



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
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TO: **Designated Parties and Interested Persons**

FROM: **David King, Presiding Officer for Prehearing Proceedings
Tentative Cleanup and Abatement Order No. R9-2010-0002
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD**

DATE: **July 30, 2010**

SUBJECT: **ORDER DENYING BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.'S
MOTION TO COMPEL BUT GRANTING ALTERNATIVE RELIEF
REQUESTED**

On January 25, 2010, BAE Systems San Diego Ship Repair, Inc. (BAE) served the Cleanup Team with the First Set of Special Interrogatories to RWQCB, Requests for Admissions (Set One) to RWQCB, and First Set of Requests for Production of Documents to RWQCB. On January 29, 2010, I granted a discovery extension in the Order on Request for Extension of Discovery Period on Tentative Cleanup and Abatement Order No. R9-2010-0002 (January 29, 2010 Order). The January 29, 2010 Order extended the discovery deadline for all parties to August 23, 2010. The January 29, 2010 Order also stated that "I expect the parties to promptly withdraw or suspend their pending discovery requests..." A "Final Discovery Plan" was issued on February 18, 2010, setting forth a deadline of August 23, 2010 as the last day to take discovery.

The record reflects that BAE served 236 written discovery requests to the Cleanup Team, but no written discovery requests to any other party. BAE served the requests 28 days before the previous discovery deadline of February 22, 2010. The Cleanup Team did not object or even note the untimely discovery requests. Rather, in a letter dated January 27, 2010, the Cleanup Team stated its support for a six-month extension of the discovery deadline. In a letter dated January 27, 2010 BAE's counsel wrote: "Given the scope of the discovery propounded, it is a virtual impossibility that the Regional Board can respond to the written discovery, and produce the requested documents, let alone find sufficient time for the requested depositions, by the current February 22, 2010 cut-off date."

Based upon the record, the only communication that BAE has had with the Cleanup Team regarding its January 25, 2010 discovery requests was to coordinate two

attempts to extend the discovery deadline in January and July of 2010. Subsequent to the denial of the second requested extension, Mr. Michael S. Tracy's declaration refers only to the fact that "On July 20, 2010, counsel for the Cleanup Team orally indicated that it will attempt to meet the discovery deadline." The record is devoid of any indication of a sincere effort to propound discovery. This dilatory behavior followed an extensive process for agreeing upon a new, extended discovery schedule in February 2010.

On July 22, 2010, BAE submitted a Notice of Motion and Motion to Compel (1) Responses to First Set of Special Interrogatories to RWQCB; (2) Responses to Requests for Admissions for RWQCB (Set One); and (3) Responses to First Set of Request for Production of Documents to RWQCB. The Notice of Motion and Motion, together with the supporting declaration by Michael S. Tracy and exhibits, was distributed simultaneously to the Designated Parties to the proceeding via e-mail and are attached to this Order. BAE also re-served the Cleanup Team with the written discovery.

The Cleanup Team has not submitted any opposition or other response to this motion.

BAE's Motion to Compel is hereby denied. Pursuant to the January 29, 2010 Order, all discovery was effectively suspended or withdrawn and needed to be re-served or otherwise re-noticed on the responding parties. Since BAE did not re-serve or otherwise re-notice the Cleanup Team with the discovery, the Cleanup Team has not failed to respond to the discovery requests under California Code of Civil Procedure sections 2030.290, 2031.300 and 2033.280. BAE has apparently made no effort to seek responses to these discovery requests, but relied solely on a coordinated effort to extend the discovery deadline.

However, I will grant the alternative relief BAE requested in its motion. The January 25, 2010, written discovery will be deemed as re-served on July 22, 2010. The Cleanup Team has thirty (30) days from that date to respond to the discovery requests. The Cleanup Team may submit a Motion to Quash any of such requests for my consideration.

Attachment

1 MICHAEL S. TRACY (Bar No. 101456)
AMY G. NEFOUSE (Bar No. 159880)
2 MATTHEW B. DART (Bar No. 216429)
ERIN O. DOYLE (Bar No. 260646)
3 **DLA PIPER LLP (US)**
401 B Street, Suite 1700
4 San Diego, CA 92101-4297
Tel: 619.699.3620
5 Fax: 619.699.2701

6 Attorneys for Designated Party
BAE Systems San Diego Ship Repair, Inc.
7

8 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

9
10 In re Tentative Cleanup and Abatement
Order No. R9-2010-0002

**BAE SYSTEMS SAN DIEGO SHIP REPAIR,
INC.'S NOTICE OF MOTION AND
MOTION TO COMPEL (1) RESPONSES TO
FIRST SET OF SPECIAL
INTERROGATORIES TO RWQCB; (2)
RESPONSES TO REQUESTS FOR
ADMISSIONS TO RWQCB (SET ONE); AND
(3) RESPONSES TO FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO RWQCB**

Before David King, Presiding Officer for
Prehearing Proceedings

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on July 22, 2010, or as soon thereafter as the matter may
3 be heard before David King, Presiding Officer for Prehearing Proceedings, located at the
4 Regional Water Quality Control Board, San Diego Region, 9174 Sky Park Circle, Ste. 100
5 San Diego, CA 92123-4353, Designated Party BAE Systems San Diego Ship Repair, Inc.
6 ("BAE") will and hereby does move to compel the Regional Board Cleanup Team ("Cleanup
7 Team"), on behalf of the California Regional Water Quality Control Board, San Diego Region
8 ("RWQCB"), to respond to BAE's:

9 (1) FIRST SET OF SPECIAL INTERROGATORIES TO
10 RWQCB;

11 (2) REQUESTS FOR ADMISSIONS TO RWQCB (SET ONE);
12 AND

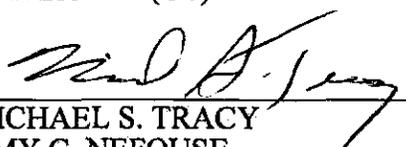
13 (3) FIRST SET OF REQUESTS FOR PRODUCTION OF
14 DOCUMENTS TO RWQCB

15 This Motion to Compel is made pursuant to California Code of Civil Procedure Sections
16 2030.290, 2031.300, and 2033.280, the Final Discovery Plan for Tentative Cleanup and
17 Abatement Order No. R9-2010-0002 and Associated Draft Technical Report dated February 18,
18 2010, and the Order of Presiding Officer King dated July 16, 2010.

19 The Motion will be based upon this Notice, the Memorandum of Points and Authorities,
20 and the Declaration of Michael S. Tracy and exhibits thereto filed concurrently herewith, and
21 such evidence and argument as may be presented at the hearing of this motion.

22 Dated: July 22, 2010

DLA PIPER LLP (US)

23
24 By 

MICHAEL S. TRACY
AMY G. NEFOUSE
MATTHEW B. DART
ERIN O. DOYLE

Attorneys for BAE Systems San Diego Ship
25 Repair, Inc.
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 BAE served essential discovery on the Cleanup Team nearly six months ago. Since that
4 discovery was served, the Presiding Officer has issued an extension of the discovery cut-off, a
5 Final Discovery Plan, and other discovery-related orders, the latest of which orders discovery to
6 conclude by August 23, 2010. For a variety of reasons, BAE's discovery has not been responded
7 to and no documents have been produced. The Cleanup Team very recently expressed its intent
8 to attempt to comply with their responding obligations. Nonetheless, given the procedural and
9 substantive events between the service of BAE's initial discovery and the present date, the
10 resulting uncertainty as to the obligations of responding parties, and the importance of the
11 information sought by BAE from the Cleanup Team at this juncture of the proceedings, to avert
12 the potential denial of BAE's long-recognized rights to procedural due process in this matter
13 BAE moves the Presiding Officer to compel the Cleanup Team to respond to BAE's written
14 discovery requests on or before the close of discovery. This Motion is prophylactic in nature,
15 intended to protect the foregoing fundamental rights.

