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8 STATE OF CALIFORNIA
9

10 STATE WATER RESOURCES CONTROL BOARD

11 In Re:
12 SAN DIEGO REGIONAL WATER
13 QUALITY CONTROL BOARD
14 REVISED CLEANUP AND
ABATEMENT ORDER REGARDING
CHEVRON SERVICE STATION NO. 9-
15 3417, 32009 CAMINO CAPISTRANO,
SAN JUAN CAPISTRANO,
16 CALIFORNIA

No.

PETITION FOR REVIEW OF REVISED
CLEANUP AND ABATEMENT ORDER NO.
R9-2009-0124 FOR CHEVRON SERVICE
STATION NO. 9-3417, 32009 CAMINO
CAPISTRANO, SAN JUAN CAPISTRANO,
CALIFORNIA; REQUEST FOR ABEYANCE;
AND REQUEST FOR STAY
[T0605902379:bpulver]

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19 This Petition for Review ("Petition"), Request for Abeyance, and Request for Stay is
20 submitted to the State Water Resources Control Board ("State Board") on behalf of Petitioner
21 Chevron U.S.A. Inc. ("Chevron") pursuant to California Water Code Section 13320 and
22 California Code of Regulations, Title 23, Sections 2050, 2050.5(d), and 2053 for review and stay
23 of Revised Cleanup and Abatement Order No. R9-2009-0124 ("Revised CAO") issued by the
24 California Regional Water Quality Control Board, San Diego Region ("Regional Board") on
25 September 28, 2009. Chevron may amend this Petition with further evidence, argument, and
26 authorities as appropriate.

27 I. NAME AND ADDRESS OF PETITIONER

28 Petitioner is Chevron U.S.A. Inc. All correspondence and other written communications

1 regarding this matter should be addressed as follows:

2 1) Natasha Molla
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4 Chevron Environmental Management Company
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8 E-mail: natashamolla@chevron.com

9 With a copy to Petitioner's counsel:

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16 II. ACTION OF THE REGIONAL BOARD BEING PETITIONED

17 The action of the Regional Board being petitioned is the Revised CAO.

18 III. DATE ON WHICH THE REGIONAL BOARD ACTED

19 The Regional Board acted on September 28, 2009, the date on which it issued the
20 Revised CAO.

21 IV. STATEMENT OF FACTS

22 A. Service Station History

23 Since 1972, the property located at 32001¹ Camino Capistrano in San Juan Capistrano
24 (the "Site") has been operated as a Chevron service station.² IRAP at Section 2.1, p. 2. In late
25 1988, gasoline releases from underground storage tanks ("USTs") occurred at the Site (IRAP at
26 Section 2.2, p. 2), and Chevron initiated environmental investigations, including quarterly

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28 ¹ Although the Revised CAO refers to 32009 Camino Capistrano as the street address for the Site (Rev.
29 CAO at p. 1), the correct address is 32001 Camino Capistrano.

30 ² The Revised CAO states that Chevron both owns and operates the service station. Rev. CAO at p. 2.
31 However, Chevron currently only owns it.

1 sampling of groundwater monitoring wells, under the regulatory oversight of the Orange County
2 Local Oversight Program (“OCLOP”). IRAP at Section 2.2, pp. 2-3. In 1990, Chevron
3 upgraded the USTs, excavated and removed approximately 400 tons of hydrocarbon-bearing
4 soil, and removed approximately 1,650 gallons of mixed gasoline and groundwater from the Site.
5 IRAP at Section 2.2, pp. 2-4. In 1996, Chevron installed and operated a soil vapor extraction
6 system that removed additional petroleum constituents. IRAP at Section 2.2, p. 4. The presence
7 of methyl tertiary butyl ether (“MTBE”) was first analyzed in quarterly groundwater monitoring
8 in the second quarter of 1996, and MTBE was detected at that time. IRAP at Section 2.2, p. 3.

9 In 1997, Chevron prepared a request for closure of the Site, citing a number of factors,
10 including that “[p]etroleum hydrocarbons did not pose a danger to public health, safety, or the
11 environment and could be left to degrade through natural processes.” IRAP at Section 2.2, p. 3.
12 The OCLOP responded that Chevron needed to undertake additional assessment prior to closing
13 the Site. IRAP at Section 2.2, p. 3.

14 Under the direction of the OCLOP, Chevron conducted investigations to define the lateral
15 and vertical extent of MTBE in soil and in groundwater onsite and downgradient, which included
16 surveys of potential receptors in the vicinity of the Site. IRAP at Section 2.2, p. 3.

17 During this assessment phase in 2006, Chevron learned that the City had installed six
18 groundwater recovery wells in the area, including the Dance Hall Well approximately 2,000 feet
19 downgradient of the Site, and had begun using groundwater in the aquifer as a drinking water
20 source in late 2004. IRAP at Section 2.2, p. 4, and Section 2.3.1, pp. 4-5. Chevron notified both
21 the OCLOP and the City of this finding. IRAP at Section 2.2, p. 4; **Ex. 1** (Declaration of
22 Natasha Molla (“Molla Decl.”)) at ¶ 5. Up until this time, the MTBE plume had appeared stable
23 based on monitoring data, but the operation of these groundwater recovery wells caused the
24 plume to begin to migrate towards the well field. **Ex. 1** (Molla Decl.) at ¶ 5.

25 Since February 2007, representatives of Chevron have met with representatives of the
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1 City and its consultants on a frequent and regular basis. **Ex. 1** (Molla Decl.) at ¶ 6. In addition,
2 since May 2007, Chevron has provided the Water Advisory Commission ("WAC")³ and the City
3 Council with status updates at many of their regularly scheduled meetings. ***Id.*** In October 2007,
4 the City hired its own consultant, Psomas, to review Chevron's investigations. **Ex. 2** (Feb. 5,
5 2008 City Council Meeting Minutes and Agenda) at 11.

6 B. The Groundwater Recovery Plant

7 In 2004, the Groundwater Recovery Plant (the "GWRP"), a San Juan Basin desalter, was
8 completed. **Ex. 3** (Sept. 2007 GW Basin Report, Chapter IV) at IV-11-7.⁴ The GWRP is
9 supplied by six municipal groundwater recovery wells, including the Dance Hall Well, located in
10 the lower part of the San Juan Basin, an area previously not used as a source of drinking water
11 due to the water's high mineral and salt content. IRAP at Section 2.3.1, pp. 4-5; **Ex. 3** (Sept.
12 2007 Groundwater Basin Report, Chapter IV) at IV-11-7. The City currently is responsible for
13 day-to-day operations and maintenance of the GWRP. **Ex. 4** (Nov. 17, 2008 Press Release).

14 The City has had several operational problems with the GWRP, including high turbidity
15 levels, bacterial contamination of the RO membranes, and the production of colored water.
16 **Ex. 5** (March 25, 2008 WAC Agenda Report) at 2. In fact, the City shut down the GWRP from
17 February 2008 to September 2008 -- and recently from August 2009 to the present -- to make
18 changes and improvements to its system. **Ex. 5** (March 25, 2008 WAC Agenda Report) at 2; **Ex.**
19 **6** (May 27, 2008 WAC Agenda Report) at 3; **Ex. 27** (July 22, 2008 WAC Minutes) at 2; **Ex. 34**
20 (Oct. 28, 2008 WAC Agenda Report) at 3; **Ex. 7** (Oct. 27, 2009 UC Staff Report) at 3.

21 C. The City Elected To Shut Down the Dance Hall Well

22 In January 2008, the City discovered low levels of MTBE (ranging from 1.0 to 1.2

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25 ³ The WAC is now referred to as the Utilities Commission ("UC").

26 ⁴ Due to the size of this document, only relevant excerpts are attached as an exhibit. However, Chevron
27 will provide a copy of the entire report upon request of the State Board or Regional Board.

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1 micrograms per liter ("µg/L") at the Dance Hall Well. **Ex. 8** (Feb. 4, 2008 letter). In a
2 January 22, 2008 WAC meeting, the City's staff "explained that a shut down [of the Dance Hall
3 Well] is not required at this time since the level of MTBE is way below 13 mcg/l [the primary
4 MCL]." **Ex. 9** (Jan. 22, 2008 WAC Meeting Minutes) at 4 (emphasis added). Nonetheless, the
5 City elected to shut down the Dance Hall Well in late January 2008. **Ex. 10** (Jan. 24, 2008 Press
6 Release) ("The amount detected in the Dance Hall Well . . . is way below levels that would pose
7 any threat to public health; however, as a proactive measure to quell any public concern, the City
8 has shut it off indefinitely"); **Ex. 2** (Feb. 5, 2008 City Council Meeting Minutes) at 11
9 ("Although the trace amounts of MTBE detected at the [Dance Hall Well] are below the primary
10 and secondary standards, the well[] ha[s] been shut down as a precautionary measure"); **Ex. 11**
11 (April 1, 2008 City Council Meeting Minutes and Transcript) at 9.

12 In a February 26, 2008 WAC meeting, a Psomas consultant stated, "The well could be
13 started up today, and it could be piped into the system, and the concentrations are not such that
14 they would exceed drinking water standards." **Ex. 12** (Feb. 26, 2008 WAC Meeting Transcript)⁵
15 at 18:50; cf. In re Groundwater Cases, 154 Cal. App. 4th 659, 685 (2007) (court found that
16 "DHS's regulations also expressly permit the continued delivery of water after detection of an
17 MCL exceedance").

18 Likewise, the City's Interim Public Works Director explained that "the levels of MTBE
19 are below the secondary standard of 5 mcg/L, and are acceptable for drinking water standards."
20 **Ex. 13** (Feb. 26, 2008 WAC Meeting Minutes) at 3. She even admitted that "we can run the
21 wells now. . . . The water would be safe." **Ex. 12** (Feb. 26, 2008 WAC Meeting Transcript) at
22 40:24 (Cindy Russell) (emphasis added); see also **Ex. 14** (March 18, 2008 City Council Meeting
23 Transcript) at 01:27:23 (City Councilmember stated that if the level of MTBE in drinking water
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25 ⁵ Due to the size of the meeting transcripts, only relevant excerpts are attached as exhibits. However,
26 Chevron will provide complete copies of the transcripts upon request of the State Board or Regional
Board.

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1 is “below the scientific standard of any possible danger, [he didn’t] see the problem in drinking
2 the water”). Significantly, since the January 2008 detections, MTBE levels at the Dance Hall
3 Well have not exceeded 2.0 µg/L.⁶ **Ex. 1** (Molla Decl.) at ¶ 28; **Ex. 15** (analytical reports for
4 well samples).

5 Furthermore, Chevron has advised the City several times to continue pumping the Dance
6 Hall Well to prevent the MTBE plume from migrating beyond the well. **Ex. 1** (Molla Decl.) at
7 ¶ 7; IRAP at 9; **Ex. 16** (Jan. 6, 2009 letter) at 2; **Ex. 17** (April 23, 2009 letter) at 2; **Ex. 18** (May
8 11, 2009 Response to OCLOP Review of CAP) at 2; **Ex. 19** (May 6, 2008 City Council Meeting
9 Minutes and Transcript) at 1:16:30 (“Since the concentrations on the Dance Hall well have been
10 below the secondary MCLs, it’s Chevron’s position that the water’s safe to drink and we highly
11 recommend the Dance Hall well be [started] once the groundwater recovery plant is [back on]”)
12 (emphasis added). However, the Dance Hall Well remains out-of-service to this day. **Ex. 20**
13 (Oct. 23-Nov. 12, 2009 The Capistrano Dispatch article).

