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# Center for Biological Diversity et al vs California Dept of Forestry and Fire Protection et al

## Case Number

25CV02244

## Case Type

Civil Law & Motion

## Hearing Date / Time

Fri, 02/27/2026 - 10:00

## Nature of Proceedings

CMC; Motion for Reconsideration

## Tentative Ruling

For the reasons set forth herein, the motion of real parties in interest Sable Offshore Corp. and Pacific Pipeline Company for reconsideration and to dissolve or modify the preliminary injunction issued in this case is denied.

These are two consolidated cases involving the same underlying incidents and activity.



Documents filed by petitioners and plaintiffs Center for Biological Diversity and Wishtoyo Foundation (case No. 25CV02244) will be identified by the prefix, and these parties will be collectively referred to as, “CBD”; documents filed by petitioners and plaintiffs Environmental Defense Center, Get Oil Out!, Santa Barbara County Action Network, Sierra Club, and Santa Barbara Channelkeeper (case No. 25CV02247) will be identified by the prefix, and these parties collectively referred to as, “EDC.” Petitioners and plaintiffs will collectively be referred to as “petitioners”; respondents and defendants will be collectively referred to as “respondents”; a petition and complaint will be referred to simply as a “petition.” Respondents Department of Forestry and Fire Protection, by and through the Office of the State Fire Marshal, an agency of the State of California, and Daniel Berlant, in his official capacity as State Fire Marshal will be collectively referred to as “OSFM.” Real parties in interest Sable Offshore Corp., and Pacific Pipeline Company will be collectively referred to as “Sable.”

### **Background:**

As alleged in the petitioners’ respective petitions:

These actions involve two oil pipelines connected to three offshore platforms known as the Santa Ynez Unit. (CBD Petition, ¶¶ 33, 34; EDC Petition, ¶ 38, 39.) The two oil pipelines at issue (collectively, the Las Flores Pipelines) consist of Las Flores Pipeline CA-324 (Line 324) and Las Flores Pipeline CA-325 (Line 325). (CBD Petition, ¶¶ 39, 40; EDC Petition, ¶ 41.) Prior to 2015, when owned by Plains Pipeline, L.P., a wholly owned subsidiary of Plains All American Pipeline (collectively, Plains), Line 324 was known as Line 901 and Line 325 was known as Line 903. (CBD Petition, ¶ 49; EDC Petition, ¶ 41, 68.)

The Las Flores Pipelines were constructed and operated following approval by Santa Barbara County in 1986. (CBD Petition, ¶ 35; EDC Petition, ¶ 54.) This approval relied upon an environmental impact report (EIR) drafted in 1984 and finalized in 1985. (CBD Petition, ¶ 35; EDC Petition, ¶ 54 & fn. 1.)

In 2015, Line 324 (formerly Line 901) ruptured causing a serious oil spill (Refugio Oil Spill). (CBD Petition, ¶¶ 50-51; EDC Petition, ¶¶ 69-70.) The Las Flores Pipelines were consequently shut down at that time. (CBD Petition, ¶ 52; EDC Petition, ¶ 82.)



In March 2020, the United States and the State of California sued Plains based upon damages from the Refugio Oil Spill in *United States v. Plains All American Pipeline*, United States District Court for the Central District of California, case No. 2:20-cv-02415 (the Federal Action). (CBD Petition, ¶ 59; EDC Petition, ¶ 85.) The Federal Action was settled by a consent decree (Federal Consent Decree) entered by the court. (CBD Petition, ¶¶ 59-62; EDC Petition, ¶¶ 85-88 & fn. 3 [the Federal Consent Decree].)

The Federal Consent Decree required the operator to “remediate all internal or external metal loss anomalies that have an ILI reported depth of 40 [percent] or greater wall loss, within one year of discovery.” (CBD Petition, ¶ 60.) The Federal Consent Decree also expressly required that prior to any restart, the operator “shall apply for a State Waiver through [OSFM] for the limited effectiveness of cathodic protection” and that it “must receive a State Waiver from [OSFM] prior to restarting.” (CBD Petition, ¶ 61.) The Federal Consent Decree stated that OSFM has the discretion to require additional terms and conditions if it grants any request for a State Waiver. (CBD Petition, ¶ 62.)

