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8 **STATE WATER RESOURCES CONTROL BOARD**
9 **FOR THE STATE OF CALIFORNIA**

10 In the Matter of the Petition of
11 SHELL PIPELINE COMPANY LP
12 Request for Technical Reports, California
Regional Water Quality Control Board, Los
13 Angeles Region
14 California Water Code § 13267

Case No.

**PETITION FOR REVIEW AND
REQUEST FOR HEARING**

15
16 Shell Pipeline Company LP ("Shell") hereby files this Petition for Review and Request
17 for Hearing, along with the Declaration of Michael R. Leslie and a Request for Stay. Shell
18 alleges as follows:

19 1. Shell seeks review of an order issued on December 28, 2009 by the California
20 Regional Water Quality Control Board, Los Angeles region (the "Regional Board") pursuant to
21 Water Code § 13267 (the "13267 Order"). The 13267 Order directs Shell to undertake an
22 environmental investigation of a fully-developed commercial and industrial property located in
23 the City of Carson known as the Watson Industrial Center South (the "WICS Property").¹ The
24 WICS Property is an irregularly shaped parcel roughly bounded by 223rd Street on the north,
25 Sepulveda Boulevard on the south, Wilmington Avenue on the east, and Avalon Boulevard on

26
27 ¹ A copy of the Water Board's December 28, 2009 Order to Conduct an Environmental
28 Investigation is attached as Exhibit A to the Declaration of Michael R. Leslie ("Leslie Decl.").
All exhibits referenced herein are attached to the Leslie Declaration. Except as otherwise
indicated, all statutory references are to the Water Code.

1 the west. Exh. B (copy of Plaintiff's First Amended Complaint in *Watson Land Company v.*
2 *Atlantic Richfield Company, et al.*, Los Angeles Superior Court Case No. BC150161, filed
3 December 20, 1996), ¶ 3.

4 2. Specifically, the 13267 Order requires Shell to submit the following reports:

- 5 • A workplan for groundwater sampling and monitoring for all existing
6 groundwater monitoring wells at the WICS Property related to four groundwater
7 contamination plumes called the Pool II, A, B1 and B2 Plumes, and the historical
8 groundwater monitoring data for these plumes. The workplan and data are due
9 February 26, 2010. Exh. A at 4.
- 10 • A three-dimensional conceptual site model depicting the hydrogeology,
11 hydrostratigraphy and current groundwater monitoring network for the WICS
12 Property, as well as the location of water supply wells and other potentially
13 affected receptors within a one mile radius of the WICS Property, and the lateral
14 and vertical extent of each chemical of concern. This model is due April 15,
15 2010. Exh. A at 4-5.
- 16 • A workplan for additional investigation to complete the three-dimensional
17 conceptual site model. This workplan is due April 15, 2010. Exh. A at 5.
- 18 • Copies of "all documents and reports of environmental assessment and
19 investigation previously conducted at the WICS." Exh. A at 2.

20 3. For the following reasons, requiring Shell to investigate the contamination
21 identified in the 13267 Order and to submit the specified workplans, model, documents and
22 reports is unjust and improper, and the 13267 Order should be rescinded.

23 4. *First*, Shell's liability for the contamination described in the 13267 Order was
24 fully determined by a jury in prior litigation with the owner of the WICS Property, Watson Land
25 Company ("Watson"). This determination resulted from a lawsuit brought by Watson against
26 Shell Oil Company, Atlantic Richfield Company ("ARCO") and others in 1996.² Just months
27

28 ² Shell Pipeline and Shell Oil Company (the particular Shell entity named in the Watson
lawsuit) are referred to herein interchangeably and collectively as "Shell." The basis for
Watson's claims against Shell Oil Company and the Regional Board's 13267 Order to Shell

1 before trial, Watson entered into a settlement agreement (the "Settlement Agreement")³ with
2 ARCO, the owner of a neighboring refinery with a history of massive environmental problems,
3 which Watson previously had accused of fraud for allegedly hiding and trying to falsely
4 minimize its impacts on the WICS Property. Exh. B, ¶¶ 28-52, 85-98. Under the terms of the
5 Settlement Agreement, ARCO agreed to "promptly . . . diligently and competently" investigate
6 and remediate the entire WICS Property in exchange for obtaining control over the remediation
7 process and gaining access to a portion of Watson's recovery against Shell to help defray the
8 costs of the cleanup. Exh. C at 19, 65-67, 88-92. In July 2001, a jury returned a verdict in which
9 it found that Shell was liable to Watson for \$3,915,851, this being "the amount of damages
10 Watson should receive in order to restore the condition of the Watson Center."⁴ This finding was
11 affirmed by the Court of Appeal in *Watson Land Co. v. Shell Oil Co.*, 130 Cal.App.4th 69
12 (Cal.App. 2005).⁵ Following the Court of Appeal's decision, Shell paid Watson \$5,702,387.94
13 in full satisfaction of the judgment and the post-judgment interest, and, pursuant to the terms of
14 Watson's Settlement Agreement with ARCO, this money was deposited into a Court-supervised
15 trust account earmarked to help pay for ARCO's investigation and remediation of the entire
16 WICS Property. Shell is unaware of the extent of ARCO's investigatory and remedial activities
17 at the WICS Property, or whether ARCO has exhausted the millions of dollars Shell paid into the
18 Cleanup Fund. Whatever the case, Shell's allocated share of the contamination beneath the
19 WICS Property has been fully determined and satisfied, and there is no justification that would
20 support requiring Shell to pay a second time to investigate the WICS Property. Even if such an

21 Pipeline are one and the same: that Shell Pipeline installed and maintained pipelines in two
22 pipeline corridors running beneath the WICS Property which Shell Oil Company used to
23 transport product, and that, as a result of alleged pipeline leaks, petroleum-related product
purportedly was released into the soil and groundwater beneath the WICS Property.

24 Similarly, ARCO and its successor, BP-ARCO, are referred to collectively and
25 interchangeably as "ARCO."

26 ³ A copy of the relevant excerpts of the November 1, 2000 Settlement Agreement
between Watson and ARCO is attached as Exhibit C.

27 ⁴ A copy of the jury's final verdict in the Watson lawsuit is attached as Exhibit D.

28 ⁵ A copy of the published portion of the Court of Appeal's opinion is attached as Exhibit

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1 order is permitted—and there is reason to think that it may run afoul of the principles of
2 collateral estoppel—it is patently inequitable and should be rescinded.

3 5. *Second*, there already exists a discharger who expressly contracted to “promptly
4 . . . diligently and competently” investigate and remediate the contamination identified in the
5 13267 Order—namely, ARCO. During the course of the Watson lawsuit, evidence showed that
6 ARCO’s refinery (adjacent to eastern boundary of the WICS Property) was the site of a series of
7 massive releases which ARCO had been investigating and remediating since the 1980s. *See* Exh.
8 B, ¶ 28 and Exh. B thereto at 4-6 and Figure 4 (“LNAPL Occurrence Map, ARCO Los Angeles
9 Refinery”). Just months before the trial, ARCO made the decision to avoid the risk of a
10 substantial adverse judgment based on Watson’s claims that ARCO’s contamination had
11 migrated downgradient to the WICS Property, and instead agreed to assume the sole
12 responsibility for investigating and remediating the contamination at the WICS Property—
13 including the very plumes identified in the 13267 Order, namely the A, B1, B2 and Pool II
14 Plumes. Exh. C at 19, 88-92; *Watson Land Co.*, 130 Cal.App.4th at 73. The Settlement
15 Agreement also established a trust fund that was to be (and was) funded by Watson’s recovery
16 against Shell, ultimately amounting to \$5,702,387.94 (including post-judgment interest). Given
17 that ARCO already agreed to do the work required in the 13267 Order, and given the existence of
18 a fund earmarked to help pay for this work, it makes no sense and is improper for the Regional
19 Board to order Shell to perform this work.

20 6. *Third*, the evidence cited in the 13267 Order relating to three of the plumes—the
21 A, B1 and B2 Plumes—entirely consists of the testimony of Jeffrey Dagdigian, Watson’s paid
22 expert witness, which was provided at a deposition taken by Shell during the Watson lawsuit.
23 Exh. A at 3-4. Moreover, the Regional Board further cites to Watson’s contentions in its
24 Respondent’s Brief as though these contentions were established fact, when in fact they were
25 hotly-contested, both at the trial and on appeal. Exh. A at 3-4; Exhs. F and G. Clearly, the
26 opinions of a paid expert presented in the course of disputed litigation is an inappropriate
27 foundation for the 13267 Order, and citations solely to one party’s contentions in an appellate
28 brief is improper and presents a skewed picture of Shell’s purported connection to these three

1 plumes. The Regional Board's use of Mr. Dagdigian's testimony violates Section 13267(e)'s
2 requirement that such evidence be the type "responsible persons are accustomed to rely in the
3 conduct of serious affairs." At the very least, the Regional Board should have asked for and
4 reviewed the evidence (including expert testimony) Shell presented in the Watson lawsuit before
5 taking any action based on Mr. Dagdigian's testimony.

6 7. *Fourth*, contrary to the requirement in Section 13267(b) that the Regional Board
7 "identify the evidence that supports requiring [the ordered party] to provide the reports," the
8 13267 Order does not provide *any* evidence connecting Shell to two of the plumes, the Pool II
9 and Jet Fuel Plumes. In fact, the evidence cited by the Regional Board in discussing the Pool II
10 Plume shows that ARCO—not Shell—is the party that should be the subject of any order to
11 investigate that plume, a conclusion consistent with Watson's claims in the Watson lawsuit.
12 Exh. B, ¶ 28 and Exh. B thereto at 4-6 and Figure 4 (discussing and showing "Pool II" Plume as
13 originating from the ARCO refinery). Another defendant from the Watson lawsuit, GATX
14 Terminals Corporation ("GATX"), had already reported the release relating to the Jet Fuel Plume
15 to the Regional Board at the time Watson filed its lawsuit and subsequently agreed to remediate
16 the Jet Fuel Plume. Exh. A at 3; *see also Watson Land Co.*, 130 Cal.App.4th at 74, fn. 4.

17 8. *Fifth*, the 13267 Order's requirement that Shell submit a sampling workplan
18 involving groundwater monitoring wells on the WICS Property which Shell does not own and for
19 which Shell does not have access rights or the necessary information, is arbitrary, illogical,
20 unfairly burdensome and infeasible.

21 9. *Sixth*, to the extent the 13267 Order requires Shell to submit documents, reports
22 and data provided by Watson or Arco, it violates § 13267(b), which only authorizes such orders
23 where "[t]he burden, including costs, of these reports shall bear a reasonable relationship to the
24 need for the report and the benefits to be obtained from the reports." Given the fact that the
25 Regional Board can obtain—and likely has obtained—Watson's and ARCO's reports directly
26 from these entities, there is no benefit to the Regional Board by requiring Shell to undertake an
27 expensive review of its voluminous litigation files to cull any such data or records it obtained
28 from Watson and ARCO in the Watson lawsuit.

1 10. This Petition is filed pursuant to Section 13320 of the Water Code, which
2 authorizes any aggrieved person to petition the State Water Resources Control Board (the "State
3 Board") to review any action (or failure to act) by a regional board. *See* Water Code § 13223
4 (actions of the regional board shall include actions by its executive officer pursuant to powers
5 and duties delegated to her by the regional board).

6 11. A copy of this Petition is being sent by personal messenger to the Regional Board
7 on January 27, 2010, to the attention of Ms. Tracy Egoscue, Executive Officer.

8 12. All communications regarding this Petition should be sent to Shell's counsel:
9 Michael R. Leslie, Caldwell Leslie & Proctor, PC, 1000 Wilshire Blvd., Suite 600, Los Angeles,
10 California 90017. For purposes of complying with the requirements for filing this Petition,
11 Shell's mailing address is 20945 South Wilmington Avenue, Carson, California 90810.

