

1 Brian Segee (Bar No. 200795)
2 Email: bsegee@environmentaldefensecenter.org
3 ENVIRONMENTAL DEFENSE CENTER
4 111 W. Topa Topa Street
5 Ojai, CA 93023
6 Tel. (805) 640-1832
7 Fac. (805) 648-8043

8 *Attorney for Plaintiffs*
9 ENVIRONMENTAL DEFENSE CENTER
10 SANTA BARBARA CHANNELKEEPER

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 ENVIRONMENTAL DEFENSE CENTER,
16 a California non-profit corporation; SANTA
17 BARBARA CHANNELKEEPER, a
18 California non-profit corporation,

19 Plaintiffs,

20 vs.

21 PIPELINE AND HAZARDOUS
22 MATERIALS SAFETY
23 ADMINISTRATION; OFFICE OF
24 PIPELINE SAFETY; and U.S.
25 DEPARTMENT OF TRANSPORTATION,

26 Defendants.

Civil Case No. 2:15-cv-09433

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**(Freedom of Information Act, 5 U.S.C.
§ 552)**

1 **JURISDICTION AND VENUE**

2 1. This Court has jurisdiction over Plaintiffs’ claims pursuant to 5 U.S.C.
3 § 552(a)(4)(B) of the Freedom of Information Act (“FOIA”).

4 2. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and
5 28 U.S.C. § 1331 because each Plaintiff maintains its principal place of businesses
6 in Santa Barbara County, located in the Central District of California. In addition,
7 Plaintiffs have members and staff who work or reside within this judicial district.
8 Finally, Plaintiffs’ FOIA requests at issue in this suit concern oil pipeline
9 infrastructure located in Santa Barbara, Ventura, and Los Angeles Counties.

10 **INTRODUCTION**

11 3. In this action under FOIA, 5 U.S.C. § 552, Plaintiffs allege that the
12 Pipeline and Hazardous Materials Safety Administration (“PHMSA”) and its
13 Office of Pipeline Safety (“OPS”), an agency within the U.S. Department of
14 Transportation (“DOT”), is improperly withholding agency records responsive to
15 Plaintiffs’ requests for information concerning oil pipelines located in Santa
16 Barbara, Ventura, and Los Angeles Counties.

17 **PARTIES**

18 4. Plaintiff Environmental Defense Center (“EDC”) is a California
19 public benefit, non-profit corporation, with offices in Santa Barbara and Ventura
20 Counties. Founded in response to the 1969 Santa Barbara oil spill, EDC has
21 approximately 3,000 members and protects and enhances the local environment
22 through education, advocacy, and legal action on behalf of itself and other non-
23 profit, environmental organizations. Since its founding more than thirty years ago,
24 EDC has worked to protect the Santa Barbara Channel, other local coastal waters,
25 the Channel Islands, and the terrestrial coastal and non-coastal environments of
26 Santa Barbara and Ventura Counties from the risks and impacts of oil exploration,
27 production, development, and transportation. The majority of EDC members live
28 within communities in Santa Barbara and Ventura Counties that are at risk from or

1 are otherwise impacted by oil exploration, production, development, and
2 transportation, including the oil pipeline infrastructure at issue in this case. The
3 information that Plaintiff EDC seeks to obtain from Defendants through the FOIA
4 requests at issue in this suit furthers Plaintiff's mission as a non-profit
5 environmental law firm. Through Plaintiff's dissemination of the requested
6 information to its members and the public at large, the requested information is
7 likely to contribute significantly to the public's understanding of activities,
8 policies, and decision-making processes of Defendants as they relate to
9 Defendants' oversight of oil pipeline infrastructure within Santa Barbara, Ventura,
10 and Los Angeles Counties.