In 2024, Sable acquired the Santa Ynez Unit and the Las Flores Pipelines. (CBD Petition, ¶ 64-65; EDC Petition, ¶ 99.)

In April 2024, Sable submitted State Waiver applications to OSFM for Lines 324 and 325. (EDC Petition, ¶ 110 & exhibit B.)

On September 24, 2024, CBD set a letter to OSFM stating that the OSFM had a duty to conduct an analysis and provide opportunities for meaningful public participation under the California Environmental Quality Act (CEQA, Pub. Resources Code, § 21000 et seq.). (CBD Petition, ¶ 68.)

On September 27, 2024, EDC sent a letter to OSFM renewing their March 2024 request for a public process. (EDC Petition, ¶ 112.) EDC also stated that operating the Las Flores Pipeline System without effective cathodic protection was neither anticipated nor reviewed in the 1985 EIR or any project approval, and the potential impacts of doing so have never been fully considered. (*Id.* & exhibit C.) OSFM never responded to the letter. (EDC Petition, ¶ 112.)

On December 17, 2024, OSFM issued State Waivers for Lines 324 and 325 with conditions. (EDC Petition, ¶ 115; CBD Petition, ¶ 71.) OSFM did not offer any sort of public process in advance of its decision. (EDC Petition, ¶ 115.)



On February 11, 2025, the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) sent a letter to OSFM indicating that it would not object to the OSFM's issuance of the State Waivers. (EDC Petition, ¶ 117.)

On April 15, 2025, CBD filed their verified petition (case No. 25CV02244) seeking writ and injunctive relief asserting three causes of action: (1) violation of federal pipeline safety laws (49 U.S.C. § 60118); (2) violation of state pipeline safety laws (Gov. Code, § 51011); and (3) violations of CEQA.

Also on April 15, 2025, EDC filed their verified petition (case No. 25CV02247) seeking writ, injunctive, and declaratory relief asserting eight causes of action: (1) violation of the federal Pipeline Safety Act (FPSA, 49 U.S.C. § 60118(d))—failure to provide a public process; (2) violation of the FPSA (49 U.S.C. § 60118(d))—failure to provide a statement of reasons; (3) declaratory relief—state waiver procedures required under the FPSA (49 U.S.C. § 60118(d)); (4) abuse of discretion under the FPSA (49 U.S.C. § 60118(d)); (5) violation of the Elder California Pipeline Safety Act of 1981 (CPSA, Gov. Code, § 51011, subd. (c)); (6) abuse of discretion under the CPSA (Gov. Code, § 51011, subd. (b)); (7) declaratory relief—standards and procedures required under the CPSA (Gov. Code, § 51011, subds. (b), (c)); and (8) CEQA—failure to prepare a subsequent EIR (Pub. Resources Code, § 21166).

On June 3, 2025, the court heard petitioners' ex parte applications for an administrative stay, or for an OSC re preliminary injunction and temporary restraining order (TRO). The court granted the petitioners' requests for a TRO and set a hearing on the OSCs for July 18, 2025.

On July 8, 2025, Sable filed demurrers and motions to strike as to the CBD Petition and EDC Petition, all noticed for hearing on September 19, 2025.

On July 18, 2025, the court granted in part petitioners' applications for issuance of preliminary injunctions.

On July 29, 2025, the court entered its written orders granting preliminary injunctions. The orders provide:



“The applications of petitioners in case numbers 25CV02244 and 25CV02247 for issuance of preliminary injunctions are, respectively, granted in part. The applications are granted to enjoin, pending the disposition of these proceedings or further order of the court, the restart of the Las Flores Pipelines, as herein defined, until 10 court days following the filing and service of notice by or on behalf of real parties in interest Sable Offshore Corp., and Pacific Pipeline Company (collectively, Sable) that Sable has received all necessary approvals and permits for restarting the Las Flores Pipelines and that Sable intends to commence such restart. “Restart” shall have the same meaning as in the Federal Consent Decree identified herein. To be effective to commence the 10-court-day period, such notice shall be signed by an officer of Sable under penalty of perjury under the laws of the State of California and shall identify each such approval or permit, the agency giving such approval or permit, and the date such approval or permit was given by the agency; the notice need not identify or provide information for any approval or permit given or received prior to June 3, 2025. The 10-court-day time period shall be extended based upon the manner of service of the notice as provided in Code of Civil Procedure sections 1013 and 1010.6, and shall be calculated from the later of the date of filing or the date of service. The temporary restraining order remains in place until a written order of the court is entered on this preliminary injunction.” (Order, filed July 29, 2025, exhibit A.)

