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[Exempt from fees pursuant to
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VENTURA SUPERIOR COURT
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7 ATTORNEYS FOR PLAINTIFF PEOPLE OF THE STATE OF
CALIFORNIA EX REL. REGIONAL WATER QUALITY
8 CONTROL BOARD, LOS ANGELES REGION

9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF VENTURA**

12 **PEOPLE OF THE STATE OF CALIFORNIA EX**
REL. REGIONAL WATER QUALITY CONTROL
13 **BOARD, LOS ANGELES REGION,**

14 **PLAINTIFF,**

15 v.

16 **THE BOEING COMPANY,**

17
18 **DEFENDANT.**

Case No. 56-2010-00371686-CU-
MC-SIM

**AMENDED AND RESTATED
CONSENT JUDGMENT
PURSUANT TO STIPULATION
OF THE PARTIES; [PROPOSED]
ORDER (Wat. Code, Division 7,
Chapter 5.5.)**

Judge: Hon. Tari L. Cody
Courtroom: 20

20
21 This Amended and Restated Consent Judgment ("Consent Judgment") supersedes the
22 consent judgment entered in the above-captioned case on June 2, 2010 ("2010 Consent
23 Judgment") and is entered into by Plaintiff the PEOPLE OF THE STATE OF CALIFORNIA, ex
24 rel. REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION
25 (Regional Board), and Defendant The Boeing Company (Boeing). For purposes of this Consent
26 Judgment, the Regional Board and Boeing shall be referred to collectively as the "Parties," and
27 individually as "Party."
28

1 **INTRODUCTION**

2 This Consent Judgment relates to Boeing’s failure to comply with the terms of its National
3 Pollutant Discharge Elimination System (NPDES) Permit No. CA0001309 at its Santa Susana
4 Field Laboratory. As set forth in the Complaint filed concurrently with the 2010 Consent
5 Judgment, the Regional Board alleges that Boeing failed to comply with its NPDES permit by
6 discharging pollutants in excess of the effluent limits set by the terms of the NPDES permit into
7 navigable waters of the United States, in violation of Water Code sections 13376 and 13385.
8

9 The Parties engaged in extended settlement negotiations prior to the initiation of litigation.
10 In these negotiations, the Regional Board was represented by the Attorney General of the State of
11 California. Boeing was represented by Paul Hastings, Janofsky & Walker LLP.
12

13 The Parties agreed to settle this matter without litigation pursuant to the terms in the 2010
14 Consent Judgment. The Regional Board filed a Complaint simultaneously with the lodging of the
15 2010 Consent Judgment. The Parties entered into the 2010 Consent Judgment pursuant to a
16 compromise and settlement of the allegations in the Complaint.

17 Pursuant to the 2010 Consent Judgment, Boeing paid a civil penalty of \$200,000.
18 Additionally, the 2010 Consent Judgment required that Boeing fund a Supplemental
19 Environmental Project (“SEP”) in the amount of \$300,000 to assist in the development of a Los
20 Angeles Region Watershed Modeling Project and an optimal set of Best Management Practices
21 that stormwater management agencies can use to achieve reductions in stormwater runoff
22 volumes and related pollutant loading. These obligations, which are reflected in Sections 4 and 5
23 herein, have been completed by Boeing.
24

25 Boeing also agreed in the 2010 Consent Judgment to the imposition of stipulated penalties
26 for future violations of Boeing’s NPDES permit from the period of January 1, 2010 through
27 December 31, 2014. The amendments in this Consent Judgment extend the period for the
28

1 imposition of stipulated penalties for future violations of Boeing's NPDES Permit through
2 December 31, 2016 and extend the expiration date of the Consent Judgment to June 30, 2017.

3 The amendments are reflected in modifications to Sections 6 and 25 herein.

4 This Consent Judgment also adds a new Section 27 regarding public notice and comment of
5 the Consent Judgment prior to entry by the Court.

6 The Parties believe that the resolution embodied in the 2010 Consent Judgment and this
7 Consent Judgment is reasonable, fulfills the Regional Board's enforcement objectives, and that
8 entry of this Consent Judgment is fair and in the best interest of the public.

9 The Parties, after opportunity for review by counsel, therefore stipulate and consent to the
10 entry of this Consent Judgment as set forth below.

11
12
13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

14 **CONSENT JUDGMENT PURSUANT TO STIPULATION**

15 **1. DEFINITIONS**

16 Except where otherwise expressly defined in this Consent Judgment, all terms shall be
17 interpreted consistent with Chapter 5.5 of the Porter-Cologne Water Quality Control Act, Water
18 Code sections 13370 et seq. and the regulations promulgated under the Federal Water Pollution
19 Control Act, 40 C.F.R. 100 et seq.

20 **2. COMPLAINT**

21 The Complaint in this action alleges that Boeing violated provisions of Chapter 5.5 of
22 Division 7 of the Water Code and the regulations applying thereto.