12 13. Shell requests a hearing to address the issues raised in the Statement of Points and
13 Authorities and reserves the right to modify and supplement this Petition. Shell also requests an
14 opportunity to present additional evidence. *See* 23 Cal. Code Regs. § 2050.6. In the alternative,
15 Shell requests that the State Water Board issue an order staying the Regional Board's 13267
16 Order and holding this Petition in abeyance pursuant to California Code of Regulations, Title 23
17 § 2020.5(d) to permit the Regional Board and Shell to engage in discussions in an attempt to
18 informally resolve this matter.

19 14. Shell's statement of points and authorities in support of the issues raised by this
20 Petition commences below. Shell respectfully requests that the State Board grant the relief
21 requested in this Petition as set forth in the Request for Relief.

1 STATEMENT OF POINTS AND AUTHORITIES

2 I. BACKGROUND

3 A. *The Watson Lawsuit*

4 15. In 1996, Watson sued ARCO, Shell Oil Company, and eight other defendants
5 alleging that defendants were liable for groundwater contamination Watson had discovered
6 beneath a commercial and industrial park it owned in the City of Carson (the "WICS Property").
7 Exh. B, ¶¶ 1-8; *Watson Land Co. v. Shell Oil Co.*, 130 Cal.App.4th at 73. In its lawsuit, Watson
8 claimed that known petroleum groundwater contamination from the neighboring ARCO refinery
9 had migrated to the WICS Property. Exh. B, ¶¶ 28, 44-46; *Watson Land Co.*, 130 Cal.App.4th at
10 73. Since sometime prior to 1977, operations at the ARCO refinery had contaminated the
11 underlying groundwater, *Watson Land Co.*, 130 Cal.App.4th at 73, and the soil and groundwater
12 beneath the refinery was impacted with extensive areas of free product including gasoline, diesel
13 and other hydrocarbon as well as multiple dissolved-phase plumes. Exh. F at 5 (Shell's
14 Appellant's Opening Brief, filed May 28, 2003). At the time of the Watson lawsuit, ARCO had
15 been investigating and remediating its onsite impacts at the refinery pursuant to a cease and
16 desist order issued by the Regional Board, but had *not* substantially investigated the extent of the
17 offsite contamination which had migrated onto the WICS Property. *Id.* at 6; *Watson Land Co.*,
18 130 Cal.App.4th at 73; *see also* Exh. B, ¶¶ 44-46. Watson also claimed that releases from
19 pipelines allegedly operated by Shell and located under the WICS Property caused additional
20 groundwater contamination. Exh. B, ¶ 8. Shell vigorously contested Watson's claims.

21 16. The contamination that was the subject of Watson's claims included the following
22 plumes:

- 23 • The Pool II Plume: one of seven pools of free product caused by contamination from
24 the ARCO refinery. Exh. B, ¶ 28 and Exh. B thereto at 4-6 and Figure 4 (discussing
25 and showing "Pool II" Plume as originating from the ARCO refinery).
- 26 • The A Plume: a benzene plume located at the northern end of the WICS Property near
27 the Utility Way Corridor. Exh. F, Exhs 1498, 1512 and 1513 thereto (plume maps

1 presented by Watson as trial exhibits and attached to Shell's Appellant's Opening
2 Brief).

- 3 • The B1 Plume: a smaller benzene plume located in the southern half of the WICS
4 Property near the DWP Corridor at 233rd Street. *Id.*, Exhs. 1498, 1500 and 1501
5 thereto.
- 6 • The B2 Plume: a benzene plume extending laterally under the eastern half of the
7 WICS Property near the ARCO Refinery. *Id.*
- 8 • The Jet Fuel Plume: located in the same area as Plume B1. GATX settled with
9 Watson prior to trial and agreed to fully remediate this plume. *Watson Land Co.*, 130
10 Cal.App.4th at 74, fn. 4.⁶ In fact, GATX had notified the Regional Board prior to
11 Watson's lawsuit regarding releases from its DWP Corridor pipeline, Exh. A at 3, and
12 GATX's successor began remediating this plume in 2003. Exh. H (excerpts from the
13 State Water Board's Geotracker entries for Site ID No. SL2045R1627, "GATX-GX-
14 190 Pipeline Release Area").

15 **B. *Watson's Settlement Agreement with ARCO and the Establishment of a***
16 ***Cleanup Fund for the WICS Property***

17 17. Just months before the May 2001 trial, Watson and ARCO entered into a
18 settlement agreement (the "Settlement Agreement"), which provided that ARCO would pay
19 Watson \$1.5 million, reimburse Watson for half of its prospective litigation expenses relating to
20 Watson's prosecution of its claims against Shell, and fully indemnify Watson for any required
21 remediation of the WICS Property. Exh. C at 43-50, 87-90; *see also Watson Land Co.*, 130
22 Cal.App.4th at 73.

23 18. In the Settlement Agreement, ARCO also agreed to "promptly undertake and
24 diligently and competently complete, at the sole cost and expense of ARCO, any environmental
25 assessment, testing, sampling, monitoring, remediation or removal of any Environmental
26 Contamination which is both the subject of [ARCO's indemnity in the Settlement Agreement]

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28 ⁶ The A, B1, B2 and Jet Fuel Plumes are also described by the Court of Appeal in *Watson*
Land Co., 130 Cal.App.4th at 74 and fn. 4.

1 and which is directed, required or ordered by any governmental agency [on the WICS Property].”
2 Exh. C at 90-91; *see also Watson Land Co.*, 130 Cal.App.4th at 73. ARCO’s responsibility
3 under the Settlement Agreement for investigating and remediating contamination includes the
4 soil and groundwater beneath the WICS Property and extending 1000 feet beyond the exterior
5 boundary of the WICS Property. Exh. C at 88-89.

6 19. The Settlement Agreement also required ARCO to complete an environmental
7 study of free product (“L-NAPL”) present in the groundwater beneath the WICS Property by
8 November 1, 2001, and thereafter prepare a workplan for removing L-NAPL and commence
9 implementation of this workplan and other environmental activities at the WICS Property. Exh.
10 C at 86-87.

11 20. The Settlement Agreement contained provisions giving ARCO a stake in
12 Watson’s claims against Shell. Any recovery Watson obtained from Shell was to be used to
13 repay Watson its attorneys’ fees and costs, and the balance was to be deposited into a court-
14 supervised trust fund called the WICS Property Environmental Cleanup Fund (the “Cleanup
15 Fund”). Exh. C at 52-53; *see also Watson Land Co.*, 130 Cal.App.4th at 73. The Settlement
16 Agreement authorized ARCO to reimburse itself from the Cleanup Fund for the investigation and
17 remediation of the WICS Property at allocated percentages assigned to three geographic areas.
18 Exh. C at 65-67 and Exh. 8 thereto; *Watson Land Co.*, 130 Cal.App.4th at 73. After ten years,
19 Watson or ARCO could seek an order terminating the Cleanup Fund, and any remaining funds
20 would be split evenly between Watson and ARCO. Exh. C at 57-58, 75.

21 21. Watson and ARCO jointly applied to the trial court for an order confirming the
22 establishment of the Cleanup Fund, approving the appointment of an administrator and
23 approving the trust agreement. Exh. I. On August 23, 2002, the trial court granted Watson’s and
24 ARCO’s motion and entered the order. Exh. J.

25 22. In settling with Watson shortly before trial, ARCO made the decision to trade the
26 risk of a massive adverse judgment for an agreement giving it the responsibility and control over
27 the environmental investigation and remediation of the WICS Property, including but not limited
28 to the A, B1, B2 and Pool II Plumes. In return, ARCO received the right to use agreed-upon

1 percentages of any judgment Watson obtained against Shell to help pay for the cleanup of the
2 WICS Property.

3 **C. The Jury's Findings as to Shell's Liability for Contamination at the**
4 **WICS Property**

5 23. At trial, Watson and Shell offered competing expert testimony and evidence
6 relating to Shell's alleged liability for the contamination at the WICS Property. The jury found
7 for Watson on its continuing trespass cause of action against Shell and awarded Watson
8 \$3,915,851 as "the amount of damages Watson should receive in order to restore the condition of
9 the Watson Center." Exh. D at 2. After Shell and Watson filed cross-appeals, the Court of
10 Appeal affirmed the jury's finding regarding the amount Shell owed Watson for remediating the
11 contamination attributed to Shell. *Watson Land Co.*, 130 Cal.App.4th at 80. On or about
12 December 9, 2005, Shell paid \$5,702,387.94 in full satisfaction of the judgment and the post-
13 judgment interest. Exh. K (copy of email chain including December 9, 2005 email from
14 Watson's counsel, Maureen J. Bright, to Shell's counsel, Michael R. Leslie, acknowledging
15 receipt of Shell's payment); Exh. L (Watson's Acknowledgment of Satisfaction of Judgment,
16 filed December 19, 2005). Consistent with Watson's Settlement Agreement with ARCO, Shell's
17 payment was deposited into the bank account for the court-supervised Cleanup Fund. Exh. M
18 (November 17, 2005 letter from Ms. Bright to Mr. Leslie with instructions for transmitting
19 Shell's payment to Cleanup Fund account); Exh. N (November 22, 2005 facsimile from Ms.
20 Bright to Mr. Leslie forwarding trust account information and copy of Trust Agreement for
21 Cleanup Fund account).

22 **D. The Regional Board's 13267 Order to Watson and Shell**

23 24. After having its share of liability for the contamination at the WICS Property fully
24 assessed by a jury and affirmed on appeal, and after having paid the judgment (plus interest) into
25 a fund earmarked for ARCO's environmental investigation and remediation of the WICS
26 Property, Shell believed it had fully satisfied whatever obligation it had in connection with the
27 environmental contamination existing at the WICS Property. Based on the terms of the
28 Settlement Agreement and the existence of the Cleanup Fund, Shell reasonably understood that

1 ARCO would proceed to draft its L-NAPL workplan and investigate and remediate the WICS
2 Property as it had promised to do.

3 25. However, on December 28, 2009, the Regional Board issued the 13267 Order
4 requiring Shell (along with Watson) to (1) submit copies of all documents and reports of
5 environmental assessment and investigation previously conducted at the WICS Property, and (2)
6 to assess the current groundwater quality at the WICS Property. Exh. A at 2. The Regional
7 Board specifically ordered Watson and Shell to submit the following reports:

- 8 • A workplan for groundwater sampling and monitoring for all existing
9 groundwater monitoring wells at the WICS Property related to the A, B1, B2 and
10 Pool II Plumes, and historical groundwater monitoring data for these plumes.⁷
11 The workplan and data are due February 26, 2010. Exh. A at 4.
- 12 • A three-dimensional conceptual site model depicting the hydrogeology,
13 hydrostratigraphy and current groundwater monitoring network for the WICS
14 Property, as well as the location of water supply wells and other potentially
15 affected receptors within a one mile radius of the WICS Property, and the lateral
16 and vertical extent of each chemical of concern. This model is due April 15,
17 2010. Exh. A at 4-5.
- 18 • A workplan for additional investigation to complete the three-dimensional
19 conceptual site model. This workplan is due April 15, 2010. Exh. A at 5.

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25 ⁷ The 13267 Order describes Pool II as a plume located “across from BP (Arco) Carson
26 refinery; primarily of mid-range hydrocarbon with a small gasoline component.” Exh. A at 3.
27 The Regional Board cites as a factual basis for the existence of Pool II a document entitled
28 “*Evaluation of Subsurface Environmental Concerns at Watson Industrial Center South, May 23,*
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1996, prepared by Levine Fricke.” *Id.* (italics in original). This plume was the subject of
Watson’s claims against ARCO in the Watson lawsuit, and is described in the Settlement
Agreement. Exh. B, ¶ 28 and Exh. B thereto at 4-6 and Figure 4; Exh. C at 8-9. There is no
evidence—either in the Regional Board’s 13267 Order or in the evidence Watson presented at
trial—connecting the Pool II Plume to the pipeline corridors or Shell.