On August 27, 2025, petitioners filed their motions to bifurcate “procedural” from “substantive” claims.

On September 8, 2025, Sable withdrew their demurrers and motions to strike. On September 17, 2025, Sable filed their answers to the petitions, admitting and denying allegations in the petitions and asserting 25 (in answer to the CBD Petition) and 19 (in answer to the EDC Petition) affirmative defenses.

On September 19, 2025, the court denied the motions to bifurcate.

On December 2, 2025, on the stipulation of the parties, the court entered its order consolidating both cases with case No. 25CV02244 as the lead case.

On January 5, 2026, Sable filed their motion for reconsideration of the preliminary injunction. As discussed below, the basis for this motion is the assertion of jurisdiction over the Las Flores Pipelines by the federal Pipeline and Hazardous Materials Safety Administration (PHMSA).

On January 7, 2026, the court heard Sable’s ex parte application for reconsideration or alternatively to advance the hearing on the motion for reconsideration. The court set this hearing of February 27 on the motion for reconsideration.



On February 13, 2026, petitioners jointly filed opposition. OSFM filed separate opposition.

On February 18, 2026, Sable filed their reply.

On February 23, 2026, Sable filed a supplemental declaration.

## **Analysis:**

### (1) Requests for Judicial Notice

In opposition to Sable's motion, petitioners request that the court take judicial notice of the following documents: (Petitioners' Opposition Request for Judicial Notice [Petitioners RJN], exhibit A) excerpts of the Consent Decree entered into by Sable's predecessor, Plains All American Pipeline, the Office of the State Fire Marshal (OSFM), and the Pipeline and Hazardous Materials Safety Administration (PHMSA) (among other parties); (exhibit B) the California Natural Resources Agency's (CNRA) December 31, 2025 updated Summary of State Regulation of Crude Oil Pipelines in Santa Barbara County; (exhibit C) an October 22, 2025 letter from the OSFM to Sable regarding unmet State Waiver conditions; (exhibit D) a November 26, 2025 letter from Sable to PHMSA requesting that the pipelines be redesignated as interstate; (exhibit E) a December 19, 2025 application letter from Sable to PHMSA for an Emergency Special Permit; (exhibit F) petitioners' December 24, 2025 Petition for Review filed in the Ninth Circuit Court of Appeals challenging PHMSA's approval of Sable's Restart Plan and issuance of an Emergency Special Permit for the Las Flores Pipeline System; (exhibit G) the Ninth Circuit Court of Appeals' denial of Petitioners' Emergency Motion and Order expediting briefing in the case; (exhibit H) the State of California's January 23, 2026 Petition in the Ninth Circuit Court of Appeals; (exhibit I) the January 30, 2026 Motion to Consolidate Petitioners' and the State of California's Petitions, filed in the Ninth Circuit Court of Appeals; (exhibit J) the Ninth Circuit Court of Appeals' February 5, 2026 Order granting the Motion to Consolidate; (exhibit K) the Santa Barbara County Board of Supervisors' December 23, 2025 Action Letter; (exhibit L) the May 18, 2016 letter from PHMSA to OSFM memorializing the understanding between the two agencies with respect to the regulatory oversight of the pipelines; (exhibit M) the United States District Court, Central District of California's October 14, 2020 Order to Enter Consent Decree; and (exhibit N) the certified transcript from the Court's January 7, 2026 hearing on the parties' ex parte motions.



The court will grant judicial notice as to these documents, all of which constitute court records, official documents, or official filings of government agencies. (See Evid. Code, § 452, subds. (b), (c), (d), (h).) Judicial notice does not extend to the truth of factual matters set forth in such documents. (*Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120; *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113.)