11 5. Plaintiff Santa Barbara Channelkeeper ("Channelkeeper") is a non-
12 profit public benefit corporation with its principal place of business located in
13 Santa Barbara. Channelkeeper's mission is to protect and enhance the water
14 quality of the Santa Barbara Channel and its tributaries for the benefit of its
15 ecosystems and the surrounding human communities. Channelkeeper
16 accomplishes its mission through science-based advocacy, education, field work,
17 and enforcement of environmental laws. Specifically, Channelkeeper and its
18 members monitor and participate in the activities of the Regional and State Water
19 Boards, and other local, state, and federal agencies. Channelkeeper and its
20 members also create and collaborate on the development of policies and programs
21 affecting pollution issues in the Santa Barbara Channel and its tributaries,
22 including pollution from oil and gas exploration and development, and pipeline oil
23 spills such as the May 2015 spill near Refugio State Beach. Channelkeeper and its
24 members play an important role in contributing to the health of the Santa Barbara
25 Channel through a variety of programs, including river and coastal monitoring and
26 scientific data collection. Channelkeeper has approximately 800 members who
27 live, recreate, and work in and around waters of the State of California, including
28 communities in Santa Barbara and Ventura Counties that are at risk or are

1 otherwise impacted by oil exploration, production, development, and
2 transportation, including the oil pipeline infrastructure at issue in this case.

3 6. The interests of Plaintiffs and their members are harmed by
4 Defendants' failure to comply with FOIA. Defendants' failure to comply with
5 FOIA and improper withholding of agency records responsive to the FOIA
6 requests prevents Plaintiffs from obtaining, analyzing, synthesizing, and
7 disseminating the requested information to further their organizational missions,
8 the interest of their members, and the public interest. These injuries would be
9 redressed by a favorable decision granting Plaintiffs their requested relief of
10 granting their fee waiver request and releasing the requested documents.

11 7. Defendant PHMSA is an agency within DOT responsible for
12 developing and enforcing regulations for the safe, reliable, and environmentally
13 sound operation of the U.S. pipeline transportation system.

14 8. Defendant OPS is an office within PHMSA, which administers DOT's
15 and PHMSA's national regulatory program to assure the safe transportation of
16 natural gas, petroleum, and other hazardous materials by pipeline. As part of
17 PHMSA, OPS develops regulations and other approaches to risk management in
18 order to assure safety in design, construction, testing, operation, maintenance, and
19 emergency response of pipeline facilities.

20 9. Defendant DOT has a mission to "serve the United States by ensuring
21 a fast, safe, efficient, accessible, and convenient transportation system that meets
22 our vital national interests and enhances the quality of life of the American people,
23 today, and into the future." DOT is a cabinet-level agency with numerous major
24 sub-agencies including PHMSA, Federal Aviation Administration, Federal
25 Highway Administration, and Federal Railroad Administration.

1 **LEGAL BACKGROUND**

2 **A. Freedom of Information Act**

3 10. The FOIA, 5 U.S.C. § 552, as amended, requires agencies of the
4 federal government to search for, and make available, responsive records to any
5 FOIA request that reasonably describes the records sought. Under FOIA, “search”
6 means to “review, manually or by automated means, agency records for the
7 purpose of locating those records which are responsive to a request.” 5 U.S.C. §
8 552(a)(3)(D). The agency must conduct a search reasonably calculated to uncover
9 all relevant documents. *Weisberg v. Dep’t of Justice*, 705 F. 2d 1344, 1351 (D.C.
10 Cir. 1983).

11 11. Once an agency receives a proper FOIA request, the agency shall
12 “determine within 20 days (excepting Saturdays, Sundays, and legal public
13 holidays) after the receipt of any such request whether to comply with such request
14 and shall immediately notify the person making such request of such determination
15 and the reasons thereof, and of the right of such person to appeal to the head of the
16 agency any adverse determination.” 5 U.S.C. § 552(a)(6)(A)(i). In “unusual
17 circumstances,” an agency may extend the time limit for its determination to 30
18 working days by written notice to the requester. *Id.* § 552(a)(6)(B)(i).

19 12. The FOIA carries a presumption of openness and disclosure, and
20 allows agencies to withhold responsive information only if one or more of nine
21 specific and limited statutory exemptions apply to a responsive record. If
22 exemptions are claimed, FOIA further requires that the agency ensure that all
23 “reasonably segregable” portions of a responsive record are provided after deletion
24 of the portions that are exempt. 5 U.S.C. § 552(b).

