

1 **IN THE UNITED STATES DISTRICT COURT**

2 **FOR THE DISTRICT OF NEVADA**

3 CHERYL A. TINDER-HOWELL, on
4 behalf of herself and all others similarly
5 situated,

6 Plaintiff,

7 v.

8 UNION PACIFIC RAILROAD
9 COMPANY, successor to SOUTHERN
10 PACIFIC TRANSPORTATION
11 COMPANY, SFPP, L.P. (formerly known
12 as SANTA FE PACIFIC PIPELINES,
INC., formerly known as SOUTHERN
PACIFIC PIPELINES, INC.), KINDER
MORGAN OPERATING L.P. "D", and
KINDER MORGAN G.P., INC.,

Defendants.

) CLASS ACTION

) CASE NO. 3:15-cv-00317-LRH-(VPC)
) (consolidated with 3:15-cv-00478)

) **[PROPOSED] STIPULATED
PROTECTIVE ORDER**

13 Before the Court is the Parties' Stipulated Protective Order, which the Court being
14 fully advised as to the same, it is hereby ORDERED. The protections afforded in this
15 Protective Order are also applicable to any third party producing documents or
16 electronically stored information in this action.

17 **1. STATEMENT OF PURPOSE**

18 Discovery in this litigation could involve production of confidential, proprietary,
19 or private information for which special protection from public disclosure and from use
20 for any purpose other than prosecuting this litigation may be warranted. Such confidential
21 and proprietary materials and information consist of, among other things, confidential
22 business or financial information, information regarding confidential business practices,
23 or other confidential research, development, or commercial information (including
24 information implicating privacy rights of third parties), or information otherwise
25 generally unavailable to the public. Accordingly, to expedite the flow of information, to
26 facilitate the prompt resolution of disputes over confidentiality of discovery materials, to
27 adequately protect information the parties are entitled to keep confidential, to ensure that
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1 the parties are permitted reasonable necessary uses of such material in preparation for and
2 in the conduct of trial, to address their handling at the end of the litigation, and serve the
3 ends of justice, a protective order for such information is justified in this matter.

4 **2. DEFINITIONS**

5 2.1 Actions: *Cheryl A. Tinder-Howell v. Union Pacific Railroad Company*, 3:15-
6 cv-00317-LRH-(VPC) (consolidated with 3:15-cv-00478).

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
8 generated, stored or maintained) or tangible things that may reveal a trade secret, or other
9 confidential research, development, financial, or other information: (1) that is not
10 commonly known by or available to the public and derives value, actual or potential,
11 from not being generally known to, and not being readily ascertainable by proper means
12 by, other persons who can obtain value from its disclosure or use; (2) that contains
13 protected personally identifiable information; or (3) any other material that is confidential
14 pursuant to applicable law.

15 2.3 Counsel: Outside Counsel of Record and In-House Counsel (as well as their
16 support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or items
18 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” and/or
19 “HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY.”

20 2.5 Disclosure or Discovery Material: all items or information, regardless of the
21 medium or manner in which it is generated, stored, or maintained (including, among
22 other things, testimony, transcripts, and tangible things), that are produced or generated in
23 disclosures or responses to discovery in this matter.

24 2.6 Expert and/or Consultants: a person with specialized knowledge or experience
25 in a matter pertinent to the litigation, along with his or her support staff, who has been
26 retained by a Party or its counsel to serve as an expert witness or as a consultant in these
27 Actions.

1 2.7 HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY Information or
2 Items: Information (regardless of how generated, stored or maintained) or tangible things
3 that are a subset of extremely sensitive “Confidential Information,” including trade
4 secrets or other highly confidential research, development, financial, or other commercial
5 information that would harm the Designating Party’s competitive position if it becomes
6 known to a party other than the Designating Party.

7 2.8 In-House Counsel: attorneys who are employees of a party to these Actions.
8 In-House Counsel does not include Outside Counsel of Record or any other outside
9 counsel.

10 2.9 Non-Party: any natural person, partnership, corporation, association, or other
11 legal entity not named as a Party to these Actions.

12 2.10 Outside Counsel: attorneys who are not employees of a party to these Actions
13 but are retained to represent or advise a party to these Actions and includes support staff.

14 2.11 Party: any party to these Actions, including all of its officers, directors,
15 employees.

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
17 Material in these Actions.

18 2.13 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
21 their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is designated
23 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY.”

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
25 a Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Order cover not only Protected Material (as
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1 defined above), but also (1) any information copied or extracted from Protected Material;
2 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
3 testimony, conversations, or presentations by Parties or their Counsel that reveal
4 Protected Material.