23 **3. JURISDICTION AND VENUE**

24 The Parties agree that the Superior Court of California, County of Ventura, has subject
25 matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties
26 to this Consent Judgment, and that the Superior Court for the County of Ventura is the proper
27 venue of this action.

1 **4. PAYMENT OF CIVIL PENALTIES AND INVESTIGATION AND**
2 **ENFORCEMENT COSTS**

3 **4.1 Total Penalties**

4 On entry of this Consent Judgment, Boeing shall be liable for a total of five hundred
5 thousand dollars (\$500,000) in civil penalties.

6 **4.2 Civil Penalty Payment**

7 Within sixty (60) days of entry of this Consent Judgment, Boeing shall pay a civil penalty
8 of two hundred thousand dollars (\$200,000), with a check payable to the State Water Pollution
9 Cleanup and Abatement Account. If Boeing fails to make payment of this amount within sixty
10 (60) days, Boeing shall pay a stipulated penalty of one thousand dollars (\$1,000) for each day
11 payment is overdue.

12 Boeing shall deliver these payments to:

13 State Water Resources Control Board
14 ATTENTION: ACL PAYMENT
15 Division of Administrative Services, Accounting Branch
16 1001 I Street, 18th Floor, [95814]
17 P.O. Box 1888
18 Sacramento, California 95812-1888

19 With a copy of the payments to:

20 Regional Water Quality Control Board, Los Angeles Region
21 ATTENTION: HUGH MARLEY
22 320 West Fourth Street, Suite 200
23 Los Angeles, California 90013

24 **4.3 Suspended Penalties and Supplemental Environmental Project (SEP)**

25 **4.3.a SEP Funding**

26 Additional penalties in the amount of three hundred thousand dollars (\$300,000) shall be
27 suspended. These suspended penalties (“Suspended Civil Liability”) shall be deemed satisfied
28 once Boeing funds a SEP in the amount of three hundred thousand dollars (\$300,000) and the

1 SEP is completed by the Southern California Coastal Waters Research Project (SCCWRP) in
2 accordance with the SEP Workplan, attached hereto as Exhibit A.

3 Within sixty (60) days of entry of this Consent Judgment, Boeing shall deliver \$300,000 to:
4 Southern California Coastal Waters Research Project
5 3535 Harbor Blvd, Suite 110
6 Costa Mesa, CA 92626
7 Attention: Steve Weisberg

8 If Boeing fails to make payment to SCCWRP of this amount within sixty (60) days of entry
9 of this Consent Judgment, then Boeing shall provide such payment to the Regional Board with a
10 check payable to the State Water Pollution Cleanup and Abatement Account delivered to the
11 Regional Board as set forth in Section 4.2 above. The Regional Board shall seek the payment by
12 serving and filing a regularly noticed motion in accordance with Code of Civil Procedure section
13 1005 (“Enforcement Motion”) pursuant to Sections 4.5. and 7.1. If the Court grants such motion,
14 Boeing shall pay the Regional Board an additional one thousand dollars (\$1,000) for each day the
15 payment is overdue with a check payable to the State Water Pollution Cleanup and Abatement
16 Account delivered to the Regional Board as set forth in Section 4.2 above. Additional provisions
17 regarding the SEP are set forth in Section 5 below.

18
19 **4.3.b SCCWRP**

20 SCCWRP is a joint-powers agency formed in 1969 to conduct research on the coastal
21 ecosystems of Southern California, from watersheds to the ocean. SCCWRP was formed by
22 fourteen agencies, including municipalities that discharge treated wastewater to the ocean and the
23 regulators that oversee them. Through impartial research overseen by the SCCWRP Commission
24 (comprised of the top executives of member agencies), SCCWRP seeks to enhance the scientific
25 understanding of linkages among human activities, natural events, and the health of the Southern
26 California coastal environment; to communicate this understanding to decision makers and other
27

1 stakeholders; and to suggest strategies for protecting the coastal environment for this and future
2 generations.

3 **4.3.c SEP Description**

4 The SEP will assist in the development, by SCCWRP, of a Los Angeles Region Watershed
5 Modeling Project and an optimal set of Best Management Practices (BMPs) that decision makers
6 in stormwater management agencies may use to achieve reductions in stormwater runoff volumes
7 and pollutant loads throughout the Los Angeles Region. One goal of the SEP is to develop the
8 information needed to develop a Los Angeles Region Watershed Modeling Project that will be
9 valuable to decision makers in the Los Angeles Region.
10

11 The SEP will consist of the building of a watershed modeling system, analyzing BMP
12 designs, and reporting. The SEP and its specific milestones (“Milestone Requirements”) are
13 described further in the SEP Workplan.
14