1 **II. THE 13267 ORDER DIRECTING SHELL TO INVESTIGATE THE WICS**
2 **PROPERTY IS IMPROPER AND SHOULD BE RESCINDED**

3 26. Two facts are apparent from the Regional Board's issuance of the 13267 Order.
4 First, contrary to its contractual obligations under the Settlement Agreement, ARCO has not
5 "promptly . . . diligently and competently" undertaken an investigation and remediation of the
6 WICS Property as it agreed to do under the Settlement Agreement. Exh. C at 90-91. Nor has it
7 drafted and commenced implementation of the L-NAPL workplan. *Id.* at 86. If it had, there
8 would be no need for the Regional Board to require Shell to submit groundwater sampling
9 workplans and conceptual site models of the contamination at the WICS Property.

10 27. Second, the Regional Board does not have all the facts regarding ARCO's
11 obligations under the Settlement Agreement and the existence of the Cleanup Fund, which was
12 funded by Shell's payment of the judgment Watson obtained at trial. Most critically from Shell's
13 perspective, the Regional Board appears to lack the facts showing that Shell already had its share
14 of liability for the contamination identified in the 13267 Order fully determined by a jury and
15 affirmed on appeal, and that, as a result, Shell paid \$5,702,387.94 into the Cleanup Fund for the
16 WICS Property.

17 28. Because Shell has fully satisfied its obligations relating to the environmental
18 conditions under the WICS Property and because, pursuant to the Settlement Agreement, ARCO
19 is responsible for investigating and remediating the environmental contamination under the
20 WICS Property—including but not limited to the A, B1, B2 and Pool II Plumes—the State Water
21 Board should order the Regional Board to rescind the 13267 Order.

22 ***A. Shell's Liability for the Subject Contamination Was Fully Assessed by the***
23 ***Jury in the Watson Lawsuit, Affirmed On Appeal and Paid Into the***
24 ***Cleanup Fund for the WICS Property***

25 **1. The Contamination Described in the 13267 Order Is the Same**
26 **Contamination that Was the Subject of the Watson Lawsuit**

27 29. The contamination described in the 13267 Order is the same contamination that
28 was the subject of Watson's claims against Shell, Watson's judgment and Shell's satisfaction

1 thereof, the Settlement Agreement between Watson and ARCO, and the Cleanup Fund
2 established for investigating and remediating the WICS Property. This is important because,
3 from Shell's perspective, its share of liability for the contamination identified in the 13267 Order
4 has already been fully determined and paid in a court of law. See Exh. D at 2 (jury finding that
5 Shell should pay Watson \$3,915,851 as "the amount of damages Watson should receive in order
6 to restore the condition of the Watson Center"). This also should be important to the Regional
7 Board because, from its perspective, there already is a discharger that voluntarily assumed the
8 full responsibility to "promptly . . . diligently and competently" investigate and remediate the
9 WICS Property—namely ARCO. Exh. C at 90-91.

10 30. The identical nature of the contamination identified in the 13267 Order and the
11 contamination at issue in the Watson lawsuit is evident by the fact that the Regional Board
12 expressly states that, based on its review of "*various documents from litigation between Watson*
13 *Land Company vs. Shell Oil Company, Los Angeles Superior Court No. BC 150161 . . .* we have
14 identified that there are five groundwater contamination plumes at the Watson Industrial Center
15 South (WICS)." Exh. A at 3 (emphasis added). The 13267 Order then proceeds to describe the
16 A, B1 and B2 Plumes by referencing "*Expert Witness Jeffrey Dagdigian Deposition Transcript,*
17 *March 5, 2001,*" and "Watson Land Company's [appellate brief]." *Id.* (italics in original). As
18 noted above, Mr. Dagdigian was Watson's expert witness in the Watson lawsuit, and the
19 referenced deposition was taken by Shell in preparation for trial. Leslie Decl., ¶ 8.

20 31. In addition, the A, B1, B2 and Jet Fuel Plumes discussed in the 13267 Order are
21 the same plumes depicted in the plume maps Watson presented at trial, described in the
22 Settlement Agreement, and discussed in the Court of Appeal's opinion on Watson and Shell's
23 cross-appeals. Compare Exh. F, Exhs. 1498, 1500, 1501, 1512 and 1513; Exh. C at 8-10; and
24 *Watson Land Co.*, 130 Cal.App.4th at 74 and fn. 4.

25 32. While the Pool II Plume was not the focus of Watson's claims against Shell and
26 therefore was not part of the evidence presented to the jury at trial (where the only remaining
27 defendant was Shell), it was the subject of Watson's claims against ARCO. Exh. B, ¶ 28 and
28 Exh. B thereto at 4-6 and Figure 4 (describing and discussing the Pool II Plume). Moreover,

1 ARCO agreed in the Settlement Agreement to fully remediate this plume (along with the rest of
2 the contamination under the WICS Property). *See* Exh. C at 8-9 (description of ARCO-related
3 plume consistent with 13267 Order’s description of Pool II Plume). In any case, there is no
4 evidence cited in the 13267 Order connecting the Pool II Plume to the pipeline corridors or Shell.
5 To the contrary, the 13267 Order’s discussion of the Pool II Plume is consistent with the
6 allegations about it in Watson’s First Amended Complaint and the Settlement Agreement,
7 namely that it is located “across from BP (Arco) Carson refinery; primarily of mid-range
8 hydrocarbon with a small gasoline component (*per Evaluation of Subsurface Environmental*
9 *Concerns at Watson Industrial Center South, May 23, 1996, prepared by Levine Fricke*.” Exh.
10 A at 3 (italics in original). Given the fact that the only source for the 13267 Order’s discussion
11 of the Pool II Plume is from a 1996 technical report—the year Watson filed its lawsuit and five
12 years prior to the trial—the only reasonable conclusion is that any evidence linking Shell to the
13 Pool II Plume was either presented to the jury or nonexistent.

14 **2. Shell’s Liability for the Subject Contamination Was Fully Assessed by**
15 **the Jury in the Watson Lawsuit**

16 33. Because “the amount of damages Watson should receive [from Shell] in order to
17 restore the condition of the Watson Center” was fully determined by the jury in the Watson trial,
18 affirmed by the Court of Appeal, and fully paid by Shell into the court-supervised remediation
19 escrow fund, requiring Shell to undertake an investigation of this same contamination would
20 mean that Shell would have to pay *a second time* for contamination it already paid millions of
21 dollars to clean up. In addition to being manifestly unjust, this order effectively means either that
22 the Regional Board is reopening the settled issue of the extent of Shell’s liability, or that Shell is
23 being penalized twice for the same wrong. In either case, the Regional Board’s order is improper
24 and should be found to be estopped and barred by the verdict Watson obtained at trial.

25 34. Under the doctrine of collateral estoppel, an issue argued and decided in a prior
26 proceeding may not be reopened in a later proceeding. *Le Parc Community Ass’n v. Workers’*
27 *Comp. Appeals Bd.*, 110 Cal.App.4th 1161, 1171 (2003). This doctrine applies where “the
28 decision in the initial proceeding was final and on the merits and the issue sought to be precluded

1 from relitigation is identical to that decided in the first action and was actually and necessarily
2 litigated in that action.” *Id.* If these requirements are met—as they are here—the first judgment
3 “operates as an estoppel or conclusive adjudication as to such issues in the second action as were
4 actually litigated and determined in the first action.” *Branson v. Sun-Diamond Growers*, 24
5 Cal.App.4th 327, 346 (1994).

6 35. As with all doctrines of res judicata, collateral estoppel “also appl[ies], with
7 certain qualifications, to the effects to be given a judgment when the subsequent proceeding is an
8 adjudication before an administrative tribunal as distinct from a court.” Restatement (2d) of
9 Judgments, Ch. 1 Introduction (2009); *see also Berg v. Davi*, 130 Cal.App.4th 223, 231 (2005)
10 (“It is well established that collateral estoppel principles apply in an administrative proceeding to
11 prevent the impeachment of a prior final judgment.”).

12 36. In this instance, Watson’s claims that Shell had caused contamination in the soil
13 and groundwater beneath the WICS Property—including the A, B1 and B2 Plumes—were tried
14 to a jury sitting in the Complex Division of the Los Angeles Superior Court. After receiving and
15 weighing all the evidence and expert testimony offered by Watson and Shell, the jury returned
16 a verdict and found that Shell should pay Watson \$3,915,851 as “the amount of damages
17 Watson should receive in order to restore the condition of the Watson Center.” Exh. D at 2. The
18 Court entered the jury’s verdict as a judgment which was affirmed by the Court of Appeal. Thus,
19 the very issue facing the Regional Board—to what extent Shell is liable for the contamination at
20 the WICS Property identified in the 13267 Order—has already been decided on the merits, and
21 Shell has fully satisfied the resulting judgment. Given this, and because requiring Shell to pay a
22 second time for contamination for which it has fully paid is obviously unfair, the 13267 Order
23 should be rescinded.

24 ***B. ARCO Already Agreed to “Promptly . . . Diligently and Competently”***
25 ***Investigate and Remediate the Subject Contamination***

26 37. In addition to being unfair, the Regional Board’s order directing Shell to
27 undertake an investigation of the WICS Property is unnecessary. As described above, ARCO
28 already agreed to “promptly undertake and diligently and competently complete, *at the sole cost*

1 *and expense of ARCO*, any environmental assessment, testing, sampling, monitoring, remediation
2 or removal of any Environmental Contamination which is both the subject of [ARCO's
3 indemnity in the Settlement Agreement] and which is directed, required or ordered by any
4 governmental agency [on the WICS Property].”⁸ Exh. C at 90-91 (emphasis added). Moreover,
5 ARCO has the right to seek reimbursement for agreed-upon percentages of its investigatory and
6 remedial expenses from the Cleanup Fund, which was funded by Shell's \$5,702,387.94 payment
7 satisfying Watson's judgment. Simply put, there already exists a party who is under a binding
8 obligation to clean up the contamination described in the 13267 Order, and money exists to help
9 facilitate this work. Given this, there is no justification for directing Shell to pay additional
10 money to investigate the WICS Property.

11 ***C. The 13267 Order Improperly Accepts Statements of Watson's Expert***
12 ***Consultant and Appellate Briefs as Fact***

13 38. In support of its discussion of the contamination at the WICS Property, the
14 Regional Board repeatedly cites the transcript of the March 5, 2001 deposition of Watson's
15 expert witness, Jeffrey Dagdigian, taken in the Watson lawsuit. Exh. A at 3-4. For instance, the
16 Regional Board states *as a fact* that the B1 plume “could only have come from Shell's pipelines
17 in the Department of Water and Power Corridor (*per Expert Witness Jeffrey Dagdigian*
18 *Deposition Transcript, March 5, 2001*).” Exh. A at 3 (italics in original).⁹ The Regional Board
19 then provides a summary of findings which, it states, is based on “[o]ur review of *Watson Land*
20 *Company's Combined Respondent's Brief and Cross-Appellant's Opening Brief*.” *Id.* (emphasis
21 added). Based on this review, the Regional Board concludes that “we have determined that there
22 is significant contamination of the groundwater under the WICS which must be completely
23 assessed and delineated,” and orders Shell to submit the above-described technical reports. *Id.* at
24 4-5.

25
26 ⁸ Notably, ARCO also agreed to complete a report on the L-NAPL under the WICS
27 Property by November 1, 2001, and thereafter commence implementation of an L-NAPL
workplan and other environmental activities at the WICS Property. Exh. C at 86.

28 ⁹ The 13267 Order does not specify the relevant pages from Mr. Dagdigian's deposition
transcript, but instead cites generally to the transcript.

