



**PLAINS**  
**ALL AMERICAN**  
**PIPELINE, L.P.**

August 26, 2014

Office of Energy Policy and Systems Analysis  
EPSA-60  
QER Meeting Comments  
U.S. Department of Energy  
1000 Independence Avenue SW  
Washington, DC 20585-0121

RE: Quadrennial Energy Review on Permitting and Siting in Cheyenne, WY  
Plains All American Pipeline, L.P. Comments  
August 21, 2014  
**(Our File No. L1403)**

To: Members of the Quadrennial Energy Review Task Force Secretariat and Energy Policy and Systems Analysis Staff, U.S. Department of Energy

Enclosed please find comments submitted on behalf of Plains All American Pipeline, L.P. for the record of the QER's August 21, 2014 Infrastructure Siting and Permitting Meeting:

### **Overview**

Plains acknowledges the important work of federal agencies reviewing applications for permits and authorizations for our nation's liquids pipeline infrastructure projects. We appreciate the challenges they face in implementing the significant volume of governing statutes. Although there are examples of individuals within the various federal regulatory agencies that we work with delaying or bringing uncertainty to the permitting process for our capital projects, we have found that, in general, individuals and agencies have been diligent in trying to adhere to their statutory and regulatory requirements. We appreciate their efforts to process the permit applications and requests for authorization.

In our experience, particularly in the case of federal agencies, there is a lack of, staffing resources and funding necessary to efficiently process applications for permits and authorizations. In some instances, this lack of staffing in the complexities of pipeline infrastructure development has resulted in mission creep beyond the scope of the agency's authority. We also increasingly note federal agencies being influenced by external organizations whose missions are to disrupt liquids pipeline development. Below are three examples to illustrate Plains' experiences and concerns.

#### **Example 1: Permit Issuance Delays Despite Plains Funding Outside Consultants to Assist Agency**

An example of the broader federal agency problem would be our dealings with the US Forest Service in California. A Plains crude oil pipeline crossing through USFS property in California suffered damage as a result of a landslide several years ago. The pipeline was shut down and a consensus

determination was made that a portion of this pipeline needed to be re-routed to avoid the landslide-prone area. This re-route triggered a NEPA/CEQA review of the new pipeline route with the USFS as the lead federal agency. Additionally, an integrity assessment of this same pipeline concluded that a number of anomaly digs within USFS property would be needed to address issues identified during the assessment. Resolution of the issues merely required issuance of simple permits from the USFS without NEPA/CEQA review. After many months most of these simple permits have not been received. It has taken much longer than anyone expected to obtain the permits and the new installation work is not being performed.

We recognized that the USFS had limited resources, so we executed an agreement with them providing funding for the USFS to hire outside consultants to review the NEPA package and permits. Plains has expended significant time and effort working with the USFS to help them contend with the challenges that affect their ability to obtain the permits that we need for our project, including funding to provide outside expertise and the development of a mutually agreed upon review timeline with milestones. The USFS has attempted to adhere to that timeline; but, with their resource limitations, they have missed critical milestones.

**Example 2: Interference by Environmental NGOs Impermissibly Extending Agencies' Jurisdiction**

Regarding the USACE, we have generally had a very good experience with them. The issue with the USACE is that their permitting program is being challenged by the Sierra Club and others. So far, it has withstood court challenges, but these challenges have resulted in the USACE limiting the historical scope of their permitting, by extending their jurisdiction outside the strict boundaries of waters of the US to include potential impacts to threatened and endangered species. This has meant that we are forced to seek approval from USFW for potential impacts to project areas outside of USACE jurisdiction. USFW does not have a well documented permitting or approval process, nor does it have a regulatory or statutory timeline for review and processing. They also seem to be very susceptible to public and political pressure and in some regards suffer from a lack of consistent leadership and transparency. There is a great deal of uncertainty and opacity on the process for listing threatened and endangered species.