15 **4.4 Attorney Fees, Staff Investigation Costs, and SEP Oversight Costs**

16 Within sixty (60) days of entry of this Consent Judgment, Boeing shall pay seventy-five
17 thousand five hundred dollars (\$75,500) for attorneys’ fees and staff investigation costs and SEP
18 oversight costs, delivered as set forth in Section 4.2 above and with a check payable to the State
19 Water Pollution Cleanup and Abatement Account. If Boeing fails to make payment of this
20 amount within sixty (60) days, Boeing shall pay a stipulated penalty of one thousand dollars
21 (\$1,000) for each day payment is overdue with a check payable to the State Water Pollution
22 Cleanup and Abatement Account delivered to the Regional Board as set forth in Section 4.2
23 above.
24

25 **4.5 Disputes Pertaining to Payment of Penalties**

26 Should any disagreement arise pertaining to Boeing’s failure to pay civil penalties,
27 attorneys fees, staff investigation costs, SEP oversight costs, or SEP funding, the Regional Board
28

1 may move the Court to award such payment(s) by serving and filing a regularly noticed motion in
2 accordance with Code of Civil Procedure section 1005 (“Enforcement Motion”). Boeing may file
3 an opposition, and the Regional Board may file a reply. At least ten days before filing an
4 Enforcement Motion, the Regional Board must meet and confer in good faith with Boeing to
5 attempt to resolve the dispute without judicial intervention. The court retains, in addition to the
6 above-described enforcement procedures, its power to enforce the Consent Judgment through
7 contempt.
8

9 **5. SEP OBLIGATIONS**

10 SCCWRP has agreed by letter, attached hereto as Exhibit B, that SCCWRP shall upon its
11 acceptance of the \$300,000, be obligated to implement and complete the Project as set forth in the
12 SEP workplan, among other obligations set forth in Exhibit B.
13

14 **5.1 Submittal of Progress Reports**

15 Boeing shall submit to the Designated Regional Board Representative, who shall be Paula
16 Rasmussen, or her designated replacement to receive notice under Section 9 below, quarterly
17 reports of progress of the SEP, including (a) SCCWRP’s implementation of, and compliance
18 with, the SEP Milestone Requirements and (b) SCCWRP’s expenditures on the SEP to date.
19 SCCWRP may submit these quarterly reports on Boeing’s behalf. The first quarterly report, for
20 the fourth quarter of 2010, shall be due no later than February 1, 2011. The subsequent quarterly
21 reports shall be due no later than the first day of May, August, November, and February of each
22 year.
23

24 If Boeing, or SCCWRP on Boeing’s behalf, fails to submit a quarterly report on or before
25 the due date and Boeing or SCCWRP has not previously obtained an extension of time in which
26 to submit the report from the Designated Regional Board Representative, Boeing shall pay an
27 additional stipulated penalty of one hundred dollars (\$100.00) per day that the Final Report is
28

1 overdue with a check payable to the State Water Pollution Cleanup and Abatement Account
2 delivered to the Regional Board as set forth in Section 4.2 above.

3 **5.2 Audits and Certification of Environmental Project**

4 **5.2.a Certification of Expenditures.**

5 On or before March 31, 2013, or a later revised date set by the Regional Board on its own
6 motion or upon a showing of good cause for delay by Boeing and/or the Southern California
7 Coastal Waters Research Project (SCCWRP) (“SEP Completion Date”), Boeing shall submit a
8 certified statement documenting the expenditures by Boeing and SCCWRP during the completion
9 period for the SEP. The expenditures by SCCWRP may be external payments to outside vendors
10 or contractors implementing the SEP. If applicable, the expenditures by SCCWRP may include
11 the costs of internal Environmental Management resources and internal Business Unit resources,
12 provided that such expenditures are directly related to development and implementation of the
13 SEP. In making such certification, the official may rely upon normal company project tracking
14 systems that capture employee time expenditures and external payments to outside vendors such
15 as environmental and information technology contractors or consultants. The Certification of
16 Expenditures need not address any costs incurred by the Regional Board for oversight. SCCWRP
17 may submit the Certification of Expenditures on Boeing’s behalf.

18 If Boeing, or SCCWRP on Boeing’s behalf, fails to submit a Certification of Expenditures
19 on or before the SEP Completion Date, Boeing shall pay an additional stipulated penalty of one
20 hundred dollars (\$100.00) per day that the Final Report is overdue with a check payable to the
21 State Water Pollution Cleanup and Abatement Account delivered to the Regional Board as set
22 forth in Section 4.2 above.

23 Boeing, and/or SCCWRP on Boeing’s behalf, shall provide, to the best of their ability,
24 any additional information requested by the Regional Board staff which is reasonably necessary
25

1 to verify Boeing's and/or SCCWRP's SEP expenditures.