Also in opposition to the motion, OSFM requests that the court take judicial notice of the following documents: (OSFM Request for Judicial Notice [OSFM RJN], exhibit A) the Petition for Review filed by California on January 23, 2026; (exhibit A-1) PHMSA Preemption Letter, dated December 17, 2025; (exhibit A-2) PHMSA Restart Plan Approval, dated December 22, 2025; (exhibit A-3) PHMSA Special Permit, dated December 23, 2025; (exhibit B) Complaint, *Pacific Pipeline Company v. California* (Kern County), filed September 29, 2025, with exhibits omitted; (exhibit C) Amended Complaint, *Pacific Pipeline Company v. California* (Kern County), filed January 21, 2026, with exhibits omitted; (exhibit D) selected pages from the Consent Decree, filed March 13, 2020; (exhibit E) Sable Assumption Agreement, dated February 19, 2024; (exhibit F) selected pages from Preliminary Injunction Order, entered on July 29, 2025; (exhibit G) selected pages from Answer by Sable Offshore Corp and Pacific Pipeline Company, filed on September 17, 2025; (exhibit H) letter from PHMSA to OSFM re Intrastate Designation, dated May 18, 2016; (exhibit I) selected pages from State Waiver for CA-324; (exhibit J) selected pages from State Waiver for CA-325; (exhibit K) OSFM letter to Sable re Tool Tolerance, dated October 22, 2025; (exhibit L) Sable letter to OSFM re Tool Tolerance, dated October 23, 2025; (exhibit M) Sable letter to PHMSA re Interstate Designation, dated November 26, 2025; (exhibit N) Order on Consent Decree, entered October 14, 2020; (exhibit O) selected pages from Santa Barbara County Air District permit; (exhibit P) Appendix to 49 CFR Part 195, Appendix A; (exhibit Q) Sable 8-K Form (Securities and Exchange Com.), dated September 29, 2025; and (exhibit R) selected pages from Sable Exhibit 99.2 to SEC filings.

The court will grant judicial notice as to these documents, all of which constitute court records, official documents, or official filings of government agencies. (See Evid. Code, § 452, subds. (b), (c), (d), (h).) As before, judicial notice does not extend to the truth of factual matters set forth in such documents.



In reply, Sable requests that the court take judicial notice of: (Sable Reply Request for Judicial Notice [Sable Reply RJN], exhibit 1) excerpts of the Consent Decree entered in *United States of America and People of the State of California v. Plains All American Pipeline, L.P. and Plains Pipeline, L.P.*, case No. 2:20-cv-02415 in the United States District Court for the Central District of California; and (2) an order denying the State of California’s Motion to Change Venue, dated February 3, 2026, by the Superior Court of Kern County in *Pacific Pipeline Company v. State of California*, Case No. BCV-25-103508.

The court will grant judicial notice as to these documents, which are court records. (See Evid. Code, § 452, subd. (d).) As before, judicial notice does not extend to the truth of factual matters set forth in such documents.

## (2) Standards for Sable’s Motion

Sable frames its motion as a motion for “reconsideration” pursuant to Code of Civil Procedure sections 1008 and 533. (Notice, at p. 3.) Reconsideration of rulings on motions generally is governed by section 1008:

“When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.” (Code Civ. Proc., § 1008, subd. (a).)

Sable asserts that this motion is timely under section 1008 because it was made within 10 days of the new or different facts and no notice of entry was served on them. Petitioners argue it is untimely under section 1008 because it has been more than five months since the court entered its order. Here, there is no evidence that there has been service of notice of entry of the order, which starts the 10-day period running. The motion is therefore timely under section 1008. (See *Novak v. Fay* (2015) 236 Cal.App.4th 329, 335–336 [service of notice of entry is applicable start date].) In any event, however, there is no time limit in making a motion to modify or dissolve an injunction under section 533:



“In any action, the court may on notice modify or dissolve an injunction or temporary restraining order upon a showing that there has been a material change in the facts upon which the injunction or temporary restraining order was granted, that the law upon which the injunction or temporary restraining order was granted has changed, or that the ends of justice would be served by the modification or dissolution of the injunction or temporary restraining order.” (Code Civ. Proc., § 533.)