25 13. When denying the release of requested records or portions of records
26 under one of FOIA’s nine statutory exemptions, agencies are required to identify
27 the exemption or exemptions being relied upon, and to provide an explanation of
28

1 the manner in which the exemption or exemptions apply to each record withheld.
2 5 U.S.C. § 552(a)(6)(F).

3 14. The FOIA directs federal agencies to provide a waiver of fees
4 normally charged for copying costs and staff time when the requester
5 demonstrates: 1) that the disclosure of the information is in the public interest
6 because it is likely to contribute significantly to public understanding of the
7 operations or activities of government; and 2) the disclosure of the information is
8 not primarily in the commercial interest of the requester. 5 U.S.C. §
9 552(a)(4)(A)(iii).

10 15. When an agency denies a FOIA request in whole or in part, or
11 otherwise makes an adverse determination related to the request, the agency must
12 inform the requester of the reasons for the denial, the name and title of each person
13 responsible for the denial, and the requester's right to appeal the denial. 5 U.S.C. §
14 552(a)(6)(A)(i).

15 16. In 2007, Congress passed the OPEN Government Act of 2007 to
16 amend specified provisions of FOIA, in large part to once again attempt to address
17 and curb agencies' delay in processing FOIA requests. *See* S. Rep. No. 110-59,
18 110th Cong., 1st Sess. (Apr. 30, 2007), at p. 3 (amendments intended to "address[]
19 the growing backlog of FOIA requests and restore [] meaningful deadlines for
20 agency action, by ensuring that the 20-day statutory clock runs immediately upon
21 an agency's receipt of a request and by imposing consequences on federal agencies
22 for missing the deadline."); *see id.* ("The major delays encountered by FOIA
23 requestors" were "[c]hief among the problems with FOIA" that Congress sought to
24 remedy in passing the 2007 amendments."). Under the 2007 amendments, "[a]n
25 agency shall not assess search fees . . . if the agency fails to comply with any time
26 limit" of FOIA. 5 U.S.C. § 552(a)(4)(A)(vii).

27 17. DOT's FOIA regulations are contained at 49 C.F.R., Subtitle A, Part 7
28 (§§ 7.1-7.46).

1 18. Under FOIA, exhaustion of administrative remedies is not required if
2 the agency fails to comply with applicable time limits, including a failure to make
3 a “determination” regarding the request within the relevant statutory time period. 5
4 U.S.C. § 552(a)(6)(C)(i).

5 **B. PHMSA’s Oil Pipeline Oversight**

6 19. DOT is responsible for ensuring the safe transportation of people and
7 goods through regulations, oversight, inspections, and other efforts. The first
8 federal statute governing pipeline safety was the Natural Gas Pipeline Safety Act
9 of 1968. Pub. L. No. 90-481, 82 Stat. 720. Congress added liquid pipelines to the
10 statute in the Pipeline Safety Act ("PSA") of 1979. Pub. L. No. 96-129, §§ 201-
11 218, 93 Stat. 989 (adding the Hazardous Liquid Pipeline Safety Act in Title II).

12 20. The PSA, 49 U.S.C. § 60101 *et seq.*, grants DOT regulatory authority
13 over the safety of hazardous liquid pipelines, including those pipelines that
14 transport petroleum and petroleum products. The PSA mandates that DOT
15 “provide adequate protection against risks to life and property posed by pipeline
16 transportation and pipeline facilities.” 49 U.S.C. § 60102.

17 21. Congress created the OPS in 1968 to oversee and implement pipeline
18 safety regulations. OPS was previously housed under DOT's Research and Special
19 Programs Administration. The U.S. General Accountability Office has repeatedly
20 found that the OPS has weak enforcement, inaccurate records, and ineffective
21 rules. *See* Carol M. Parker, *The Pipeline Industry Meets Grief Unimaginable:
22 Congress Reacts with the Pipeline Safety Improvement Act of 2002*. Nat. Res.
23 Journal 243 (2004).