2 **5.2.b Certification of Performance of Work**

3 On or before the SEP Completion Date, Boeing shall submit a Final Report, under penalty
4 of perjury, stating that the SEP has been completed in accordance with the terms of this Consent
5 Judgment. Such documentation may include photographs, invoices, receipts, certifications, and
6 other materials reasonably necessary for the Regional Board to evaluate the completion of the
7 SEP and the costs incurred by Boeing. SCCWRP may submit the Certification of Performance of
8 Work on Boeing's behalf.
9

10 If Boeing, or SCCWRP on Boeing's behalf, fails to submit this Final Report on or before
11 the SEP Completion Date, Boeing shall pay an additional stipulated penalty of one hundred
12 dollars (\$100.00) per day that the certified statement is overdue with a check payable to the State
13 Water Pollution Cleanup and Abatement Account delivered to the Regional Board as set forth in
14 Section 4.2 above.
15

16 **5.2.c Third Party Audit**

17 If at any time prior to December 31, 2014, the Regional Board obtains information that
18 causes it to reasonably believe that Boeing or SCCWRP has not expended money in the amounts
19 claimed by Boeing, or has not adequately completed any of the work in the SEP Workplan, the
20 Designated Regional Board Representative, at her discretion may require, and Boeing shall
21 submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the
22 Regional Board staff providing such party(ies)'s professional opinion that Boeing and/or
23 SCCWRP has expended money in the amounts claimed by Boeing. Such information shall be
24 provided to the Designated Regional Board Representative within three (3) months of the request
25 by the Designated Regional Board Representative. The audit need not address any costs incurred
26 by the Regional Board for oversight.
27
28

1 If Boeing fails to submit a third party audit within three (3) months of the request, Boeing
2 shall pay an additional stipulated penalty of one hundred dollars (\$100.00) per day that the
3 certified statement is overdue with a check payable to the State Water Pollution Cleanup and
4 Abatement Account delivered to the Regional Board as set forth in Section 4.2 above.

5
6 **5.3 Regional Board Acceptance of Completed SEP**

7 Upon Boeing's satisfaction of its obligations under this Consent Judgment for the
8 completion of the SEP and any audits, and the Regional Board's agreement that Boeing's SEP
9 obligations are complete, the Regional Board shall issue a "Satisfaction of Supplemental
10 Environmental Project." The issuance of this document shall terminate any further obligations of
11 Boeing for the SEP pursuant to this Consent Judgment and satisfy the Suspended Civil Liability.

12
13 **5.4 Failure To Expend All Suspended Civil Liability Funds On The Approved**
14 **SEP**

15 In the event that Boeing is not able to demonstrate to the reasonable satisfaction of the
16 Regional Board that the \$300,000 has been spent to complete the SEP (as described herein and in
17 the SEP Workplan), Boeing shall pay the difference between the Suspended Civil Liability and
18 the amount Boeing can demonstrate was actually spent on the SEP, as a civil liability. A showing
19 in the Section 5.2.a Certification of Expenditures that Boeing has expended \$300,000 to
20 SCCWRP for the SEP and that SCCWRP has expended the \$300,000 to complete the SEP shall
21 constitute a satisfactory demonstration of such expenditure. If Boeing fails to pay the difference,
22 the Regional Board shall use the procedures set forth in Section 7 below to enforce this term.

23
24 **5.5 Failure To Complete The SEP**

25 In the event the SEP is not fully implemented as required by this Consent Judgment or
26 there has been a material failure to satisfy a SEP Milestone Requirement, Boeing shall pay, as a
27 civil liability, the difference between the Suspended Civil Liability and the amount Boeing and/or
28

1 SCCWRP can demonstrate was actually spent on the SEP in meeting one or more SEP Milestone
2 Requirement(s). Such payment shall be made by check payable to the State Water Pollution
3 Cleanup and Abatement Account and delivered to the Regional Board as set forth in Section 4.2
4 above. The Regional Board may enforce this provision by using the procedures set forth in
5 Section 7 below.

6 **5.6 Publicity**

8 Whenever Boeing or its agents or subcontractors or SCCWRP publicizes one or more
9 elements of the SEP, they shall state in a **prominent manner** that the project is being undertaken
10 as part of the settlement of an enforcement action by the Regional Board against Boeing.