1 39. It is highly unorthodox and improper for the Regional Board to rely on a brief
2 filed by a party to hotly-contested litigation and the opinions of that party's paid expert witness
3 as the objective basis for ordering certain actions under the Water Code. This sort of one-sided
4 argument is hardly the type of evidence on which "responsible persons are accustomed to rely in
5 the conduct of serious affairs," as required by Section 13267(e). On this basis, the 13267 Order
6 should be rescinded.

7 40. Even if such evidence were properly considered, the Regional Board should have
8 given Shell the opportunity to submit its own briefs and evidence, including testimony of Shell's
9 expert witnesses, so that the Regional Board would have a complete record to weigh, and could
10 consider the flaws in Watson's presentation and the assumptions made by its expert witness
11 before issuing its order. For instance, in Shell's Appellant's Opening Brief, Shell points out that
12 Watson had been unable to produce *any* direct evidence of *any* leaks in Shell's pipelines in the
13 Utility Way and DWP Corridors, and thus Watson's claims that the A and B2 Plumes were
14 caused by pipeline leaks was entirely speculative. Exh. F at 27-28 (discussing Watson's refusal
15 to conduct soil and soil vapor testing near Utility Way Corridor Pipeline), and 29-31 (discussing
16 documentary record relating to Shell's maintenance of pipelines); *see also* Exh. G (Shell's
17 Combined Appellant's Reply Brief and Cross-Respondent's Brief) at 23-37.

18 ***D. The 13267 Order Does Not Provide Any Basis For Ordering Shell to***
19 ***Investigate the Pool II and Jet Fuel Plumes***

20 41. Contrary to the requirement in Section 13267(b) that the Regional Board "identify
21 the evidence that supports requiring [the ordered party] to provide the reports," the 13267 Order
22 does not provide *any* evidence connecting Shell to two of the plumes, the Pool II and Jet Fuel
23 Plumes. In fact, the evidence cited by the Regional Board in discussing the Pool II Plume shows
24 that ARCO—not Shell—is the party that should be the subject of any order to investigate that
25 plume. Exh. A at 3 (describing Pool II as being located "across from BP (Arco) Carson
26 refinery"). And, as noted in the 13267 Order, GATX had already reported the release relating to
27 the Jet Fuel Plume to the Regional Board at the time Watson filed its lawsuit in 1996, and

1 subsequently entered into a settlement agreement with Watson whereby it agreed to remediate the
2 Jet Fuel Plume.¹⁰ *Id.*; *Watson Land Co.*, 130 Cal.App.4th at 74, fn. 4.

3 ***E. The 13267 Order's Requirement that Shell Submit Workplans, Models***
4 ***and Historical Data and Reports Relating to Wells and Information It***
5 ***Does Not Possess or Have Access To Is Infeasible***

6 42. The 13267 Order's requirement that Shell submit a sampling workplan for
7 groundwater monitoring wells on the WICS Property which Shell does not own and for which
8 Shell does not have access rights or the necessary information, is arbitrary, illogical, unfairly
9 burdensome and infeasible.¹¹

10 ***F. To the Extent the 13267 Order Requires Shell to Submit Reports Provided***
11 ***by Watson or Arco, It Violates Section 13267(b)***

12 43. In addition to technical reports, the 13267 Order also directs Shell "to submit
13 copies of all documents and reports of environmental assessment and investigation previously
14 conducted at the WICS." Exh. A at 2; *see also* Exh. A at 4 ("You are also required to submit any
15 historical groundwater monitoring data in the report with your discussion on groundwater quality
16 concern."). To the extent the Regional Board is directing Shell to submit documents, reports and
17 data provided by Watson or ARCO, this requirement violates § 13267(b), which prohibits such
18 requirements where "[t]he burden, including costs, of these reports shall bear a reasonable
19 relationship to the need for the report and the benefits to be obtained from the reports." Given
20 the fact that the Regional Board can obtain Watson's and ARCO's reports *directly* from these
21 parties, there is no benefit to be gained by requiring Shell to undertake a review of its
22 voluminous files relating to the Watson lawsuit to locate copies of other parties' reports.

23
24 ¹⁰ The 13267 Order does not specifically direct Shell to take any action with respect to the
25 Jet Fuel Plume. Shell assumes that this is because the Regional Board is overseeing GATX's
26 investigation and remediation of the Jet Fuel Plume. The State Water Board's Geotracker
website shows that GATX (or, more accurately, its successor, Kinder Morgan Liquid Terminals,
LLC) has been conducting free product recovery activities since 2003. Exh. H.

27 ¹¹ Presumably, Watson, which owns the property, and/or ARCO, which has been
28 investigating the contamination caused by its refinery since the 1980s, has the necessary
information and has installed and owns the groundwater monitoring wells referenced in the
13267 Order.

REQUEST FOR RELIEF

For the reasons set forth above, Shell respectfully requests that the State Board grant Shell the following relief:

1. That the State Board grant Shell's Request for Stay, filed concurrently herewith, pending the State Board's decision on this Petition.
2. That the 13267 Order be rescinded.
3. In the alternative, that the State Board grant Shell's Request for Stay and hold this Petition in abeyance pursuant to California Code of Regulations, Title 23 § 2020.5(d) to permit the Regional Board and Shell to engage in discussions in an attempt to informally resolve this matter.
4. Such other relief as the State Board may deem just and proper.

DATED: January 27, 2010

CALDWELL LESLIE & PROCTOR, PC
MICHAEL R. LESLIE
DAVID ZAFT

By 

DAVID ZAFT
Attorneys for Petitioner SHELL PIPELINE
COMPANY LP

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6 Attorneys for Petitioner SHELL PIPELINE COMPANY LP

7
8 **STATE WATER RESOURCES CONTROL BOARD**
9 **FOR THE STATE OF CALIFORNIA**

10 In the Matter of the Petition of
11 SHELL PIPELINE COMPANY LP
12 Request for Technical Reports, California
Regional Water Quality Control Board, Los
13 Angeles Region
14 California Water Code § 13267

Case No.
**DECLARATION OF MICHAEL R.
LESLIE AND EXHIBITS**

15
16 I, Michael R. Leslie, declare as follows:

17 1. I am an attorney admitted to practice in the State of California and a principal in
18 the law firm of Caldwell Leslie & Proctor, counsel for Petitioner Shell Pipeline Company LP. I
19 submit this declaration in support of Petitioner's Petition for Review and Request for Hearing
20 and its concurrently filed Request for Stay. I have personal knowledge of the facts contained
21 within this declaration, and, if called upon as a witness, I could and would testify competently
22 thereto.

23 2. I also was counsel at trial for Shell Oil Company ("Shell") in the civil action
24 entitled *Watson Land Company v. Atlantic Richfield Company, et al.*, Los Angeles Superior
25 Court Case No. BC 150161 (the "Watson lawsuit"), and during the subsequent appeal therefrom.

26 3. Attached hereto as Exhibit A is a true and correct copy of the Requirement for
27 Technical Reports Pursuant to California Water Code Section 13267 Order – Watson Industrial
28 Center South, Carson (File No. 09-197) (the "13267 Order"), issued by the California Regional

CALDWELL
LESLIE &
PROCTOR

1 Water Quality Control Board, Los Angeles region (the "Regional Board") on December 28,
2 2009. In this Order, the Regional Board directs Petitioner to submit workplans, a conceptual site
3 model and historical data and reports relating to a commercial and industrial development
4 located in Carson called the Watson Industrial Center South (or, the "WICS Property"). While
5 the 13267 Order is directed to Shell Pipeline Company LP, the contamination identified in the
6 13267 Order is the same contamination that was the subject of Watson Land Company's
7 ("Watson") claims against Shell in the Watson lawsuit.

8 4. Attached hereto as Exhibit B is a true and correct copy of the First Amended
9 Complaint (with exhibits) filed on December 20, 1996 by Watson, the owner of the WICS
10 Property, in the Watson lawsuit. This was Watson's operative pleading at trial in the Watson
11 lawsuit.

12 5. Attached as "Exhibit B" to the First Amended Complaint is a technical report
13 called "Phase I Off-Site Migration Barrier Plan, ARCO Los Angeles Refinery," prepared by
14 Remediation Technologies, Inc., dated March 1993. The report discusses (at page 4-6) the
15 existence of seven pools of free product ("L-NAPL"), including a plume called Pool II. Figure 4
16 to this report ("LNAPL Occurrence Map, ARCO Los Angeles Refinery") shows the location of
17 the seven LNAPL pools, and shows that the onsite extent of Pool II reaches to Wilmington
18 Avenue on the east side of the WICS Property.

19 6. Attached hereto as Exhibit C is a true and correct copy of excerpts from the 200+
20 page settlement agreement between Watson and Atlantic Richfield Company ("ARCO"), dated
21 November 1, 2000 (the "Settlement Agreement").

22 7. After Watson settled with ARCO and other defendants, it took its claims against
23 Shell (the only remaining defendant) to trial on May 21, 2001.

24 8. Prior to trial, on March 5 and 6, 2001, my co-counsel in the Watson lawsuit,
25 David J. Earle, took the deposition of one of Watson's expert witnesses, Jeffrey Dagdigian.
26 Based on the witness identified, the date and the statements referenced, I believe the deposition
27 transcript referenced throughout the 13267 Order is the transcript to Mr. Earle's deposition of
28 Mr. Dagdigian. At trial, Shell presented evidence that contradicted and undermined Mr.

1 Dagdigian's statements and the other evidence presented by Watson.

2 9. The jury returned a verdict in which it found for Watson (and against Shell) on its
3 continuing trespass cause of action, and against Watson (and for Shell) on its continuing
4 nuisance cause of action. A true and correct copy of the Judgment on General Verdict with
5 Special Findings (the "Judgment"), filed July 23, 2001, is attached hereto as Exhibit D. This
6 Judgment shows that the jury found that "the amount of damages that Watson should receive
7 [from Shell] in order to restore the condition of the Watson Center" was \$3,915,851.

8 10. After the Judgment was entered, Shell and Watson filed cross-appeals. The Court
9 of Appeal affirmed the jury's findings with respect to Shell's liability for the contamination at the
10 WICS Property, but rejected the jury's finding that Shell "benefited" under Civil Code § 3334
11 from the alleged release. For the State Water Board's convenience, a true and correct copy of the
12 published Court of Appeal opinion, *Watson Land Company v. Shell Oil Company*, 130
13 Cal.App.4th 69 (Cal.App. 2005), is attached hereto as Exhibit E.

14 11. Attached hereto as Exhibit F is a true and correct copy of Shell's Appellant's
15 Opening Brief, filed May 28, 2003 in the Court of Appeal, appealing the judgment entered in the
16 Watson lawsuit. Attached to this brief are Trial Exhibits 1498, 1500, 1501, 1512 and 1513,
17 consisting of plume maps presented at trial in the Watson lawsuit by Watson, and purporting to
18 show the A, B1 and B2 Plumes.

19 12. Attached hereto as Exhibit G is a true and correct copy of Shell's Combined
20 Appellant's Reply Brief and Cross-Respondent's Brief, which my office filed in the Court of
21 Appeal on or about September 15, 2004.

22 13. Also at issue in the Watson lawsuit was responsibility for a jet fuel plume in the
23 same general area as the B1 Plume. Prior to trial, Watson and GATX Terminals Corporation
24 ("GATX") entered a settlement whereby GATX agreed to remediate the jet fuel plume. Attached
25 hereto as Exhibit H are true and correct copies of excerpts from the State Water Board's
26 Geotracker website for the jet fuel plume, Site Identification No. SL2045R1627, GATX-GX-
27 190-Pipeline Release Area.