24 22. Congress created PHMSA in 2004, and delegated the new agency
25 with responsibility for DOT’s pipeline safety program. Pub. L. No. 108-426 (Nov.
26 30, 2004), *codified at* 49 U.S.C. § 108(f)(1)(2006)(creating PHMSA and directing
27 the PHMSA Administrator to carry out the responsibilities and authorities vested in
28 the Secretary of Transportation under the PSA). OPS is now housed under

1 PHMSA. Under the PSA, PHMSA may regulate (through its delegated authority)
2 pipeline design, installation, inspection, emergency plans and procedures, testing,
3 construction, extension, operation, replacement, and maintenance. 49 U.S.C. §
4 60102(a)(2)(B).

5 23. PHMSA has promulgated regulations concerning the safety of
6 hazardous liquid pipelines. 49 C.F.R. Part 190 (§§ 190.1-190.341), for example,
7 authorizes OPS to inspect pipelines and establishes procedures for OPS regulatory
8 enforcement. 49 C.F.R. Part 194 (§§ 194.1-194.121) contains requirements for oil
9 spill response plans. 49 C.F.R. Part 195 (§§ 195.0-195.589) prescribes the safety
10 standards and reporting requirements for oil pipelines.

11 24. Generally, PHMSA's pipeline regulations cover all hazardous liquid
12 pipelines that are "downstream" from production facilities and are inland from the
13 U.S. coast. 49 C.F.R. §§ 195.1, 195.2 (2011). Crude oil gathering lines that are
14 less than 6 inches in diameter, and are located in rural areas that are not unusually
15 sensitive to environmental damage are exempted from regulation. 49 U.S.C. §
16 60101(b)(2)(B)(ii).

17 25. Although PHMSA regulations establish some minimum safety
18 standards that all transmission pipeline operators must adhere to, in 1996 Congress
19 created the Hazardous Liquid Pipeline Integrity Management ("IM") Program as
20 an alternative to prescriptive measures. The IM Program primarily relies upon a
21 risk-based approach that requires operators to identify and mitigate risks in "high-
22 consequence areas," which include urbanized areas, navigable waterways, and
23 "unusually sensitive areas." 49 C.F.R. § 195.450 (2015).

24 26. Recent major pipeline accidents in Marshall, MI, San Bruno, CA,
25 Allentown, PA, and Laurel, MT, have heightened congressional concern about
26 pipeline risks. Under the Pipeline Safety, Regulatory Certainty, and Job Creation
27 Act of 2011 (Pub. L. 112-90), signed by President Obama on January 3, 2012,
28

1 Congress reauthorized the federal pipeline safety program while also including
2 several new pipeline safety provisions.

3 27. Pub. L. 112-90, for example, required DOT to: issue within 2 years, if
4 appropriate, regulations requiring operators to install automatic or remote-
5 controlled shut-off valves, or equivalent technology, where economically,
6 technically, and operationally feasible on new or replaced pipelines (§ 4(1));
7 prepare a study on the ability of transmission pipeline operators to respond to a
8 hazardous liquid or natural gas release from pipelines located in high consequence
9 areas (§4(2)); issue revised regulations within 18 months establishing minimum
10 requirements including that operators provide notification of a spill within 1 hour
11 (§ 9); prepare a report to Congress within 2 years regarding gathering lines,
12 including such lines located on Outer Continental Shelf (“OCS”) federal waters (§
13 31); and prepare a report to Congress within 1 year regarding pipeline inspection
14 and enforcement needs.

15 28. On October 1, 2015 PHMSA announced proposed regulations to, in
16 part, implement requirements of Pub. L. 112-90.

17 **FACTUAL BACKGROUND**

18 **A. Rising Domestic Oil Production Has Strained Transportation** 19 **Infrastructure, including Pipelines**

20 29. U.S. production of oil and gas resources has increased in recent years,
21 driven by advancements in horizontal drilling techniques and well stimulation
22 methods including hydraulic fracturing and acid well stimulation. These
23 advancements have allowed production of previously inaccessible oil and gas
24 resources, particularly from shale and tight sandstone geologic formations. From
25 2007 to 2012, annual production from these formations increased more than
26 sixfold for oil and fivefold for gas.