11 **6. STIPULATED PENALTIES FOR FUTURE VIOLATIONS**

12 Boeing shall comply with its NPDES Permit. Should Boeing fail to comply with its
13 NPDES Permit, the parties consent to stipulated penalties as described below. These stipulated
14 penalties apply to Boeing's violations of its NPDES Permit(s) from January 1, 2010 through
15 December 31, 2016. Should Boeing violate any NPDES Permit terms after December 31, 2016,
16 the Regional Board shall not be constrained in any way by the terms of this agreement, and may
17 seek to recover any penalties or enforce the terms of the NPDES Permit as permitted by law. For
18 any NPDES permit violation occurring between (and including) January 1, 2010, and December
19 31, 2016 that is not a type of violation subject to stipulated penalties as set forth in section 6.1
20 below, the Regional Board shall not be constrained in any way by the terms of this agreement,
21 and may seek to recover any penalties or enforce the terms of the NPDES Permit as permitted by
22 law. For any NPDES permit violation occurring between (and including) January 1, 2010, and
23 December 31, 2016, that is a type of violation subject to stipulated penalties as set forth in Section
24 6.1 below, Boeing shall be subject to the following stipulated penalties:
25
26
27
28

1 **6.1 Types of Penalties**

2 Boeing shall pay stipulated penalties for: 1) each NPDES permit violation that constitutes
3 a “serious violation” requiring the imposition of mandatory minimum penalties, as defined in
4 Water Code section 13385, subdivision (h), or 2) each permit violation that requires the
5 imposition of mandatory minimum penalties, as defined in Water Code section 13385,
6 subdivision (i). The violations shall be placed in three categories: Group 1 violations (violations
7 involving Group 1 pollutants), Group 2 violations (violations involving Group 2 pollutants), and
8 TCDD (also known as dioxin) violations. Group 1 and 2 pollutants are defined here as they are in
9 the 2002 State Water Resources Control Board’s Water Quality Enforcement Policy, Appendices
10 1 and 2 (a copy of which is attached hereto as Exhibit C). However, the following constituents
11 shall be included in the Group 1 pollutants category: 1) Temperature; 2) pH; 3) Settleable solids;
12 4) Turbidity; and, 5) Conductivity. In addition, TCDD violations shall not be considered to be
13 either Group 1 or Group 2 violations.
14
15

16 **6.2 Civil Penalties for Each Group 1 Violation Occurring Between January 1,**
17 **2010, and December 31, 2016**

18 Boeing shall be automatically penalized for Group 1 NPDES violations occurring between
19 January 1, 2010, and December 31, 2016. The amount of the penalty for each violation shall
20 vary, depending on the number of prior violations during that time period. The first through fifth
21 violations of Group 1 pollutants shall result in a penalty of three thousand dollars (\$3,000) per
22 violation. The sixth through tenth violations of Group 1 pollutants shall result in a penalty of
23 three thousand three hundred dollars (\$3,300) per violation. The eleventh through fifteenth
24 violations of Group 1 pollutants shall result in a penalty of four thousand dollars (\$4,000) per
25 violation. The sixteenth through twentieth violations of Group 1 pollutants shall result in a
26 penalty of five thousand dollars (\$5,000) per violation. The twenty-first through twenty-fifth
27 violations of Group 1 pollutants shall result in a penalty of seven thousand dollars (\$7,000) per
28

1 violation. The twenty-sixth violation, and any violation of Group 1 pollutants thereafter, shall
2 result in a penalty of ten thousand dollars (\$10,000) per violation. The amount of the penalty per
3 violation for each violation of Group 1 pollutants is also set forth in Exhibit D attached hereto.

4 **6.3 Civil Penalties for Each Group 2 Violation Occurring Between January 1,**
5 **2010, and December 31, 2016**

6 Boeing shall be automatically penalized for Group 2 NPDES violations occurring between
7 January 1, 2010, and December 31, 2016. The amount of the penalty for each violation shall
8 vary, depending on the number of prior violations during that time period. The first through fifth
9 violations of Group 2 pollutants shall result in a penalty of five thousand dollars (\$5000) per
10 violation. The sixth through tenth violations of Group 2 pollutants shall result in a penalty of five
11 thousand five hundred dollars (\$5,500) per violation. The eleventh through fifteenth violations of
12 Group 2 pollutants shall result in a penalty of six thousand two hundred fifty dollars (\$6,250) per
13 violation. The sixteenth through twentieth violations of Group 2 pollutants shall result in a
14 penalty of seven thousand five hundred dollars (\$7,500) per violation. The twenty-first through
15 twenty-fifth violations of Group 2 pollutants shall result in a penalty of nine thousand dollars
16 (\$9,000) per violation. The twenty-sixth through thirtieth violations of Group 2 pollutants shall
17 result in a penalty of eleven thousand five hundred dollars (\$11,500) per violation. The thirty-
18 first violation, and any violation of Group 2 pollutants thereafter, shall result in a penalty of
19 fifteen thousand dollars (\$15,000) per violation. The amount of the penalty per violation for
20 each violation of Group 2 pollutants is also set forth in Exhibit E attached hereto.

21 **6.4 Civil Penalties for Each TCDD Violation Occurring Between January 1, 2010,**
22 **and December 31, 2016**

23 Boeing shall be automatically penalized for TCDD NPDES violations occurring between
24 January 1, 2010, and December 31, 2016. The amount of the penalty for each violation shall be a
25

1 total of seven thousand dollars (\$7,000) per violation. Violations pertaining to TCDD shall not be
2 exempt from stipulated penalties by Water Code section 13385 subdivision (j)(1)(B).