1 14. Following their settlement, Watson and ARCO filed a Joint Motion for an Order
2 Confirming Establishment of the WICS Property Environmental Cleanup Fund, Appointing
3 Administrator, and Approving Trust Agreement. A true and correct copy of this document,
4 which my office received on or about June 18, 2002, is attached hereto as Exhibit I. On or about
5 August 23, 2002, the Court entered an order granting Watson's and ARCO's Joint Motion. A
6 true and correct copy of this order, which established the WICS Property Environmental Cleanup
7 Fund ("Cleanup Fund") pursuant to the Settlement Agreement, is attached hereto as Exhibit J.

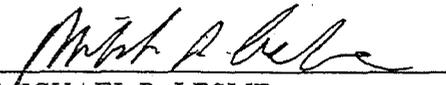
8 15. Following the Court of Appeal's opinion, Shell paid the judgment in full to
9 Watson plus interest. Attached hereto as Exhibit K is a true and correct copy of an email chain
10 between Maureen J. Bright, Matthew S. Covington (for ARCO) and me, which includes an
11 email from Ms. Bright dated December 9, 2005 in which she confirmed receipt of Shell's
12 payment of \$5,702,387.94 to Watson into the account for the Cleanup Fund in satisfaction of
13 Watson's judgment against Shell plus post-judgment interest.

14 16. Thereafter, on December 19, 2005, my office filed Watson's Acknowledgement
15 of Satisfaction of Judgment-Full, which was executed by Watson's counsel, Ms. Bright.
16 A true and correct copy of this document is attached hereto as Exhibit L.

17 17. Attached hereto as Exhibit M is a true and correct copy of a letter dated November
18 17, 2005 from Ms. Bright to me in which Ms. Bright provided instructions for payment of
19 Watson's judgment against Shell into the account for the Cleanup Fund.

20 18. Attached hereto as Exhibit N is a true and correct copy of a facsimile dated
21 November 22, 2005 from Ms. Bright to me (and copying Mr. Covington and Bradley D. Frazier,
22 counsel for Watson), in which Ms. Bright transmits documents relating to the establishment of
23 the account for the Cleanup Fund, including the Trust Agreement.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct to the best of my knowledge. Executed this 27th day of January,
26 2010, at Los Angeles, California.

27
28 
MICHAEL R. LESLIE

CALDWELL
LESLIE &
PROCTOR



California Regional Water Quality Control Board Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

December 28, 2009

Mr. Bradley D. Frazier
Watson Land Company
22010 South Wilmington Avenue, Suite 400
Carson, California 90745

Mr. Don Herman
Shell Pipeline Company
20945 S. Wilmington Avenue
Carson, CA 90810

REQUIREMENT FOR TECHNICAL REPORTS PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER – WATSON INDUSTRIAL CENTER SOUTH, CARSON (FILE NO. 09-197)

Dear Mr. Frazier & Mr. Herman:

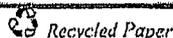
The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the State regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board has been overseeing the soil and groundwater investigation and cleanup activities on and in the vicinity of the properties at 2149 Sepulveda Boulevard (BP Carson refinery facility, SCP No. 225) and 900 233rd Street, Carson (GATX, SCP No. 532A).

Recently, we learned that there are several site investigation reports related to the Watson Industrial Center at 22010 South Wilmington Avenue, Carson (Watson Land Company vs. Shell Oil Company, Los Angeles Superior Court No. BC150161). Based on information we reviewed, we understand that there are five identified groundwater contamination plumes at Watson Land Company's Watson Industrial Center South (WICS): generally, the WICS is bordered on the north by 223rd Street, on the south by Sepulveda Boulevard, on the east by Wilmington Avenue, and on the west by Avalon Boulevard. Those identified groundwater contamination plumes are:

1. Pool II – across from BP (Arco) Carson refinery; primarily of mid-range hydrocarbon with a small gasoline component.
2. B2 Plume – under the Utility Way Corridor; 1300 feet long in a north-south direction aligned under Shell's pipelines and approximately 600-700 feet wide; old leaded gasoline with small free product.
3. A Plume – under the Utility Way Corridor; about half the length of the B2 Plume and also aligns with Shell's pipeline; old leaded gasoline and no free product.

California Environmental Protection Agency

EXHIBIT A



Mr. Bradley Frazier, Watson Land Co.
Mr. Don Herman, Shell Pipeline Co.

- 2 -

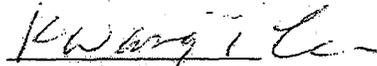
December 28, 2009

4. Jet Fuel Plume – from GATX's pipeline (GATX notified this Regional Board on October 5, 1995, regarding GX-190 pipeline releases within the Watson property. Currently, this case is being handled by Regional Board staff).
5. B1 Plume – unleaded gasoline plume that could only have come from Shell's pipelines in the Department of Water and Power Corridor.

These contaminated groundwater plumes underneath the WICS site are significant threats to human health and groundwater quality and must be completely assessed and delineated. Therefore, the Regional Board requires both Watson Land Co. and Shell Pipeline Co. to submit copies of all documents and reports of environmental assessment and investigation previously conducted at the WICS, and to assess the current groundwater quality. You are required to comply with the enclosed Order.

If you have any questions, please contact Mr. Paul Cho at (213) 576-6721 or me at (213) 576-6734.

Sincerely,



Kwang Lee, Ph.D., P.E.

Unit Chief

Site Cleanup Unit IV

Enclosures: Requirement to Provide Technical Reports (CWC Section 13267 Order)

cc: Nancy Matsumoto, Water Replenishment District
Henry Wind, California Water Service Company

California Environmental Protection Agency

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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

2



California Regional Water Quality Control Board

Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

REQUIRING SUBMITTAL OF TECHNICAL REPORTS (CALIFORNIA WATER CODE SECTION 13267 ORDER)

WATSON INDUSTRIAL CENTER
CARSON, CALIFORNIA
(FILE NO. 09-197)

You are legally obligated to respond to this Order. Please read this carefully.

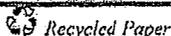
Regional Board staff has reviewed various documents from litigation between Watson Land Company vs. Shell Oil Company, Los Angeles Superior Court No. BC150161. Based on information we reviewed, we have identified that there are five groundwater contamination plumes at the Watson Industrial Center South (WICS). Those identified groundwater contamination plumes are:

1. Pool II – across from BP (Arco) Carson refinery; primarily of mid-range hydrocarbon with a small gasoline component (*per Evaluation of Subsurface Environmental Concerns at Watson Industrial Center South, May 23, 1996, prepared by Levine Fricke*).
2. B2 Plume – under the Utility Way Corridor; 1300 feet long in a north-south direction aligned under Shell's pipelines and approximately 600-700 feet wide; old leaded gasoline with small free product (*per Expert Witness Jeffrey Dagdigian Deposition Transcript, March 5, 2001*).
3. A Plume – under the Utility Way Corridor; about half the length of the B2 Plume and also aligns with Shell's pipeline; old leaded gasoline and no free product (*per Expert Witness Jeffrey Dagdigian Deposition Transcript, March 5, 2001*).
4. Jet Fuel Plume – from GATX's pipeline (GATX notified this Regional Board on October 5, 1995, regarding GX-190 pipeline releases within the Watson property. Currently, this case is being handled by Regional Board staff).
5. B1 Plume – unleaded gasoline plume that could only have come from Shell's pipelines in the Department of Water and Power Corridor (*per Expert Witness Jeffrey Dagdigian Deposition Transcript, March 5, 2001*).

Our review of Watson Land Company's Combined Respondent's Brief and Cross-Appellant's Opening Brief dated October 11, 2006 summarizes as follow:

1. Various chemicals have been detected at the Watson Industrial Center including petroleum hydrocarbons, fuel oxygenates, 1,2-dichloroethane, ethylene dichloride, etc. Specifically, within B2 plume, diisopropyl ether (DIPE) has been detected at 14 milligrams per liter (mg/L) from water-table monitoring well MW-1. Within A plume, DIPE detected at 4.5 mg/L (*per Expert Witness Jeffrey Dagdigian Deposition Transcript, March 5, 2001*).

California Environmental Protection Agency



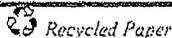
Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

2. Shell transported hydrocarbon produced or used at its refinery through a series of 'inter-refinery pipelines' (IRPs) contained in two easements that traversed north-south through the center of the Watson Center (the "Utility Way Corridor" and the "DWP Corridor"). In 1973, Shell built 13 new pipelines in the DWP Corridor, and critically, stopped using 7 of the 12 pipelines in the Utility Way Corridor that were built in 1965. A notation found on one of Shell's Y-Maps (as-built pipeline drawings) admitting that as of 1983 one of 7 lines was in poor condition.
3. The contamination is physically located directly under the location of Shell's IRPs.
4. DIPE manufactured by Shell at its refinery and presented in the B2 and A plumes further shows causation. DIPE was used by Shell as an additive to leaded gasoline.
5. BP (Arco) did not use DIPE as an additive in leaded gasoline.
6. Two lead scavengers added to leaded gasoline called ethylene dibromide (EDB) and ethylene dichloride (EDC) distribution pattern also helped to define the B2 plume (*per Expert Witness Jeffrey Dagdigian Deposition Transcript, March 5, 2001*). Both Watson's and Shell's experts agreed that the contamination was pre-1990 leaded gasoline. The B2 plume contains lead that is a special mixture of five lead alkyls that was used in gasoline produced between 1960 and 1982, within the period in which Shell's IRP carried leaded gasoline.
7. Samples from pertinent locations on the BP refinery contained a lead package called 'tetraethyl lead' or TEL, not the lead alkyl mixture, which means that the gasoline in the B2 plume is different from the gasoline component of the contamination under the Arco refinery.
8. Shell's IRP are the only confirmed source of gasoline in the vicinity of the B2 and A plumes. There was no evidence of non-Shell pipelines transporting gasoline in the area or of nearby gasoline stations or tenant uses that were a potential source for the plumes.

Based on the above information, we have determined that there is significant contamination of groundwater under the WICS which must be completely assessed and delineated. Pursuant to section 13267(b) of the California Water Code (CWC), you are hereby directed to submit the following:

1. By February 26, 2010 a technical report (workplan) for groundwater sampling and monitoring from all the existing groundwater monitoring wells at the Watson Industrial Center related to Pool II, Plume A, Plume B1, and Plume B2. You are also required to submit any historical groundwater monitoring data in the report with your discussion on groundwater quality concern.
2. By April 15, 2010, a 3-dimensional illustration as a conceptual site model (CSM) to depict:

California Environmental Protection Agency



- i) the site-specific hydrogeology and hydrostratigraphy with verified field data;
 - ii) the current groundwater monitoring network with screened intervals;
 - iii) the location of all the water supply wells within one mile radius of the site as well as other receptors that may be affected by the release and migration of the contaminants to the subsurface environment; and
 - iv) the lateral and vertical extent of each chemical of concern in groundwater.
3. By April 15, 2010, a technical report (workplan) for additional investigation to complete the 3-d illustration in case the CSM cannot adequately convey all the required above information.
4. All technical reports must be signed by a senior authorized [NAME OF RESPONSIBLE PARTY'S or DISCHARGER'S COMPANY] representative (and not by a consultant). It shall be in the following format: "I [NAME], do hereby declare, under penalty of perjury under the laws of the State of California, that I am [JOB TITLE] for [NAME OF RESPONSIBLE PARTY\DISCHARGER], that I am authorized to attest to the veracity of the information contained in the reports described herein, and that the information contained in [NAME AND DATE OF REPORT] is true and correct, and that this declaration was executed at [PLACE], [STATE], on [DATE]."

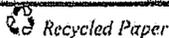
Pursuant to section 13268(b)(1) of the CWC, failure to submit the required technical reports may result in the imposition of civil liability penalties by the Regional Board, without further warning, of up to \$1,000 per day for each day the report is not received after the *above* due dates.