27 30. The rapid expansion of domestic oil and gas production has in turn
28 created challenges with respect to the manner in which these oil and gas resources

1 are transported to processing and refining facilities, industrial users, and individual
2 consumers. Options for the transportation of oil and gas include rail, highways
3 (trucks), waterways (barges), and pipeline.

4 31. Today, most oil and nearly all natural gas continue to be transported
5 by pipeline. Nearly half a million miles of high-volume pipeline transport natural
6 gas, oil, and other hazardous liquids across the United States. Approximately
7 170,000 miles carry hazardous liquids, including more than 75% of the nation's
8 crude oil and 60% of its refined petroleum products. This network includes nearly
9 200 individual interstate crude oil and liquid fuel pipelines, which comprise
10 approximately 80% of total pipeline mileage and transported volume.

11 32. According to the Energy Information Administration ("EIA"), U.S.
12 refinery receipts to domestic crude oil by pipeline increased almost 25 percent
13 between 2008 and 2012, from 1.6 billion barrels to nearly 2 billion barrels. In
14 March 2014, the U.S. Government Accountability Office found that the majority of
15 the crude oil pipeline infrastructure system was constructed several decades ago, in
16 the 1950s, 1960s, and 1970s.

17 33. As U.S. domestic oil production has increased, so have the number of
18 pipeline accidents. According to one recent analysis of federal data, the annual
19 number of significant accidents on oil and petroleum pipelines has increased by 60
20 percent since 2009. Nearly two thirds of the leaks in that same time period are
21 believed to have been caused by corrosion or material, welding, or equipment
22 failures, issues most commonly associated with older pipelines.

23 **B. The Plains Pipeline, LP Line 901 Pipeline Spill (Santa Barbara County)**

24 34. On May 19, 2015, the Line 901 Pipeline, owned and operated by
25 Plains Pipeline, LP ("Plains") failed, releasing what was initially estimated to be
26 1,700 to 2,500 barrels (53,550 to 78,750 gallons) of heavy crude oil along the north
27 side of California's Pacific Coast Highway. *See* PHMSA Correction Action
28

1 Order, CPR No. 5-2015-5011H (May 21, 2015). Updated figures estimate that
2 more than 3,400 barrels (142,800 gallons) leaked from the pipeline.

3 35. The spilled oil from the Line 901 Pipeline was conveyed southward
4 down a culvert for approximately one quarter mile into the Pacific Ocean at
5 Refugio State Beach, along a larger stretch of Santa Barbara coastline known as
6 the Gaviota Coast. Petroleum globs linked to the spill, known as “tar balls,” have
7 been found as far south as Crystal Cove, approximately 150 miles away in Orange
8 County. More than 100 mammals and nearly 200 birds have been directly killed
9 by the spill.

10 36. The Line 901 Pipeline was constructed from 1987-1990.

11 37. The Line 901 Pipeline is a 24-inch diameter pipeline approximately
12 10.6 miles in length that transports crude oil from storage tanks owned by
13 ExxonMobil at the Las Flores Canyon facility to the Gaviota Pump Station, owned
14 by Plains. The Las Flores Canyon facility receives and stores oil produced from
15 three offshore oil platforms located in federal OCS waters. These platforms—
16 Hondo, Harmony, and Heritage—are currently owned and operated by
17 ExxonMobil. Line 901 also transports oil produced by Platform Holly, an offshore
18 oil platform located in state waters off of University of California, Santa Barbara,
19 currently owned by Venoco, Inc., as well as oil produced from three more
20 platforms—Hidalgo, Harvest and Hermosa—operated by Freeport-McMoRan.

21 38. Following the spill, investigators located a 6-inch opening along the
22 bottom of the pipeline where it broke on May 19, 2015. The Plains Line 901
23 Pipeline spill may not have occurred if adequate safeguards were in place to
24 monitor, inspect, and maintain the line. PHMSA states in its Corrective Action
25 Order that a May 5, 2015 (two weeks before the spill) In-Line Inspection survey
26 revealed four areas with pipe anomalies “requiring immediate investigation and
27 remediation,” with metal loss ranging between 54% and 75% of the original pipe
28

1 wall thickness. In addition, Line 901 is also experiencing active external
2 corrosion, noted by PHMSA inspectors conducting field visits after the spill.