3 **6.5 Determination of Violations**

4 Boeing shall continue to monitor and report each violation of Group 1 pollutants, Group 2
5 pollutants, and TCDD, as it is required to do under its current NPDES permit and under any other
6 permit(s) under which it operates from January 1, 2010, to December 31, 2016. If Boeing fails to
7 monitor or report as required by its permit(s), then the Regional Board retains the right to enforce
8 against Boeing for those violations to the full extent the law permits.

10 **6.6 Time for Payment and Form of Payment of Stipulated Penalties**

11 Boeing shall pay to the Regional Board the amount of money owed based on the self-
12 reported violations that meet the mandatory minimum penalty definition stated above within sixty
13 (60) days of reporting the violations with a check payable to the State Water Pollution Cleanup
14 and Abatement Account delivered to the State Water Resources Control Board (State Board),
15 with a copy to the Regional Board, as set forth in Section 4.2 above. If any stipulated penalty is
16 not paid within sixty (60) days of reporting the exceedances, Boeing shall pay an additional
17 stipulated penalty of one hundred dollars (\$100.00) per day that the money is overdue with a
18 check payable to the State Water Pollution Cleanup and Abatement Account delivered to the
19 State Board, with a copy to the Regional Board as set forth in Section 4.2 above.

22 **6.7 Additional Penalties for Each Violation**

23 The Regional Board may move the court to award penalties in excess of the stipulated
24 penalty amounts listed above, up to the limit allowed by law, by filing and serving a regularly
25 noticed motion in accordance with Code of Civil Procedure section 1005 (“Enforcement
26 Motion”) within 180 days after Boeing has paid stipulated penalties for the violation at issue.
27 These excess penalties may be sought only where: 1) the permit violations are the result of
28

1 intentional or willful misconduct by Boeing, or 2) where the penalty provided for above does not
2 recover Boeing's economic benefits from its failure to adequately operate or maintain existing
3 stormwater management equipment or Best Management Practices (BMPs), which failure causes
4 or contributes to the violation. In evaluating such economic benefits, the Regional Board shall
5 evaluate Boeing's reduced remediation costs, reduced BMP costs, and other costs saved from its
6 failure to adequately operate or maintain existing stormwater management equipment or BMPs.
7 Boeing may file an opposition, and the Regional Board may file a reply. At least ten days before
8 filing an Enforcement Motion, the Regional Board must meet and confer in good faith with
9 Boeing to attempt to resolve the demand for additional penalties in excess of the agreed-to
10 minimum penalty without judicial intervention. The court retains, in addition to the above-
11 described enforcement procedures, its power to enforce the Consent Judgment through contempt.

14 **6.8 Disputes Pertaining to Boeing's Failure to Pay Stipulated Penalties**

15 Should any disagreement arise pertaining to Boeing's failure to pay a stipulated penalty,
16 or any monies owed under this Judgment, or should Boeing disagree with any stipulated penalty
17 amount it has paid or contend that it should not have paid for a reported violation, either party
18 may move the court for a resolution of the matter by filing and serving a regularly noticed motion
19 in accordance with Code of Civil Procedure section 1005 ("Enforcement Motion"). Either party
20 may file an opposition to the motion, and the moving party may file a reply. At least ten days
21 before filing an Enforcement Motion, the moving party must meet and confer in good faith with
22 the other party to attempt to resolve the dispute without judicial intervention. The court retains,
23 in addition to the above-described enforcement procedures, its power to enforce the Consent
24 Judgment through contempt.

1 **7. ENFORCEMENT AND PENALTIES**

2 **7.1. Procedure**

3 The Regional Board may move this Court to enforce any provision of this Consent
4 Judgment and to award other appropriate relief, including penalties as provided in Sections 7.2.,
5 by serving and filing a regularly noticed motion in accordance with Code of Civil Procedure
6 section 1005 (“Enforcement Motion”). Boeing may file an opposition, and the Regional Board
7 may file a reply, both also in accordance with Code of Civil Procedure section 1005. At least ten
8 (10) business days before filing an Enforcement Motion under this Consent Judgment, the
9 Regional Board must meet and confer with Boeing to attempt to resolve the matter without
10 judicial intervention. To ensure that the “meet and confer” is as productive as possible, the
11 Regional Board will identify, as specifically as the available information allows, the specific
12 instances and dates of non-compliance and the actions that the Regional Board believes Boeing
13 must take to remedy that non-compliance. As a part of this enforcement process, the Court shall
14 have the discretion to allow discovery to take place and/or to allow live testimony of witnesses.