14 D. The OCLOP Accepted The IRAP

15 On February 4, 2008, the OCLOP directed Chevron to submit an Interim Remedial
16 Action Plan (“IRAP”) within 45 days of Chevron’s receipt of the OCLOP’s letter. **Ex. 8** (Feb. 4,
17 2008 letter). In this regard, on March 12, 2008, Chevron met with the City to discuss using the
18 Dance Hall Well to capture the plume and proposed a treatment system conceptual design using
19 granulated activated carbon (“GAC”) filters to remove MTBE from groundwater produced at the
20 Dance Hall Well and a greensand filter to remove iron from the groundwater to reduce fouling of
21 the GAC filter. **Ex. 1** (Molla Decl.) at ¶ 9. Following treatment, the produced water would be
22 returned to the GWRP. Id. The City agreed with the wellhead treatment conceptual design. Id.

23 On March 18, 2008, Chevron received approval from the City to access the Dance Hall

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26 ⁶ In August 2005, the City detected 3.06 µg/L of MTBE at the Dance Hall Well, which the City attributed
27 to laboratory error. **Ex. 1** (Molla Decl.) at ¶ 28; **Ex. 15** (analytical reports for well samples).

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1 Well to conduct an aquifer test to evaluate the effectiveness of the Dance Hall Well in capturing
2 the MTBE plume. **Ex. 1** (Molla Decl.) at ¶ 10. The results of the aquifer test indicated that in
3 order to capture the MTBE plume, the Dance Hall Well would need to be pumped as
4 continuously as possible (*i.e.*, with only minimal downtime for maintenance) at a certain
5 minimum capacity. *Id.*

6 On March 26, 2008, Chevron submitted the IRAP to the OCLOP. **Ex. 1** (Molla Decl.) at
7 ¶ 11. In the IRAP, Chevron proposed to remediate the MTBE plume using a wellhead treatment
8 system at the Dance Hall Well. IRAP at Section 5.1.2, p. 28. The IRAP also proposed using a
9 30-day period immediately following the completion of construction to troubleshoot and startup
10 the wellhead treatment system. IRAP at Section 5.2.4, p. 33; **Ex. 21** (Sept. 23, 2008 WAC
11 Meeting Minutes and Transcript) at part 2, p. 8. During this time, the operating parameters
12 would be monitored daily to optimize the treatment equipment, and the GWRP operators would
13 be trained on the system in preparation for operating and monitoring the system on their own
14 following the startup period. IRAP at Section 5.2.4, p. 33.

15 On May 14, 2008, the OCLOP accepted Chevron's IRAP. **Ex. 22** (May 14, 2008 letter).

16 E. Chevron Attempted To Implement The IRAP

17 Since acceptance of the IRAP, the City has continued to lead Chevron to believe that the
18 City agreed with Chevron's approach to remediating the plume using a wellhead treatment
19 system at the Dance Hall Well. Notably, in August 2008, the Chevron submitted a Preliminary
20 Design Report regarding the wellhead treatment system to the City and solicited its comments.
21 **Ex. 1** (Molla Decl.) at ¶ 15; **Ex. 23** (Aug. 27, 2008 e-mail). On October 6, 2008, Chevron
22 received and incorporated the City's comments. **Ex. 1** (Molla Decl.) at ¶ 17. On October 14,
23 2008, Chevron presented the Preliminary Modeling Report to the City and the OCLOP. *Id.*

24 On October 30, 2008, Chevron completed the 60% design and submitted it to the City for
25 review. **Ex. 1** (Molla Decl.) at ¶ 19; **Ex. 24** (Oct. 30, 2008 letter); **Ex. 25** (Oct. 7, 2008 City
26 Council Meeting Minutes and Transcript) at 9:32. The City's Community Development
27 Department provided comments on the 60% design, which Chevron addressed. **Ex. 1** (Molla
28 Decl.) at ¶ 19.

1 On October 31, 2008, the City provided Chevron with a Draft Notice of Exemption from
2 the California Environmental Quality Act (“CEQA”), which indicated that the City concurred
3 with the wellhead treatment system design and the urgency in getting the system implemented by
4 February 2009. **Ex. 1** (Molla Decl.) at ¶ 20; **Ex. 26** (Oct. 31, 2008 e-mail).

5 In December 2008, based on these events and with information obtained from the
6 geotechnical study performed for the GWRP, Chevron progressed to a 100% design, began to
7 procure equipment, and engaged contractors in preparation for construction, subject to
8 confirmatory geotechnical work to be completed before constructing pilings and foundations.
9 **Ex. 1** (Molla Decl.) at ¶ 21. Chevron has requested, but not received, written comments on the
10 final design from the City’s engineering staff. Id.

11 In February 2009, Chevron was ready to begin construction of the wellhead treatment
12 system. **Ex. 1** (Molla Decl.) at ¶ 22; **Ex. 27** (July 22, 2008 WAC Meeting Minutes and
13 Transcript) at 4. Chevron, however, could not start construction of the project at this time
14 because the City denied Chevron access to the Dance Hall Well. **Ex. 1** (Molla Decl.) at ¶ 22; **Ex.**
15 **28** (Aug. 5, 2008 City Council Meeting Minutes and Transcript) at 23. As a result, Chevron has
16 put subcontractors on hold, put the greensand filter in storage, and has been unable to complete
17 the necessary geotechnical testing. **Ex. 1** (Molla Decl.) at ¶ 22.

18 Lastly, in August 2009, the City’s attorney verbally provided engineering comments on
19 the 60% design and suggested that the entire design needs to be re-done at Chevron’s expense.
20 **Ex. 1** (Molla Decl.) at ¶ 23.

21 F. The Regional Board Has Concurred With An Alternate Remedial
22 Action

23 On February 17, 2009, Chevron submitted its Corrective Action Plan (“CAP”) to the
24 OCLOP. Feb. 17, 2009 CAP. On May 1, 2009, the OCLOP required Chevron to submit a
25 revised CAP that included an alternate remedial action in lieu of the wellhead treatment system
26 due to Chevron’s difficulty in gaining access to the City’s property. **Ex. 29** (May 1, 2009 letter).

27 On May 28, 2009, the OCLOP transferred oversight responsibilities for the site to the
28 Regional Board. **Ex. 30** (May 28, 2009 letter). On June 29, 2009, Chevron submitted to the

1 Regional Board a work plan proposing installation of a line of low-volume, downgradient
2 extraction wells to remediate the dissolved downgradient portion of the MTBE plume as an
3 alternate remedial action that would not require access to the Dance Hall Well. June 29, 2009
4 Work Plan. On June 30, 2009, the Regional Board stated that it “concur[red] with the work
5 proposed provided that . . . [certain] comments are incorporated into the work.” **Ex. 31** (June 30,
6 2009 e-mail).

7 G. The Regional Board Issued A Cleanup And Abatement Order

8 On September 3, 2009, the Regional Board issued a Cleanup and Abatement Order
9 (“Order”) naming both Chevron and the City as Responsible Parties. Order at 2, 22. The Order
10 explains that the “City is named a Responsible Party because it has contributed to the condition
11 of nuisance and pollution by failing to pump the Dance Hall Well to control the MTBE plume,
12 and because the City has the ability to obviate the condition.” Order at Section 3, p. 3.
13 Additionally, the Order required both the City and Chevron to “take all corrective action
14 necessary to cleanup and abate the effects of the discharge” from the Service Station, as well as
15 to “implement interim remedial actions” pursuant to a schedule (referred to herein as “Directive
16 B”). Order at Directives A and B, pp. 5-6. Lastly, the Order required that Chevron “provide
17 replacement water if requested by the City,” and that “any additional costs for replacement water
18 beyond the City’s ordinary production costs for water extracted from the Dance Hall Well will
19 be borne solely by Chevron.” Order at Directive B(D), p. 7.

20 On September 16, 2009, Chevron met with the Regional Board to discuss Chevron’s
21 concerns regarding the Order. **Ex. 1** (Molla Decl.) at ¶ 25. In that meeting, Chevron explained
22 to the Regional Board that Chevron’s estimates of the most realistic dates for the start of
23 construction and to achieve full-scale operations were December 15, 2009 and April 14, 2010,
24 respectively. Id. These estimates were based on the assumptions that Chevron: (1) would have
25 the City’s cooperation to access the Dance Hall Well by September 21, 2009, and (2) could begin
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1 implementation of the existing 100% design immediately on that date, with no design changes.
2 Id.⁷ Chevron also informed the Regional Board that the City would be responsible for operating
3 the treatment system and the associated greensand filter once installed as they would be an
4 integral part of the GWRP. Id. In this regard, in order to ensure that the plume was remediated,
5 Chevron requested that the Regional Board impose on the City minimal operational requirements
6 for the Dance Hall Well and treatment system. Id. In addition, the Operations and Maintenance
7 plan (“O&M Plan”) would need to be prepared by the City as the operator of the GWRP, not
8 Chevron, as specified in the Order. Id.

H. The Regional Board Issued A Revised Cleanup And Abatement Order

On September 28, 2009, the Regional Board issued the Revised CAO. In a follow-up meeting on September 29, 2009, Chevron informed the Regional Board that the City continues to deny Chevron access to the Dance Hall Well, and that Chevron could not meet the Revised CAO Directive B deadlines given the City's failure to allow access by September 21, 2009. **Ex. 1** (Molla Decl.) at ¶ 26. Chevron confirmed that it was prepared to move forward with implementing the IRAP, but that it would take approximately seven months from the City's grant of access to the Dance Hall Well to do so. *Id.* Chevron also requested the Regional Board allow Chevron to implement the alternate remedy proposed in Chevron's June 29, 2009 Work Plan, which involves a line of low-volume, downgradient extraction wells to remediate the dissolved downgradient portion of the MTBE plume, in lieu of the IRAP if the City fails to grant Chevron access to the Dance Hall Well. *Id.*

I. The City Continues To Prohibit Chevron's Access To The Dance Hall Well

Despite issuance of the CAO and Revised CAO, the City continues to deny Chevron access to the Dance Hall Well. In fact, in the latest issue of The Capistrano Dispatch, the City

⁷ As neither assumption has come to pass, these estimated dates are no longer feasible. *Id.*

1 admitted that "Chevron is correct that the city is standing in the way of [Chevron] implementing
2 their . . . cleanup plan using one of [the] city's primary drinking water wells." **Ex. 20** (Oct. 23-
3 Nov. 12, 2009 The Capistrano Dispatch article).

4 V. STATEMENT OF THE REASONS WHY THE REVISED CAO IS
IMPROPER AND HOW CHEVRON IS AGGRIEVED

5 The Revised CAO is improper and Chevron is aggrieved by its terms because it fails to
6 require the City to pump groundwater from the Dance Hall Well and to treat the groundwater
7 with the wellhead treatment system; requires Chevron to comply with deadlines that are
8 impossible to achieve; requires Chevron to provide and pay for replacement water despite
9 contrary legal authority and the fact that MTBE has not been detected in the Dance Hall Well in
10 excess of the primary MCL⁸; and otherwise requires Chevron to perform acts beyond Chevron's
11 control, as described fully below. Because it is impossible for Chevron to comply with certain
12 deadlines, for example, Chevron will be immediately out of compliance upon the date of those
13 deadlines and potentially subject to penalties for violating the Revised CAO.

14 VI. ACTION THE PETITION REQUESTS THE STATE BOARD TO TAKE

15 Chevron requests the State Board modify the Revised CAO, or direct the Regional Board
16 to modify the Revised CAO, as follows:

- 17 • Establish deadlines in Directive B based on when the City provides access to the
18 Dance Hall Well and condition Chevron's implementation of the IRAP on the City's
19 grant of access;
- 20 • Permit Chevron to implement an alternate remedial action in lieu of the IRAP;
- 21 • Specify minimum requirements for how the City will operate the Dance Hall Well
22 and the wellhead treatment system;
- 23 • Include a force majeure provision as the appropriate legal response to the City's

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26 ⁸ In fact, MTBE has not been detected in the Dance Hall Well in excess of the secondary MCL. **Ex. 1**
(Molla Decl.) at ¶ 28; **Ex. 15** (analytical reports for well samples).