3 **C. The FOIA Requests**

4 39. Plaintiff filed two FOIA requests, and associated fee waiver requests,
5 at issue in this litigation. The first FOIA request seeks information regarding
6 PHMSA's oversight of Plains Pipeline 901. The second FOIA request seeks
7 information regarding PHMSA's oversight of the M-143 and Tosco Oil Pipelines.
8 According to information and belief, the M-143 and Tosco Oil Pipelines are two of
9 the primary pipelines for conveying oil produced in Ventura County and southern
10 Santa Barbara Counties, including oil produced from offshore oil platforms located
11 in OCS waters.

12 40. In filing these FOIA requests, Plaintiffs are seeking information as
13 part of their organizational missions and members' interests in environmental
14 protection. Specifically, Plaintiffs have requested information that will shed light
15 on PHMSA's oversight (or lack of oversight) of Pipeline 901 prior to the May 19,
16 2015 spill. In addition, Plaintiff EDC has requested information that will shed
17 light on PHMSA's oversight (or lack of oversight) of the M-143 and Tosco Oil
18 Pipelines, which are two of the primary pipelines used for conveying oil produced
19 in Ventura County to refiners and other users in other parts of the state, including
20 Los Angeles and the Bay Area. The M-143 and Tosco Pipelines have fortunately
21 not experienced leaks as significant as the Line 901 spill. This information will, in
22 turn, inform and guide future efforts by Plaintiffs to identify and advocate for
23 policies, regulations, or other mechanisms that will help prevent future pipeline oil
24 spills.

25 **i. Plains 901 Pipeline FOIA**

26 41. On May 22, 2015, Plaintiffs EDC and Channelkeeper submitted a
27 FOIA request to PHMSA for the following records:
28

- 1) All records held regarding the most recent internal inspection of the Line 901 Pipeline, which we understand, was conducted in 2012;
- 2) All records held regarding other inspections of Line 901 since PHMSA began monitoring, inspecting, and reviewing Line 901 operations in approximately 2013. We understand that inspections are commonly referred to as “Pigging” and “Smart Pig” inspections, and that the request included records on any such inspections, in addition to records related to the following activities associated with Line 910:
 - a. Cleaning
 - b. Maintenance
 - c. Monitoring
 - d. Incident reports (e.g. any findings of abnormalities and what response was recommended and taken)
 - e. Repairs.

42. On May 26, 2015, PHMSA sent a letter to Plaintiff EDC acknowledging receipt of the May 22, 2015 FOIA request and assigning the request with control number 2015-0129. The acknowledgment letter also stated that because of the need to search for and collect records from a separate establishment, PHMSA was invoking FOIA’s “unusual circumstances” provision, 49 C.F.R. § 7.34(a)(1), to extend the time limit for response by 10 workdays. Finally, the acknowledgment letter noted that PHMSA was experiencing a backlog of FOIA requests, that the request was number 63 in the queue, and that the average request processing time was approximately 54 workdays.

43. On August 28, 2015, Plaintiff EDC wrote to PHMSA inquiring as to the status of processing on its Plains 901 Pipeline FOIA. EDC’s letter noted that it had received no further correspondence from PHMSA since the agency’s May 26, 2015 acknowledgment letter, and that PHMSA had not provided notice of EDC’s right to file an administrative appeal of the agency’s untimely response, as required by 5 U.S.C. §552(a)(6)(A)(i). Finally, the letter stated that PHMSA had exceeded its own 54 workday response estimate by 17 days.

1 44. On September 1, 2015, a PHMSA FOIA officer wrote by email to
2 EDC, stating that the agency could use clarification on part two of the FOIA
3 request. EDC responded by email on the same day expressing a willingness to
4 discuss clarification of the response.

5 45. PHMSA has not further acknowledged or responded to Plaintiff
6 EDC's August 28, 2015 letter. PHMSA's May 26, 2015, initial acknowledgment
7 letter and September 1, 2015, email remain its only correspondence regarding the
8 Plains 901 Pipeline FOIA. More than 6 months have now elapsed since the FOIA
9 request was received by PHMSA. PHMSA has not provided Plaintiffs with a
10 determination regarding the FOIA request, a determination on the fee waiver
11 request, or with a notice of appeal rights concerning its late response.