15 **7.2. Remedies and Sanctions**

16 The Court has the authority to impose a reasonable penalty for any violation of this
17 Consent Judgment. Any penalty paid pursuant to this section shall be paid within sixty (60) days
18 of the Court’s order with a check payable to the State Water Pollution Cleanup and Abatement
19 Account delivered to the State Board, with a copy to the Regional Board, as set forth in Section
20 4.2 above. Boeing shall pay an additional penalty of one thousand dollars (\$1000) per day that
21 the money is overdue with a check payable to the State Water Pollution Cleanup and Abatement
22 Account delivered to the State Board, with a copy to the Regional Board, as set forth in Section
23 4.2 above.

24 **8. MATTERS COVERED BY THIS CONSENT JUDGMENT**

25 **8.1** This Consent Judgment is a final and binding resolution and settlement of all
26 “Covered Matters.” “Covered Matters” include all claims, violations or causes of action alleged
27 by the Regional Board in the Complaint, and of all claims, violations or causes of action which
28

1 could have been asserted by the Regional Board against Boeing, based on the facts that are the
2 subject of the Complaint and reports sent by Boeing to the Regional Board pertaining to all
3 exceedances of its NPDES permit up to and including exceedances on December 31, 2009.

4 **8.2** The Parties reserve the right to pursue any claim that is not a Covered Matter
5 (“Reserved Claim”) and to defend against any Reserved Claim. Any claims, violations or causes
6 of action that constitute a Reserved Claim are not resolved, settled or covered by this Consent
7 Judgment.

8 **8.3** Boeing and its officers, employees, representatives, agents or attorneys covenant not
9 to sue or pursue any civil or administrative claims against the Regional Board or other
10 departments or agencies of the State of California, or their officers, employees, representatives,
11 agents or attorneys arising out of or related to Covered Matters, except for the purpose of
12 enforcing Plaintiff’s obligations under this Consent Judgment.

13 **8.4** In any subsequent action that may be brought by the Regional Board based on any
14 Reserved Claims, Boeing agrees that it will not assert that failing to pursue the Reserved Claims
15 as part of this action constitutes claim-splitting, laches or is otherwise inequitable. This
16 Paragraph does not prohibit Boeing from asserting any statute of limitations that may be
17 applicable to any Reserved Claims.

18 **8.5** Boeing hereby specifically reserves any rights, and by this settlement does not waive
19 its rights, to challenge any permit, permit condition, or Regional Board action not otherwise
20 resolved pursuant to this settlement, including but not limited to administrative and/or judicial
21 challenges to the conditions set forth in any NPDES permit or other Order issued to Boeing for
22 the Santa Susana Field Laboratory.

23 **8.6** The provisions of sections 8.1, 8.2, 8.3, and 8.4 are effective on the date of the entry
24 of the Consent Judgment.

25 **8.7** Sections 8.1, 8.2, 8.3 and 8.4 shall not bar the Regional Board’s right to enforce the
26 terms of the Consent Judgment in this or another proceeding.
27

1 construed to relieve Boeing of its obligation to obtain any final written approval required by this
2 Consent Judgment.

3
4 **11. EFFECT OF JUDGMENT**

5 Except as expressly provided in this Consent Judgment, nothing in this Consent Judgment
6 is intended nor shall it be construed to preclude the Regional Board, or any state, county, or local
7 agency, department, board or entity, or any CUPA, from exercising its authority under any law,
8 statute or regulation.

9
10 **12. LIABILITY OF REGIONAL BOARD**

11 The Regional Board shall not be liable for any injury or damage to persons or property
12 resulting from acts or omissions by Boeing, its directors, officers, employees, agents,
13 representatives or contractors in carrying out activities pursuant to this Consent Judgment, nor
14 shall the Regional Board be held as a party to or guarantor of any contract entered into by Boeing,
15 its directors, officers, employees, agents, representatives or contractors, in carrying out the
16 requirements of this Consent Judgment.

17
18 **13. NO WAIVER OF RIGHT TO ENFORCE**

19 The failure of the Regional Board to enforce any provision of this Consent Judgment shall
20 neither be deemed a waiver of such provision nor in any way affect the validity of this Consent
21 Judgment. The failure of the Regional Board to enforce any such provision shall not preclude it
22 from later enforcing the same or any other provision of this Consent Judgment. No oral advice,
23 guidance, suggestions or comments by employees or officials of any Party regarding matters
24 covered in this Consent Judgment shall be construed to relieve any Party of its obligations under
25 this Consent Judgment.

26
27 **14. FUTURE REGULATORY CHANGES**

28 Nothing in this Consent Judgment shall excuse Boeing from meeting any more stringent
requirements that may be imposed by changes in the applicable law.

1 **15. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment shall apply to and be binding upon the Regional Board and Boeing,
3 and their employees, agents, successors, and assigns.