In either case, the party seeking modification or dissolution of an injunction bears the burden to show that changed circumstances justifies modification or dissolution of the order. (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1504.)

### (3) Prior Ruling on Preliminary Injunction and Subsequent Events

The court need not here repeat the background and analysis set forth in the court’s July 2025 ruling granting plaintiffs’ applications for preliminary injunction, which ruling is incorporated by this reference. However, it is useful to highlight past events reflected in the court’s record in order to evaluate Sable’s motion for reconsideration.

In ruling on plaintiffs’ applications for preliminary injunction, the court did not find that plaintiffs had made a sufficient evidentiary showing of a likelihood of success on the merits of plaintiffs’ causes of action except as related to the State Fire Marshal’s findings under the Elder California Pipeline Safety Act of 1981 (CPSA, Gov. Code, § 51010 et seq.).

In opposing the issuance of the preliminary injunction, Sable and OSFM argued that much, if not all, of plaintiffs’ claims of harm were premature because those claims depended upon the restart of the Las Flores Pipelines and that multiple approvals were necessary before such restart. As argued by Sable in that opposition:

“Petitioners’ alleged harm from restart of the Pipelines [citations] is purely speculative due to the additional approval Sable must obtain before the Pipelines are operational. [Citation.] As Petitioners acknowledge, and as required by the Consent Decree, OSFM must approve a Restart Plan before Sable can restart the Pipelines. [Citations.] When reviewing Sable’s Restart Plan, OSFM will necessarily consider the safety of operations and integrity of the pipelines to minimize potential safety risks.” (Sable Opposition re Preliminary Injunction, filed July 8, 2025, at p. 19.)

Accepting this argument in part, the court granted the preliminary injunction narrowly. As the court stated in its July 18 ruling:



“As the evidence and arguments of the petitioners most strongly demonstrate, the principal harm to be avoided is the restart of the Las Flores Pipelines without compliance with all applicable law. Because such a restart requires additional approvals, this harm may be avoided in the present by having adequate notice that a restart has been approved and so providing petitioners with a reasonable opportunity to address compliance issues of such a restart based upon such future approvals. By the same token, Sable would not be materially harmed by being restrained from restarting the Las Flores Pipelines without first providing such adequate notice. The OSFM would not be restrained or constrained in the interim to address all such matters within its regulatory purview.

“Accordingly, the court will narrowly grant the motions for preliminary injunctions to enjoin the restart of the Las Flores Pipelines, as herein defined, until 10 court days following Sable’s filing and service of notice that Sable has received all necessary approvals and permits for restarting the Las Flores Pipelines and that Sable intends to commence such restart. ‘Restart’ shall have the same meaning as in the Federal Consent Decree. Such notice shall be signed by an officer of Sable under penalty of perjury under the laws of the State of California and shall identify each such approval or permit, the agency giving such approval or permit, and the date such approval or permit was given by the agency; the notice need not identify or provide information for any approval or permit given or received prior to June 3, 2025 (the date of the court’s grant of the TRO in these matters). The 10-court-day time period shall be extended based upon the manner of service of the notice as provided in Code of Civil Procedure sections 1013 and 1010.6, and shall be calculated from the later of the date of filing and the date of service.



“Under these terms of the preliminary injunction, absent further order of the court, Sable may restart the Las Flores Pipelines 10 court days following the giving of notice of receiving all necessary approvals and permits. Sable is not prevented by this injunction from taking steps towards restarting the Las Flores Pipelines short of actual restart. The OSFM is not impeded by the injunction from taking steps it finds appropriate in its regulatory capacity, including any steps OSFM may find desirable following this order. The conditions of the injunction do not allow restart without prior notice. This notice requirement and intervening waiting period provides reasonable time and opportunity for the petitioners and for the OSFM to take any requisite procedural step they may find appropriate before restart is to occur. The ruling is without prejudice to petitioners to seek additional, further, or other relief from the court, if any is warranted, before such restart. The court would be in a position to assess the evidence and arguments of the parties as they then exist, including, presumably, the fact and effects of actions taken as a result of obtaining the remaining necessary approvals and permits.” (Minute Order, filed July 18, 2025, at pp. 13-14.)