12 **ii. M-143 and Tosco Oil Pipelines FOIA**

13 46. On May 27, 2015, Plaintiff EDC submitted a FOIA request to
14 PHMSA for the following records:

- 15 1) All inspection reports regarding the M-143 oil
16 pipeline (a 22-inch diameter, unheated, gravity-
17 flow pipeline running from Carpinteria,
18 California to Ventura, California) and the
"Tosco oil pipeline" (now owned and operated
by Crimson Pipeline, LP) running from the
Ventura Pump Station to Los Angeles;
- 19 2) The oil spill response plans for the M-143 and
20 Tosco oil pipelines;
- 21 3) All incident reports for the M-143 and Tosco oil
22 pipelines;
- 23 4) All other records held regarding the M-143 and
24 Tosco oil pipelines

25 47. On May 29, 2015, PHMSA sent a letter to Plaintiff EDC
26 acknowledging receipt of the May 27, 2015, FOIA request and assigning the
27 request with control number 2015-0131. The acknowledgment letter also stated
28 that because of the need to search for and collect records from a separate
establishment, PHMSA was invoking FOIA's "unusual circumstances" provision,

1 49 C.F.R. § 7.34(a)(1), to extend the time limit for response by 10 workdays.
2 Finally, the acknowledgment letter noted that PHMSA was experiencing a backlog
3 of FOIA requests, that the request was number 65 in the queue, and that the
4 average request processing time was approximately 54 workdays.

5 48. On August 21, 2015, Plaintiff EDC wrote to PHMSA inquiring as to
6 the status of processing on its M-143 and Tosco Oil Pipelines FOIA. EDC's letter
7 noted that it had received no further correspondence from PHMSA since the
8 agency's May 29, 2015, acknowledgment letter, and that PHMSA had not
9 provided notice of EDC's right to file an administrative appeal of the agency's
10 untimely response, as required by 5 U.S.C. § 552(a)(6)(A)(i). Finally, the letter
11 stated that PHMSA had exceeded its own 54 workday response estimate by 6 days.

12 49. PHMSA has not acknowledged or responded to Plaintiff EDC's
13 August 21, 2015, letter. PHMSA's May 26, 2015, initial acknowledgment letter
14 remains its only correspondence regarding the M-143 and Tosco Oil Pipelines.
15 More than 6 months have now elapsed since the FOIA request was received by
16 PHMSA. PHMSA has not provided Plaintiff with a determination on the fee
17 waiver request, or with a notice of appeal rights concerning its late response.

18 **CLAIMS FOR RELIEF**

19 **First Claim for Relief** 20 **(Failure to Make Determination on FOIA Request and Fee Waiver Request)**

21 50. Plaintiffs re-allege and incorporate, as if fully set forth herein, each
22 and every allegation in the preceding paragraphs of this Complaint.

23 51. FOIA provides that any person may obtain access to the records of
24 federal agencies provided the statute's disclosure exemptions do not apply. 5
25 U.S.C. § 552. Plaintiffs have a statutory right to the records sought.

26 52. Once an agency receives a proper FOIA request, the agency shall
27 "determine within 20 days (excepting Saturdays, Sundays, and legal public
28 holidays) after the receipt of any such request whether to comply with such request

1 and shall immediately notify the person making such request of such determination
2 and the reasons thereof, and of the right of such person to appeal to the head of the
3 agency any adverse determination.” 5 U.S.C. § 552(a)(6)(A)(i). In “unusual
4 circumstances,” an agency may extend the time limit for its determination to 30
5 working days by written notice to the requester. *Id.* § 552(a)(6)(B)(i).

6 53. Under 2007 FOIA amendments, “[a]n agency shall not assess search
7 fees . . . if the agency fails to comply with any time limit” of FOIA. §
8 552(a)(4)(A)(vii).