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- 1 failure to grant Chevron access to the Dance Hall Well;
- 2 • Change the deadline for submission of the O&M Plan to 30 days after completion of
- 3 the shakedown period, and specify that it is the City's responsibility to submit the
- 4 O&M Plan; and
- 5 • Remove the replacement water provision because water from the Dance Hall Well is
- 6 safe for drinking.

7 VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF
8 LEGAL ISSUES

9 A. The State Board Should Modify, Or Direct The Regional Board To
10 Modify, Directive B In The Revised CAO (Interim Remedial
Action)

11 The Porter-Cologne Water Quality Control Act grants the Regional Board authority to
12 order cleanup and abatement of discharges of waste into the waters of the state. Cal. Water Code
13 § 13304(a). In so ordering, the Regional Board must abide by policies adopted by the State
14 Board. Cal. Water Code § 13307(a). State Board policies address “[p]rocedures for identifying
15 and utilizing the most cost effective methods for . . . cleaning up or abating the effects of
16 contamination or pollution” and “policies for determining reasonable schedules for investigation
17 and cleanup, abatement, or other remedial action at a site[,]” among others. Id.

18 Resolution No. 92-49 sets forth the State Board’s policies applicable to cleanup and
19 abatement orders. See Ex. 32 (State Board, Policies and Procedures for Investigation and
20 Cleanup and Abatement of Discharges Under Water Code Section 13304, Resolution No. 92-49,
21 1994 WL 1892115 (State Water Res. Control Bd. October 2, 1996)). Resolution No. 92-49
22 requires that the Regional Board “[c]oncur with any investigative and cleanup and abatement
23 proposal which the discharger demonstrates and the Regional Water Board finds to have a
24 substantial likelihood to achieve compliance, within a reasonable time frame[;];” and “determine
25 schedules for . . . cleanup and abatement, taking into account . . . technical resources available to
26 the discharger[.]” Ex. 32 (State Board Resolution No. 92-49) at Sections III(A) and IV(C), 1994
27 WL 1892115, at *7. Moreover, where information becomes available after a cleanup and
28 abatement order is issued that demonstrates an “original compliance schedule is inappropriate, it

1 should be revised.” In the Matter of the Petition of BKK Corp., 1986 WL 25520, *8, Order
2 WQ 86-13 (State Water Res. Control Bd. August 21, 1986). Resolution No. 92-49 further
3 requires that the Regional Board “[i]mplement the applicable provisions of [California Code of
4 Regulations, Title 23, Division 3,] Chapter 16 for investigations and cleanup and abatement of
5 discharges of hazardous substances from underground storage tanks.” **Ex. 32** (State Board
6 Resolution No. 92-49), 1994 WL 1892115, at *8. Among its provisions, Chapter 16 requires
7 implementation of interim remedial actions, as necessary, “to abate or correct the actual or
8 potential effects of an unauthorized release[,]” which may include “pumping and treatment of
9 ground water to remove dissolved contaminants.” Cal. Code Regs. Tit. 23, § 2722(b).

10 In this case, the Regional Board has not met its obligations under the above-listed
11 authorities. The Revised CAO fails to provide a reasonable schedule for the implementation of
12 the interim remedial action that takes into account Chevron’s inability to access City property.
13 Moreover, the Revised CAO fails to allow an alternate remedial action to achieve remediation of
14 the MTBE plume within a reasonable time frame. The Revised CAO also fails to order actual
15 pumping and treatment of groundwater in order to clean up the MTBE plume, should the
16 wellhead treatment system at the Dance Hall Well be installed. Thus, the Revised CAO should
17 be amended.

18 1. Directive B Should Be Revised To Establish Deadlines
19 Based On When The City Provides Access To The Dance
20 Hall Well And To Condition Chevron’s Implementation Of
The IRAP On The City’s Grant Of Access

21 Directive B requires that Chevron and the City “begin implementation (i.e., construction)
22 of the Interim Remedial Action described in . . . the IRAP . . .” by November 30, 2009, and
23 requires certification that the system is fully operational by January 29, 2010. Rev. CAO at
24 Directive B(1), p. 6. Even before the Regional Board issued the Revised CAO (as explained to
25 the Regional Board on September 16, 2009), these deadlines were not feasible. **Ex. 1** (Molla
26 Decl.) at ¶ 25. Furthermore, Chevron’s ability to start construction and to achieve full-scale
27 operations depends upon the City granting Chevron access to the Dance Hall Well. Id.
28 However, the City has continued to deny such access (**Ex. 1** (Molla Decl.) at ¶¶ 26-27), and the

1 City is admittedly "standing in the way of [Chevron] implementing their . . . cleanup plan using
2 one of [the] city's primary drinking water wells." **Ex. 20** (Oct. 23-Nov. 12, 2009 The Capistrano
3 Dispatch article). Therefore, Chevron cannot meet the schedule in Directive B. If the IRAP is to
4 be implemented, the deadlines for implementation should be modified to reflect Chevron's
5 technical inability to comply. Because compliance with existing deadlines is technically
6 impossible, the deadlines in Directive B are unreasonably short and should be revised.

7 Moreover, Chevron met with the Regional Board after it issued its September 3, 2009
8 Order and before it issued the September 28, 2009 Revised CAO and alerted the Regional Board
9 to the impossibility of the schedule. **Ex. 1** (Molla Decl.) at ¶ 25. The State Board has previously
10 announced that a regional board has not only the authority, but also the responsibility to revise
11 unreasonable deadlines based on later-acquired information. See In the Matter of the Petition of
12 BKK Corp., 1986 WL 25520, Order WQ 86-13 (State Water Res. Control Bd. August 21, 1986).
13 In BKK, the State Board declared that "[o]nce a cleanup and abatement order is issued . . . the
14 Regional Board . . . must maintain the flexibility to revise the order as further information,
15 including information and arguments submitted by the discharger, become available. . . . Where
16 this information demonstrates that the original compliance schedule is inappropriate, it should be
17 revised." Id. at *8 (emphasis added). Here, Chevron cannot meet the current deadlines because
18 the City has denied Chevron access to its property (**Ex. 1** (Molla Decl.) at ¶¶ 25-27), and the City
19 is admittedly "standing in the way of [Chevron] implementing their . . . cleanup plan using one
20 of [the] city's primary drinking water wells" (**Ex. 20** (Oct. 23-Nov. 12, 2009 The Capistrano
21 Dispatch article)). Thus, Directive B should be revised to set deadlines based upon the date the
22 City eventually (if ever) grants Chevron access to the Dance Hall Well. Cal. Water Code
23 § 13304(a)(4); BKK Corp., 1986 WL 25520, at *8.

24 Impossibility or impracticability provides an excuse from performance in the analogous
25 area of contract law. "Impossibility" means not only strict impossibility, but also
26 impracticability because of "extreme and unreasonable difficulty, expense, injury, or loss
27 involved." Oosten v. Hay Haulers Dairy Emp. & Helpers Union, 45 Cal. 2d 784, 788 (1956).
28 To plead impossibility as an excuse from performance, a contractor must show that "in spite of

1 skill, diligence and good faith on his part, performance became impossible or unreasonably
2 expensive." Id. at 789. Here, Chevron has exercised "skill, diligence, and good faith" in its
3 efforts to implement the IRAP; what has prevented Chevron from installing the wellhead
4 treatment system has been the City's refusal to allow access to the Dance Hall Well. **Ex. 1**
5 (Molla Decl.) at ¶¶ 22, 25-27; **Ex. 20** (Oct. 23-Nov. 12, 2009 The Capistrano Dispatch article).
6 Thus, Directive B should be revised such that the requirement to implement the IRAP be directly
7 conditioned upon the City's granting Chevron access to the Dance Hall Well.

8 2. Directive B Should Be Revised To Permit Chevron To
9 Implement An Alternate Remedial Action In Lieu Of The
 Wellhead Treatment System

10 Chevron remains committed to remediating the MTBE plume, and is concerned that the
11 installation of a wellhead treatment system will not remediate the MTBE plume absent a
12 requirement in the Revised CAO that the City pump and treat groundwater from the Dance Hall
13 Well. Chevron does not control the use of the Dance Hall Well, and thus is in no position to
14 operate the wellhead treatment system once installed. Without a requirement to pump and treat
15 groundwater at the Dance Hall Well, the Revised CAO is fatally flawed.

16 Hence, Chevron requests that the Revised CAO be modified to allow an alternate option
17 for Chevron to clean up the plume in lieu of the wellhead treatment system. For example,
18 Chevron has proposed a line of low-volume, downgradient extraction wells to remediate the
19 dissolved downgradient portion of the MTBE plume in its June 29, 2009 "Work Plan for
20 Pumping Test" as just such an alternate remedial action. June 29, 2009 Work Plan; **Ex. 31** (June
21 30, 2009 e-mail). Directive B should be revised to allow Chevron to implement this alternate
22 remedial action, or another appropriate alternative, in lieu of wellhead treatment at the Dance
23 Hall Well.

24 3. Directive B Should Be Revised To Specify How The City
25 Should Operate The Dance Hall Well

26 There is no benefit to the requirement of implementing the IRAP if the wellhead
27 treatment system is not used. The purpose of the Revised CAO is for both Chevron and the City
28 to "take all corrective action necessary to cleanup and abate the effects of the discharge." Rev.

1 CAO at Directive A, p. 5. However, while the Revised CAO orders implementation of the IRAP
2 (which specifies installation of a wellhead treatment system), it does not order the City to operate
3 the system or the Dance Hall Well thereafter. Availability of a wellhead treatment system does
4 not by itself clean up the MTBE plume; the City -- which owns the well, operates the GWRP,
5 and will operate the wellhead treatment system as an integral part of the GWRP -- must actually
6 pump water from the Dance Hall Well and process it through the wellhead treatment system for
7 the MTBE plume to be captured and remediated. Cf. Friends of Santa Clara River v. Castaic
8 Lake Water Agency, 123 Cal. App. 4th 1, 14 (2004) (finding description of reliability of
9 groundwater supply in Urban Water Management Plan inadequate where it stated availability of
10 treatment technology, but did not discuss time for implementation). As currently written,
11 nothing in Directive B or anywhere else in the Revised CAO prevents the City from electing to
12 shut down the Dance Hall Well and cease wellhead treatment of the groundwater.

13 To ensure that implementation of the IRAP actually results in the cleanup of the MTBE
14 plume, the Revised CAO should specify performance standards. At a minimum, the Revised
15 CAO should require the City to operate the Dance Hall Well at a flow rate of at least 850 gpm, or
16 at a rate the aquifer and treatment system can sustain. Ex. 1 (Molla Decl.) at ¶ 18. Moreover,
17 the Revised CAO should specify that the City must operate the Dance Hall Well as continuously
18 as possible. Id. at ¶ 10; cf. Ex. 5 (March 25, 2008 WAC Agenda Report) at 2, Ex. 6 (May 27,
19 2008 WAC Agenda Report) at 3, and Ex. 7 (Oct. 27, 2009 Utilities Commission Report) at 3 (the
20 City shut down the GWRP from February 2008 to September 2008 -- and recently from August
21 2009 to the present -- to make changes and improvements to its system).⁹

22

23

24

25

26 ⁹ It is Chevron's understanding that the City cannot operate the Dance Hall Well when the GWRP is shut
down.

