPATION

85. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

86. Each undersigned representative of Defendants and the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice identified on the DOJ signature page below, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by email with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

88. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and

supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXI. APPENDIX

89. The following Appendix is attached to and part of this Consent Decree:

Appendix A: List of Pipelines Subject to the Consent Decree

XXII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

90. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 5; Section V (Compliance Requirements), Paragraphs 12-22; Section VI (Reporting Requirements), Paragraphs 23-24; and Section X (Information Collection and Retention), Paragraphs 51-55 are restitution, remediation, or required to come into compliance with law.

XXIII. FINAL JUDGMENT

91. Upon approval and entry of this Consent Decree by the Court and a determination that there is no just reason for delay, this Consent Decree constitutes a final judgment of the Court as to the United States, the State, and Defendants, except as to those portions of the Second, Seventh, and Eighth (but only to the extent it seeks future costs) Causes of Action in the North Dakota Complaint that are expressly reserved by Paragraphs 63 and 64.

Dated and entered this ____ day of _____, 2023.

DANIEL L. HOVLAND
United States District Judge

The Undersigned Party enters into this Partial Consent Decree in *United States and State of North Dakota v. Belle Fourche Pipeline Company*.

FOR THE UNITED STATES OF AMERICA

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

July 30, 2023

Date

MARK ELMER Digitally signed by MARK ELMER
Date: 2023.07.30 09:28:40 -06'00'

MARK C. ELMER
Senior Counsel
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
Tel: (303) 844-1352
Email: mark.elmer@usdoj.gov

JOHANNA M. FRANZEN
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
4 Constitution Square
150 M Street, N.E.
Washington, D.C. 20002
Tel: (202) 305-0467
Email: Johanna.franzen@usdoj.gov

The Undersigned Party enters into this Partial Consent Decree in *United States and State of North Dakota v. Belle Fourche Pipeline Company*.

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY

7-28-2023

Date

KATHLEEN BECKER Digitally signed by
KATHLEEN BECKER
Date: 2023.07.28
07:36:29 -06'00'

KC BECKER
Regional Administrator
U.S. Environmental Protection Agency, Region 8

7-27-2023

Date

STEPHANIE TALBERT Digitally signed by
STEPHANIE TALBERT
Date: 2023.07.27
09:12:31 -06'00'

STEPHANIE TALBERT
Acting Regional Counsel
U.S. Environmental Protection Agency, Region 8

7-27-2023

Date

SUZANNE BOHAN Digitally signed by
SUZANNE BOHAN
Date: 2023.07.27
10:43:13 -06'00'

SUZANNE J. BOHAN
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 8

7-27-2023

Date

MARGARET LIVINGSTON Digitally signed by MARGARET
LIVINGSTON
Date: 2023.07.27 09:31:14 -06'00'

MARGARET J. ("PEGGY") LIVINGSTON
Senior Assistant Regional Counsel
Legal Enforcement Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 8

The Undersigned Party enters into this Partial Consent Decree in *United States and State of North Dakota v. Belle Fourche Pipeline Company*.

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY

LAWRENCE STARFIELD Digitally signed by
LAWRENCE STARFIELD
Date: 2023.07.28
16:45:03 -04'00'

Date

LAWRENCE E. STARFIELD
Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. EPA
Mail Code 2243A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

ROSEMARIE KELLEY
Office Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

BENJAMIN BAHK
Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

KELLY BRANTNER
Senior Attorney
Office of Enforcement and Compliance Assurance
U.S. EPA
Mail Code 2243A
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

The Undersigned Party enters into this Partial Consent Decree in *United States and State of North Dakota v. Belle Fourche Pipeline Company*.

FOR THE U.S. DEPARTMENT OF
TRANSPORTATION, PIPELINE AND HAZARDOUS
MATERIALS SAFETY ADMINISTRATION:

July 27, 2023

Date

TRISTAN
HILTON BROWN

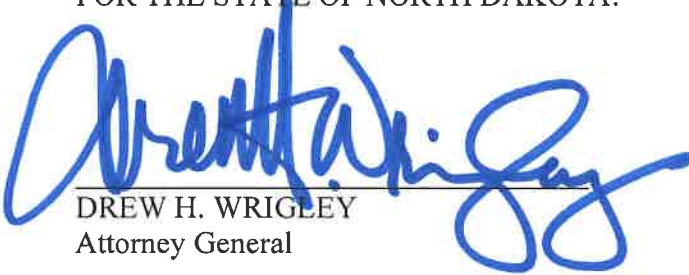
Digitally signed by TRISTAN
HILTON BROWN
Date: 2023.07.27 13:22:13
-04'00'


TRISTAN BROWN
Deputy Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
Washington, D.C. 20590

The Undersigned Party enters into this Partial Consent Decree in *United States of America and State of North Dakota v. Belle Fourche Pipeline Company*.