As a final note, anti-pipeline groups are taking their efforts to communities near new pipelines and getting local populations motivated to attempt to stop infrastructure with barriers created by towns or regional authorities. We need strong Federal policies and regulations to support infrastructure so small irate vocal groups do not block projects that are good for the country.

**Example 3: Federal Agency's Duplication of Environmental Review by Agencies Empowered with Liquids Pipeline Oversight**

Plains Pipeline, L.P. ("Plains") owns a valid Presidential Permit issued in 2007 by the Department of State ("DOS") for the Poplar Pipeline ("Poplar"), in Sheridan County, Montana near the international border. The Permit is currently in the name of two Plains affiliates, and Plains has submitted its application for issuance of a Name Change Permit to reflect a transfer of the Poplar Presidential Permit ("Permit") to a related Plains entity. Plains is merely updating its records with DOS.

During this same time period, Plains constructed the Bakken North pipeline from Trenton, North Dakota to the Raymond, Montana Station on the Poplar pipeline. This point is 6.4 miles from the international border. Plains will use the Bakken North pipeline to transport light sweet crude from the Bakken shale.

While processing Plains' request for a Poplar Name Change Permit, DOS advised Plains they were considering whether to conduct an environmental review of the interconnection of Poplar with the Bakken North Pipeline ("Bakken North"), even though Bakken North is entirely within the U.S., over 6 miles from the border-crossing covered by the current Permit. Bakken North is not included in Plains' Poplar Name Change Permit Application, and separately would not require its own DOS Presidential permit.

The interconnection of Poplar and Bakken North does not impact the border crossing and has no impact on operation of the pipeline at the border.

Review of Bakken North is beyond the scope of DOS authority. DOS's authority to issue Presidential Permits for pipelines crossing borders of the United States does not include authority to regulate downstream or upstream liquids pipeline connections to pipelines entirely within the domestic borders of the United States.

Before DOS's Poplar Permit application review began, Bakken North pipeline underwent a thorough environmental review at several state and federal levels. Plains obtained all necessary permits, approvals and exemptions for Bakken North's construction and operation from the relevant state agencies - North Dakota Public Service Commission (NDPSC) and Montana Department of Environmental Quality; as well as the relevant federal agencies - Army Corps of Engineers, Bureau of Indian Affairs, and U.S. Fish and Wildlife Service.

Plains also complied with Montana and federal siting and permitting requirements; and determined our project's qualification for exemptions applicable to Plains' construction, maintenance, and repair activity at Raymond Station and on the Poplar Pipeline north of Raymond Station.

Before submitting the Permit Application to DOS, Plains conducted an extensive review of the permit requirements for the project, which included a reanalysis of each step in Plains' construction, maintenance, and repair activities. Plains' DOS Permit Application included significant documentation previously submitted to state and federal agencies in obtaining the permits and exemptions for which Plains' projects qualified.

Nevertheless, during their Poplar Name Change Permit Application review, DOS engaged in a pattern of redundant critiquing and second guessing the Bakken North project, as to the evidentiary basis for final decisions rendered and permits issued by the various agencies empowered to regulate aspects of liquids pipeline development, including the Bureau of Indian Affairs; the Corp; the USFWS and the NDPSC's Findings of Fact and Conclusions of Law and Order.

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Should DOS persist in critiquing the findings of state and federal regulators with authority over the siting and permitting of liquids pipelines, DOS could federalize all future connections to Presidential Permitted pipelines and become the ultimate authority of environmental protection over the Corps, the Department of Interior and the States. Policy to prohibit such duplicate review is overdue.

**Conclusion:**

Thank you for this opportunity to share some of Plains' experiences and concerns about permitting and siting for liquids pipeline infrastructure developments. We urge you to aggressively resolve the permitting and siting challenges that our industry faces. In our view, failure to timely resolve our industry's concerns will result in further delay of pipeline development and increased cost of constructing new pipelines. Inaction would not serve the national interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy E. Valenzuela". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Troy E. Valenzuela  
Vice President  
Environmental, Health & Safety