27

28

1 4. Directive B Should Include A Force Majeure Provision To
2 Address The City's Unwillingness To Permit Chevron
3 Access To The Dance Hall Well

4 Force majeure provisions are commonly used in orders issued pursuant to the Clean
5 Water Act. See In the Matter of Lafourche Parish, 2009 WL 1359541, at ¶ 24 (“Respondent
6 shall perform the requirements of this [Consent Agreement and Final Order] within the time
7 limits set forth or approved or established herein, unless the performance is prevented or delayed
8 solely by events which constitute a force majeure”); In the Matter of Center Point Dairy Limited,
9 2008 WL 4948554, at ¶ 46 (similar). Here, where the City has demonstrated a history of delay
10 and noncooperation (see, e.g., Ex. 20 (Oct. 23-Nov. 12, 2009 The Capistrano Dispatch article)),
11 a force majeure provision is appropriate. To address any future obstruction by the City, the
12 Revised CAO should be revised to include the following force majeure provision:

13 The Regional Board acknowledges and agrees that implementation of the interim
14 remedial action and other matters relating to the cleanup and abatement of the discharge
15 depends upon the willingness of the City to cooperate with the requirements set forth in
16 the CAO. As such, Chevron’s ability to meet the deadlines set forth herein is conditioned
17 upon the City’s compliance with the CAO. To the extent that Chevron has used its best
18 efforts to meet the deadlines and is unable to do so due to matters beyond its reasonable
19 control, including the City’s unwillingness to permit Chevron access to the Dance Hall
20 Well, the GWRP, and related City property, the time for completion shall be extended for
21 a period commensurate with the delay.

22 Ex. 1 (Molla Decl.) at ¶ 26.

23 Because Chevron is unable to install the wellhead treatment system at the Dance Hall
24 Well unless and until the City grants Chevron access, and because the actions of the City are
25 totally beyond the control of Chevron, the inclusion of a force majeure provision is appropriate
26 to protect Chevron from being held in violation of the Revised CAO for the City’s actions,
27 should the City continue to deny Chevron access to the Dance Hall Well.

28

1 5. Directive B Should Be Revised To Change The Deadline
2 For Submission Of The O&M Plan To 30 Days After
3 Completion Of The Shakedown Period, And To Specify
4 The City's Responsibility To Submit The O&M Plan

5 The Revised CAO requires that Chevron submit an O&M Plan to the Regional Board on
6 or before November 30, 2009. Rev. CAO at Directive B(2), p. 6. However, an O&M Plan for a
7 wellhead treatment system depends upon operating parameters of the installed equipment, which
8 will not be fully known until after monitoring for optimization during the shakedown period after
9 construction. IRAP at Section 5.2.4, p. 33. Additionally, while Chevron's contractor will assist
10 the City in training its operators, and Chevron will pay associated monitoring costs, the City
11 itself will operate and maintain the wellhead treatment system as part of its operation of the
12 GWRP. IRAP at Section 5.2.4, p. 33. Since Chevron will not be operating the wellhead
13 treatment system, Chevron should not be required to submit an O&M Plan for such operation.
14 Thus, Directive B should be revised to change the deadline for submission of the O&M Plan to
15 30 days after the completion of the shakedown period and to require the City, not Chevron, to
16 submit such a plan.

16 B. The Revised CAO Should Be Modified To Remove The
17 Replacement Water Provision Because Water From The Dance
18 Hall Well Is Safe For Drinking

19 Neither statutory nor precedential decisions allow the Regional Board to require the
20 provision of, or payment for, replacement water at the City's request. Nonetheless, Directive D
21 of the Revised CAO states: "Chevron shall provide replacement water if requested by the City.
22 Any additional costs for replacement water beyond the City's ordinary production costs for water
23 extracted from the Dance Hall Well will be borne solely by Chevron. . ." Rev. CAO at
24 Directive D, p. 7. This provision should be removed because groundwater pumped from the
25 Dance Hall Well is safe for drinking.

25 1. The Porter-Cologne Water Quality Control Act Does Not
26 Authorize Replacement Water Unless Concentrations
27 Exceed Primary Maximum Contaminant Levels

28 Under certain circumstances, the Porter-Cologne Water Quality Control Act grants the
29 State Board or a regional board authority to issue a cleanup and abatement order that requires

1 “the provision of, or payment for, uninterrupted replacement water service, which may include
2 wellhead treatment, to each affected public water supplier or private well owner.” Cal. Water
3 Code § 13304(a). However, in this case, such circumstances do not exist. A board may only
4 order replacement water in a cleanup and abatement order for “affected” water supplies, which
5 “include those wells in which water does not meet the federal, state and local drinking water
6 standards.” In the Matter of the Petitions of Olin Corp. and Standard Fusee, Inc., 2005 WL
7 5166379, Order WQ 2005-0007, *3 (State Water Res. Control Bd. May 19, 2005).

8 In Olin, the State Board declared that the Public Health Goal (“PHG”) or primary MCL
9 are the appropriate levels to determine whether a well was affected, explaining that “[a]ny other
10 approach would require regional water boards to make individual, possibly inconsistent public
11 health and toxicological determinations or, in the alternative, to require replacement drinking
12 water whenever there is any determination of a contaminant. [Such] approach ignores the
13 expertise of [the California Office of Environmental Health Hazard Assessment (“OEHHA”)]
14 and, in the case of contaminants for which MCLs have been developed, [the California
15 Department of Health Services (“DHS”)].” Id. Thus, “[w]here new water replacement orders
16 are considered or where existing agreements or orders provide for reconsideration of replacement
17 water levels, regional water boards should defer to OEHHA and DHS in determining safe
18 drinking water levels.” Id.

19 2. Water From The Dance Hall Well Is Below The Primary
20 Maximum Contaminant Level For MTBE

21 The Department of Public Health, formerly the DHS, has determined that drinking water
22 containing concentrations of MTBE below 13 µg/L is safe. Cal. Code Regs. tit. 22, § 64444;
23 Cal. Health & Safety Code § 116365(a); In re Groundwater Cases, 154 Cal. App. 4th at 686-87
24 (“MCLs are developed for the purpose of protecting the public from possible health risks
25 associated with long-term exposure to contaminants. . . . Thus, ‘where levels of contamination
26 are below an MCL or AL or temporarily exceed these levels, no health hazard is reasonably
27 expected to occur’”) (italics removed, underline added, internal citation omitted). The Dance
28 Hall Well was shut down in response to detections of MTBE that did not come close to

1 exceeding 13 µg/L, and, with the exception of one detection of MTBE at 3.05 µg/L which the
2 City has attributed to laboratory error, MTBE detections to date have not exceeded 2.0 µg/L. **Ex.**
3 **1** (Molla Decl.) at ¶ 28; **Ex. 8** (Feb. 4, 2008 letter); **Ex. 15** (analytical reports for well samples).
4 As such, use of the City's groundwater, without treatment, poses no cognizable risk to human
5 health and safety and is safe for drinking. Cal. Code Regs. tit. 22, § 64444; Cal. Health & Safety
6 Code § 116365(a); **Ex. 2** (Feb. 5, 2008 City Council Meeting Minutes) at 11; **Ex. 9** (Jan. 22,
7 2008 WAC Meeting Minutes) at 4; **Ex. 10** (Jan. 24, 2008 Press Release); **Ex. 12** (Feb. 26, 2008
8 WAC Meeting Transcript) at 18:50 and 40:24; **Ex. 13** (Feb. 26, 2008 WAC Meeting Minutes) at
9 3; **Ex. 14** (March 18, 2008 City Council Meeting Transcript) at 01:27:23. Thus, neither the State
10 Board nor the Regional Board may require Chevron to provide replacement water service to the
11 City if requested. Cal. Water Code § 13304(a); In the Matter of the Petitions of Olin Corp. and
12 Standard Fusee, Inc., 2005 WL 5166379, Order WQ 2005-0007 (State Water Res. Control Bd.
13 May 19, 2005). There is no reason why the City should use replacement water instead of its own
14 GWRP-treated groundwater to meet the City's drinking water needs. Thus, the replacement
15 water provision, Directive D, should be removed from the Revised CAO.

16 If the replacement water provision is not removed, it should -- at a minimum -- be
17 amended to be consistent with Olin. The Revised CAO should clearly limit Chevron's
18 responsibility for providing or bearing the cost of replacement water to only those circumstances
19 where test samples of groundwater produced from the Dance Hall Well show concentrations of
20 MTBE that exceed the primary MCL, as the Olin decision dictates, should they occur (if ever).
21 Moreover, the Revised CAO should clarify that replacement water includes water treated by
22 Chevron using the wellhead treatment system proposed by the IRAP. Finally, the Revised CAO
23 should clarify that Chevron is not responsible for the City's alleged replacement water costs
24 incurred to date as a result of the City's voluntary shutdown of the Dance Hall Well, as no
25 detections of MTBE have exceeded the primary MCL. **Ex. 1** (Molla Decl.) at ¶ 28; **Ex. 15**
26 (analytical reports for well samples).

27
28

1 VIII. STATEMENT THAT PETITION HAS BEEN SENT TO THE
2 REGIONAL BOARD AND THE DISCHARGER

3 Copies of this Petition have been sent to both the Regional Board and the City.

4 IX. STATEMENT THAT SUBSTANTIVE ISSUES OR OBJECTIONS
5 RAISED IN PETITION WERE RAISED BEFORE REGIONAL BOARD

6 Concurrent with the submission of this Petition, Chevron also requests the Regional
7 Board for a formal evidentiary hearing consistent with the California Administrative Procedure
8 Act (Cal. Gov't Code §§ 11400, et seq.) and California Code of Regulations, Title 23,
9 Sections 648 through 648.8. A copy of the request for an evidentiary hearing is attached at
10 **Exhibit 33.** The documents attached hereto will be made part of the administrative record at the
Regional Board hearing.

11 X. REQUEST FOR STATE BOARD HEARING

12 Pursuant to California Code of Regulations, Title 23, Section 2050.6, Chevron requests
13 the State Board for an evidentiary hearing to present any additional evidence that may become
14 available that was not presented to the Regional Board, or to present any evidence improperly
15 excluded by the Regional Board.

16 XI. REQUEST FOR ABEYANCE

17 Pending resolution of the evidentiary hearing requested before the Regional Board,
18 Chevron requests that this Petition be held in abeyance.¹⁰ Consistent with the provisions of
19 California Code of Regulations, Title 23, Section 2050.5(d), Chevron understands that the time
20 limits for formal disposition on the Petition, set forth in California Code of Regulations, Title 23,
21 Section 2050.5(b), shall be tolled while the Petition is held in abeyance; but that consistent with
22 California Code of Regulations, Title 23, Section 2053, the 60-day time limit for the State Board
23 to review and act on the Request for Stay in Section XII shall not be tolled.

24

25 ¹⁰ The City submitted on October 5, 2009, and October 22, 2009 Petitions for Review (including a
26 request to stay the Order and to hold the Petition in abeyance) and Requests for Evidentiary Hearing.
27 Chevron asks that its Petition and Requests for a Stay and Abeyance be heard at the same time as the
City's Petition and Requests.

28

1 XII. REQUEST FOR STAY

2 Pursuant to California Code of Regulations, Title 23, Section 2053, Chevron requests a
3 stay of the Revised CAO pending resolution of the Petition, as well as a hearing. As described
4 above, Chevron will suffer substantial harm if a stay is not granted in that it cannot comply with
5 this Order due to the City's noncooperation, and is required to provide replacement water if the
6 City requests it despite legal authority to the contrary. Ex. 1 (Molla Decl.) at ¶ 29. The public is
7 not harmed if a stay is granted because the water from the Dance Hall Well does not contain
8 MTBE in excess of the primary or secondary MCLs, the Dance Hall Well has already been
9 voluntarily shut down by the City, and Chevron is fully cooperating with the remediation to the
10 extent possible in the absence of the City's cooperation. Id. As outlined above, substantial
11 questions of law and fact exist with regard to Chevron's ability to meet deadlines in the Revised
12 CAO and the authority of the Regional Board to order the provision of, or payment for,
13 replacement water. Id.

14 XIII. CONCLUSION

15 For all the foregoing reasons, Chevron requests the State Board modify the Revised
16 CAO, or direct the Regional Board to modify the Revised CAO, as requested in Section VI,
17 above.

18

19 DATED: October 28, 2009

Bingham McCutchen LLP

20

21

By:

Jill C. Teraoka

Jill C. Teraoka
Attorneys for Petitioner
Chevron U.S.A. Inc.

