ATTACHMENT "A"

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45 DAY COMMENTOR		
W1	**Western States Petroleum Association, Ben Oakley, California Coastal Region Manager; letter dated October 15, 2021**	
Topic	**Summary of Comments**	**Agency Responses**
General	According to the Financial Budget and Projections (2019-2026) document, the OSFM is proposing an operator and mileage fee revenue increase of 114% while total expenses are only projected to increase by 72.4% over the same period. The ISOR refers generally to "increases to staff, facilities, and equipment" as a rationale for the fee increase but doesn't explain why operator and mileage fees are being raised at a much higher rate than total expenses. The OSFM should explain this discrepancy and should limit the proposed operator and mileage fees so that they do not exceed the projected total expenses in terms of percentage. **W1-1**	The commenter fails to consider the fact that the OSFM is currently running a deficit since 2016 and will continue to run a deficit until the proposed fee regulation becomes effective. It is necessary to recover additional fee revenue to correct the budget shortfalls or the fund will become insolvent. The initial fee increase is designed to rectify the previous shortfalls by fiscal year 2022/23. The additional fee increases in fiscal year 2024/25 are needed to avoid future budget shortfalls due to the projected reduction in pipeline mileage. The increase also accounts for variations in grant reimbursements rates, pipeline mileage that are inconsistent year to year, and an increase in projected costs. The new fee rate is calculated to provide solvency for a minimum of five years, and ongoing with efficient management of the fund. The OSFM disagrees with the commenters assumption that program costs are projected to increase by only 72 percent. In fact, expenses are expected to increase at a larger rate due to an increase in the projected costs of energy, salary, and inflation. However, due to the current trends of pipeline abandonment, the program anticipates that travel expenses will be reduced at a proportional rate. While the costs related to travel is expected to be reduced, it is important to recognize that the inspection workload is not anticipated to be significantly impacted because the majority of annual inspections are completed by inspection unit not by pipeline mileage. The OSFM proposed a 25 percent reserve to account for variations in grant reimbursements rates. The grant funds have varied considerably from year to year and cannot be counted on to fund the program at a consistent rate. These proposed reserve funds are necessary to protect the OSFM pipeline safety fund from budget gaps when grant funds come in lower than projected.

General	Operator and Mileage Fee increases of the magnitude envisioned by the proposed regulation should only come with corresponding commitments to efficiency and transparency from OSFM. Such commitments should be demonstrated through annual reports/audits and could include such metrics as: • Comparing results against set goals. • Task assignment, delegation, tracking, and completion. • Integration of technology or other innovations that lead to increased organizational efficiency. • Performance on the annual federal progress report and program review and whether the OSFM received the full amount of the available grant (see comment under Maximize the Federal Reimbursement Grant below). **W1-2**	OSFM is committed to increasing program efficiency while also maintaining appropriate staff and resources to meet federal and State inspection requirements. For instance, the OSFM implemented a teleworking schedule for staff to reduce office space and expenses, utilized online tools to conduct virtual inspections limiting staff travel expenses, and combined two of the six mandatory headquarter inspections (OME and PAPEE) inspections to increase efficiency for both the pipeline operator and OSFM. There exist several program metrics that demonstrate the OSFM's program performance. The U.S. DOT PHMSA completes an annual Federal Audit of the OSFM Pipeline Safety Program, in which the OSFM has consistently scored above 88% since 2016. The PHMSA Program Evaluation and Progress Report findings are found on the PHMSA webpage here: https://www.phmsa.dot.gov/working-phmsa/state-programs/evaluation-search In addition, a set of performance metrics has been developed by both PHMSA and the National Association of Pipeline Safety Representatives (NAPSR) to look at hazardous liquid state program performance in the following areas: •Inspection Activity •Inspector Qualification •Enforcement •Incident Investigation. For additional information on the OSFM performance see PHMSA's State Program Metrics webpage here: https://portal.phmsa.dot.gov/analytics/saw.dll?Portalpages&PortalPath=%2Fshared%2FPDM%20Public%20Website%2F_portal%2FPublic%20Reports&Page=State%20Program&Action=Navigate&var1=dashboard.variables%5b%27state%27%5d&cov1=%22PHP%20-%20Geo%20Location%22.%22State%20Name%22&val1=%22%22
General	The OSFM notes "the general reduction in mileage as old pipelines are taken out of service" and acknowledges that "the number of operators has been decreasing as a result of company mergers." Instead of viewing this trend as an opportunity to find efficiencies, the OSFM sees this as another reason to increase fees: "The proposed regulations target these two observed trends and should negate the need for fee revisions for the foreseeable future." **W1-3**	The OSFM disagrees with this comment. Out-of-service pipeline are pipeline that have been purged of hazardous liquids and are considered active until abandoned (see Advisory Bulletin PHMSA–2016–0075). These lines are subject to the same regulatory oversight as those pipelines currently shipping product. Although OSFM has seen a general reduction in jurisdictional pipeline mileage, the inspection workload required of OSFM has increased due to recent legislation and federal requirements. These included California mandated inspections according to GC §51015.1 and §51013.1 and leak detection requirements in accordance 49 C.F.R. §195.134, among others. The proposed fees factor in the vulnerability of pipeline mileage and number of operators due to variations in the pipeline industry while also maintaining funding for the appropriate staff and resources to complete the increased inspection workload.