16 **II. FACTUAL BACKGROUND**

17 On January 25, 2010, BAE filed its requests for written discovery on the Cleanup Team¹,
18 including: (1) First Set of Special Interrogatories; (2) Requests for Admissions (Set One); and (3)
19 First Set of Requests for Production of Documents.² See Exs. 1-3 to Declaration of Michael S.
20 Tracy ("Tracy Decl.")³

21
22
23 ¹ BAE's discovery was propounded on the RWQCB, including but not limited to the Cleanup Team. The Final
24 Discovery Plan for Tentative Cleanup and Abatement Order No. R9-2010-0002 and Associated Draft Technical
25 Report dated February 18, 2010, designates the Cleanup Team as a party to the proceeding and orders the
26 Cleanup Team be responsible for responding to discovery directed to the Cleanup Team and/or the RWQCB.

26 ² Also on January 25, 2010, BAE joined in NASSCO's request that the Presiding Officer issue twenty-one (21)
27 deposition subpoenas and subpoena duces tecum to relevant witnesses. See Ex. 6, Tracy letter joining in
28 NASSCO letter to Presiding Officer King dated January 22, 2010 (enclosing proposed deposition subpoenas and
subpoenas duces tecum). As of the date this motion, these deposition subpoenas and subpoenas duces tecum
have not been issued.

³ All exhibit references are to those attached to the Tracy Declaration.

1 On January 29, 2010, Presiding Officer King granted a discovery extension from February
2 22, 2010 to August 23, 2010. *See Ex. 4, Order on Request for Extension of Discovery Period for*
3 *Tentative Cleanup and Abatement Order No. R9-2010-0002.* Pursuant to the Order, a proposed
4 discovery plan was submitted by a number of the Designated Parties on February 11, 2010, and
5 the Final Discovery Plan was entered on February 18, 2010. *See Ex. 5, Final Discovery Plan, at*
6 *1.* The written discovery period opened for all Designated Parties on March 8, 2010. *See id.* at
7 § III.B.⁴

8 Presiding Officer King's January 29th Order extended the discovery deadline to August
9 23, 2010, and stated that the Presiding Officer expected the "parties to promptly withdraw or
10 suspend their pending discovery requests, including requests for issuance of deposition
11 subpoenas, and in any event I will not issue the deposition subpoenas submitted by NASSCO and
12 joined by BAE Systems, until after I issue an order approving a discovery plan." *See Ex. 4, at 4.*
13 BAE did not withdraw its January 25, 2010, discovery requests, which have remained valid and
14 pending against the Cleanup Team since the discovery period opened on March 8, 2010.

15 Between the issuance of the most recent Tentative Cleanup and Abatement Order No. R9-
16 2010-0002 ("CAO") and Draft Technical Report ("DTR") on December 22, 2009, and July 14,
17 2010, BAE, the Cleanup Team, and a number of other parties, including NASSCO, San Diego
18 Gas & Electric, the City of San Diego, Campbell Industries, and the United States Navy (jointly,
19 the "Mediation Parties"), engaged in weekly mediation sessions to improve both the CAO and
20 DTR. Tracy Decl., ¶¶ 3-4. Through this process BAE and the other Mediation Parties made their
21 experts available to the Cleanup Team to support the Cleanup Team's efforts on the CAO and
22 DTR. *Id.* at ¶ 5. BAE participated in mediation with the hope that it ultimately would prove
23 unnecessary to compel the Cleanup Team to respond to its written discovery requests if the
24 Mediation Parties could agree to a CAO and DTR that all Mediation Parties could support. *Id.*

25
26
27 ⁴ The Plan indicated that written discovery would open "no sooner than ten days (10) after the Presiding Officer
28 approves a discovery plan, or March 8, 2010, whichever is later." *Id.* at § III.B (emphasis in the original). Since
the Presiding Officer approved the Final Discovery on February 18, 2010, March 8, 2010 was the latest of the
two dates.

1 On June 16, 2010, in recognition of the fact that the revisions to the CAO and DTR would
2 not be finished before close of discovery on August 23, 2010, and due to the Cleanup Team's
3 intent to prepare an Environmental Impact Report to study the CAO under the California
4 Environmental Quality Act ("CEQA"), the Cleanup Team filed a Motion to Extend Discovery
5 deadline. *See* Ex. 7, San Diego Water Board Cleanup Team's Notice of Motion and Motion to
6 Extend Discovery Deadlines. The Mediation Parties joined in the Cleanup Team's Motion, and
7 agreed with the Cleanup Team's subsequent request that the discovery period be extended to run
8 coincident with the CEQA process. *See* Ex. 8, Mediation Parties' Letter to Presiding Officer
9 King, dated June 24, 2010, at 2; Ex. 9, Response to Presiding Officer King's June 17 Order
10 Requesting Responses to Motion, dated June 24, 2010, at 4-5.

11 On July 14, 2010, the Presiding Officer denied the Cleanup Team's Motion at a hearing
12 attended by all the Regional Water Board members. *See* Ex. 10, Ruling on Cleanup Team's
13 Motion to Extend Remaining Discovery Deadlines and Related Matters Addressed at Prehearing
14 Conference, dated July 16, 2010, at 1. Pursuant to the Presiding Officer's July 16, 2010 Order,
15 initial expert and non-expert disclosures were due July 19, 2010, and discovery will close on
16 August 23, 2010.

17 On July 20, 2010, the Cleanup Team orally indicated it will attempt to meet its responding
18 obligations by the discovery deadline. Tracy Decl., ¶ 6.

19 **III. ARGUMENT**

20 The applicable law and facts support BAE's Motion to Compel. The Final Discovery Plan
21 adopts the California Code of Civil Procedure's ("CCP") discovery scheme for the purpose of
22 ensuring that the Designated Parties' constitutional rights are protected during the Regional
23 Board's consideration of the CAO and DTR. *See* Ex. 5, Final Discovery Plan, Section I (written
24 discovery shall be governed by the applicable CCP sections, except where modified by the Plan).

25 Under the CCP, a propounding party may move to compel a response when the receiving
26 party fails to respond. *See* CCP §§ 2030.290 (Interrogatories); 2031.300 (Requests for
27 Production); and 2033.280 (Requests for Admissions). In fact, failure by the receiving party to
28 object to discovery requests within the requisite time for responding waives important rights to

1 contest such discovery. CCP §§ 2030.290(a) (receiving party “waives any right to exercise the
2 option to produce writings . . . , as well as any objection to the interrogatories, including one
3 based on privilege or . . . work product”); 2031.300(a) (receiving party “waives any
4 objection to the demand, including one based on privilege or on the protection for work product .
5”); 2033.280(a) (receiving party “waives any objection to the demand, including one based on
6 privilege or on the protection for work product”). The receiving party can only cure its
7 failure to timely object by serving a response in substantial compliance, and by making a showing
8 that its failure to serve a timely response was the result of “mistake, inadvertence, or excusable
9 neglect.” CCP §§ 2030.290(a)(1)-(2); 2031.300(a)(1)-(2); 2033.280(a)(1)-(2).

10 In addition, where as here the intended recipient has failed to respond to discovery
11 requests, the propounding party is not required to state facts showing a reasonable and good faith
12 attempt at informal resolution. CCP §§ 2030.300, 2031.310, 2033.290 (only requiring a “meet
13 and confer declaration under Section 2016.240” where the propounding party has received a
14 response to the discovery request). Instead, the propounding party can immediately move to
15 compel discovery.

16 When placed against this discovery scheme, the facts underline why the Presiding Officer
17 should grant the Motion to Compel to ensure BAE’s discovery rights are maintained. First, as
18 noted above, the Regional Board has long recognized BAE’s constitutional right to take discovery
19 on the CAO and DTR, which involves a highly technical sediment cleanup anticipated to cost
20 tens of millions of dollars. *See* Ex. 11, Second Amended Order of Proceedings at 7
21 (contemplating discovery governed by a “final comprehensive discovery plan”); Ex. 5, Final
22 Discovery Plan, § II.A.1 (Designated Parties entitled to “procedural and due process safeguards”
23 set forth in the Water Board regulations and California Administrative Procedures Act). In the
24 event the Cleanup Team is unable to timely and sufficiently respond to BAE’s discovery, BAE
25 would be denied its well-established right to discover the basis upon which the Cleanup Team
26 relies for the CAO and DTR.