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28

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October 28, 2009

Via E-mail and Federal Express

Catherine Hagan, Esq. [chagan@waterboards.ca.gov]
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court
Suite 100
San Diego, CA 92123-4353

**Re: Request for Evidentiary Hearing re Revised Cleanup and
Abatement Order No. R9-2009-0124
[T0605902379:bpulver]**

Dear Ms. Hagan:

Chevron U.S.A. Inc. ("Chevron") submits this request for a formal evidentiary hearing ("Request") before the California Regional Water Quality Control Board, San Diego Region ("Regional Board") to present and rebut evidence relating to the issuance of Revised Cleanup and Abatement Order No. R9-2009-0124 ("CAO") by the Regional Board on September 28, 2009. As you are aware, the CAO named Chevron and the City of San Juan Capistrano ("City") as Responsible Parties for the remediation of an MTBE plume downgradient from a Chevron gasoline service station using the City's Dance Hall Well and a groundwater treatment system to capture and treat the plume. Concurrent with this Request, Chevron has submitted to the State Water Resources Control Board a Petition for Review ("Petition"), Request for Stay, and Request for Abeyance, a copy of which is attached to this Request.

A. Summary of Evidence and Arguments Chevron Intends to Present

Chevron has several concerns regarding Directives B and D of the CAO and proposes to introduce evidence and testimony to assist in the resolution of these concerns. Chevron's concerns are as follows:

- The deadlines in Directive B for implementation of the wellhead treatment system described in the Interim Remedial Action Plan ("IRAP") are unreasonably short given the technical impossibility for Chevron to comply due to the City's failure to grant Chevron access to the Dance Hall Well. Such deadlines should be revised and conditioned upon the City's grant of access.

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October 28, 2009

Page 2

- Given the City's history of blocking Chevron's access to the Dance Hall Well to implement the approved Interim Remedial Action Plan, Directive B should be revised to permit Chevron to implement an alternate remedial action in lieu of the wellhead treatment system.
- Since the City owns the Dance Hall Well, operates the Groundwater Recovery Plant ("GWRP"), and will operate the wellhead treatment system once it is installed as an integral part of the GWRP, Directive B should be revised to specify minimal operational requirements for the Dance Hall Well and treatment system to ensure the plume is timely remediated.
- Directive B should include a force majeure provision to address any future failure of the City to permit Chevron access to the Dance Hall Well.
- The deadline for submission of the operations and maintenance plan ("O&M Plan") in Directive B should be changed to 30 days after completion of the shakedown period for the wellhead treatment system, and Directive B should specify that it is the City's responsibility to submit the O&M Plan, as the City will be the operator of the system.
- Directive D, regarding the provision of and payment for replacement water, should be removed from the CAO because the water from the Dance Hall Well does not exceed the primary maximum contaminant level for MTBE and is safe for drinking.

These concerns are more fully briefed in the Petition attached to this Request, which includes additional supporting evidence.

B. Request for Formal Evidentiary Hearing

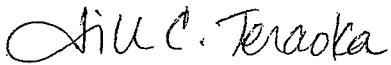
Chevron respectfully requests that the Regional Board issue a notice of hearing for a formal evidentiary hearing regarding the CAO. We anticipate the hearing notice to identify a date for the hearing, state the Regional Board's decision to hold a formal hearing, and specify the governing procedures.¹ Among the

¹ The City submitted on October 5, 2009, and October 22, 2009 Petitions for Review (including a request to stay the Order and to hold the Petition in abeyance) and Requests for Evidentiary Hearing, and Chevron requests that Chevron's Request for an Evidentiary Hearing be considered at the same time as the City's Requests.

Catherine Hagan, Esq.
October 28, 2009
Page 3

procedures we expect the hearing notice to describe are those applicable to the identification of witnesses and for the presubmission and presentation of testimony and exhibits. *See, e.g.*, Cal. Code Regs. tit. 23, § 648.4. Chevron reserves its right to supplement the evidence submitted concurrent with this Request as set forth in the hearing notice.

Respectfully submitted,



Jill C. Teraoka

Enclosures

cc: Jessica Newman, Esq.
Mr. Craig Carlisle (e-mail only)
Cris Carrigan, Esq. (e-mail only)
Duane C. Miller, Esq.



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board

San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
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Arnold Schwarzenegger
Governor

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<http://www.waterboards.ca.gov/sandiego>

September 28, 2009

In reply refer to:
T0605902379:bpulver

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
7009 1410 0002 2347 6040

Ms. Natasha Molla
Chevron Environmental Management Company
145 S. State College Boulevard
P.O. Box 2292
Brea, California 92822

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
7009 1410 0002 2347 6057

Mayor Mark Nielsen
City of Capistrano
32400 Paseo Adelanto
San Juan Capistrano, California 92675

Dear Ms. Molla and Honorable Mayor Nielsen,

**SUBJECT: REVISED CLEANUP AND ABATEMENT ORDER NO. R9-2009-0124
FOR CHEVRON SERVICE STATION No. 9-3417, 32009 CAMINO
CAPISTRANO, SAN JUAN CAPISTRANO, CALIFORNIA**

Enclosed is a copy of Revised Cleanup and Abatement Order No. R9-2009-0124 (Order). The following revisions were made to correct non-substantive typographic errors.

Section	Revision
Finding 3	Changed comma to period at end of fourth paragraph
Directive B	Inserted "light nonaqueous phase liquid" in second sentence
Directive C	Capitalized "C"
Directive C	Changed "Directive D" to "Directive E"
Directive E.1.a	Changed "has" to "is"
Directive E.2	Replaced paragraph to clarify and correct well designations

Ms. Natasha Molla
Hon. Mark Nielsen
Revised CAO No. R9-2009-0124

- 2 -

September 28, 2009

Section	Revision
Directive E.3.b	Changed "Directives D.1 and D.2" to "Directives E.1 and E.2"
Directive E.3.d	Changed "Directive D.1" to "E.1"
Directive E.4.c.vi	Changed "monitor" to "monitoring"
Directive F.11	Changed "GWP" to "GMP"
Directive G	Changed "underground storage tanks" to "USTs"
Directive G	Changed "2600" to "2610"
Directive G.3	Changed "Finding 7" to "Finding 9"
Directive L	Corrected Directive designations
Directive M.1	Inserted "and"
Directive N.5	Changed "monitor" to "monitoring"
Directive P	Changed "an underground tank" to "USTs"
Provision C	Inserted "to" in last sentence
Provision I	Changed "44-49" to "92-49"
Notification B	Changed "to" to "for" in last sentence
Notification C.4	Removed the first "the"

If you have any questions, or require additional assistance, please contact Mr. Barry Pulver of my staff at (858) 467-2733 or bpulver@waterboards.ca.gov.

Sincerely,



MICHAEL P. McCANN
Assistant Executive Officer

MPM:jac:clc:bsp

Attachment: Revised Cleanup and Abatement Order No. R9-2009-0124

Ms. Natasha Molla
Hon. Mark Nielsen
Revised CAO No. R9-2009-0124

- 3 -

September 28, 2009

cc: Mr. Juan M. Garcia, Chevron U.S.A., Inc., JuanGarcia@chevron.com

Mr. Steven H. Edelman, PhD, Holguin, Fahan & Associates, Inc.,
Steve_Edelman@hfa.com

Mr. Jack Fraim, Principal Hydrogeologist, Cedar Creek Consulting,
cedarcreek@directioncon.net

Mr. Joseph E. Tait, Interim City Manager, City of San Juan Capistrano,
jtait@sanjuancapistrano.org

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

REVISED CLEANUP AND ABATEMENT ORDER NO. R9-2009-0124
(Revised September 28, 2009)

AN ORDER DIRECTING CHEVRON USA, INC. AND THE CITY OF SAN JUAN CAPISTRANO
TO CLEANUP AND ABATE THE EFFECTS OF POLLUTION AND NUISANCE AND
SUBMIT TECHNICAL REPORTS PERTAINING TO SITE ASSESSMENT
AND CORRECTIVE ACTION

AT

CHEVRON SERVICE STATION NO. 9-3417
32009 CAMINO CAPISTRANO
SAN JUAN CAPISTRANO, CALIFORNIA

The California Regional Water Quality Control Board, San Diego Region
(hereinafter Regional Board) finds that:

1. **Legal and Regulatory Authority:** This Order conforms to and implements policies and requirements of the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000) including (1) sections 13267 and 13304; (2) applicable State and federal regulations; (3) all applicable provisions of Statewide Water Quality Control Plans adopted by the State Water Resources Control Board (State Board) and the *Water Quality Control Plan, San Diego Basin* (Basin Plan) adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (4) State Board policies and regulations, including State Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*), Resolution No. 88-63 (*Sources of Drinking Water*), and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under California Water Code Section 13304*); California Code of Regulations (CCR) Title 23, Division 3, Chapter 16, Article 11; CCR Title 23, section 3890 et. seq., and (5) relevant standards, criteria, and advisories adopted by other State and federal agencies.
2. **Unauthorized Discharge of Petroleum Hydrocarbon Wastes:** Chevron Service Station No. 9-3417, located at 32009 Camino Capistrano, San Juan Capistrano, California began operation in 1972 and has undergone several upgrades. Discharges of gasoline from the USTs have resulted in a methyl tertiary butyl ether (MTBE) plume in groundwater that extends approximately 2,400 feet south of the facility. The MTBE plume extends to the south (downgradient) to the Dance Hall Well, a municipal water supply well owned and operated by the City of San Juan Capistrano (City).

In early 2008 the City discontinued use of the Dance Hall Well due to the presence of MTBE in the extracted groundwater. A groundwater sample collected from the Dance Hall Well was reported by the City to have a MTBE concentration of 1.3 micrograms per liter ($\mu\text{g/l}$). The health-based primary maximum contaminant level (MCL) for MTBE is 13 $\mu\text{g/l}$. The secondary MCL, which is a taste and odor threshold, is 5 $\mu\text{g/l}$. Although the reported groundwater MTBE concentration is below the secondary MCL, the City elected to shut down the well to eliminate the potential of distributing groundwater with MTBE to its residents.

The following table presents the highest concentration of selected compounds detected within the plume during the most recent groundwater sampling.

Compound	Maximum Groundwater Concentration ($\mu\text{g/L}$)
Benzene	2.8
MTBE	46

- 3. Persons Named as Responsible Parties:** Chevron USA, Inc. (Chevron) is named as a Responsible Party because it owns and operates the retail gasoline station known as Chevron Service Station No. 9-3417 (hereinafter the Facility) where discharges of gasoline occurred from the underground storage tank system (UST).¹ These petroleum hydrocarbons are not naturally occurring and are wastes, as defined in Water Code section 13050(d).

As an interim cleanup action, Chevron proposes pumping the City's Dance Hall Well to capture and contain the MTBE plume, and further proposes treating the pumped groundwater to remove petroleum hydrocarbon wastes.

The City operates a series of municipal water supply wells, including the Dance Hall Well, which are located in a geographic line approximately parallel to the flow of the MTBE plume. The City's municipal supply wells are downgradient from the identified petroleum hydrocarbon discharge source(s). A discharge of waste includes passive migration of waste after the initial discharge.² By not pumping, or by not allowing the Dance Hall well to be pumped to capture and contain the MTBE plume, the City is contributing to the discharge of waste, and contributing to the migration of the MTBE plume beyond the Dance Hall Well, threatening other water supply wells.

¹ The UST system included the tanks, piping, and dispensers.

² In the Matter of Zoecon Corporation, Order No. 86-2 (State Board, 1986)

As the owner and operator of the Dance Hall Well, the City has the ability to arrest the spread of the plume and to obviate the condition of waste that exists in groundwater. Nevertheless, the City and Chevron have failed to enter into an agreement to pump the Dance Hall Well for these purposes.

Pursuant to the California Water Code, the California Health and Safety Code, and applicable law, the City is named a Responsible Party because it has contributed to the condition of nuisance and pollution by failing to pump the Dance Hall Well to control the MTBE plume, and because the City has the ability to obviate the condition.