4 **16. AUTHORITY TO ENTER CONSENT JUDGMENT**

5 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
6 Party he or she represents to enter into this Consent Judgment, to execute it on behalf of the Party
7 represented and legally to bind that Party.

8 **17. RETENTION OF JURISDICTION**

9 **17.1** The Parties agree that this Court has exclusive jurisdiction to interpret and enforce the
10 Consent Judgment. The Court shall retain continuing jurisdiction to enforce the terms of this
11 Consent Judgment and to address any other matters arising out of or regarding this Consent
12 Judgment. The Parties shall meet and confer prior to the filing of any motion relating to this
13 Consent Judgment, including any Enforcement Motion as contemplated by Paragraphs 4.3, 4.5,
14 6.7, 6.8, and 7.1, and shall negotiate in good faith in an effort to resolve any dispute without
15 judicial intervention.

16 **17.2** This Consent Judgment shall go into effect immediately upon entry thereof. Entry is
17 authorized by Stipulation of the Parties upon filing.

18 **18. NON-DISCHARGEABILITY OF OBLIGATIONS**

19 Boeing agrees that it will not seek to discharge in bankruptcy any payment obligations
20 required by this Consent Judgment.

21 **19. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

22 On reasonable notice and subject to all of the defenses Boeing would have to requests for
23 documents made by subpoena or other formal legal process or discovery, Boeing shall permit any
24 duly authorized representative of the Regional Board to inspect and copy Boeing's records and
25 documents, and to enter and inspect Boeing's facilities to determine the nature and extent of
26 Boeing's compliance with or violation of its NPDES permit. Nothing in this Paragraph is
27 intended to require access to or production of any documents that are protected from production
28

1 or disclosure by the attorney-client privilege, attorney work product doctrine or any other
2 applicable privilege afforded to Boeing under law.

3 **20. PAYMENT OF LITIGATION EXPENSES AND FEES**

4 Boeing shall pay its own attorney fees and costs and all other costs of litigation and
5 investigation incurred to date.

6 **21. INTERPRETATION**

7 This Consent Judgment was drafted equally by all Parties. The Parties agree that the rule of
8 construction holding that ambiguity is construed against the drafting Party shall not apply to the
9 interpretation of this Consent Judgment.

10 **22. COUNTERPART AND FACSIMILE SIGNATURES**

11 This Consent Judgment may be executed by the Parties in counterparts and facsimiles, each
12 of which shall be deemed an original, and all of which, when taken together, shall constitute one
13 and the same document.

14 **23. INTEGRATION**

15 This Consent Judgment constitutes the entire agreement between the Parties and may not be
16 amended or supplemented except as provided for in the Consent Judgment.

17 **24. MODIFICATION OF CONSENT JUDGMENT**

18 This Consent Judgment may be modified only by the Court, or upon written consent by the
19 Parties and the approval of the Court.

20 **25. TERMINATION OF CONSENT JUDGMENT**

21 This Consent Judgment will expire and be of no further effect after June 30, 2017, or after
22 Boeing has reported any and all violations of its NPDES permit through December 31, 2016 and
23 has paid all stipulated penalties resulting from any such violations, whichever comes last.

24 **26. FINAL JUDGMENT**

25 Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment
26 shall constitute a Final Judgment by the Court as to the Parties.

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27. PUBLIC NOTICE AND COMMENT

This Consent Judgment shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 40 C.F.R. § 123.27(d) and the State Board’s Water Quality Enforcement Policy. The Regional Board reserves the right to withdraw or withhold its consent if the comments regarding the Consent Judgment disclose facts or considerations indicating that the Consent Judgment is inappropriate, improper, or inadequate.


STIPULATION AND APPROVALS OF THE PARTIES.

IT IS SO STIPULATED.

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Plaintiff Regional Water Quality Control Board, Los Angeles Region:

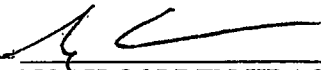
Dated: 10/29, 2014



SAMUEL UNGER
Executive Officer
Regional Water Quality Control Board, Los Angeles
Region

Approved as to form:

Dated: 10/29, 2014



NOAH GOLDEN-KRASNER
Deputy Attorney General for the State of California
Attorneys for Plaintiff
Regional Water Quality Control Board, Los Angeles
Region

1 Defendant The Boeing Company:

2
3 Dated: Nov. 3, 2014


Steven L. Shestak
Director, Enterprise Remediation
Environment, Health & Safety
The Boeing Company

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Dated: Nov. 3, 2014


KATHLEEN H. WONG
Senior Counsel
Office of the General Counsel
The Boeing Company

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Approved as to form:

Dated: 11/3, 2014



PETER H. WEINER
Paul Hastings LLP
Attorney for Defendant
The Boeing Company

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IT IS SO ORDERED, ADJUDGED AND DECREED

Dated: _____, 2014

Hon. Tari L. Cody
Judge of the Superior Court