27 Second, all of BAE’s discovery requests on the Cleanup Team have been pending since
28 written discovery opened on March 8, 2010. Although the Cleanup Team was diligently working

1 with the Mediation Parties throughout this time period to revise the CAO and DTR, the fact
2 remains that the Cleanup Team has already waived its ability to object to BAE's discovery
3 requests by failing to timely object to them on or before April 7, 2010. CCP §§ 2030.290(a);
4 2031.300(a); 2033.280(a); *Leach v. Superior Court*, 111 Cal. App. 3d 902, 905-06 (1980) (failure
5 to object to interrogatories constitutes waiver of the right to object); *City of Fresno v. Superior*
6 *Court*, 205 Cal. App. 3d 1459 (1988) (same for Request for Production); *Demyer v. Costa Mesa*
7 *Mobile Home Estates*, 36 Cal. App. 4th 393, 394-395 (1995) (same for Requests for Admissions).
8 Although all parties, including the Cleanup Team, paused discovery efforts while addressing the
9 discovery plan and seeking an extension of the discovery deadline, the fact remains that by the
10 close of discovery on August 23, 2010 the Cleanup Team will have had 168 days to respond to
11 BAE's discovery requests when the Final Discovery Plan allows only 30 days to respond.⁵ See
12 Ex. 5, Final Discovery Plan, §§ I.A.1, B.1, C.1, and D.1.

13 Finally, although the Cleanup Team recently indicated it would attempt to respond to all
14 pending discovery, that statement does not provide BAE binding assurance that the Cleanup
15 Team will necessarily timely meet its discovery obligations. Given the very tight remaining
16 discovery schedule, BAE's concern is justified. Moreover, as a matter of public policy, if a
17 legitimate risks exists that the Cleanup Team may be unable to sufficiently and timely respond to
18 BAE's discovery, BAE contends that the Cleanup Team's duty, if necessary, is to seek a limited
19 extension to allow it to adequately fulfill its duties as the Regional Board's representative in this
20 matter.

21 **IV. ALTERNATIVE RELIEF REGARDING VALIDITY OF BAE DISCOVERY**

22 BAE contends the Presiding Officer's January 29th Order did not invalidate BAE's written
23 discovery requests filed on January 25, 2010. To the contrary, the Presiding Officer's statement
24 that they should be withdrawn or suspended demonstrated that they were entirely valid.
25 However, certain parties have expressed uncertainty regarding that contention. To address that

26 ⁵ BAE's written discovery requests are timely under the Final Discovery Plan by any measure, even if judged as of
27 the date of BAE's Motion to Compel. As of the filing date of this Motion, the Cleanup Team will have thirty
28 one (31) days to respond to BAE's discovery requests, in excess of the thirty (30) days called for under the Final
Discovery Plan.

1 issue, BAE hereby re-serves its January 25, 2010 written discovery on the Cleanup Team (*see*
2 Exhibits 1, 2 and 3), with responses due 30 days from the effective date of service.

3 If the Presiding Officer is not inclined to grant this Motion to Compel, BAE proposes,
4 alternatively, that the Presiding Officer deem valid BAE's re-service of the foregoing discovery.
5 This alternative relief would potentially accomplish the stated goals of this Motion.

6 **V. CONCLUSION**

7 BAE's Motion to Compel comes at a crucial juncture in the Regional Board's process for
8 considering the CAO and DTR. With the Presiding Officer's decision to maintain the close of
9 discovery as August 23, 2010, all the parties must cope with short deadlines and significant
10 demands on scarce resources. BAE and the Cleanup Team are no exceptions. This is no reason,
11 however, to justify denying BAE its constitutional due process rights to discover the basis
12 supporting the Cleanup Team's CAO and DTR. For the reasons set forth above, BAE moves the
13 Presiding Officer to compel the Cleanup Team to respond to its discovery requests on or before
14 close of discovery. If the Presiding Officer is inclined to deny the motion, BAE alternatively
15 requests the Presiding Officer deem BAE's discovery re-served as of the date of this motion.

16
17 Dated: July 22, 2010

DLA PIPER LLP (US)

18
19 By 

MICHAEL S. TRACY

AMY G. NEFOUSE

MATTHEW B. DART

ERIN O. DOYLE

Attorneys for BAE Systems San Diego Ship
Repair Inc.

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6 Attorneys for Designated Party
BAE Systems San Diego Ship Repair, Inc.
7

8 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

9
10 In re Tentative Cleanup and Abatement
Order No. R9-2010-0002

**DECLARATION OF MICHAEL S. TRACY
IN SUPPORT OF BAE SYSTEMS SAN
DIEGO SHIP REPAIR, INC.'S NOTICE OF
MOTION AND MOTION TO COMPEL (1)
RESPONSES TO FIRST SET OF SPECIAL
INTERROGATORIES TO RWQCB; (2)
RESPONSES TO REQUESTS FOR
ADMISSIONS TO RWQCB (SET ONE); AND
13 (3) RESPONSES TO FIRST SET OF
14 REQUESTS FOR PRODUCTION OF
15 DOCUMENTS TO RWQCB**

16 Before David King, Presiding Officer for
Prehearing Proceedings
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22 I, Michael S. Tracy, declare as follows:

23 1. I am an attorney licensed to practice in the State of California and am a
24 partner with DLA Piper LLP (US), the law firm of record for Designated Party BAE San Diego
25 Ship Repair, Inc. ("BAE Systems") in the above-captioned matter concerning Tentative Cleanup
26 and Abatement Order No. R9-2010-0002 ("Tentative CAO"). I am personally familiar with the
27 facts set forth herein and if called upon to do so, could and would testify competently thereto.

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-1-

1 2. On December 22, 2009, the Cleanup Team issued a revised Tentative CAO
2 and Draft Technical Report (“DTR”).

3 3. Before the Tentative CAO and DTR could become mutually agreeable to
4 the Cleanup Team, BAE, and other Designated Parties participating mediation, including
5 NASSCO, San Diego Gas & Electric, the City of San Diego, Campbell Industries, and the United
6 States Navy (jointly, “Mediation Parties”), both documents needed revisions that required
7 collaborative efforts among the Mediation Parties.

8 4. Between December 22, 2009 and July 14, 2010, the Mediation Parties
9 engaged in weekly mediation to revise the CAO and DTR.

10 5. BAE participated in mediation with the hope that it ultimately would prove
11 unnecessary to compel the Cleanup Team to respond to its written discovery requests if the
12 Mediation Parties could agree to a CAO and DTR that all Mediation Parties could support. To
13 that end, BAE and other Mediation Parties made their experts available to the Cleanup Team to
14 support their efforts on the CAO and DTR.

15 6. On July 20, 2010, counsel for the Cleanup Team orally indicated it will
16 attempt to meet the discovery deadline.

17 7. Attached as Exhibit 1 is a true and correct copy of BAE’s First Set of
18 Special Interrogatories to RWQCB.

19 8. Attached as Exhibit 2 is a true and correct copy of BAE’s Requests for
20 Admissions to RWQCB (Set One).

21 9. Attached as Exhibit 3 is a true and correct copy of BAE’s First Set of
22 Requests for Production of Documents to RWQCB.

23 10. Attached as Exhibit 4 is a true and correct copy of the Order on Request for
24 Extension of Discovery Period for Tentative Cleanup and Abatement Order No. R9-2010-0002,
25 dated January 29, 2010.

26 11. Attached as Exhibit 5 is a true and correct copy of the Final Discovery Plan
27 for Cleanup Levels and Liability Issues, dated February 18, 2010.

1 12. Attached as Exhibit 6 is a true and correct copy of January 25, 2010 letter
2 from counsel for BAE joining in NASSCO letter to Presiding Officer King dated January 22,
3 2010 (enclosing proposed deposition subpoenas and subpoenas duces tecum).

4 13. Attached as Exhibit 7 is a true and correct copy of San Diego Water Board
5 Cleanup Team's Notice of Motion and Motion to Extend Discovery Deadlines, dated June 16,
6 2010.