4. **Water Quality Standards:** The Site is located within the Lower San Juan Hydrologic Subarea (HSA) (901.27) of the San Juan Hydrologic Unit (901.00). Groundwater in the San Juan HSA is designated in the Basin Plan as having existing beneficial uses for municipal and domestic water supply (MUN),³ agricultural supply water (AGR), and industrial service supply (IND). The Basin Plan contains numeric water quality objectives⁴ for chemical constituents to protect groundwater designated for MUN use. The numeric objectives are derived from primary MCLs⁵ established by the Department of Health Services (Department) in Title 22 of the California Code of Regulations.⁶ Groundwater concentrations of benzene and MTBE are not in conformance with the water quality objectives needed to support MUN uses of the groundwater, creating a condition of pollution and nuisance in water of the State.

Groundwater is currently used for municipal and domestic supply. The San Juan Capistrano Groundwater Recovery Plant (GWRP), which began operation in 2005, consists of six groundwater production wells, and a greensand filter

³ See Water Quality Control Plan for the San Diego Basin (Basin Plan), Page 2-3. The Basin Plan defines MUN as "uses of water for community, military, or individual water supply systems including, but not limited to, drinking water supply."

⁴ "Water quality objectives" are defined in Water Code section 13050(h) as "the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area."

⁵ MCLs, maximum contaminant levels, are public health-protective drinking water standards to be met by public water systems. MCLs take into account not only chemicals' health risks but also factors such as their detectability and treatability, as well as the costs of treatment. Primary MCLs can be found in Title 22 California Code of Regulations (CCR) sections 64431 - 64444. Secondary MCLs address the taste, odor, or appearance of drinking water, and are found in 22 CCR section 64449.

⁶ Basin Plan, footnote 1, supra. Page 3-24 and Table 3-5 at 3-25. The Basin Plan provides that "Water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels specified in California Code of Regulations, Title 22, Table 64444-A of section 64444 (Organic Chemicals) which is incorporated by reference into this plan. This incorporation by reference is prospective including future changes to the incorporated provisions as the changes take effect. (See Table 3-5.)"

and reverse osmosis treatment system. The GWRP, which includes the Dance Hall Well, can extract and treat up to 5.1 million gallons per day of highly mineralized groundwater. The GWRP was designed to supply virtually all of San Juan Capistrano's winter needs and half of its summer needs.

5. **Basis of Cleanup and Abatement Order:** Water Code section 13304 contains the cleanup and abatement authority of the Regional Board. Water Code section 13304 requires a person to clean up waste and/or abate the effects of the waste discharge if so ordered by a regional board in the event there has been a discharge in violation of waste discharge requirements, or if a person has caused or permitted waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates or threatens to create a condition of pollution or nuisance. Therefore, based on the previous findings the Regional Board is authorized to order the Responsible Parties to cleanup and abate the effects of the waste discharge(s).
6. **Basis for Requiring Reports:** Water Code section 13267 provides that the Regional Water Board may require dischargers, past dischargers, or suspected dischargers to furnish those technical or monitoring reports as the Regional Water Board may specify, provided that the burden, including costs, of these reports, shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring the reports, the Regional Board must provide the person with a written explanation with regard to the need for the reports, and identify the evidence that supports requiring that person to provide the reports.
7. **Need for Technical and Monitoring Reports:** Technical reports and Monitoring reports required by this Order are needed to provide information to the Regional Board regarding (a) the nature and extent of the discharge, (b) the nature and extent of pollution conditions in State waters created by the discharge, (c) the threat to public health posed by the discharge, and (d) appropriate cleanup and abatement measures. The reports will enable the Regional Board to determine the vertical and lateral extent of the discharge, ascertain if the condition of pollution poses a threat to human health in the vicinity of the Site, and provide technical information to determine what cleanup and abatement measures are necessary to bring the Site into compliance with applicable water quality standards. Based on the nature and possible consequences of the discharges (as described in Findings No. 1 through 6, above) the burden of providing the required reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
8. **Cost Recovery:** Pursuant to California Water Code section 13304, the Regional Board is entitled to, and will seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized

discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

9. **State Board Policies:** The State Board adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304*. This Resolution sets forth the policies and procedures to be used during an investigation or cleanup of a nuisance site and requires that cleanup levels be consistent with State Board Resolution No. 68-16, the *Statement of Policy with Respect to Maintaining High Quality of Waters in California*. Resolution No. 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution No. 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, CCR section 2550.4. Any alternative cleanup level greater than background must (1) be consistent with the maximum benefit for the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.
10. **California Environmental Quality Act (CEQA) Compliance:** The issuance of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of CEQA pursuant to section 15321(a) (2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of detailed work plans that address cleanup activities. The proposed activities under the work plans are not yet known, but implementation of the work plans may result in significant physical impacts to the environment that must be evaluated under CEQA. The appropriate lead agency will address the CEQA requirements prior to implementing any work plan that may have a significant impact on the environment.
11. **Qualified Professionals:** The Responsible Parties' reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals should be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals.

IT IS HEREBY ORDERED that, pursuant to sections 13267 and 13304 of the Water Code, that Chevron and the City (hereinafter the Responsible Parties) must comply with the following Directives:

- A. CLEANUP AND ABATE DISCHARGES:** The Responsible Parties shall take all corrective action necessary to cleanup and abate the effects of the discharge.
- B. INTERIM REMEDIAL ACTION:** The Responsible Parties shall immediately implement interim remedial actions to abate or correct the actual or potential effects of the unauthorized release pursuant to CCR Title 23, Chapter 16, section 2722 (b) as necessary. Interim remedial actions may include but are not limited to activities that remove all free product (light nonaqueous phase liquid or LNAPL), remove petroleum hydrocarbon sources (e.g. soil saturated with petroleum hydrocarbons) and/or mitigate nuisance of all surface and groundwater affected by the waste discharge.
1. Interim remedial actions can occur concurrently with any phase of the site investigation or remedial action. On or before **November 30, 2009** the Responsible Parties must begin implementation (i.e. construction) of the Interim Remedial Action described in the March 26, 2008 Interim Remedial Action Plan (IRAP)⁷ which was approved by the Orange County Local Oversight Program, provided that the water provided to the GWRP has no detectable concentrations (using the lowest available method detection level) of fuel hydrocarbons including oxygenates such as MTBE.
 2. On or before **November 30, 2009** Chevron shall submit an operations and maintenance plan (OM Plan) to the Regional Board. The OM Plan must include:
 - a. A description of how the well head treatment system described in the IRAP will be operated and maintained.
 - b. A sampling plan to demonstrate that the water provided to the GWRP has no detectable concentrations of fuel hydrocarbons including oxygenates such as MTBE.
 - c. A monitoring plan to demonstrate the effectiveness of the IRAP.
 - d. A contingency plan in the event of "breakthrough" of fuel hydrocarbons including oxygenates such as MTBE.

⁷ *Interim Remedial Action Plan, Chevron Station 9-3417, 32001 Camino Capistrano, San Juan Capistrano, California, prepared by Conestoga-Rovers & Associates, dated March 26, 2008.*

3. On or before **January 29, 2010** a technical report shall be submitted to the Regional Board certifying that the Interim Remedial Action is fully operational.
4. During operation of the IRAP Chevron shall submit monthly updates reports to the Regional Board. The monthly IRAP reports shall at a minimum include:
 - a. Monthly and cumulative volumes of water extracted, treated, and delivered to the GWRP.
 - b. Monthly and cumulative hours of operation of the IRAP.
 - c. Laboratory test results of samples collected as part of the IRAP OM Plan.
 - d. Effectiveness of the IRAP in containing the MTBE plume.
 - e. Any repairs and/or modifications made to the system.
 - f. Records of carbon change outs.
- g. Any other information needed to demonstrate compliance with Directive B.

C. MUNICIPAL WATER SUPPLY WELL MONITORING PROGRAM: The City shall design and implement a municipal water supply well monitoring program. The City shall prepare and submit to the Regional Board by **October 30, 2009** a workplan to monitor the Dance Hall, Kinoshita, CVWD1, SJBA2, and SJBA4 municipal water supply wells in compliance with the appropriate provisions of Directive E. The workplan shall include historical data of samples collected and analyzed and a description of the methods used to sample the wells. At a minimum groundwater samples must be collected monthly and analyzed for total petroleum hydrocarbons by the United States Environmental Protection Agency (USEPA) Test Method 8015, and for volatile organic compounds; including oxygenates, by USEPA Test Method 8260b. The results of the production well monitoring shall be submitted to the Regional Board no later than the end of the month after the samples were collected. The municipal water supply well monitoring program shall begin no later than **January 4, 2010**.

D. REPLACEMENT WATER: Chevron shall provide replacement water if requested by the City. Any additional costs for replacement water beyond the City's ordinary production costs for water extracted from the Dance Hall Well will be borne solely by Chevron. Pursuant to Water Code section 13304(f) replacement water shall meet all applicable federal, state, and local drinking water standards and shall have comparable quality to that pumped by the public water system prior to the discharge. Groundwater pumped from the Dance Hall Well and treated as required by Directive B and delivered to the GWRP shall be considered replacement water.

E. GROUNDWATER MONITORING PROGRAM: Chevron shall submit the technical reports required in this Groundwater Monitoring Program (GMP) pursuant to Water Code sections 13267 and 13304.

1. Purpose: The purpose of the GMP is to provide data to answer the following questions.
 - a. To what extent is the MTBE plume migrating towards the Kinoshita, CVWD1, SJBA2, and SJBA4 municipal water supply wells?
 - b. Are interim remedial actions effective?
 - c. Has the lateral and vertical extent of each waste constituent in soil, groundwater, and soil vapor been delineated?
 - d. Is the size of the plume of each waste constituent decreasing in size and/or mass?
 - e. Has the source of each waste constituent been effectively cleaned up?
 - f. Is the selected remedial action alternative effectively removing waste constituents from the soil, groundwater, and soil vapor, and is the implemented corrective action capable of achieving the cleanup levels in the CAP?
 - g. Have the beneficial uses of the groundwater been restored, and are human health and the environment protected?
2. Monitoring: With the exception of well clusters MW-15, MW-16, and MW-17, Chevron shall monitor and sample all groundwater monitor wells on a quarterly basis. Well clusters MW-15, MW-16 and MW-17 shall be monitored and sampled monthly. Well clusters MW-15 and MW-16 shall be monitored and sampled weekly when the Dance Hall Well resumes operation. Groundwater samples shall be analyzed for total petroleum hydrocarbons quantified as gasoline and diesel using USEPA method 8015 and for **full scan of volatile organic compounds** including benzene, toluene, ethylbenzene, xylenes, MTBE, tertiary butyl alcohol (TBA) using USEPA method 8260b. **Additional groundwater monitoring wells may be required to meet the objectives of the groundwater monitoring program.**
3. Groundwater Monitoring Program Workplan: Chevron shall prepare and submit to the Regional Board by **November 30, 2009** a workplan to implement the groundwater monitoring program. At a minimum the Groundwater Monitoring Program Workplan must include:

- a. Methods to be used to monitor, purge, and sample the wells.
 - b. Request and justification for changes to the groundwater monitoring requirements specified in Directives E.1 and E.2.
 - c. A map showing the location of groundwater monitoring wells to be part of the groundwater monitoring program.
 - d. A brief workplan for the installation of additional groundwater monitoring wells needed to comply with Directive E.1.
4. Quarterly Groundwater Monitoring Reports: Chevron shall submit quarterly groundwater monitoring reports to the Regional Board according to the following schedule:

Quarter	Monitoring Period	Report Due Date
First Quarter	January, February, March	April 30
Second Quarter	April, May, June	July 30
Third Quarter	July, August, September	October 30
Fourth Quarter	October, November, December	January 30

The quarterly groundwater monitoring reports shall include:

- a. Transmittal Letter with Penalty of Perjury Statement. The transmittal letter shall discuss any violations during the reporting period and actions taken or planned to correct the problem. The letter shall be signed by the Responsible Party's principal executive officer or their duly authorized representative, and shall include a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.
- b. Groundwater Elevations. Groundwater elevation data shall be presented in tabular format with depth to groundwater (in feet below ground surface), top of casing elevations, depths to the top of well screens, length of well screens and total depth for each well included in the monitoring program. For all wells containing floating "free petroleum product" (A.K.A. light non-aqueous phase liquid or LNAPL) include the measured thickness of LNAPL in a tabular format. A groundwater elevation map must be prepared for each monitored water-bearing zone with the groundwater flow direction and calculated hydrologic gradient(s) clearly indicated in the figures(s). A complete tabulation of historical groundwater elevations must be included in each quarterly report.