FOR THE STATE OF NORTH DAKOTA:

7/27/23
Date



DREW H. WRIGLEY
Attorney General


MARGARET I. OLSON
Assistant Attorney General
Office of the Attorney General
500 North 9th Street
Bismarck, North Dakota 58501-4509

The Undersigned Party enters into this Partial Consent Decree in *United States of America and State of North Dakota v. Belle Fourche Pipeline Company*.

FOR BELLE FOURCHE PIPELINE COMPANY:

July 25, 2023
Date



KEVIN COOK
General Counsel
PO Drawer 2360
Casper, WY 82602

The Undersigned Party enters into this Partial Consent Decree in *United States of America and State of North Dakota v. Belle Fourche Pipeline Company*.

FOR BRIDGER PIPELINE LLC:

July 25, 2023

Date



KEVIN COOK
General Counsel
PO Drawer 2360
Casper, WY 82602

APPENDIX A**LIST OF PIPELINES SUBJECT TO THIS CONSENT DECREE***United States, et al. v. Belle Fourche Pipeline Company*

Segment Name	State	Nominal Pipe Diameter (inches)	Origination/Coordinates	Termination/Coordinates	Status as of 3/28/23
Poplar - North	MT	10	Near Outlook MT/48.910437, - 104.755157	Fisher Station/ 47.968392, -104.983546	Idled
Poplar – Fisher to Baker	MT	10, 12	Fisher Station/ 47.968392, -104.983546	Baker-Sandstone/ 46.39014, -104.450377	Active
Alex to Bowline	ND	8	Alexander Station/ 47.979677, -103.66474	Bowline Station/ 47.568605, -103.57271	Active
Bowline to Bicentennial	ND	8, 10	Bowline Station/ 47.568605, -103.57271	Bicentennial Station/ 47.385336, -103.858536	Active
Bicentennial to Baker – Sandstone	MT/ND	10	Bicentennial Station/ 47.385336, -103.858536	Baker-Sandstone/ 46.39014, -104.450377	Active
Four Bears Hwy 23 to Skunk Hill	ND	12	Highway 23 / 47.978904, -102.920343	Skunk Hill Station/ 47.031692, -103.098626	Active
Four Bears Skunk Hill to Fryburg	ND	16	Skunk Hill Station/ 47.031692, -103.098626	Fryburg Station/ 46.902781, -103.295947	Active
Four Bears Fryburg to Baker-Sandstone	MT/ND	10	Fryburg Station/ 46.902781, -103.295947	Baker-Sandstone/ 46.39014, -104.450377	Active
DAPL Delivery	ND	16	Johnsons Corner/47.801882, - 102.890964	DAPL Station/ 47.798216, -102.922938	Active

Dickinson to Skunk Hill	ND	10	Dickinson / 46.90644, -102.895265	Skunk Hill Station/ 47.031692, -103.098626	Idled
Equality North	MT	16	Baker-Sandstone/ 46.39014, -104.450377	State Line / 44.999093, -104.741591	Active
Butte Line	MT	16	Baker-Sandstone/ 46.39014, -104.450377	State Line / 44.999093, -104.741591	Active
Thunderbird	MT	8	Alzada / 45.151142, -104.714277	Belle Creek / 45.113451, -105.096004	Active
Thunderbird	MT	10	Belle Creek / 45.113451, -105.096004	State Line / 44.999881, -105.178031	Active
South Bend	MT/ND	16	Johnsons Corner/47.801882, -102.890964	Baker-Sandstone/ 46.39014, -104.450377	Active
Cabin Creek	MT	10	Cabin Creek/46.607719, -104.438173	Baker-Sandstone/ 46.39014, -104.450377	Active