7 14. Attached as Exhibit 8 is a true and correct copy of Mediation Parties'
8 Letter to Presiding Officer King, dated June 24, 2010.

9 15. Attached as Exhibit 9 is a true and correct copy of Response to Presiding
10 Officer King's June 17 Order Requesting Responses to Motion, dated June 24, 2010.

11 16. Attached as Exhibit 10 is a true and correct copy of Ruling on Cleanup
12 Team's Motion to Extend Remaining Discovery Deadlines and Related Matters Addressed at
13 Prehearing Conference, dated July 16, 2010.

14 17. Attached as Exhibit 11 is a true and correct copy of the Second Amended
15 Order of Proceedings, dated May 2, 2008.

16
17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct. Executed on July 22, 2010, at San Diego, California.

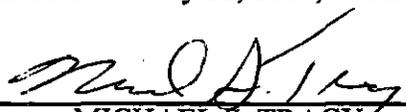
19
20 
21 _____
22 MICHAEL S. TRACY

EXHIBIT 1

1 MICHAEL S. TRACY (Bar No. 101456)
2 AMY G. NEFOUSE (Bar No. 159880)
3 MATTHEW B. DART (Bar No. 216429)
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10 Attorneys for Designated Party
11 BAE Systems San Diego Ship Repair Inc.

12 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

13 In re Tentative Cleanup and Abatement
14 Order No. R9-2010-0002

**DESIGNATED PARTY BAE SYSTEMS
SAN DIEGO SHIP REPAIR INC.'S FIRST
SET OF SPECIAL INTERROGATORIES
TO THE CALIFORNIA REGIONAL
WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION**

15 Presiding Officer: David A. King

16 PROPOUNDING PARTY: BAE SYSTEMS SAN DIEGO SHIP REPAIR INC.

17 RESPONDING PARTY: CALIFORNIA REGIONAL WATER QUALITY CONTROL
18 BOARD, SAN DIEGO REGION

19 SET NUMBER: ONE

20 Designated Party BAE Systems San Diego Ship Repair Inc. ("BAE Systems") pursuant to
21 the Second Amended Order of Proceedings and the Presiding Officer's October 27, 2009,
22 Discovery Scheduling Order, hereby requests that the California Regional Water Quality Control
23 Board, San Diego Region ("RWQCB"), including, but not limited to, the Cleanup Team and other
24 agency staff, respond to the following First Set of Special Interrogatories fully in writing and
25 under oath by February 10, 2010. Responses to these Interrogatories should be directed to
26 Michael S. Tracy, Esq. of DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California
27 92101.
28

1 **INSTRUCTIONS**

2 A. These interrogatories shall be deemed to seek answers in existence as of the date
3 of service thereof. These interrogatories are of a continuing nature and You are required to file
4 and serve supplemental responses promptly if You obtain further or different information after the
5 date of Your initial answer and before this investigation is completed.

6 B. The singular form of a word should be interpreted in the plural as well. Any
7 pronoun shall be construed to refer to the masculine, feminine, or neutral gender as in each case is
8 most appropriate. The words “and” and “or” shall be construed conjunctively or disjunctively,
9 whichever makes the request most inclusive.

10 C. These interrogatories seek all information that is known to You, Your
11 representatives, agents, employees, staff, investigators, consultants and, unless otherwise
12 privileged, their counsel.

13 D. If the information requested is not readily available from Your records in exactly
14 the form requested, furnish carefully prepared estimates, designated as such and attach
15 explanations of any estimate used.

16 E. If You do not answer any interrogatory, or part thereof, because of a claim of
17 privilege or any other claim, set forth the privilege claimed, the facts upon which You rely to
18 support the claim or privilege, and furnish a privilege log in the manner set forth in BAE Systems
19 San Diego Ship Repairs Inc.’s First Set of Requests for Production of Documents to the
20 California Regional Water Quality Control Board, San Diego Region at paragraph F.

21 **DEFINITIONS**

22 1. “Advisory Team” means and refers to the Advisory Team of the RWQCB,
23 specially formed in response to and for purposes of the investigation of the Site in San Diego
24 Bay, including, but not limited to, all past or present members, directors, officers, agents,
25 representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership
26 relationship with the Advisory Team and others acting on behalf of the Advisory Team.

27 2. “BAE Systems” means BAE Systems San Diego Ship Repair Inc. and Southwest
28 Marine, Inc., including, but not limited to, all past or present directors, officers, agents,

1 representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership
2 relationships with BAE Systems San Diego Ship Repair Inc. and others acting on behalf of BAE
3 Systems San Diego Ship Repair Inc.

4 3. "Cleanup Team" means and refers to the Cleanup Team of the RWQCB specially
5 formed in response to and for purposes of the investigation of the Site in San Diego Bay,
6 including, but not limited to, all past or present members, directors, officers, agents,
7 representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership
8 relationship with the Cleanup Team and others acting on behalf of the Cleanup Team.

9 4. "Communication(s)" or "Communicate" means any and all contact whatsoever,
10 whether by oral, written, or electronic means, whether directly or indirectly, in any nature
11 whatsoever, including, but not limited to, any correspondence, face-to-face conversation,
12 telephonic conversation, video conversation, electronic transmission, telegraph, telex, telecopier,
13 facsimile, Internet, on-line service, electronic mail, letters, memoranda, reports, or other media.

14 5. "Document" is defined broadly to be given the full scope of that term, and includes
15 all tangible things, all originals (or, if originals are not available, identical copies thereof), all non-
16 identical copies of a document, all drafts of final documents, all other written, printed, or recorded
17 matter of any kind, and all other data compilations from which information can be obtained and
18 translated if necessary, that are or have been in Your actual or constructive possession or control,
19 regardless of the medium on which they are produced, reproduced, or stored (including, without
20 limitation, computer programs and files containing any requested information), and any electronic
21 mail, recording or writing, as these terms are defined in California Evidence Code §§ 250-260.
22 Any Document bearing marks, including, without limitation, initials, stamped initials, comments,
23 or notations not a part of the original text or photographic reproduction thereof, is a separate
24 Document. By way of example, the term "Document" encompasses, without limitation, any
25 agreements, contracts, contract files, closing statements, valuation reports, purchase orders,
26 correspondence, customer or client files, memoranda, tables, charts, graphs, schedules, reports,
27 surveys, analyses, compilations, journals, ledgers, receipts, warehouse receipts, vouchers,
28 invoices, bills of sale, bills of lading, confirmation of credit and billing statements, checks,

1 financial statements, manuals, circulars, pamphlets, bulletins, instructions, sketches, diagrams,
2 telegrams, facsimiles, e-mails, Internet and modem transmissions, stenographic and handwritten
3 notes, minutes of meetings, transcripts, news articles and press releases, computer programs,
4 printouts, punch cards, tabulations, logs, telephone records, desk calendars, diaries, appointment
5 books, computer data, tapes and discs, video tapes, photographs, films, voice recordings,
6 magnetic recordings, all drafts and/or non-identical copies of every such "writing," glossaries of
7 all terms of art and abbreviations used in every such "writing," or any other items of a similar
8 nature, including all originals, drafts, and non-identical copies.

9 6. "Draft Technical Report" refers to the Draft Technical Report for Tentative
10 Cleanup and Abatement Order No. R9-2010-0002, dated December 2009.

11 7. "Each" means each and every.

12 8. "Environmental Group" means and refers to any and all non-profit and/or
13 advocacy organizations focused on environmental causes and issues, including, but not limited to,
14 Designated Parties Coastkeeper (formerly San Diego Bay-Keeper) and Environmental Health
15 Coalition.

16 9. "HPAHs" means High Molecular Weight Polynuclear Aromatic Hydrocarbons.

17 10. "Identify" as it relates to a Document means provide the title of the Document, the
18 date the Document was generated, the name of the author of the Document, a description of the
19 Document (*e.g.*, letter, memorandum, report, book, photograph, etc.) and any other information
20 which would be required to specify the Document in a request for production of Documents.