- c. Reporting Groundwater Results. All monitoring reports must, at a minimum, include:
- i. A map showing the location of all wells and other sampling points.
 - ii. Tables of current and historic groundwater sampling data (chemical data and depth to groundwater and groundwater elevation data).
 - iii. Results of the Production Well Monitoring Program conducted by the City pursuant to Directive C and interpretations of the results and the potential for MTBE to impact other municipal supply wells.
 - iv. Isoconcentration map(s) for constituents of concern (COCs) for each monitored water-bearing zone, as appropriate.
 - v. Time versus concentration plots that also show groundwater elevations for constituents of concern for appropriate wells.
 - vi. A site plot plan which clearly illustrates the locations of monitoring wells, former/current UST systems (and product piping) and buildings located on the property and immediately adjacent to the property lines of the facility.
 - vii. A map presenting the most recent concentrations of total petroleum hydrocarbons and volatile aromatic hydrocarbons (e.g. benzene, toluene, ethylbenzene, total xylenes, MTBE, TBA and other fuel oxygenates).
 - viii. Technical interpretations of the groundwater data, and describe any significant increases in pollutant concentrations since the last report, any measures proposed to address the increases, any changes to the site conceptual model, and any conclusions and recommendations for future action with each report.
 - ix. A description of the analytical methods used, detection limits obtained for each reported constituent, and a summary of quality assurance/quality control (QA/QC) data.
 - x. A data validation summary which evaluates the sampling methods, laboratory data, and laboratory QA/QC data to determine whether or not there were deviations in the sampling method or if there are any QA/QC items which did not meet the appropriate standards, and to what degree these noted excursions affect the monitoring data.

- xi. The report must indicate sample collection protocol(s), describe how investigation derived wastes are managed at the facility, and include documentation of proper disposal of contaminated well purge water and/or soil cuttings removed from the facility.
 - d. Remediation. If applicable, the report must include soil vapor or groundwater extraction results in tabular form, for each extraction well and for the Site as a whole. The report must also include contaminant removal results, from all extraction wells and from other cleanup and abatement systems, expressed in units of pounds per month and quarter, and cumulative pounds since initiation of the remedial action.
 - e. Status Report. The quarterly report must describe relevant work completed during the reporting period (e.g. Site investigation, interim remedial measures) and work planned for the following quarter.
5. Record Keeping: The Responsible Parties, or their agent, must retain data generated for the above reports, including laboratory results and QA/QC data, for a minimum of six years after origination and must make them available to the Regional Board upon request.
6. Groundwater Monitoring Program Revisions: Revisions to the GMP may be ordered by the Regional Board. Prior to making GMP revisions, the Regional Board will consider the burden, including costs, of the groundwater monitoring reports relative to the benefits to be obtained from these reports.

F. SITE ASSESSMENT REPORT: Chevron shall prepare and submit a Site Assessment Report (Report) describing the results of the site investigation. The Report is due no later than 5:00 p.m. on **April 30, 2010** and shall contain the following information:

1. Source Characterization: The report shall contain the results of an investigation of all potential sources of waste constituent discharges to soil and groundwater including, but not limited to, historical records of operations, site reconnaissance, and previous sampling studies. The information in the technical report shall provide an adequate basis for determining subsequent effective cleanup and abatement actions. All sources of waste constituent releases shall be located on a site map at a scale of 1 inch = 200 feet or larger, with an appropriate contour interval to depict site topography.
2. Geologic Characterization: The report shall contain an accurate characterization of the subsurface geology, the hydrogeologic characteristics, and all preferential pathways that may affect groundwater flow and contaminant migration.

3. Groundwater Flow Characterization: The report shall describe the rate(s) and direction(s) of local groundwater flow, in both the horizontal and vertical dimension for all water-bearing units potentially affected by the waste constituent(s) from the facility.
4. Extent of Waste Constituent Characterization: The report shall adequately characterize the extent (both laterally and vertically) of each waste constituent in soil and groundwater to the background⁸ concentration for that waste constituent, and characterize any pollution that has migrated off-property.
5. Human Health and Ecological Risk Assessment: The report shall include a human health and ecological risk assessment for every complete exposure pathway identified in the Site Conceptual Model (SCM). The human health and ecological risk assessments should follow USEPA and the California Environmental Protection Agency guidance.
6. Groundwater Monitoring Wells: The report shall describe the location of existing monitoring wells, and the proposed location of additional monitoring wells, needed to characterize the types of waste constituents present, the concentrations of waste constituents, and their lateral and vertical extent in groundwater. The report shall include locations of proposed wells located between the downgradient extent of the dissolved plume and downgradient groundwater production wells to serve as an "early warning" should the plume migrate towards these wells.
7. Field Methodologies: The report shall describe the field methodologies used for drilling, soil sampling, groundwater sampling, well and piezometer construction, geophysical surveys, and other activities. Selected methods for purging and sampling monitoring wells must be capable of providing representative samples of groundwater for detecting all of the waste constituents.
8. Chemical Analyses: The report shall describe the laboratory analytical methods and protocols used for each environmental medium including soil, soil vapor, and water. The suite of chemical analyses, methods and protocols must be adequate to quantitatively identify and characterize the full range of site-specific waste constituents.
9. Sample Locations and Number: The report shall contain the locations, type, and number of samples identified and shown on a site map and cross sections. The number of samples and suite of chemical analyses must be sufficient to identify the nature of waste constituent(s) and their sources, to define the distribution of waste constituents in the subsurface, to provide data for

⁸ "Background" means the concentrations or measures of constituents or indicator parameters in water or soil that have not been affected by waste constituents from the site. For volatile organic compounds, oxygenates, and gasoline constituents the background concentration is zero.

evaluation of fate and transport of pollutants, risk assessment, remedy selection, and remedial design. In addition, samples shall be collected to evaluate physical properties of soils and aquifer materials. All monitoring data shall be presented in tabular format including the sample result, sample medium, location, depth, sampling method, analyses and rationale for the method.

10. Updated Site Conceptual Model: The report shall contain an updated SCM that updates the initial SCM using all data collected at the facility. The updated SCM must include data, interpretations, and a discussion of the level of uncertainty of conclusions.
11. Groundwater Monitoring Program: The report shall contain a proposed revised GMP. The objective of the GMP is to determine the changes in the nature and extent of the dissolved petroleum hydrocarbon plume. At a minimum the GMP shall include the rationale for the proposed sampling program, a narrative of the proposed sampling locations, sampling frequency, and laboratory test methods, and a map showing the location of the proposed sampling locations.

G. CORRECTIVE ACTION PLAN (CAP): Chevron shall prepare and submit to the Regional Board by **April 30, 2010** a CAP that satisfies the provisions of section 2725 of the regulations governing USTs (CCR, Title 23, Chapter 16 section 2610, et seq.). The CAP must address cleanup of soil and groundwater at the facility as well as all groundwater impacted by the discharge(s) from the facility, and contain all the elements specified in Article 11, section 2725 including:

1. Assessment of Impacts: The CAP shall include an assessment of impacts in accordance with Article 11, section 2725 (e), which includes but is not limited to:
 - a. The physical and chemical characteristics of the hazardous substance or its constituents, including their toxicity, persistence and potential for migration in water, soil and air.
 - b. The hydrogeologic characteristics of the facility and the surrounding area where the unauthorized release has migrated or may migrate.
 - c. The proximity and quality of nearby surface water or groundwater, and the current and potential beneficial uses of these waters.
 - d. The potential effects of residual contamination on nearby surface water and groundwater.
2. Feasibility Study: The CAP shall include a feasibility study to evaluate alternatives for cleanup of soil and groundwater. The evaluation shall be

consistent with the requirements of CCR Title 23, Division 3, Chapter 16, section 2725(f) and include the following elements:

- a. An evaluation of the effectiveness, feasibility, and cost of at least two alternatives to restore or protect the beneficial uses of groundwater.
 - b. An evaluation of methods to control the spread of the dissolved contaminant plume off the property.
 - c. A comprehensive description of the cleanup and abatement activities associated with each recommended alternative.
 - d. A proposed action schedule, including interim milestone dates, for completion of each recommended alternative.
3. Cleanup Levels: The CAP shall evaluate applicable cleanup levels in accordance with the requirements of Article 11, section 2725(g) and shall comply with the requirements found in Article 11, section 2721(b), State Board Resolution No. 92-49, and Finding 9 of this Order.
- a. Groundwater Cleanup Levels. Chevron shall cleanup and abate the effects of the discharge in a manner that promotes the attainment of either background groundwater quality or the best water quality which is reasonably attainable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. Any alternative cleanup levels less stringent than background groundwater quality shall:
 - i. Be consistent with maximum benefit to the people of the state;
 - ii. Not unreasonably affect present and anticipated beneficial use of such water; and
 - iii. Not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State Board and Regional Board.
 - b. Soil Cleanup Levels. Residual concentrations of fuel constituents in soils must meet all the following criteria: 1) be low enough so that leachable contaminants will not cause the groundwater cleanup levels to be exceeded at/near the facility; and 2) be protective of human health and the environment. Chevron shall propose a range of site-specific soil cleanup levels based upon a technical evaluation of risks from residual soil contaminants and analytical results from contaminant leachability tests

performed on an adequate number of significantly contaminated soils samples collected from the facility.

4. Corrective Action Evaluation Monitoring Program: The CAP shall include a corrective action evaluation monitoring program (EMP). The objective of the EMP is to determine the effectiveness of the corrective action and shall be used to make adjustments to the implementation of the CAP. At a minimum the EMP shall include the rationale for the proposed sampling program, a narrative of the proposed sampling locations, sampling frequency, and laboratory test methods, and a map showing the location of the proposed sampling locations.

H. IMPLEMENTATION OF CAP: Chevron shall implement the CAP in accordance with the action schedule in the approved CAP. Chevron shall begin implementation of the CAP no later than **July 30, 2010**. Chevron shall propose a method(s) and schedule for the monitoring and reporting of progress of remediation at the facility. These results should be used by Chevron to evaluate the effectiveness of the approved corrective action alternative implemented by Chevron to remediate the soil and groundwater contamination from the unauthorized release at the facility. The results and the technical evaluation must be reported to the Regional Board Executive Officer for review and comment.

No later than **October 29, 2010** Chevron shall submit a technical report to the Regional Board certifying that the preferred remedial action alternative(s) is fully operational and evaluating the effectiveness of the CAP.

I. COMPLETION OF SOURCE AREA CLEANUP: The source area is defined as the facility and immediately adjacent area where petroleum hydrocarbons in soil and groundwater are the source of continued discharges of petroleum hydrocarbon wastes to groundwater. Soil and groundwater cleanup goals in the source area shall be achieved no later than **January 5, 2015**.

No later than 5:00 P.M. on **January 5, 2015** Chevron shall submit a workplan to the Regional Board to conduct confirmation sampling to demonstrate that soil and groundwater cleanup goals in the source area have been met. No later than 5:00 P.M. on **June 30, 2015** Chevron shall submit a technical report to the Regional Board presenting the results of soil and groundwater confirmation sampling and certifying that cleanup levels in the source area have been achieved.

J. COMPLETION OF NON-SOURCE AREA CLEANUP: Soil and groundwater cleanup goals outside of the source area shall be achieved no later than **January 6, 2020**.