Due to historical land use at the site, soil and groundwater beneath the site have been impacted with petroleum hydrocarbons and fuel oxygenates. However, you have not yet completed site contamination characterization and have not organized site investigation data into a conceptual site model to assess the full extent of the groundwater contamination. The Regional Board needs the required reports in order to complete the vertical and lateral delineation of the groundwater contamination plume and properly implement remedial measures.

We believe that the burdens, including costs, of the reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. If you disagree and have information about the burdens, including costs, of complying with these requirements, provide such information to Mr. Paul Cho within ten days of the date of this letter so that we may reconsider the requirements.

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

California Environmental Protection Agency



Mr. Bradley Frazier, Watson Land Co.
Mr. Don Herman, Shell Pipeline Co.

- 4 -

December 28, 2009

http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

SO ORDERED.

Samuel Unger A.E.O. for

Tracy J. Egoscue
Executive Officer

December 28, 2009

California Environmental Protection Agency

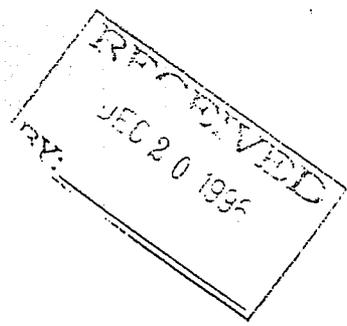
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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

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1 BRIGHT AND BROWN
2 JAMES S. BRIGHT (State Bar No. 65299)
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8 Attorneys for Plaintiff
9 WATSON LAND COMPANY



10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12 CENTRAL DISTRICT

13 WATSON LAND COMPANY, a California
14 corporation,

15 Plaintiff,

16 v.

17 ATLANTIC RICHFIELD COMPANY, a
18 Pennsylvania corporation; GEORGE
19 PEARSON, an individual, dba G & M OIL
20 COMPANY; G & M OIL COMPANY, INC., a
21 California corporation; TEXACO REFINING
22 AND MARKETING, INC., a Delaware
23 corporation; TRMI HOLDINGS, INC., a
24 Delaware corporation; REMEDIATION
25 CAPITAL CORPORATION, a Nevada
26 corporation; MONSANTO CHEMICAL
27 COMPANY, a Delaware corporation;
28 STAUFFER MANAGEMENT COMPANY, a
Delaware corporation; RHONE-POULENC
BASIC CHEMICALS COMPANY, a Delaware
corporation, SHELL OIL COMPANY, a
Delaware corporation and DOES 1
through 200, inclusive,

Defendants.

Case No. BC 150161

FIRST AMENDED COMPLAINT OF THE
WATSON LAND COMPANY FOR:

- 1. PERMANENT TRESPASS;
- 2. CONTINUING TRESPASS;
- 3. PERMANENT PRIVATE NUISANCE;
- 4. PERMANENT PUBLIC NUISANCE;
- 5. CONTINUING PRIVATE NUISANCE;
- 6. CONTINUING PUBLIC NUISANCE;
- 7. FRAUD (CONCEALMENT);
- 8. FRAUD (MISREPRESENTATION);
- 9. EQUITABLE INDEMNITY;
- 10. UNJUST ENRICHMENT; AND
- 11. DECLARATORY RELIEF

///

12/19

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1 The Plaintiff, Watson Land Company, alleges as follows:

2 THE ACTION

3 1. This action is brought by Watson Land Company (hereinafter
4 referred to as "Watson") seeking damages and other relief associated with the
5 environmental contamination of real property in the City of Carson, California.
6 The property is commonly known as the Watson Industrial Center South
7 (hereinafter referred to as the "Watson Center"). The action seeks relief from a
8 variety of defendants. Watson is informed and believes, and thereon alleges, that
9 some of the defendants have caused the contamination of the Watson Center as a
10 result of operations which those defendants have conducted on parcels
11 immediately adjoining or in the vicinity of the Watson Center. Watson is informed
12 and believes, and thereon alleges, that others of the defendants have installed
13 pipelines through the Watson Center, the operation of which have also caused
14 contamination of the Watson Center. This action seeks relief against all of the
15 defendants predicated upon causes of action for permanent trespass, continuing
16 trespass, permanent private nuisance, permanent public nuisance, continuing
17 private nuisance, continuing public nuisance, equitable indemnity, unjust
18 enrichment and declaratory relief. In addition to the previously stated causes of
19 action, this action also seeks relief from defendant Atlantic Richfield Company on
20 the basis of fraud.

21 PARTIES AND PROPERTY

22 2. Watson is a California corporation with its principal place of
23 business in Carson, California. Watson is a developer/owner of commercial and
24 industrial properties.

25 3. Watson is the owner of the Watson Center, consisting of
26 approximately 400 acres, irregularly configured and bounded at the northern
27 most point by 223rd Street, the eastern most point by Wilmington Avenue, the
28 southern most point by Sepulveda Boulevard and extending at the western most

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1 point beyond Avalon Boulevard. The Watson Center is developed with
2 approximately 65 commercial and light industrial buildings which Watson leases.
3 Neither Watson, nor any of its tenants, have caused or contributed to the
4 environmental contamination complained of in this action.

5 4. Immediately across Wilmington Avenue, and to the east of
6 the Watson Center, is the ARCO Los Angeles Refinery (hereinafter referred to as
7 the "ARCO Refinery"). Watson is informed and believes, and thereon alleges, that
8 the ARCO Refinery is owned by defendant Atlantic Richfield Company
9 (hereinafter "ARCO") and is operated by a division of ARCO known as "ARCO
10 Products Company." Watson is informed and believes, and thereon alleges, that
11 the ARCO Refinery has been so owned and operated throughout the period of time
12 relevant to this complaint. Watson is further informed and believes, and thereon
13 alleges, that ARCO is a Pennsylvania corporation with its principal place of
14 business in Los Angeles, California. Watson is informed and believes, and
15 thereon alleges, that ARCO's operations at the ARCO Refinery caused or
16 contributed to the environmental contamination complained of in this action.

17 5. To the northeast of the Watson Center at 22351 Wilmington
18 Avenue is a parcel of property upon which is located a gas station. The property is
19 owned by Robert and LuAnne Leonard (hereinafter referred to as the "Leonards"
20 and the "Leonard Property"). Watson is informed and believes, and thereon
21 alleges, that the gas station on the Leonard Property has been operated during the
22 relevant period by Mohawk Petroleum Corporation (hereinafter referred to as
23 "Mohawk"), and later by defendant George Pearson, dba G & M Oil Company and
24 G & M Oil Company, Inc. (hereinafter collectively referred to as "G & M").
25 Watson is informed and believes, and thereon alleges, that George Pearson is a
26 resident of Huntington Beach, California and that G & M Oil Company, Inc. is a
27 California corporation with its principal place of business in Huntington Beach,
28 California. Watson is further informed and believes, and thereon alleges, that

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1 Getty Refinery and Marketing Company (hereinafter referred to as "Getty")
2 succeeded to the liability of Mohawk for its operations on the Leonard Property and
3 that defendant Texaco Refining and Marketing, Inc., later acquired Getty and
4 thereby succeeded to the liabilities of Getty, including, but not limited to the
5 liabilities of Mohawk for operations on the Leonard Property. Watson is informed
6 and believes, and thereon alleges, that the corporate entity known as Texaco
7 Refining and Marketing, Inc., into which Getty was merged, changed its name to
8 TRMI Holdings Inc. (hereinafter referred to as "TRMI"). Watson is further
9 informed and believes, and thereon alleges, that on that same date, a separate
10 corporation was created under the name of Texaco Refining and Marketing, Inc.
11 (hereinafter referred to as "Texaco") which also succeeded to the liabilities
12 attributable to the operation of the gas station on the Leonard Property. (G & M,
13 Mohawk, Getty, Texaco and TRMI are collectively referred to herein as the
14 "Leonard Gas Station Defendants.") Watson is informed and believes, and
15 thereon alleges, that Mohawk and Getty no longer exist as separate corporations
16 and that Texaco and TRMI are both Delaware corporations with the identical
17 principal place of business in White Plains, New York. Watson is informed and
18 believes, and thereon alleges, that the gas station operations by the Leonard Gas
19 Station Defendants on the Leonard Property caused or contributed to the
20 environmental contamination complained of in this action.

21 6. Further to the northwest of the Watson Center are two parcels
22 which front on 223rd Street and upon which operations have been conducted
23 which are the subject of this action. Watson is informed and believes, and thereon
24 alleges, that the parcel located at 2100 223rd Street is owned by defendant
25 Remediation Capital Corporation, a Nevada corporation, with its principal place
26 of business in San Francisco, California. Watson is informed and believes, and
27 thereon alleges, that Remedial Capital Corporation acquired the property from
28 defendant Monsanto Chemical Company and succeeded to the liabilities resulting

1 from the operations conducted on that property. Watson is further informed and
2 believes, and thereon alleges, that Monsanto Chemical Company is a Delaware
3 corporation with its principal place of business in St. Louis, Missouri. (Remedial
4 Capital Corporation and Monsanto Chemical Company are collectively referred to
5 herein as "Monsanto" and the property is hereinafter referred to as the "Monsanto
6 Plant.") Watson is further informed and believes, and thereon alleges, that
7 Monsanto operated a detergent manufacturing facility at the Monsanto Plant
8 which caused or contributed to the environmental contamination complained of in
9 this action.

10 7. Watson is informed and believes, and thereon alleges, that the
11 parcel located at 2112 223rd Street is owned by defendant Stauffer Management
12 Company which acquired the property from Stauffer Chemical Company and
13 succeeded to the liability for operations conducted on that property. Watson is
14 informed and believes, and thereon alleges, that Stauffer Chemical Company
15 changed its name to Stauffer Chemical Company, a Division of Rhone-Poulenc,
16 Inc. Watson is informed and believes, and thereon alleges, that Stauffer
17 Chemical Company, a Division of Rhone-Poulenc, Inc. changed its name to
18 Rhone-Poulenc Basic Chemicals Company. Watson is informed and believes, and
19 thereon alleges, that Stauffer Chemical Company no longer exists as a separate
20 corporation, that defendant Stauffer Management Company is a Delaware
21 corporation with its principal place of business in Shelton, Connecticut, and that
22 Rhone-Poulenc Basic Chemicals Company is a Delaware corporation with its
23 principal place of business in Shelton, Connecticut. (Stauffer Management
24 Company, Stauffer Chemical Company and Rhone-Poulenc Basic Chemical
25 Company are hereinafter collectively referred to as "Stauffer" and the property is
26 hereinafter referred to as the "Stauffer Plant.") Watson is informed and believes,
27 and thereon alleges, that Stauffer operated a chemical manufacturing facility at
28

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1 the Stauffer Plant which caused or contributed to the environmental
2 contamination complained of in this action.

3 8. Located in the middle of the Watson Center and running
4 beneath a street known as "Utility Way" and in a North/South line extending from
5 the northern most to the southern most edge of the Watson Center, is a pipeline
6 corridor in which several pipelines are located that carry petroleum, petroleum
7 products and other chemical substances (hereinafter referred to as the "Pipeline
8 Corridor"). Watson is informed and believes, and thereon alleges, that defendant
9 Shell Oil Company (hereinafter referred to as "Shell") owns and has operated
10 pipelines within the Pipeline Corridor. Watson is informed and believes, and
11 thereon alleges, that defendant ARCO owns and has operated pipelines within the
12 Pipeline Corridor. Watson is informed and believes, and thereon alleges, that
13 Shell is a Delaware corporation with its principal place of business in Houston,
14 Texas. Watson is informed and believes, and thereon alleges, that the operation of
15 these pipelines by Shell and ARCO, respectively, have caused or contributed to the
16 environmental contamination complained of in this action.

17 9. Watson is informed and believes, and thereon alleges, that
18 Does 1 through 25, inclusive, are the agents, representatives, subsidiaries,
19 affiliates, predecessors or successors of ARCO, and that each of these Doe
20 defendants is in some manner responsible for the damages caused to Watson, as
21 described more fully below.

