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8 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

9 SAN DIEGO REGION

10 IN THE MATTER OF TENTATIVE
11 CLEANUP AND ABATEMENT ORDER
NO. R9-2010-0002 (SHIPYARD
12 SEDIMENT CLEANUP)

**NATIONAL STEEL AND SHIPBUILDING
COMPANY'S OBJECTION TO SAN DIEGO
COASTKEEPER'S AND ENVIRONMENTAL
HEALTH COALITION'S EXPERT, NON-
EXPERT WITNESS DISCLOSURE AND
RESERVATION OF RIGHT TO COUNTER-
DESIGNATE EXPERT WITNESSES**

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1 Designated Party National Steel and Shipbuilding Company (“NASSCO”) hereby objects
2 to San Diego Coastkeeper’s (“Coastkeeper”) and Environmental Health Coalition’s (“EHC”)
3 deficient and wholly inadequate Expert and Non-Expert Witness Designations (“Designation”),
4 which leaves NASSCO unable to determine who are the designated experts and the nature and
5 scope of the designated witnesses’ testimony.

6 Pursuant to the Final Discovery Plan, the Designated Parties are required to file expert
7 counter-designations on or before August 2, 2010. See Presiding Officer’s July 16, 2010 Ruling
8 on Cleanup Team’s Motion to Extend Remaining Discovery Deadlines and Related Matters
9 Addressed at Prehearing Conference (stating all expert designations must be made on or before
10 July 19, 2010); Final Discovery Plan, § III.F (expert counter-designations due fifteen (15) days
11 after expert designations). Accordingly, NASSCO expressly reserves its right to counter-
12 designate expert witnesses to Coastkeeper’s and EHC’s ambiguous witnesses designations as the
13 nature and scope of Coastkeeper’s and EHC’s designated witnesses’ testimony becomes clear
14 through deposition (and other forms of discovery) through the close of discovery.

15 **I. COASTKEEPER’S AND EHC’S DESIGNATION IS WHOLLY INADEQUATE**

16 On July 19, 2010, Coastkeeper and EHC filed a simple two-page list designating ten
17 individuals as “expert and non-expert witnesses who may testify in the above-referenced
18 proceeding.” Designation, at 1. In a number of respects, Coastkeeper’s and EHC’s Designation
19 fails to comply with the Final Discovery Plan and Code of Civil Procedure.

20 First, the Designation did not distinguish whether each designated witness would testify
21 as an expert, non-expert, or in both capacities. Designation at 1-2. Not distinguishing between
22 expert and non-expert witnesses wholly precludes NASSCO from being able to evaluate whether
23 it needs to counter-designate expert witnesses in response.

24 Second, even if NASSCO assumed that *all ten designated witnesses* would testify as
25 experts, the Designation was not accompanied by declaration from counsel of record providing
26 the information necessary to allow NASSCO to understand the scope and nature of any potential
27 expert testimony. The required information is set forth in the Code of Civil Procedure, and
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1 includes the expert's qualifications, substance of testimony, whether the expert has agreed to
2 testify in the matter, whether the expert will be sufficiently familiar with the pending matter to
3 submit to deposition, and the expert's fee for testifying. See CCP §§ 2034.010 *et seq.*; §
4 2034.260(c)(specific requirements). Coastkeeper's and EHC's failure to provide the required
5 declaration wholly precludes NASSCO from being able to evaluate whether it needs to counter-
6 designate expert witnesses in response.

7 **II. CONCLUSION**

8 For the reasons set forth above, NASSCO objects to Coastkeeper's and EHC's
9 inadequate Expert and Non-Expert Witness Designations, and NASSCO therefore expressly
10 reserves its right to counter-designate expert witnesses to Coastkeeper's and EHC's witnesses
11 designations as the nature and scope of Coastkeeper's and EHC's designated witnesses'
12 testimony becomes clear through deposition (and other forms of discovery) through the close of
13 discovery.

14
15 Dated: August 2, 2010

LATHAM & WATKINS LLP

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17 By 
18 Kelly E. Richardson
19 Attorneys for Designated Party
20 NATIONAL STEEL AND
21 SHIPBUILDING COMPANY
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1 **PROOF OF SERVICE**

2 I am employed in the County of San Diego, State of California. I am over the age of 18
3 years and not a party to this action. My business address is Latham & Watkins LLP, 600 West
4 Broadway, Suite 1800, San Diego, CA 92101-3375.

5 On **August 2, 2010**, I served the following document described as:

6 **NATIONAL STEEL AND SHIPBUILDING COMPANY'S OBJECTION TO SAN
7 DIEGO COASTKEEPER'S AND ENVIRONMENTAL HEALTH COALITION'S
8 EXPERT, NON-EXPERT WITNESS DISCLOSURE AND RESERVATION OF
9 RIGHT TO COUNTER-DESIGNATE EXPERT WITNESSES**

10 by serving a true copy of the above-described document in the following manner:

11 **BY ELECTRONIC MAIL**

12 Upon written agreement by the parties, the above-described document was transmitted via
13 electronic mail to the parties noted below on **August 2, 2010**.

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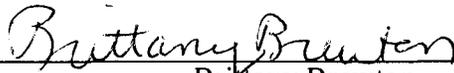
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8 I declare that I am employed in the office of a member of the Bar of, or permitted
9 to practice before, this Court at whose direction the service was made and declare under penalty
10 of perjury under the laws of the State of California that the foregoing is true and correct.

11 Executed on **August 2, 2010**, at San Diego, California.

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