K. VERIFICATION MONITORING: No later than **April 30, 2020** Chevron shall submit a workplan to the Regional Board to implement a verification monitoring program that

includes a schedule for submitting monitoring reports.⁹ Chevron shall conduct verification monitoring in conformance with the provisions of section 2727 of CCR Title 23, Chapter 16. Chevron shall begin implementation of the verification monitoring program no later than **June 30, 2020**. No later than **July 30, 2021** Chevron shall submit a technical report presenting the results of the groundwater cleanup verification monitoring program which certifies that groundwater cleanup levels have been achieved.

L. COMPLIANCE DATES: The following is a summary of the due dates for activities presented in the preceding directives.

Directive	Activity	Due Date
B	Interim Remedial Action Implementation	November 30, 2009
	IRAP Operations and Maintenance Plan	November 30, 2009
	Interim Remedial Action Certification Report	January 29, 2010
C	Municipal Water Supply Well Monitoring Workplan	October 30, 2009
	Commencement of Municipal Water Supply Well Monitoring	January 4, 2010
E	Groundwater Monitoring Program Workplan	November 30, 2009
F	Site Assessment Report	April 30, 2010
G	Corrective Action Plan	April 30, 2010
H	Corrective Action Plan Implementation	July 30, 2010
	Corrective Action Certification Report	October 29, 2010
I	Completion of Source Area Cleanup	January 5, 2015
	Source Area Cleanup Confirmation Workplan	January 5, 2015
	Source Area Cleanup Certification Report	June 30, 2015
J	Completion of Non-Source Area Cleanup	January 6, 2020
K	Groundwater Verification Monitoring Workplan	April 30, 2020
	Groundwater Cleanup Verification Report	July 30, 2021

⁹ Verification groundwater monitoring shall include both source area and non-source area.

M.DOCUMENT SUBMITTALS:

1. Transmittal Letter: A transmittal letter shall be included with all Reports submitted in compliance with this Order and shall include the following:
 - a. Content. The Transmittal Letter shall include a brief discussion of the findings, conclusion(s), and recommendation(s) presented in the Report.
 - b. Certification Statement. The person signing the Transmittal Letter shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. Signatory Requirements: All reports required by this Order and other information required by the Regional Board shall be signed:
 - a. By a person certified as follows:
 - i. For a corporation: A principal executive officer, at least a vice president of the corporation, or duly authorized representative.
 - ii. For a partnership or sole proprietorship: A general manager or the proprietor, respectively, or duly authorized representative.
 - iii. For a municipality, state, federal, or other public agency: Either a principle executive officer, ranking elected official, or duly authorized representative.
 - b. An individual is a duly authorized representative only if:
 - i. The authorization is made in writing by a person described in paragraph 2.a of this section.
 - ii. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility or activity.

- iii. The written authorization is submitted to the Regional Board prior to submission of the Report.
3. The Responsible Parties shall submit both one paper and one electronic, searchable PDF copy of all documents required under this Order to:

Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4353
Attn: Barry Pulver, Groundwater Basins Branch

All correspondence and documents submitted to the Regional Board shall include the following Geotracker Site ID in the header or subject line:

T0605902379:bpulver

N. ELECTRONIC DATA SUBMITTALS: The State's Electronic Reporting Regulations (Chapter 30, Division 3 of Title 23 & and Division 3 of Title 27, CCR) require electronic submission of any report or data required by a regulatory agency from a cleanup site after July 1, 2005. All information submitted to the Regional Board in compliance with this Order is required to be submitted electronically via the Internet into the Geotracker database <http://geotracker.waterboards.ca.gov/> (Geotracker Site ID. **T0605902379**). The electronic data shall be uploaded on or prior to the regulatory due dates set forth in the Order or addenda thereto. To comply with these requirements, the Responsible Party shall upload to the Geotracker database the following minimum information.

1. Laboratory Analytical Data: Analytical data (including geochemical data) for all soil, vapor, and water samples in Electronic Data File (EDF) format. Water, soil, and vapor data include analytical results of samples collected from: monitoring wells, boreholes, gas and vapor wells or other collection devices, surface water, groundwater, piezometers, stockpiles, and drinking water wells.
2. Locational Data: The latitude and longitude of any permanent monitor well for which data is reported in EDF format, accurate to within 1 meter and referenced to a minimum of two reference points from the California Spatial Reference System (CSRS-H), if available.
3. Monitoring Well Elevation Data: The surveyed elevation relative to a geodetic datum of any permanent monitor well. Elevation measurements to the top of groundwater well casings for all groundwater monitoring wells.
4. Depth-to-Water Data: The depth-to-water in monitoring wells even if groundwater samples are not actually collected during the sampling event.

5. Monitoring Well Screen Intervals: The depth to the top of the screened interval and the length of screened interval for any permanent monitoring well.
6. Site Map: Site map or maps which display discharge locations,¹⁰ streets bordering the facility, and sampling locations for all soil, water, and vapor samples. The site map is a stand-alone document that may be submitted in various electronic formats.¹¹ A site map must also be uploaded to show the maximum extent of any waste constituent in groundwater. An updated site map may be submitted at any time.
7. Boring logs: Boring logs (in searchable PDF format) prepared by an appropriately licensed professional.
8. Electronic Report: A complete copy (in searchable PDF format) of all workplans, assessment, cleanup, and monitoring reports including the signed transmittal letters, professional certifications, and all data presented in the reports.

O. VIOLATION REPORTS: If the Responsible Parties violate any requirement of this Order, then the Responsible Parties must notify the Regional Board office by telephone as soon as practicable once the Responsible Parties have knowledge of the violation. Regional Board staff may, depending on violation severity, require the Responsible Parties to submit a separate technical report on the violation within five working days of telephone notification.

P. OTHER REPORTS: The Responsible Parties must notify the Regional Board in writing prior to any facility activities, such as construction or removal of USTs, which have the potential to cause further migration of contaminants or which would provide new opportunities for Site investigation.

PROVISIONS

A. NO POLLUTION, CONTAMINATION OR NUISANCE: The storage, handling, treatment, or disposal of soil containing petroleum hydrocarbon waste or polluted groundwater must not create conditions of nuisance as defined in Water Code section 13050(m). The Responsible Parties must properly manage, treat and dispose of wastes and polluted groundwater in accordance with applicable federal, state and local regulations.

¹⁰ Former tank(s), product and vapor piping, dispenser locations, or sump locations, and unauthorized discharge or spill areas.

¹¹ Formats include .gif, .jpeg, .jpg, .tiff, .tif, .pdf

B. GOOD OPERATION AND MAINTENANCE: The Responsible Parties must maintain in good working order and operate as efficiently as possible any monitoring system, Site or control system installed to achieve compliance with the requirements of this Order.

C. CONTRACTOR/CONSULTANT QUALIFICATIONS: All reports, plans and documents required under this Order shall be prepared under the direction of appropriately qualified professionals. A statement of qualifications and license numbers, if applicable, of the responsible lead professional and all professionals making significant and/or substantive contributions shall be included in the report submitted by the Responsible Parties. The lead professional performing engineering and geologic evaluations and judgments shall sign and affix their professional geologist or civil engineering registration stamp to all technical reports, plans or documents submitted to the Regional Board.

D. LABORATORY QUALIFICATIONS: Unless otherwise permitted by the Regional Board, all analyses shall be conducted at a laboratory certified for such analyses by the California Department of Health Services. The Responsible Parties must use a laboratory capable of producing and providing quality assurance/quality control (QA/QC) records for Regional Board review. The director of the laboratory whose name appears on the certification shall supervise all analytical work in his/her laboratory and shall sign all reports submitted to the Regional Board.

E. LABORATORY ANALYTICAL REPORTS: Any report presenting new analytical data is required to include the complete Laboratory Analytical Report(s). The Laboratory Analytical Report(s) must be signed by the laboratory director and contain:

1. A complete sample analytical report.
2. A complete laboratory quality assurance/quality control (QA/QC) report.
3. A discussion of the sample and QA/QC data.
4. A transmittal letter that shall indicate whether or not all the analytical work was supervised by the director of the laboratory, and contain the following statement, "All analyses were conducted at a laboratory certified for such analyses by the California Department of Health Services in accordance with current USEPA procedures."

F. ANALYTICAL METHODS: Specific methods of analysis must be identified in monitoring program reports. If the Responsible Parties propose to use methods or test procedures other than those included in the most current version of "Test Methods for Evaluations Solid Waste, Physical/Chemical Methods, SW-846" (USEPA) or 40 CFR 136, "Guidelines Establishing Test Procedures for the

Analysis of Pollutants; Procedures for Detection and Quantification," the exact methodology must be submitted for review and must be approved by the Regional Board prior to use.

G. REPORTING OF CHANGED OWNER OR OPERATOR: The Responsible Parties must notify the Regional Board of any changes in Site occupancy or ownership associated with the property described in this Order.

H. PENALTY OF PERJURY STATEMENT: All reports must be signed by the Responsible Parties' principal executive officer or their duly authorized representative, and must include a statement by the official, under penalty of perjury, that the report is true and correct to the best of the official's knowledge.

I. REGULATIONS: All corrective actions must be in accordance with the provisions of CCR Title 23, Chapter 16; the Cleanup and Abatement Policy in the Water Quality Control Plan for the San Diego Basin (9); and State Board Resolution No. 92-49.

NOTIFICATIONS

A. COST RECOVERY: Pursuant to Water Code section 13304(c), the Regional Board is entitled to, and will seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by the Order.

B. ENFORCEMENT NOTIFICATION: Failure to comply with requirements of this Order may subject the Responsible Parties to enforcement action, including but not limited to: imposition of administrative civil liability, pursuant to Water Code sections 13268 and 13350, in an amount not to exceed \$5,000 for each day in which the violation occurs under Water Code sections 13304 or 13350 or referral to the Attorney General for injunctive relief or civil or criminal liability.

C. REQUESTING EVIDENTIARY HEARING BY THE REGIONAL BOARD: Any person affected by this action of the Regional Board may request an evidentiary hearing before the Regional Board. The Regional Board's Executive Officer may elect to hold an informal hearing or a "paper hearing" in lieu of scheduling a hearing before the Regional Board itself. If either of the Responsible Parties decides to request an evidentiary hearing, they must send their request to the Regional Board Executive Officer, Attn: Supervisor Central San Diego County Groundwater Unit, at the address provided on the Order transmittal letter. Please consider the following carefully:

1. The Regional Board must receive the request within 30 days of the date of this Order.

2. The request must include all comments, technical analysis, documents, reports, and other evidence that the Responsible Party wishes to submit for the evidentiary hearing. However, please note that the administrative record will include all materials the Regional Board has previously received regarding this facility. The Responsible Party is not required to submit documents that are already in the record.
3. The Executive Officer or Regional Board may deny the request for a hearing after reviewing the evidence.
4. If neither of the Responsible Parties requests an evidentiary hearing, the State Board may prevent them from submitting new evidence in support of a State Board petition.
5. The request for an evidentiary hearing, if one or both of the Responsible Parties submits one, does not stay the effective date of the Order, whether or not a hearing is scheduled.
6. A request for a hearing does not extend the 30-day period to file a petition with the State Board (see below). However, we suggest that the either or both of the Responsible Parties asks the State Board to hold the petition in abeyance while the request for a hearing is pending. (Refer to CCR Title 23 section 2050.5(d)) Additional information regarding the SWRCB petition process is provided below.

D. REQUESTING ADMINISTRATIVE REVIEW BY THE STATE BOARD: Any person affected by this action of the Regional Board may petition the State Board to review the action in accordance with section 13320 of the Water Code and CCR Title 23 section 2050. The petition must be received by the State Board (Office of Chief Counsel, P.O. Box 100, Sacramento, California 95812) within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.



MICHAEL P. McCANN
Assistant Executive Officer

9/28/09
DATE