21 11. "Identify" as it relates to a Person or Entity means to state the name, address and
22 telephone number of the Person or Entity.

23 12. "Leasehold" means and refers to BAE Systems' leasehold within the Site.

24 13. "PAHs" means Polynuclear Aromatic Hydrocarbons.

25 14. "PCBs" means Polychlorinated Biphenyls.

26 15. "PCTs" means Polychlorinated Terphenyls.

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1 16. “Person(s)” or “Entity” or “Entities” means any individual, firm, association,
2 organization, joint venture, trust, partnership, corporation, or other collective organization or
3 entity.

4 17. “Relate to” or “Relating to” includes, but is not limited to, analyzing, considering,
5 constituting, defining, evidencing, containing, describing, concerning, commenting, discussing,
6 embodying, explaining, reflecting, detailing, identifying, mentioning, demonstrating, alluding to,
7 referencing, edifying, stating, summarizing, referring to, dealing with or in any way pertaining to,
8 in whole or in part, the subject.

9 18. “RWQCB,” “You” or “Your” means the California Regional Water Quality
10 Control Board, San Diego Region and all predecessors and successors thereof, including, but not
11 limited to, all past or present members, directors, officers, agents, representatives, employees,
12 staff, consultants, attorneys, entities acting in joint-venture or partnership relationship with the
13 California Regional Water Quality Control Board, San Diego Region and other acting on behalf
14 of the California Regional Water Quality Control Board, San Diego Region.

15 19. “Sediment Investigation” means and refers to the Sediment Quality Investigation
16 described in Paragraph 12 of the Tentative Order.

17 20. “Shipyard Administrative Record” refers to the compilation of indexed electronic
18 documents distributed by the Cleanup Team on April 4, 2008, in the San Diego Bay sediments
19 cleanup proceedings regarding Tentative Cleanup and Abatement Order No. R9-2005-0126
20 (“2005 Tentative Order”), and any subsequent additions thereto in connection with the 2005
21 Tentative Order.

22 21. “Site” means and refers to the Shipyard Sediment Site described in the Tentative
23 Order and Draft Technical Report.

24 22. “State RWCB” means the California Water Resources Control Board and all
25 predecessors and successors thereof, including, but not limited to, all past or present members,
26 directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in
27 joint-venture or partnership relationship with the California Water Resources Control Board and
28 others acting on behalf of the California Water Resources Control Board.

- 1 23. "SWAC" refers to surface-area weighted average concentration.
- 2 24. "TBT" means Tributyltin.
- 3 25. "Tentative Cleanup Levels" means and refers to the cleanup levels for the Site
- 4 proposed in the Tentative Order and included in Paragraph 34, Table 2 of the Tentative Order.
- 5 26. "Tentative Order" refers to California Regional Water Quality Control Board, San
- 6 Diego Region, Tentative Cleanup and Abatement Order No. R9-2010-0002, published on
- 7 December 22, 2009.
- 8 27. "TPHs" means Total Petroleum Hydrocarbons.

9 **INTERROGATORIES**

10 **INTERROGATORY NO. 1:**

11 For each response to a Request for Admission which is not an unqualified admission

- 12 a. state the number of the Request;
- 13 b. state all facts supporting your response;
- 14 c. Identify Each Person who has knowledge Relating to the facts; and
- 15 d. Identify all Documents that Relate to Your response.

16 **INTERROGATORY NO. 2:**

17 Identify Each current and former member of the Cleanup Team.

18 **INTERROGATORY NO. 3:**

19 Identify Each current and former member of the Advisory Team.

20 **INTERROGATORY NO. 4:**

21 Identify every state, federal, and local agency that was consulted by You in connection

22 with Your preparation of the Tentative Order and Draft Technical Report.

23 **INTERROGATORY NO. 5:**

24 For every agency identified in response to the preceding Special Interrogatory, Identify

25 the individual employee(s) of that agency who was consulted in connection with Your preparation

26 of the Tentative Order and Draft Technical Report.

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1 **INTERROGATORY NO. 6:**

2 For every agency employee identified in response to the preceding Special Interrogatory,
3 please specify to which finding(s) in the Tentative Order and Draft Technical Report such agency
4 employee consultation relates.

5 **INTERROGATORY NO. 7:**

6 Identify every Environmental Group that was consulted in connection with Your
7 preparation of the Tentative Order and Draft Technical Report.

8 **INTERROGATORY NO. 8:**

9 For every Environmental Group identified in response to the preceding Special
10 Interrogatory, Identify the individual member(s) of that Environmental Group who was consulted
11 in connection with Your preparation of the Tentative Order and Draft Technical Report.

12 **INTERROGATORY NO. 9:**

13 For every member of an Environmental Group identified in response to the preceding
14 Special Interrogatory, please specify to which finding(s) in the Tentative Order and Draft
15 Technical Report such agency employee consultation relates.

16 **INTERROGATORY NO. 10:**

17 Identify the RWQCB staff with primary responsibility for compiling the Shipyard
18 Administrative Record.

19 **INTERROGATORY NO. 11:**

20 Identify the Cleanup Team staff primarily responsible for preparation of the human health
21 risk assessment supporting the Tentative Order and Draft Technical Report.

22 **INTERROGATORY NO. 12:**

23 Identify the Cleanup Team staff primarily responsible for preparation of the ecological
24 risk assessment supporting the Tentative Order and Draft Technical Report.

25 **INTERROGATORY NO. 13:**

26 Identify the Cleanup Team staff primarily responsible for preparation of the economic
27 feasibility analysis supporting the Tentative Order and Draft Technical Report.

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1 **INTERROGATORY NO. 14:**

2 Identify the Cleanup Team staff primarily responsible for preparation of the technological
3 feasibility analysis supporting the Tentative Order and Draft Technical Report.

4 **INTERROGATORY NO. 15:**

5 Identify the Cleanup Team staff primarily responsible for preparation of any cost analysis
6 supporting the Tentative Order and Draft Technical Report.

7 **INTERROGATORY NO. 16:**

8 Identify all Documents Relating to any cost analysis supporting the Tentative Order and
9 Draft Technical Report.

10 **INTERROGATORY NO. 17:**

11 If You considered alternatives to the alternative cleanup levels specified in the Tentative
12 Order and Draft Technical Report, Identify the Cleanup Team staff primarily responsible for
13 preparation of any analysis of alternatives.

14 **INTERROGATORY NO. 18:**

15 Identify all Documents Relating to any alternatives to the alternative cleanup levels
16 specified in the Tentative Order and Draft Technical Report evaluated by the Cleanup Team.

17 **INTERROGATORY NO. 19:**

18 Identify the Cleanup Team staff primarily responsible for preparation of the alternative
19 sediment cleanup levels analysis supporting the Tentative Order and Draft Technical Report.

20 **INTERROGATORY NO. 20:**

21 Identify the Cleanup Team staff primarily responsible for preparation of the remedial
22 monitoring analysis supporting the Tentative Order and Draft Technical Report.

23 **INTERROGATORY NO. 21:**

24 Identify the Cleanup Team staff primarily responsible for preparation of the analysis
25 regarding the contribution of stormwater to sediment contamination in the San Diego Bay, in
26 support of the Tentative Order and Draft Technical Report.

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1 **INTERROGATORY NO. 22:**

2 Identify all sites in San Diego Bay where contaminated sediment has been remediated, the
3 remedy selected, and the starting and ending dates of such remediation.

4 **INTERROGATORY NO. 23:**

5 Identify all sites in San Diego Bay where the selected remedy for contaminated sediment
6 has been to allow natural attenuation without dredging.

7 **INTERROGATORY NO. 24:**

8 For any sites identified in response to the preceding Special Interrogatory, Identify the
9 constituents of concern that were remediated and the cleanup levels that were set for those
10 constituents.

11 **INTERROGATORY NO. 25:**

12 Identify all sites in San Diego Bay where cleanup levels for the remediation of sediment
13 contamination were established at background concentration levels.