9 54. More than six months have passed since Plaintiffs submitted the Line
10 901 Pipeline FOIA and the M-143 and Tosco Oil Pipeline FOIA. Defendants have
11 not provided a determination on Plaintiffs’ FOIA requests within the time period
12 required by FOIA. Defendants’ improper withholding of agency records violates
13 FOIA and is subject to judicial review under 5 U.S.C. § 552(a)(4)(B).

14 55. Defendants have failed to provide Plaintiffs with a determination on
15 the request for waiver from fees associated with the Line 901 Pipeline FOIA and
16 the M-143 and Tosco Oil Pipeline FOIA.

17 56. Defendants have failed to make a determination as to whether to
18 comply with the Line 901 Pipeline FOIA and the M-143 and Tosco Oil Pipeline
19 FOIA within the relevant statutory time period. Defendants’ failure to make such
20 determination constitutes constructive exhaustion of Plaintiffs’ administrative
21 remedies 5 U.S.C. § 552(a)(6)(A)(i).

22 57. Plaintiffs’ organizational activities will be adversely affected if
23 Defendants are allowed to continue violating FOIA’s disclosure provisions as they
24 have in this case.

25 58. Unless enjoined and made subject to a declaration of Plaintiffs’ legal
26 rights by this Court, Defendants will continue to violate the rights of Plaintiffs and
27 fail to disclose public records under the FOIA.
28

1 59. Plaintiffs are entitled to reasonable costs of litigation, including
2 attorney fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

3
4 **Second Claim for Relief**
5 **(Unlawful Withholding of Agency Records Based on Constructive Denial)**

6 60. Plaintiffs re-allege and incorporate, as if fully set forth herein, each
7 and every allegation in the preceding paragraphs of this Complaint.

8 61. FOIA provides that any person may obtain access to the records of
9 federal agencies provided the statute's disclosure exemptions do not apply. 5
10 U.S.C. § 552. Plaintiffs have a statutory right to the records sought. By failing to
11 make a determination as to whether to comply with the Line 901 Pipeline FOIA
12 and the M-143 and Tosco Oil Pipeline FOIA, Defendants have effectively and
13 unlawfully denied Plaintiffs' FOIA requests.

14 62. Plaintiffs' organizational activities will be adversely affected if
15 Defendants are allowed to continue violating FOIA's disclosure provisions as they
16 have in this case.

17 63. Unless enjoined and made subject to a declaration of Plaintiffs' legal
18 rights by this Court, Defendants will continue to violate the rights of Plaintiffs and
19 fail to disclose public records under the FOIA.

20 64. Plaintiffs are entitled to reasonable costs of litigation, including
21 attorney fees and costs pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

22
23 **RELIEF REQUESTED**

24 For the foregoing reasons, Plaintiffs respectfully request that the Court:

- 25 A. Declare that Defendants' unlawful withholding of agency records
26 responsive to the Line 901 Pipeline FOIA request and the M-143 and
27 Tosco Oil Pipeline FOIA request violates FOIA;
28

- 1 B. Declare that Defendants' failure to make a determination on
2 Plaintiffs' fee waiver request for the Line 901 Pipeline FOIA request
3 and the M-143 and Tosco Oil Pipeline FOIA request violates FOIA;
- 4 C. Order Defendants to produce all non-exempt records, and parts of
5 records, responsive to the Line 901 Pipeline FOIA and the M-143 and
6 Tosco Oil Pipeline FOIA within 30 days;
- 7 D. Order Defendants to grant Plaintiffs' fee waiver request;
- 8 E. Award Plaintiffs their costs and reasonable attorneys' fees incurred in
9 this action; and
- 10 F. Grant such additional relief as the Court deems just and proper.

11 Respectfully submitted this 7th day of December, 2015

12 /s/

13 Brian Segee (Bar No. 200795)
14 ENVIRONMENTAL DEFENSE CENTER
15 111 W. Topa Topa Street
16 Ojai, CA 93023
17 Tel: (805) 640-1832
18 Fac: (805) 648-8043
19 Email: bsegee@environmentaldefensecenter.org

20 *Attorney for Plaintiffs*
21 ENVIRONMENTAL DEFENSE CENTER
22 SANTA BARBARA CHANNELKEEPER
23
24
25
26
27
28