22 10. Watson is informed and believes, and thereon alleges, that
23 Does 26 through 50, inclusive, are the agents, representatives, subsidiaries,
24 affiliates, predecessors or successors of the Leonard Gas Station Defendants, and
25 that each of these Doe defendants is in some manner responsible for the damages
26 caused to Watson, as described more fully below.

27 11. Watson is informed and believes, and thereon alleges, that
28 Does 51 through 75, inclusive, are the agents, representatives, subsidiaries,

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1 affiliates, predecessors or successors of Monsanto, and that each of these Doe
2 defendants is in some manner responsible for the damages caused to Watson, as
3 described more fully below.

4 12. Watson is informed and believes, and thereon alleges, that
5 Does 76 through 100, inclusive, are the agents, representatives, subsidiaries,
6 affiliates, predecessors or successors of Stauffer, and that each of these Doe
7 defendants is in some manner responsible for the damages caused to Watson, as
8 described more fully below.

9 13. Watson is informed and believes, and thereon alleges, that
10 Does 101 through 125, inclusive, are the agents, representatives, subsidiaries,
11 affiliates, predecessors or successors of Shell, and that each of these Doe
12 defendants is in some manner responsible for the damages caused to Watson, as
13 described more fully below.

14 14. Watson is informed and believes, and thereon alleges, that
15 Does 126 through 150, inclusive, are other persons or entities that have operated
16 the gas station facilities on the Leonard Property and that each of these Does
17 defendants is in some manner responsible for the damages caused to Watson, as
18 described more fully below.

19 15. Watson is informed and believes, and thereon alleges, that
20 Does 151 through 200, inclusive, are the other persons or entities that have
21 conducted operations on or near the Watson Center and that each of these Doe
22 defendants is in some manner responsible for the damages to Watson, as
23 described more fully below.

24 **FACTUAL BACKGROUND**

25 16. Watson is informed and believes, and thereon alleges, that
26 groundwater in the vicinity of the Watson Center generally flows to the south -
27 southwest, placing the Watson Center hydraulically down to cross-gradient from
28

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1 the ARCO Refinery, the Leonard Property, the Stauffer Plant and the Monsanto
2 Plant.

3 17. The soil and groundwater contamination which Watson has
4 discovered beneath the Watson Center is not visible and is not detectable absent
5 subsurface testing. Watson is informed and believes, and thereon alleges, that the
6 defendants, and each of them, knew or should have known that the contamination
7 which they caused was not likely to be discovered by Watson absent disclosure by
8 the defendants of the existence of such contamination.

9 18. The discharge of petroleum, petroleum products, hazardous
10 substances, industrial wastes or waste from manufacturing facilities into a
11 location in which they will or could endanger the waters of the State, including
12 groundwater, has been unlawful and prohibited since 1915 by Fish & Game Code
13 §5650 (formerly Penal Code §635), since 1949 by Water Code §13350 et seq. (formerly
14 the Dickey Water Act), since 1949 by Health and Safety Code §5410 and §5411 and
15 since 1952 by Los Angeles County Ordinance §20.36.010. Los Angeles County
16 Ordinance §20.36.010 has further prohibited the discharge of any hazardous
17 substances in locations where they would or might damage private property.
18 Health and Safety Code §5410 and §5411 have prohibited the discharge of waste in
19 any manner which will result in pollution or contamination of the waters of the
20 State or the creation of a nuisance, including an obstruction to the free use of
21 property or the comfortable enjoyment of property. Watson is informed and
22 believes, and thereon alleges, that each of the discharges of petroleum, petroleum
23 products, and other hazardous substances by the defendants herein, as described
24 more fully below, were unlawful at the time such discharges occurred.

25 MONSANTO PLANT

26 19. Watson is informed and believes, and thereon alleges, that the
27 Monsanto Plant manufactured detergent from approximately 1985 to 1991. Watson
28 is further informed and believes, and thereon alleges, that some time at the end of

1 1990, or early in 1991, Monsanto signed a consent order issued by the California
2 Environmental Protection Agency, Department of Toxic Substance Control
3 (hereinafter referred to as "DTSC") requiring Monsanto to remediate soil and
4 groundwater contamination emanating from the Monsanto Plant. In or around
5 the beginning of 1991, an environmental consultant acting on behalf of Monsanto
6 interviewed representatives of Watson for the stated purpose of preparing a
7 community relations plan for a site investigation and remediation at the Monsanto
8 Plant. In or around February of 1995, Watson received a copy of a fact sheet
9 published by the DTSC informing the general public of activities undertaken by
10 Monsanto to remediate groundwater contamination caused by the Monsanto
11 Plant. The 1995 fact sheet described interim measures implemented by Monsanto
12 to extract free-floating contamination from the groundwater, the completion of a
13 feasibility study prepared by Monsanto to identify, develop and evaluate remedial
14 action alternatives for the Monsanto site, and the pending preparation and
15 approval by the DTSC of the remedial action plan by Monsanto to remediate
16 contamination emanating from the Monsanto Plant. None of the information
17 supplied to Watson indicated that the Monsanto Plant had contaminated the soil or
18 groundwater beneath the Watson Center. As a result, Watson had no reason to
19 suspect that Monsanto had contaminated the Watson Center, until the discoveries
20 made by Watson in 1996, as more fully described below.

21 20. In addition to the fact that Watson had no reason to believe
22 that the Monsanto Plant had contaminated the soil and groundwater under the
23 Watson Center, as a result of the public disclosures made by Monsanto in
24 connection with the DTSC order, the DTSC order, the specific representations
25 made by the agents of Monsanto in connection with the preparation of the
26 community relations plan, and DTSC fact sheets, Watson also believed that
27 Monsanto had accepted responsibility for the contamination emanating from the
28 Monsanto Plant and would fully investigate, delineate and remediate that

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1 contamination under supervision of the DTSC. In reliance upon the
2 representations of Monsanto and the information supplied by the DTSC which
3 indicated that the Watson Center was not contaminated by the Monsanto Plant
4 and that Monsanto would clean up the contamination it caused, Watson did not
5 initiate any legal action to protect its rights or assert any claims against Monsanto
6 prior to this action.

7 STAUFFER PLANT

8 21. Watson is informed and believes, and thereon alleges, that
9 Stauffer operated a chemical manufacturing facility at the Stauffer plant until
10 1976 on behalf of the American Chemical Company, a joint venture between
11 Stauffer and ARCO. Watson is informed and believes, and thereon alleges, that
12 the Stauffer plant continued operating subsequent to 1976, and ceased to operate in
13 or around 1982. Watson is informed and believes, and thereon alleges, that in or
14 around July of 1994, Stauffer signed a consent order with the DTSC requiring
15 Stauffer to investigate and remediate contamination emanating from the Stauffer
16 plant. In or around January of 1995, Watson received a copy of a fact sheet
17 prepared by the DTSC concerning activities conducted by Stauffer at the Stauffer
18 Plant. The fact sheet affirmatively represented that Stauffer had agreed to
19 undertake field work at the Stauffer site to identify and determine the extent and
20 nature of the contamination caused by Stauffer. The fact sheet indicated that
21 Stauffer would prepare a remedial investigation workplan for the purpose of
22 identifying contaminants on the site. The fact sheet further indicated that
23 following the initial assessment, alternatives for remedial measures would be
24 evaluated in a feasibility study which would be followed by a remedial action plan
25 recommending clean up actions for the site. None of the information supplied to
26 Watson indicated that the Stauffer Plant had contaminated the soil or
27 groundwater beneath the Watson Center. As a result, Watson had no reason to
28

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1 Watson Center and that the Leonard's had undertaken the remediation of that
2 contamination. As a result, Watson had no reason to suspect that the gasoline
3 operations on the Leonard Property had contaminated the Watson Center, until
4 the discoveries made by Watson in 1996, as more fully described below.

5 24. As a result of the discoveries made by Watson in 1996, as
6 described more fully below, Watson is informed and believes, and thereon alleges,
7 that the contamination created beneath the Leonard Property by the gasoline
8 operations thereon, or resulting from the migration of contamination to the
9 Leonard Property from the ARCO Refinery, has now migrated down-gradient
10 beneath the Watson Center and thereby caused or contributed to the contamination
11 of soil and/or groundwater under the Watson Center.

12 THE PIPELINE CORRIDOR

13 25. Watson is informed and believes, and thereon alleges, that
14 Shell has operated as many as 22 pipelines (described below) through the Pipeline
15 Corridor immediately to the west of Building 165. Watson is informed and
16 believes, and thereon alleges, that there are currently seven abandoned Shell
17 pipelines, six idle Shell pipelines and nine active Shell pipelines in the Pipeline
18 Corridor. Watson is informed and believes, and thereon alleges, that Shell has
19 transported a variety of petroleum, petroleum products and other chemicals
20 through the Shell pipelines in the Pipeline Corridor.

21 26. Watson is informed and believes, and thereon alleges, that
22 ARCO has installed as many as three pipelines (described below) in the Pipeline
23 Corridor immediately west of Building 165. Watson is informed and believes, and
24 thereon alleges, that there are currently two abandoned ARCO pipelines and one
25 active ARCO pipeline in the Pipeline Corridor. Watson is informed and believes,
26 and thereon alleges, that ARCO has transported a variety of petroleum, petroleum
27 products and other chemicals through the ARCO pipelines in the Pipeline
28 Corridor.

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1 Carson which are also believed to have caused contamination to groundwater,
2 ARCO became a part of the Carson Regional Groundwater Group (hereinafter the
3 "CRGG Group") organized by the RWQCB for the purpose of assessing and
4 remediating groundwater contamination under the City of Carson.

5 30. In connection with ARCO's participation in the CRGG group
6 and its remediation of the contamination in the groundwater beneath the ARCO
7 Refinery, ARCO has made various reports to the RWQCB regarding the
8 groundwater contamination which ARCO caused at the ARCO Refinery. ARCO
9 delivered copies of portions of some of those reports directly to Watson for the
10 express purpose of informing Watson about ARCO's remediation activities. All of
11 the information delivered by ARCO to Watson to date has indicated that the free-
12 floating pools of contamination in the groundwater caused by the ARCO Refinery
13 exist under the ARCO Refinery but not under the Watson Center, and that the
14 ARCO Refinery had not caused any contamination of the soil under the Watson
15 Center.

16 31. Watson is informed and believes, and thereon alleges, that
17 ARCO is under current order of the RWQCB to design and install a light
18 nonaqueous phase liquid hydrocarbon (LNAPL) recovery and remediation system
19 in order to remediate groundwater contamination emanating from the ARCO
20 Refinery and to create a subsurface barrier which will prevent the westerly
21 migration of contamination in the groundwater from the ARCO Refinery to the
22 Watson Center and properties beyond. RWQCB Abatement Order No. 90-121 dated
23 August 22, 1990 originally obligated ARCO to complete an off-site assessment of
24 the contamination caused by the ARCO Refinery by December 15, 1990, and to
25 begin remediation of off-site dissolved petroleum hydrocarbon contamination by
26 April 30, 1992.

27 32. Watson is informed and believes, and thereon alleges, that
28 pursuant to the RWQCB order, ARCO has installed numerous water monitoring

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1 wells on the ARCO refinery in order to sample soil and groundwater beneath the
2 ARCO Refinery for various contaminants and for the purposes of reporting those
3 findings to the RWQCB.

4 33. In December of 1990, ARCO entered into a Temporary License
5 Agreement (hereinafter the "ARCO License Agreement") with Watson to install
6 water monitoring wells on the Watson Center. A true and correct copy of the
7 ARCO License Agreement is attached hereto as Exhibit "A" and is incorporated
8 herein by reference. In pertinent part, the ARCO License Agreement provides
9 that ARCO shall immediately deliver to Watson any data, reports, or analysis
10 pertaining to the installation, sampling or testing of any of the water monitoring
11 wells or any groundwater or soil removed from such wells on the Watson Center,
12 as well as copies of any documentation submitted to any agency in connection with
13 the wells installed on the Watson Center. (See Ex. A, ¶¶3, 10.)