14 **INTERROGATORY NO. 26:**

15 Identify all sites within the RWQCB's jurisdiction where sediment contamination has
16 been remediated in rivers, bays, estuaries, ocean, wetlands, or any other surface water body, and
17 the starting and ending dates of such remediation.

18 **INTERROGATORY NO. 27:**

19 For any sites identified in response to the preceding Special Interrogatory, Identify the
20 constituents of concern that were remediated and the cleanup levels that were imposed for those
21 constituents.

22 **INTERROGATORY NO. 28:**

23 Identify all sites within the RWQCB's jurisdiction where cleanup levels for the
24 remediation of sediment contamination in rivers, bays, estuaries, ocean, wetlands, or any other
25 surface water body were set at background concentration levels.

26 **INTERROGATORY NO. 29:**

27 Identify all sites within the State of California, other than those identified in response to
28 Special Interrogatory Number 28, where sediment contamination in rivers, bays, estuaries, ocean,

1 wetlands, or any other surface water body has been remediated, and the starting and ending dates
2 of such remediation.

3 **INTERROGATORY NO. 30:**

4 For any sites identified in response to the preceding Special Interrogatory, Identify the
5 constituents of concern that were remediated and the cleanup levels that were imposed for those
6 constituents.

7 **INTERROGATORY NO. 31:**

8 Identify all sites within the State of California, other than those identified in response to
9 Special Interrogatory Number 30, where cleanup levels for the remediation of sediment
10 contamination in rivers, bays, estuaries, ocean, wetlands, or any other surface water body were set
11 at background concentration levels.

12 **INTERROGATORY NO. 32:**

13 Identify all enforcement actions before the RWQCB, other regional water quality board,
14 and the State RWCB, where the board prepared a Negative Declaration, Mitigated Negative
15 Declaration, or Environmental Impact Report under the California Environmental Quality Act,
16 Public Resources Code section 21000, *et seq.* (“CEQA”).

17 **INTERROGATORY NO. 33:**

18 Identify any Cleanup Team staff with primary responsibility for investigating whether or
19 not the instant enforcement action should be exempt from CEQA, as detailed in Paragraph 39 of
20 the Tentative Order.

21 **INTERROGATORY NO. 34:**

22 Identify any alternatives to the remediation proposed in the Tentative Order that You
23 considered prior to the release of the Tentative Order on December 22, 2009.

24 **INTERROGATORY NO. 35:**

25 Identify any alternative cleanup levels that You considered, aside from the Tentative
26 Cleanup Levels, prior to the release of the Tentative Order on December 22, 2009.

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1 **INTERROGATORY NO. 36:**

2 Identify all Documents Relating to the Tentative Cleanup Levels proposed in the
3 Tentative Order.

4 **INTERROGATORY NO. 37:**

5 Identify all Documents Relating to the “mass removal goals” described on page 26 of the
6 Tentative Order.

7 **INTERROGATORY NO. 38:**

8 Identify all Documents Relating to the estimate of contaminant mass that will be removed
9 from the San Diego Bay if the Tentative Order is implemented, as set forth on page 26 of the
10 Tentative Order.

11 **INTERROGATORY NO. 39:**

12 Identify all Documents Relating to the statement in Paragraph 3 of the Tentative Order
13 that BAE Systems is “in violation of waste discharge requirements.”

14 **INTERROGATORY NO. 40:**

15 Identify all Documents Relating to the finding in Paragraph 10 of the Tentative Order that
16 the San Diego Unified Port District should not be listed as a “Discharger” in the Tentative Order.

17 **INTERROGATORY NO. 41:**

18 Identify all Documents Relating to the City of San Diego’s former ownership of property
19 at the Site.

20 **INTERROGATORY NO. 42:**

21 Identify all Documents Relating to the statement in Paragraph 3 of the Tentative Order
22 that BAE Systems has owned and operated a ship repair, alteration, and overhaul facility at 2205
23 East Belt Street, San Diego, California since 1979.

24 **INTERROGATORY NO. 43:**

25 Identify all Documents Relating to the finding in Paragraph 32 of the Tentative Order that
26 confined aquatic disposal is technologically feasible at the Site.

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1 **INTERROGATORY NO. 44:**

2 Identify all Documents Relating to the finding in Paragraph 32 of the Tentative Order that
3 near-shore confined disposal is technologically feasible at the Site.

4 **INTERROGATORY NO. 45:**

5 Identify all Documents Relating to the statement on page 25 of the Tentative Order that
6 station location SW22 was characterized as “likely” to be impaired in the sediment triad analysis.

7 **INTERROGATORY NO. 46:**

8 Identify all Documents Relating to the statement on page 25 of the Tentative Order that
9 station location SW23 was characterized as “likely” to be impaired in the sediment triad analysis.

10 **INTERROGATORY NO. 47:**

11 Identify all Documents Relating to Your contentions and facts presented in Finding 13 of
12 the Draft Technical Report.

13 **INTERROGATORY NO. 48:**

14 Identify all Documents Relating to Your contentions and facts presented in Finding 14 of
15 the Draft Technical Report.

16 **INTERROGATORY NO. 49:**

17 Identify all Documents Relating to Your contentions and facts presented in Finding 15 of
18 the Draft Technical Report.

19 **INTERROGATORY NO. 50:**

20 Identify all Documents Relating to Your contentions and facts presented in Finding 16 of
21 the Draft Technical Report.

22 **INTERROGATORY NO. 51:**

23 Identify all Documents Relating to Your contentions and facts presented in Finding 17 of
24 the Draft Technical Report.

25 **INTERROGATORY NO. 52:**

26 Identify all Documents Relating to Your contentions and facts presented in Finding 18 of
27 the Draft Technical Report.

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1 **INTERROGATORY NO. 53:**

2 Identify all Documents Relating to Your contentions and facts presented in Finding 19 of
3 the Draft Technical Report.

4 **INTERROGATORY NO. 54:**

5 Identify all Documents Relating to Your contentions and facts presented in Finding 20 of
6 the Draft Technical Report.

7 **INTERROGATORY NO. 55:**

8 Identify all Documents Relating to Your contentions and facts presented in Finding 21 of
9 the Draft Technical Report.

10 **INTERROGATORY NO. 56:**

11 Identify all Documents Relating to Your contentions and facts presented in Finding 22 of
12 the Draft Technical Report.

13 **INTERROGATORY NO. 57:**

14 Identify all Documents Relating to Your contentions and facts presented in Finding 23 of
15 the Draft Technical Report.

16 **INTERROGATORY NO. 58:**

17 Identify all Documents Relating to Your contentions and facts presented in Finding 24 of
18 the Draft Technical Report.

19 **INTERROGATORY NO. 59:**

20 Identify all Documents Relating to Your contentions and facts presented in Finding 25 of
21 the Draft Technical Report.

22 **INTERROGATORY NO. 60:**

23 Identify all Documents Relating to Your contentions and facts presented in Finding 26 of
24 the Draft Technical Report.

25 **INTERROGATORY NO. 61:**

26 Identify all Documents Relating to Your contentions and facts presented in Finding 27 of
27 the Draft Technical Report.

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1 **INTERROGATORY NO. 62:**

2 Identify all Documents Relating to Your contentions and facts presented in Finding 28 of
3 the Draft Technical Report.

4 **INTERROGATORY NO. 63:**

5 Identify all Documents Relating to Your contentions and facts presented in Finding 29 of
6 the Draft Technical Report.

7 **INTERROGATORY NO. 64:**

8 Identify all Documents Relating to Your contentions and facts presented in Finding 30 of
9 the Draft Technical Report.

10 **INTERROGATORY NO. 65:**

11 Identify all Documents Relating to Your contentions and facts presented in Finding 31 of
12 the Draft Technical Report.

13 **INTERROGATORY NO. 66:**

14 Identify all Documents Relating to Your contentions and facts presented in Finding 32 of
15 the Draft Technical Report.

16 **INTERROGATORY NO. 67:**

17 Identify all Documents Relating to Your contentions and facts presented in Finding 33 of
18 the Draft Technical Report.

19 **INTERROGATORY NO. 68:**

20 Identify all Documents Relating to Your contentions and facts presented in Finding 34 of
21 the Draft Technical Report.