5 Any use of Protected Material at trial shall be governed by the orders of the trial
6 judge. This Order does not govern the use of Protected Material at trial.

7 **4. DESIGNATING PROTECTED MATERIAL**

8 **4.1 Designating Material for Protection.** Each Party or Non-Party that
9 designates information or items for protection under this Order must take care to limit
10 any such designation to specific material that qualifies under the appropriate standards.
11 The Designating Party must designate for protection only those parts of material,
12 documents, items, or oral or written communications that qualify so that other portions of
13 the material, documents, items, or communications for which protection is not warranted
14 are not swept unjustifiably within the ambit of this Order.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 **4.2 Manner and Timing of Designations.** Except as otherwise provided in this
19 Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that
20 qualifies for protection under this Order must be clearly so designated before or at the
21 time the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) A Party or Third Party may designate discovery material as Protected
24 Material in the following manner:

25 i. **TIFF Documents:** In the case of documents or other materials
26 (apart from depositions or other pre-trial testimony), by affixing the appropriate legend to
27 each page of the document.
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1 ii. **Native Documents:** With respect to documents produced in
2 native format, by including the designation in the file name.

3 iii. **Non-Written Materials.** In the case of non-text Protected
4 Material (e.g., videotape, audio tape, computer disk), by labeling the outside of the
5 material with the designation.
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7 (b) A Party or Non-Party that makes original documents available for
8 inspection need not designate them for protection until after the inspecting Party has
9 indicated which documents it would like copied and produced. During the inspection and
10 before the designation, all of the material made available for inspection shall be deemed
11 “HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY.” After the inspecting Party
12 has identified the documents it wants copied and produced, the Producing Party must
13 determine which documents, or portions thereof, qualify for protection under this Order.
14 Then, before producing the specified documents, the Producing Party must affix the
15 “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY”
16 designation to each page that contains Protected Material. If only a portion or portions of
17 the material on a page qualifies for protection, the Producing Party also must clearly
18 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

19 (c) For testimony given in depositions, the Designating Party may
20 identify the Disclosure or Discovery Material on the record, including exhibits before the
21 close of the deposition. Upon such designation by counsel, the reporter of the deposition
22 shall place the designated testimony and exhibits in a separate volume marked
23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY.”
24 Alternatively, counsel may designate a deposition or portion thereof as CONFIDENTIAL
25 or HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY by designating those
26 portions of the transcript by page and line within twenty days of receipt of the transcript
27 and by so informing the other Party of that designation. During the twenty-day period,
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1 the entire transcript shall be treated as CONFIDENTIAL or HIGHLY CONFIDENTIAL-
2 ATTORNEYS EYES ONLY, as applicable.

3 **4.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure
4 to designate qualified information or items does not, standing alone, waive the
5 Designating Party's right to secure protection under this Order for such material. Upon
6 timely correction of a designation, the Receiving Party must make reasonable efforts to
7 assure that the material is treated in accordance with the provisions of this Order. If the
8 Receiving Party has disclosed the materials before receiving the corrected designation,
9 the Receiving Party must notify the Designating Party in writing of each such disclosure.

10 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 **5.1 Timing of Challenges.** A Party shall not be obligated to challenge the
12 propriety of a CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS EYES
13 ONLY material designation at the time made, and failure to do so shall not preclude a
14 subsequent challenge thereto.

15 **5.2 Challenge Process:** In the event that any Party to this litigation disagrees at
16 any stage of these proceedings with such designation, such Party shall provide to the
17 Producing Party written notice of its disagreement with the designation. The Parties shall
18 first try to resolve such a dispute in good faith. If the dispute cannot be resolved, the
19 Designating Party shall have 15 business days to either seek a protective order from the
20 Court confirming the designation, or withdraw the challenged designation. The Parties
21 acknowledge and agree that this challenge procedure shall not be used to gain any unfair
22 tactical advantage in this case, such as through burdening a producing party with
23 unnecessary voluminous challenges. Any disputes in this regard shall, after the required
24 good faith meet-and-confer, be presented to the Court under the Court's procedure for
25 discovery disputes.

26 **5.3** The burden of proving that information has been properly designated as
27 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY is on the
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1 Producing Party. Protected Material designated CONFIDENTIAL and/or HIGHLY
2 CONFIDENTIAL-ATTORNEYS EYES ONLY shall continue to be treated as such
3 unless and until ordered otherwise by the Court.

4 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 **6.1 Basic Principles.** A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with these
7 Actions only for prosecuting, defending, or attempting to settle these Actions. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When an Action(s) has been terminated, a Receiving
10 Party must comply with the provisions of section 11 below (FINAL DISPOSITION).
11 Protected Material must be stored and maintained by a Receiving Party at a location and
12 in a secure manner that ensures that access is limited to the persons authorized under this
13 Order.