Sable has not filed and served a notice under the existing terms of the preliminary injunction to restart the Las Flores Pipelines.

Subsequent to the court’s grant of the preliminary injunction, the PHMSA has asserted that the Las Flores Pipelines constitute an interstate pipeline subject to PHMSA’s exclusive jurisdiction. (Flores decl., ¶ 3 & exhibit A.) The PHMSA further issued their own approvals and an emergency special permit. (Flores decl., ¶¶ 4-7 & exhibits B, C.) These approvals are the subject of proceedings in the Ninth Circuit Court of Appeals, which has not issued a final ruling. (OSFM RJN, exhibit A; Simmonds decl., ¶¶ 7-11 & exhibits F-J.)

#### (4) Reconsideration

Sable argues that because the PHMSA has asserted exclusive jurisdiction over the Las Flores Pipelines, the preliminary injunction issued by this court has been preempted. Acknowledging that preemption issues are being resolved in other jurisdictions, including the Ninth Circuit Court of Appeals, OSFM and Petitioners argue that, at least until there is binding authority otherwise, this court is bound by the terms of the Federal Consent Degree and the preliminary injunction remains on a firm foundation.



The Federal Consent Decree provides, among other things, that “Plains must receive a State Waiver from the OSFM prior to restarting Line 901.” (Federal Consent Decree, appen. B, art. I, § 1(A).) While Sable now argues that it is not a party to the proceedings in which the Federal Consent Decree was entered, Sable’s authority to operate the Las Flores Pipelines derives from rights obtained by Plains, for which Plains was, and remains, subject to conditions including conditions set forth in the Federal Consent Decree. Sable has not demonstrated any right to operate the Las Flores Pipelines separate from the rights derived from Plains and subject to the Federal Consent Decree. (See, e.g., Federal Consent Decree, art. III, § 4 [obligations binding on successors and assigns].)

The arguments raised by Sable thus question the continuing authority of the Federal Consent Decree.

“In a stipulated judgment, or consent decree, litigants voluntarily terminate a lawsuit by assenting to specified terms, which the court agrees to enforce as a judgment. [Citations.] As the high court has recognized, stipulated judgments bear the earmarks both of judgments entered after litigation and contracts derived through mutual agreement: ‘[C]onsent decrees “have attributes both of contracts and of judicial decrees”; a dual character that has resulted in different treatment for different purposes.’ As in [*Firefighters v. City of Cleveland* (1986) 478 U.S. 501 [106 S.Ct. 3063, 92 L.Ed.2d 405], the issue before us is ‘not whether we can label a consent decree as a “contract” or a “judgment,” for we can do both.’ [Citation.]” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 663–664.)

For purposes of this discussion, it is sufficient to observe that by the Federal Consent Decree, the Las Flores Pipelines may not be restarted (as defined therein) without obtaining a State Waiver from the OSFM. Thus, the Federal Consent Decree by its terms requires authorization from the OSFM, whether that authorization is couched in regulatory, contract, or collateral estoppel terms. The court is not persuaded on this record that administrative actions taken by PHMSA necessarily eliminates OSFM participation in the restart process.



As pertinent to the preliminary injunction ruling, Petitioners' actions challenge whether OSFM meets OSFM's statutory and regulatory obligations in providing the authorization directed by the Federal Consent Decree. The court's grant of the preliminary injunction is narrow precisely so that all parties will have the opportunity to put this matter in a procedural posture specific to the circumstances existing when Sable is, by its own reckoning, fully authorized and ready to restart the Las Flores Pipelines. At that time the court can resolve, to the extent necessary, the restart issues presented by the parties without being sidetracked by speculative harms (such as those highlighted previously by Sable) and with the benefit of any then-existing legal developments from the federal courts.

After considering all of the arguments, facts, and circumstances presented in Sable's motion for reconsideration, the court does not find the evidence of subsequent events involving PHMSA and federal appellate proceedings are sufficient to reconsider its ruling on the preliminary injunction or to modify or dissolve the preliminary injunction. The motion will therefore be denied.

## JUDGES

### JUDGE DONNA GECK

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