22 **INTERROGATORY NO. 69:**

23 Identify all Documents Relating to Your contentions and facts presented in Finding 35 of
24 the Draft Technical Report.

25 **INTERROGATORY NO. 70:**

26 Identify all Documents Relating to Your contentions and facts presented in Finding 36 of
27 the Draft Technical Report.

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1 **INTERROGATORY NO. 71:**

2 Identify all Documents Relating to Your contentions and facts presented in Finding 37 of
3 the Draft Technical Report.

4 **INTERROGATORY NO. 72:**

5 Identify all Documents Relating to Your contentions and facts presented in Finding 39 of
6 the Draft Technical Report.

7 **INTERROGATORY NO. 73:**

8 Identify all findings and conclusions in the Tentative Order and Draft Technical Report
9 supported by the exercise of “best professional judgment,” as defined on page 14-2 of the Draft
10 Technical Report.

11 **INTERROGATORY NO. 74:**

12 For any findings and conclusions identified in response to the preceding Special
13 Interrogatory, Identify the Persons who exercised “best professional judgment” for each finding
14 or conclusion.

15 **INTERROGATORY NO. 75:**

16 Identify the Persons who selected the reference pool described in Finding 16 of the Draft
17 Technical Report.

18 **INTERROGATORY NO. 76:**

19 Identify the Persons who conducted the statistical analysis referenced on page 17-6 of the
20 Draft Technical Report.

21 **INTERROGATORY NO. 77:**

22 Identify the Persons responsible for deciding not to correct for multiple comparisons in the
23 statistical analysis on page 17-6 of the Draft Technical Report.

24 **INTERROGATORY NO. 78:**

25 Identify all Documents Relating to the deposit or discharge of wastes containing arsenic
26 into San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
27 Order.

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1 **INTERROGATORY NO. 79:**

2 Identify all Documents Relating to the deposit or discharge of wastes containing
3 chromium into San Diego Bay from sources other than the parties named as “Dischargers” in the
4 Tentative Order.

5 **INTERROGATORY NO. 80:**

6 Identify all Documents Relating to the deposit or discharge of wastes containing copper
7 into San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
8 Order.

9 **INTERROGATORY NO. 81:**

10 Identify all Documents Relating to the deposit or discharge of wastes containing lead into
11 San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
12 Order.

13 **INTERROGATORY NO. 82:**

14 Identify all Documents Relating to the deposit or discharge of wastes containing mercury
15 into San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
16 Order.

17 **INTERROGATORY NO. 83:**

18 Identify all Documents Relating to the deposit or discharge of wastes containing nickel
19 into San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
20 Order.

21 **INTERROGATORY NO. 84:**

22 Identify all Documents Relating to the deposit or discharge of wastes containing silver
23 into San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
24 Order.

25 **INTERROGATORY NO. 85:**

26 Identify all Documents Relating to the deposit or discharge of wastes containing zinc into
27 San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
28 Order.

1 **INTERROGATORY NO. 86:**

2 Identify all Documents Relating to the deposit or discharge of PCBs into San Diego Bay
3 from sources other than the parties named as “Dischargers” in the Tentative Order.

4 **INTERROGATORY NO. 87:**

5 Identify all Documents Relating to the deposit or discharge of wastes containing PCTs
6 into San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
7 Order.

8 **INTERROGATORY NO. 88:**

9 Identify all Documents Relating to the deposit or discharge of wastes containing PAHs
10 into San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
11 Order.

12 **INTERROGATORY NO. 89:**

13 Identify all Documents Relating to the deposit or discharge of wastes containing THP into
14 San Diego Bay from sources other than the parties named as “Dischargers” in the Tentative
15 Order.

16 **INTERROGATORY NO. 90:**

17 Identify all Documents Related to Your allegation that historical or current activities at the
18 BAE Systems site informed the determination in the Draft Technical Report that BAE Systems
19 caused or permitted wastes to be discharged or deposited into San Diego Bay.

20 **INTERROGATORY NO. 91:**

21 Identify all Documents Related to Your allegation that waste characteristics of materials
22 used at the BAE Systems site informed the determination in the Draft Technical Report that BAE
23 Systems caused or permitted wastes to be discharged or deposited into San Diego Bay.

24 **INTERROGATORY NO. 92:**

25 Identify all Documents Related to Your allegation in the Draft Technical Report that
26 historical or current activities at the BAE Systems site caused or permitted wastes to be
27 discharged or deposited into San Diego Bay.

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1 **INTERROGATORY NO. 93:**

2 Identify all Documents Related to Your allegation in the Draft Technical Report that
3 waste characteristics of materials used at the BAE Systems site caused or permitted wastes to be
4 discharged or deposited into San Diego Bay.

5 **INTERROGATORY NO. 94:**

6 Identify all Documents Related to Your allegations in the Draft Technical Report that site
7 characteristics of the BAE Systems site, in relation to other potential sources of discharge, caused
8 or permitted wastes to be discharged or deposited into San Diego Bay.

9 **INTERROGATORY NO. 95:**

10 Identify all Documents Related to hydrologic and hydrogeologic information at the BAE
11 Systems site which support Your allegation in the Draft Technical Report that BAE Systems
12 caused or permitted wastes to be discharged or deposited into San Diego Bay.

13 **INTERROGATORY NO. 96:**

14 Identify all Documents Related to Your allegation in the Draft Technical Report that
15 industry-wide operational practices that historically lead to discharges were utilized at the BAE
16 Systems site and caused or permitted wastes to be discharged or deposited into San Diego Bay.

17 **INTERROGATORY NO. 97:**

18 Identify all Documents Related to Your allegation in the Draft Technical Report that poor
19 management of materials or wastes at the BAE Systems site caused or permitted wastes to be
20 discharged or deposited into San Diego Bay.

21 **INTERROGATORY NO. 98:**

22 Identify all Documents Related to Your allegation in the Draft Technical Report that a
23 lack of documentation of responsible management of materials or wastes at the BAE Systems site
24 caused or permitted wastes to be discharged or deposited into San Diego Bay.

25 **INTERROGATORY NO. 99:**

26 Identify all Documents Related to physical evidence, including, but not limited to,
27 analytical data, soil or pavement staining, distressed vegetation, or unusual odor or appearance,

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1 from the BAE Systems site supporting Your allegation in the Draft Technical Report that BAE
2 Systems caused or permitted wastes to be discharged or deposited into San Diego Bay.

3 **INTERROGATORY NO. 100:**

4 Identify all Documents Related to Your allegation in the Draft Technical Report that
5 reports or complaints about the BAE Systems site caused or permitted wastes to be discharged or
6 deposited into San Diego Bay.

7 **INTERROGATORY NO. 101:**

8 Identify all Documents Related to agency records of known discharges, other than records
9 of the RWQCB or State WRCB, which support Your allegations in the Draft Technical Report
10 that BAE Systems caused or permitted wastes to be discharged or deposited into San Diego Bay.

11 **INTERROGATORY NO. 102:**

12 Identify all Documents Relating to BAE Systems' refusal or failure to respond to
13 RWQCB or State WRCB inquiries which support Your allegation in the Draft Technical Report
14 that BAE Systems caused or permitted wastes to be discharged or deposited into San Diego Bay.

15 **INTERROGATORY NO. 103:**

16 Identify the Documents that evidence or Relate to discharges and/or releases of TBT in
17 Leasehold sediment found at depths of 2-4 feet.

18 **INTERROGATORY NO. 104:**

19 Identify the Documents that evidence or Relate to discharges and/or releases of PCBs in
20 Leasehold sediment found at depths of 2-4 feet.

21 **INTERROGATORY NO. 105:**

22 Identify the Documents that evidence or Relate to discharges and/or releases of PAHs in
23 Leasehold sediment found at depths of 2-4 feet.

24 **INTERROGATORY NO. 106:**

25 Identify the Documents that evidence or Relate to discharges and/or releases of PHAHs in
26 Leasehold sediment found at depths of 2-4 feet.