General	The OSFM should establish a formal inspection protocol to improve the efficiency of inspections and promote consistency between inspectors. The OSFM should explain why a reduced number of operators and total pipeline miles has not resulted in any reduced program costs. The OSFM should consider a funding mechanism based on actual costs rather than projected workload or budget, see comment under Reasonable Alternatives Considered. **W1-4**	Efficiency and Consistency: The OSFM is continually striving to increase efficiency and consistency in the program **(see examples in the response to comment W1-2)**. Reduced Operators and Mileage: The proposed fees will ensure appropriate staff and resources assuring the OSFM continues to meet federal and State inspection requirements **(see comment W1-3)**. Funding Mechanism: The OSFM funding mechanism is based on historic costs projected in to the future and required under Government Code 51019 to cover expenses for the following year. The fees proposed are divided proportionally across the regulated community based on their pipeline mileage owned. Should costs decrease in the future the OSFM will reevaluate the fee at that time. The fees being modified have not been increased since 2007. Since that time, program costs have risen significantly due to inflation, rising personnel costs and pipeline program expansion.
General	The OSFM should not be leaving federal money on the table while asking pipeline operators to absorb a significant fee increase. The OSFM should demonstrate annually that it is maximizing the federal reimbursement through effective performance on the annual federal progress report and program review as part of the proposed fee increase regulation. **W1-5**	The OSFM is maximizing the federal grant funding and continue to demonstrate effective performance and utilization of federal funds through the annual federal audit findings. Federal grant funding is based on actual reimbursable expenses incurred by OSFM and the score received on the PHMSA annual evaluation **(see response to comment W1-2).**
General	The OSFM should include an analysis of its ratio of supervisorial/administrative positions to nonsupervisory/ administrative positions and should establish a goal of achieving a ratio of between 1:3 to 1:7 supervisorial/administrative positions to non-supervisorial/administrative positions. **W1-6**	The ratio is outside of the fee structure proposed but will be discussed. The commenter appears to encourage the OSFM to eliminate staff positions engaged in pipeline safety inspection to reduce the fee imposed on operators. The comment fails to consider the fact that all operators and all pipelines must be inspected annually in California in addition to federal pipeline regulations. The staffing requirements are necessary to complete the required inspections. From FY 2021/2022 going forward the OSFM anticipates 6.5 administrative staff assisting the 34.9 supervisorial/inspection/damage prevention staff. This amounts to an approximate 1:5 ratio, which falls in line with the commenters desired ratio without the need to eliminate staff positions. Importantly, administrative staff do not possess the necessary qualifications to inspect pipelines but their support is essential to the program carrying out its mission effectively.
General	The OSFM statements beg the question, on what basis did the OSFM come to the conclusion that “the proposed regulations are not expected to create or eliminate jobs” following a year in which the industry already saw significant job losses and after disclosing that a single operator will see a fee increase of over $1.1 million in the first year of the program alone and nearly $1.3 million per year starting in 2025? **W1-7**	This comment does not speak to the regulation but to the analysis undertaken by the OSFM. The analysis was derived from the survey sent to the pipeline industry and information presented to us. We cannot compel industry to respond to solicitation for information on regulations that may impact their operations. However, in the absence of data provided by industry we are forced to undertake an analysis with less than all information available to the commenter. It also appears that the impacts projected by WSPA is using the largest operator in California as an example, which is not representative of all operators. The impact to each operator is unique based on their pipeline mileage.