14 34. Watson is informed and believes, and thereon alleges, that in
15 or around March of 1993, ARCO caused another report to be prepared for
16 submission to the RWQCB entitled: "Phase I Off-Site Migration Barrier Plan,
17 ARCO Los Angeles Refinery." ARCO thereafter supplied a copy of this document
18 to Watson. The document is described in the introduction as a "work plan"
19 presenting the scope of work "to collect data necessary for the design and
20 installation of a light nonaqueous phase liquid hydrocarbon (LNAPL) recovery and
21 groundwater remediation system along the down-gradient western perimeter of
22 the ARCO Los Angeles Refinery (LAR). This system will be designed to function
23 as a barrier to off-site migration of LNAPL." ARCO's Phase I Off-Site Migration
24 Barrier Plan further indicated that ARCO was conducting aquifer remediation
25 (see Page 3-1) and affirmatively represented that it would undertake
26 implementation of cleanup of the contamination in the groundwater caused by the
27 ARCO Refinery (see Page 3-2). The extent of the water table contamination caused
28 by the ARCO Refinery is represented in a map designated as Figure 4. Figure 4

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1 affirmatively represents that no groundwater contamination exists beneath the
2 Watson Center.

3 35. In or around March of 1993, Watson sought a loan for
4 operating capital which was to be secured by liens against several of the buildings
5 located within the Watson Center. In connection with that loan application, the
6 lender required Watson to undertake an environmental investigation of the
7 subsurface conditions below the buildings forming the collateral. As a result of
8 this environmental investigation, the lender required Watson to undertake a
9 supplemental investigation to assess the potential impact of the ARCO Refinery
10 contamination upon the soil and groundwater beneath the Watson Center. In
11 connection with that supplemental investigation and at Watson's request, ARCO
12 supplied information to Watson's environmental consultant which included a
13 report indicating that no contamination had migrated under the Watson Center
14 from the ARCO Refinery, that ARCO had been identified by the RWQCB as the
15 responsible party for contamination in the groundwater adjacent to the Watson
16 Center, and that ARCO was responding to RWQCB orders to investigate, mitigate
17 and remediate contamination from the ARCO Refinery. In reliance upon the
18 information supplied by ARCO, Watson's environmental consultant concluded
19 that the groundwater beneath the Watson Center had not been significantly
20 impacted by the operations at the ARCO Refinery and that no further investigation
21 was warranted. Watson supplied that report to its lender and both Watson and its
22 lender relied upon the conclusions drawn from the information supplied by
23 ARCO. The operating loan was funded in or around October of 1993.

24 36. By letter dated August 5, 1994, from Dean S. Kirk of ARCO to
25 Michael Genewick of Watson, ARCO affirmatively represented to Watson that it
26 intended to install a groundwater barrier system along the western perimeter of
27 the ARCO Refinery by the second quarter of 1995 which would provide
28

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1 containment of groundwater contamination at the ARCO Refinery as well as off-
2 site recovery of groundwater contamination.

3 37. Watson is informed and believes, and thereon alleges, that
4 throughout the relevant period ARCO has repeatedly advised the public (including
5 Watson) that it is remediating all of the contamination caused at the ARCO
6 Refinery, and within the last several years has been doing so under RWQCB
7 supervision.

8 38. By virtue of ARCO's remediation activities supervised by the
9 RWQCB and the information supplied to Watson by ARCO, Watson believed that
10 the contamination under the ARCO Refinery had not migrated beneath the
11 Watson Center. Watson also believed that ARCO had accepted responsibility for
12 and would remediate all of its contamination, whether under the ARCO Refinery
13 or adjacent properties. As a result, no reason existed to suggest that the Watson
14 Center had been damaged by ARCO, that claims existed against ARCO or that
15 ARCO would not voluntarily cleanup after itself in the event contamination
16 ultimately migrated beneath the Watson Center, until the discoveries made by
17 Watson in 1996, as described more fully below.

18 39. Watson is informed and believes, and thereon alleges, that
19 each of the defendants who have undertaken investigation and remediation
20 activities pursuant to order by the RWQCB or DTSC, have held themselves out to
21 the public as accepting responsibility for the contamination caused by that
22 defendant at its respective site, and therefore have led the public and Watson to
23 believe that it would not be necessary to pursue a legal action against each such
24 defendant to compel that defendant to remedy the damages it caused by its
25 respective contamination.

26 THE 1996 INVESTIGATION

27 40. The Watson Center has been developed with buildings which
28 are rented for light industrial purposes. Because of the nature of light industrial

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1 occupants, the leases of the buildings on the Watson Center average a term of
2 approximately seven years. As a result, approximately one-seventh of the total
3 number of leases for the buildings at Watson Center terminate every year, and the
4 buildings are thereafter leased again.

5 41. In 1995, Watson undertook to lease one of the buildings located
6 on the Watson Center, most commonly known as "Building 165." In connection
7 with lease negotiations for Building 165, the prospective tenant requested that it be
8 permitted to undertake an environmental site investigation for the purposes of
9 establishing whether identifiable contamination existed within the soil or
10 groundwater beneath Building 165. Pursuant to agreement with Watson, the
11 prospective tenant undertook the requested site assessment which was completed
12 in March of 1995. That investigation revealed the presence of high concentrations
13 of contaminants in the groundwater beneath the Watson Center at the Building
14 165 location.

15 42. As a result of the discovery of contamination beneath Building
16 165, Watson retained an independent environmental consulting firm to further
17 investigate that contamination (hereinafter referred to as the "1996
18 Investigation"). In connection with the 1996 Investigation, Watson reviewed all of
19 the data previously supplied by ARCO with respect to contamination caused by the
20 ARCO Refinery, and caused its environmental consultant to separately review the
21 files of the RWQCB for materials submitted by ARCO with respect to the ARCO
22 Refinery as well as for other information about operations by others on and within
23 the vicinity of the Watson Center. Watson also attempted to identify potential off-
24 site sources which may have caused or contributed to the contamination
25 discovered under the Watson Center. As a result of that 1996 Investigation,
26 Watson learned for the first time that four off-site properties had likely
27 contaminated the soil and groundwater under the Watson Center: the ARCO
28 Refinery, the Leonard Property, the Stauffer Plant and the Monsanto Plant. As a

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1 result of the 1996 Investigation, Watson further learned for the first time that the
2 Shell and ARCO pipelines located in the Pipeline Corridor immediately west of
3 Building 165 are also likely contributors to the contamination discovered under the
4 Watson Center.

5 43. Prior to the 1996 Investigation, Watson was unaware that
6 contamination had migrated beneath the Watson Center from the ARCO Refinery,
7 the Leonard Property, the Stauffer Plant and the Monsanto Plant, and was
8 unaware that the Shell and ARCO pipelines had also contaminated the Watson
9 Center.

10 44. As a result of the 1996 Investigation, Watson also discovered
11 that ARCO withheld and misrepresented information about the contamination
12 emanating from the ARCO Refinery. ARCO had drilled a water monitoring well
13 within a public street running through the Watson Center in the immediate
14 vicinity of Building 165, designated as "MW-543." MW-543 is located immediately
15 adjacent to the three water monitoring wells installed by the prospective tenant at
16 Building 165. Sampling data which ARCO obtained itself in 1990 in connection
17 with the installation of MW-543 and submitted to the RWQCB showed that
18 contamination existed in the groundwater beneath Watson Center at Building 165.
19 According to records filed with the RWQCB by ARCO, MW-543 was installed by
20 ARCO in December of 1990. However, a review of all of the materials supplied by
21 ARCO to Watson showed that although ARCO had advised the RWQCB of the test
22 results from MW-543 in 1990, as part of an off-site assessment report dated
23 December 14, 1990, ARCO never supplied a copy of that report to Watson. Instead,
24 on May 28, 1993, after Watson requested data in connection with the financing
25 describe above, ARCO supplied only tables summarizing the test data for wells
26 MW-541-545 and MW-565-566. On July 12, 1993 ARCO advised Watson of an error
27 affecting all of the tables provided to Watson on May 28, 1993. As of December 1990,
28 ARCO was obligated to supply all data, reports and information obtained from

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1 water wells drilled on Watson Center to Watson under the terms of the ARCO
2 License Agreement. In addition, to the extent that ARCO supplied information to
3 Watson, ARCO was obligated to provide full and complete information and not to
4 provide only partial information which would be misleading to Watson absent the
5 full disclosure of all the information known to ARCO. ARCO breached its various
6 disclosure obligations by entirely withholding the December 14, 1990 off-site
7 assessment report and by failing to supply even an erroneous version of the
8 underlying monitoring well test data to Watson until May 28, 1993.

9 45. In addition, the 1996 Investigation revealed that despite the
10 fact that MW-543 showed the existence of contamination in the groundwater,
11 ARCO did not subsequently sample that test well and prepared annual water
12 monitoring information for the RWQCB without testing MW-543. In fact, a review
13 of the data supplied by ARCO to the RWQCB revealed that of the seventeen water
14 monitoring wells installed by ARCO west of Wilmington Avenue, ARCO has
15 regularly monitored only wells which showed substantially no contamination,
16 and that ARCO has not conducted any further testing of MW-543 since 1990.

17 46. A review of the December 14, 1990, off-site assessment report
18 submitted by ARCO to the RWQCB in 1990 also revealed that ARCO knew there
19 was free-floating contamination in the groundwater under the Watson Center
20 which had emanated from the ARCO Refinery. At no time has ARCO ever
21 informed Watson of the existence of this contamination under the Watson Center
22 and ARCO has provided information and maps to Watson since 1990 which
23 specifically represent that there are no free-floating pools of contamination in the
24 groundwater beneath the Watson Center.

25 47. The 1996 Investigation has also revealed that ARCO is has
26 changed its position and is now contending that it is not liable for any
27 contamination in the soil and groundwater beneath Watson Center, despite the
28 map contained in the December 14, 1990 off-site assessment report which shows a

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1 pool of free-floating contamination to extend westerly from the ARCO Refinery
2 across Wilmington Avenue and under the Watson Center. In addition, the 1996
3 Investigation has also revealed that ARCO has just now completed the installation
4 of the barrier system intended to prevent the migration of groundwater
5 contamination from the ARCO Refinery to Watson Center and properties beyond,
6 and that ARCO is years behind the time table originally set by the RWQCB for the
7 off-site remediation of contamination caused by the ARCO Refinery. Watson is
8 informed and believes, and thereon alleges, that ARCO will be remediating
9 contamination in the groundwater caused by operations at the ARCO Refinery for
10 at least the next 30 to 40 years and has no intention to remediate the groundwater
11 or soil contamination caused by ARCO to the Watson Center.

12 48. Watson is informed and believes, and thereon alleges, that
13 ARCO knowingly and deliberately withheld copies of reports, maps, data and
14 information disclosing the existence of free-floating contamination in the
15 groundwater beneath Watson Center and emanating from the ARCO Refinery for
16 the purpose of concealing such contamination from Watson and so that Watson
17 would not take action to protect its property interests from the damages caused by
18 ARCO.

19 49. Watson has been damaged by ARCO's concealment of this
20 information. As a result of the contamination discovered beneath Building 165,
21 the prospective tenant declined to lease Building 165. Watson ultimately leased the
22 Building 165 approximately one year later, after losing the prospective tenancy
23 described above. However, Watson disclosed the existence of the discovered
24 contamination to all prospective tenants interested in leasing Building 165 and
25 was only able to lease Building 165 by providing significant concessions to its
26 tenant directly attributable to the presence of the contamination. Without such
27 concessions, no tenant could be found to rent Building 165. The concessions would
28