14 **6.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise
15 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
16 may disclose any information or item designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party;

18 (b) the Receiving Party's Outside Counsel of Record in these Actions, as
19 well as employees of said Outside Counsel of Record to whom it is reasonably necessary
20 to disclose the information for these Actions;

21 (c) Members of the in-house legal departments for the Parties or their
22 parents or affiliates, including their paralegals, investigative, technical, secretarial, and
23 clerical personnel who are engaged in assisting them in this litigation;

24 (d) the officers, directors, and employees (including In-House Counsel) of
25 the Receiving Party to whom disclosure is reasonably necessary for these Actions;

26 (e) Experts (as defined in this Order) of the Receiving Party to whom
27 disclosure is reasonably necessary for these Actions and who have signed the
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1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (f) the Court and its personnel;

3 (g) court reporters and their staff;

4 (h) professional jury or trial consultants, mock jurors, and Professional

5 Vendors to whom disclosure is reasonably necessary for these Actions and who have
6 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (i) the author or recipient of a document containing the information or a
8 custodian or other person who otherwise possessed or knew the information;

9 (j) during their depositions, witnesses, and attorneys for witnesses, in any
10 of these Actions to whom disclosure is reasonably necessary provided: (1) the deposing
11 Party requests that the witness sign the form attached as Exhibit A hereto; and (2) they
12 will not be permitted to keep any confidential information unless they sign the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by
14 the Designating Party or ordered by the Court. Pages of transcribed deposition testimony
15 or exhibits to depositions that reveal Protected Material may be separately bound by the
16 court reporter and may not be disclosed to anyone except as permitted under this
17 Protective Order; and

18 (k) any mediator or settlement officer, and their supporting personnel,
19 mutually agreed upon by any of the Parties engaged in settlement discussions.

20 **6.3 Disclosure of HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY**

21 **Information or Items:** Unless otherwise ordered by the Court or permitted in writing by
22 the Designating Party, a Receiving Party may disclose any information or item
23 designated “HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY” only to the
24 persons listed in subsections 6.2(b), and 6.2 (e) through (k).

25 **6.4 Use in Court.** Unless otherwise permitted by statute, rule or prior Court order,
26 papers filed with the Court under seal shall be accompanied by a contemporaneous
27 motion for leave to file those documents under seal, and shall be filed consistent with the
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1 Court's electronic filing procedures in accordance with Local Rule 10-5(b).
2 Notwithstanding any agreement among the parties, the party seeking to file a paper under
3 seal bears the burden of overcoming the presumption in favor of public access to papers
4 filed in court. *Kamakana v. City and County of Honolulu*, 447 F.2d 1172 (9th Cir. 2006).

5 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
6 **IN OTHER LITIGATION**

7 If any Party receiving documents or information covered by this Order is
8 subpoenaed in another action or proceeding, or served with a document demand, and
9 such subpoena or document demand seeks material which was produced or designated as
10 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY by the
11 other Party, the Party receiving the subpoena or document demand shall give prompt
12 written notice to counsel for the Designating Party and shall, to the extent permitted by
13 law, withhold production of the subpoenaed material until any dispute relating to the
14 production of such material is resolved. The Party to whom the subpoena or document
15 demand is directed shall not take any position concerning the propriety of such subpoena
16 or document demand or the discoverability of the information sought that is adverse to
17 the Designating Party should the Designating Party oppose the request for production of
18 such documents or information. This Order is not intended to affect a Party's obligation
19 to respond to an order from a court of competent jurisdiction compelling a production of
20 documents subject to this Order.

21 **8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
22 **PRODUCED IN THIS LITIGATION**

23 (a) The terms of this Order are applicable to information produced by a
24 Non-Party in these Actions and designated as "CONFIDENTIAL" and/or "HIGHLY
25 CONFIDENTIAL-ATTORNEYS EYES ONLY." Such information produced by Non-
26 Parties in connection with this litigation is protected by the remedies and relief provided
27 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
28 from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is subject
3 to an agreement with the Non-Party not to produce the Non-Party's confidential
4 information, then the Party shall:

5 (1) promptly notify in writing the Requesting Party and the Non-
6 Party that some or all of the information requested is subject to a confidentiality
7 agreement with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated
9 Protective Order in these Actions, the relevant discovery request(s), and a reasonably
10 specific description of the information requested; and

11 (3) make the information requested available for inspection by the
12 Non-Party, if requested.