General	How did the OSFM arrive at the specific conclusion that a 114% increase in Operator and Mileage Fees (characterized by OSFM as "nominal") will "not drive business out nor incentivize the creation of new business"? **W1-8**	The proposed fee increase was based on the information provided in the ISOR and supporting documents as specified in the ISOR. The purpose is to fund the program and not to determine the threshold at which businesses would leave California and raise the fee to that level. The survey sent to operators indicated that approximately 50% of the respondent companies found pipeline fees impacted operations. This also means 50% are unaffected. Importantly, pipeline operators function, expand, and contract based on demand for petroleum not fees assessed. An alternative way to look at the proposed fee increase is that operators have been saving on regulatory expenses that could have been incurred over the past several years while the OSFM has been running a budget deficit.
General	What specific evidence supports the conclusions that the fee increase will not result in the "creation or elimination of pipeline operators" or will not "encourage or discourage pipeline operators from expanding their business in California"? **W1-9**	Entering and exiting the pipeline industry is a costly endeavor. Operations require specialized labor, hardware, and software to meet stringent regulatory requirements at both the State and federal level. These hurdles create a stable market that adapts to changing regulatory requirements, such as fee increases. Importantly, the demand for petroleum products is the primary driver for pipeline operators, not fees. **See comment W1-8**
General	In the absence of facts, the OSFM findings are entirely conclusory. OSFM should disclose specific assumptions, facts, documents, testimony, conversations, or other evidence relied upon in coming to each of the above conclusions, and refrain from making conclusory findings. **W1-10**	The OSFM disagrees with the assertion that the findings are conclusory. The ISOR and supporting documents form the basis of the analysis.
General	The OSFM did not take proactive steps to consider a broad range of reasonable alternatives. Instead, the OSFM responded to alternatives "suggested by industry survey" and limited their analysis to three alternatives "based on comments received." A more meaningful consideration of reasonable alternatives would have included a review of funding mechanisms for pipeline safety programs administered in other states, including the Minnesota Office of Pipeline Safety (MNOPS) and the Washington Utilities and Transportation Commission's (UTC) Pipeline Safety Program. Both funding methodologies are based on actual rather than projected costs and are more directly attributable to each specific pipeline operator. **W1-11**	The OSFM disagrees with this comment. The commenter suggested OSFM consider an additional funding mechanism similar to the MNOPS and WUTC fee structure. The OSFM did consider several alternatives in the ISOR. The OSFM concluded that the proposed mileage fee is distributed among pipeline operators based on their pipeline mileage, which is proportional to the required OSFM inspection workload and related expenses (e.g. travel costs, enforcement processing, accident response, and integrity inspections). Our office is not required to undertake an analysis of every pipeline program funding mechanism and describe how the OSFM's differs from those other programs or why they are infeasible. In considering the MNOPS and the WUTC fee structures, they are inconsistent with the fiscal realities faced through statutory fee assessment requirements under California law. The proposed fee is consistent with MNOPS and WUTC fee structures in that they are based on actual historic costs incurred by the OSFM and then projected in to the future.

General	MNOPS charges pipeline operators based on a pro rata share of total actual costs of administering the program minus the federal reimbursement and other program costs attributable to specific operators. Then each operator is billed directly for the costs directly attributable to their specific operation. **W1-12**	The OSFM also takes federal grant reimbursement into consideration of the fee assessed. **See comment W1-11**
General	The Washington UTC Pipeline Safety Program is similarly funded through an annual overhead charge "allocated among companies according to each company's share of the total of all pipeline miles" as well as a pipeline safety fee "allocated among companies in proportion of each company's share of…staff hours that are directly attributable to particular companies." **W1-13**	**See comment W1-11**
General	These funding methodologies provide three distinct advantages: 1. Increased flexibility for the regulatory agency to manage varying annual program costs, workloads, and reimbursements. Operator fees are based on actual costs incurred by the agency and billed directly to the operators. Under these methodologies, the agency does not need fee revisions based on budget or workload projections. 2. Increased transparency. 3. More equitable distribution of program costs since operator fees are more directly correlated with each company's respective operation. WSPA recommends that the OSFM include the MNOPS and Washington UTC funding methodologies in its consideration of reasonable alternatives. **W1-14**	**See comment W1-11**

General	Contrary to the OSFM's assertion that the rulemaking uses a "phased in schedule for fee increases…on a stepped schedule over a series of years" to allow businesses time to adapt, the OSFM proposes a single significant annual fee increase in the first year with just one more smaller proposed increase to be implemented in 2025. A truly phased in approach would include small annual increases in fees over time rather than a front-loaded fee increase in the first year. **W1-15**	The proposed fee increase is taken in two steps based on the need to fund the OSFM cost structures. Currently the OSFM is running a deficit. If no action is taken under the proposed fee structure, the OSFM pipeline safety fund will become insolvent by fiscal year 2022/2023. Regardless of whether smaller incremental steps are taken annually or the two step approach is implemented, the fee must be increased before fiscal year 2022/2023. The purpose of increasing two times in lieu of many steps reduces the workload on industry to capture all required costs and spreads the initial need for additional funds over two years as opposed to one year suggested by the commenter. Also, if the fee increase was postponed a year, the OSFM would need to increase the fee proportionally to recoup those lost costs and cover the deficit incurred.
General	The OSFM should delay implementation of the proposed fee increase to 2023 and should use a phased in approach that includes small annual increases over time rather than a front-loaded fee increase in the first year. **W1-16**	• **See W1-15**
General	In the ISOR, the OSFM references a review of "facts, documents, testimony, and other evidence" in support of its finding of no significant adverse economic impact on any business but fails to provide any specific information beyond a survey of pipeline operators with an approximate 14% participation rate with only 7 of 50 pipeline operators responding. **W1-17**	• **See W1-8**