13 (c) If the Non-Party fails to seek a protective order from this court within
14 14 days of receiving the notice and accompanying information, the Receiving Party may
15 produce the Non-Party's confidential information responsive to the discovery request. If
16 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
17 information in its possession or control that is subject to the confidentiality agreement
18 with the Non-Party before a determination by the Court. Absent a court order to the
19 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
20 Court of its Protected Material.

21 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Protective Order, the Receiving Party must immediately (a) notify in writing the
25 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
26 unauthorized copies of the Protected Material, and (c) inform the person or persons to
27 whom unauthorized disclosures were made of all the terms of this Order.

1 **10. MISCELLANEOUS**

2 10.1 **Right to Further Relief.** Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 10.2 **Right to Assert Other Objections.** By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to disclosing
6 or producing any information or item on any ground not addressed in this Stipulated
7 Protective Order. Similarly, no Party waives any right to object on any ground to use in
8 evidence of any of the material covered by this Protective Order.

9 10.3 Nothing in this Protective Order shall limit any Producing Party's use of its
10 own documents or shall prevent any Producing Party from disclosing its own confidential
11 information to any person. Such disclosures shall not affect any confidential designation
12 made pursuant to the terms of this Order so long as the disclosure is made in a manner
13 which is reasonably calculated to maintain the confidentiality of the information.
14 Nothing in this Order shall prevent or otherwise restrict counsel from rendering advice to
15 their clients, and in the course thereof, relying on examination of documents designated
16 CONFIDENTIAL and/or HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY.

17 10.4 Transmission by email to a Party's/Non-Party's Outside Counsel is
18 acceptable for all notification purposes within this Order. A Non-Party may designate an
19 alternative representative for notification purposes if it is not represented by counsel.

20 **11. TERMINATION OF THESE ACTIONS AND CONTINUING OBLIGATIONS**

21 Within sixty (60) days after final conclusion of all aspects of this action, including
22 any appeals, any Party and all persons who received (or tendered to any other person)
23 documents or materials designated for CONFIDENTIAL or HIGHLY
24 CONFIDENTIAL-ATTORNEYS EYES ONLY treatment (or any copy thereof) must, (i)
25 return such documents and materials to the Producing Party or (ii) certify in writing to
26 counsel to the Producing Party that the Receiving Party or such person(s) has destroyed
27 these documents and materials and the portions of all other material containing such
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1 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY
2 information.

3 Notwithstanding these provisions, Outside Counsel shall be permitted to retain
4 copies of court filings, papers served in connection with this action, transcripts (including
5 deposition transcripts), exhibits containing or reflecting CONFIDENTIAL or HIGHLY
6 CONFIDENTIAL-ATTORNEYS EYES ONLY documents or materials. Counsel for
7 each party shall use reasonable efforts to review and/or destroy any or all emails and
8 electronic documents that may contain CONFIDENTIAL or HIGHLY
9 CONFIDENTIAL-ATTORNEYS EYES ONLY information. Counsel shall not be
10 required to destroy or remove from any e-mails or electronic documents work product
11 any summaries or references to CONFIDENTIAL or HIGHLY CONFIDENTIAL-
12 ATTORNEYS EYES ONLY information provided such work product does not contain
13 actual copies (whole or excerpted) or attachments constituting the actual
14 CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY
15 information. Instead, counsel is required to maintain such CONFIDENTIAL or
16 HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY documents or materials in
17 confidence and consistent with the terms of this Protective Order.

18 This Order shall survive the final termination of this litigation with respect to any such
19 retained CONFIDENTIAL or HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY
20 materials. This Court retains and shall have continuing jurisdictions over the Parties and
21 recipients of material designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL-
22 ATTORNEYS EYES ONLY for enforcement of the provisions of this Order following
23 termination of this litigation.

24 So ORDERED and SIGNED this 28th day of April, 2016

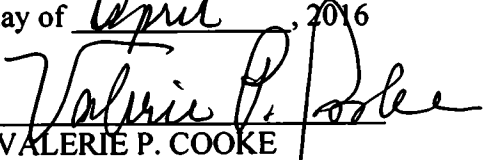
25 
26 VALERIE P. COOKE
27 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued by
6 the United States District Court for the Central District of California on
7 _____ in the case of *Cheryl A. Tinder-Howell v. Union Pacific*
8 *Railroad Company*, 3:15-cv-00317-LRH-(VPC) (consolidated with 3:15-cv-00478). I
9 agree to comply with and to be bound by all the terms of this Stipulated Protective Order
10 and I understand and acknowledge that failure to so comply could expose me to sanctions
11 and punishment in the nature of contempt. I solemnly promise that I will not disclose in
12 any manner any information or item that is subject to this Stipulated Protective Order to
13 any person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for
15 the Central District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of these
17 actions.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 Signature: _____

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