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1 **INTERROGATORY NO. 107:**

2 Identify the Documents that evidence or Relate to discharges and/or releases of arsenic in
3 Leasehold sediment found at depths of 2-4 feet.

4 **INTERROGATORY NO. 108:**

5 Identify the Documents that evidence or Relate to discharges and/or releases of cadmium
6 in Leasehold sediment found at depths of 2-4 feet.

7 **INTERROGATORY NO. 109:**

8 Identify the Documents that evidence or Relate to discharges and/or releases of chromium
9 in Leasehold sediment found at depths of 2-4 feet.

10 **INTERROGATORY NO. 110:**

11 Identify the Documents that evidence or Relate to discharges and/or releases of copper in
12 Leasehold sediment found at depths of 2-4 feet.

13 **INTERROGATORY NO. 111:**

14 Identify the Documents that evidence or Relate to discharges and/or releases of lead in
15 Leasehold sediment found at depths of 2-4 feet.

16 **INTERROGATORY NO. 112:**

17 Identify the Documents that evidence or Relate to discharges and/or releases of mercury in
18 Leasehold sediment found at depths of 2-4 feet.

19 **INTERROGATORY NO. 113:**

20 Identify the Documents that evidence or Relate to discharges and/or releases of nickel in
21 Leasehold sediment found at depths of 2-4 feet.

22 **INTERROGATORY NO. 114:**

23 Identify the Documents that evidence or Relate to discharges and/or releases of silver in
24 Leasehold sediment found at depths of 2-4 feet.

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1 **INTERROGATORY NO. 115:**

2 Identify the Documents that evidence or Relate to discharges and/or releases of zinc in
3 Leasehold sediment found at depths of 2-4 feet.

4 Dated: January 25, 2010

5 DLA PIPER LLP (US)

6
7 By 
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EXHIBIT 2

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11 BAE Systems San Diego Ship Repair Inc.

12 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

13 In re Tentative Cleanup and Abatement
14 Order No. R9-2010-0002

**DESIGNATED PARTY BAE SYSTEMS
SAN DIEGO SHIP REPAIR INC.'S
REQUESTS FOR ADMISSIONS TO THE
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN
DIEGO REGION**

15 Presiding Officer: David A. King

16 PROPOUNDING PARTY: BAE SYSTEMS SAN DIEGO SHIP REPAIR INC.

17 RESPONDING PARTY: CALIFORNIA REGIONAL WATER QUALITY CONTROL
18 BOARD, SAN DIEGO REGION

19 SET NUMBER: ONE

20 Designated Party BAE Systems San Diego Ship Repair Inc. ("BAE Systems") pursuant to
21 the Second Amended Order of Proceedings and the Presiding Officer's October 27, 2009,
22 Discovery Scheduling Order, hereby requests that the California Regional Water Quality Control
23 Board, San Diego Region ("RWQCB"), including, but not limited to, the Cleanup Team and other
24 agency staff, respond to the following Request for Admissions fully in writing and under oath by
25 February 10, 2010. Responses to these Requests should be directed to Michael S. Tracy, Esq. of
26 DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California 92101.

27 ////

1 **INSTRUCTIONS**

2 1. The use of the singular form of any word includes the plural and vice versa.

3 2. Any pronoun should be construed to refer to the masculine, feminine, or neutral
4 gender as in each case is most appropriate.

5 3. The word “including” shall be construed without limitation.

6 4. Each response must be as complete and straightforward as the information
7 reasonably available to you permits. If a Request cannot be answered completely, answer it to the
8 greatest extent possible.

9 5. The responses to these Requests shall include such information and documents and
10 other tangible things as are within Your possession, custody, or control, or are within the
11 possession, custody or control of Your past and present employees, staff, officers, directors,
12 agents, independent contractors, trustees, officials, servants, limited partners, general partners,
13 investigators, investment advisors, analysts, consultants, accountants, attorneys, attorneys-in-fact,
14 representatives, all predecessors and successors, subsidiaries, parent corporations, affiliates, joint
15 venturers, or other agents, or which are otherwise available to You. In responding to these
16 Requests, You are specifically directed to review the personal files, records, notes,
17 correspondence, daily calendars, electronic mail, computer files, and telephone logs or records of
18 all persons who have knowledge of the information inquired about in each Request.

19 6. If You contend that any of these Requests cannot be admitted or denied in full,
20 You must set forth in detail the reasons why You cannot truthfully admit or deny the request
21 and/or specify so much of the request as is true and qualify or deny the remainder.

22 **DEFINITIONS**

23 1. “Advisory Team” means and refers to the Advisory Team of the RWQCB,
24 specially formed in response to and for purposes of the investigation of the Site in San Diego
25 Bay, including, but not limited to, all past or present members, directors, officers, agents,
26 representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership
27 relationship with the Advisory Team and others acting on behalf of the Advisory Team.

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1 2. “BAE Systems” means BAE Systems San Diego Ship Repair Inc. and Southwest
2 Marine, Inc. including, but not limited to, all past or present directors, officers, agents,
3 representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership
4 relationships with BAE Systems San Diego Ship Repair Inc. and others acting on behalf of BAE
5 Systems San Diego Ship Repair Inc.

6 3. “Cleanup Team” means and refers to the Cleanup Team of the RWQCB specially
7 formed in response to and for purposes of the investigation of the Site in San Diego Bay,
8 including, but not limited to, all past or present members, directors, officers, agents,
9 representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership
10 relationship with the Cleanup Team and others acting on behalf of the Cleanup Team.

11 4. “Communication(s)” or “Communicate” means any and all contact whatsoever,
12 whether by oral, written, or electronic means, whether directly or indirectly, in any nature
13 whatsoever, including, but not limited to, any correspondence, face-to-face conversation,
14 telephonic conversation, video conversation, electronic transmission, telegraph, telex, telecopier,
15 facsimile, Internet, on-line service, electronic mail, letters, memoranda, reports, or other media.

16 5. “Document” is defined broadly to be given the full scope of that term, and includes
17 all tangible things, all originals (or, if originals are not available, identical copies thereof), all non-
18 identical copies of a document, all drafts of final documents, all other written, printed, or recorded
19 matter of any kind, and all other data compilations from which information can be obtained and
20 translated if necessary, that are or have been in Your actual or constructive possession or control,
21 regardless of the medium on which they are produced, reproduced, or stored (including, without
22 limitation, computer programs and files containing any requested information), and any electronic
23 mail, recording or writing, as these terms are defined in California Evidence Code §§ 250-260.
24 Any Document bearing marks, including, without limitation, initials, stamped initials, comments,
25 or notations not a part of the original text or photographic reproduction thereof, is a separate
26 Document. By way of example, the term “Document” encompasses, without limitation, any
27 agreements, contracts, contract files, closing statements, valuation reports, purchase orders,
28 correspondence, customer or client files, memoranda, tables, charts, graphs, schedules, reports,

1 surveys, analyses, compilations, journals, ledgers, receipts, warehouse receipts, vouchers,
2 invoices, bills of sale, bills of lading, confirmation of credit and billing statements, checks,
3 financial statements, manuals, circulars, pamphlets, bulletins, instructions, sketches, diagrams,
4 telegrams, facsimiles, e-mails, Internet and modem transmissions, stenographic and handwritten
5 notes, minutes of meetings, transcripts, news articles and press releases, computer programs,
6 printouts, punch cards, tabulations, logs, telephone records, desk calendars, diaries, appointment
7 books, computer data, tapes and discs, video tapes, photographs, films, voice recordings,
8 magnetic recordings, all drafts and/or non-identical copies of every such "writing," glossaries of
9 all terms of art and abbreviations used in every such "writing," or any other items of a similar
10 nature, including all originals, drafts, and non-identical copies.

11 6. "Draft Technical Report" refers to the Draft Technical Report for Tentative
12 Cleanup and Abatement Order No. R9-2010-0002, dated December 2009.

13 7. "Each" means each and every.

14 8. "Environmental Group" means and refers to any and all non-profit and/or
15 advocacy organizations focused on environmental causes and issues, including, but not limited to,
16 Designated Parties Coastkeeper (formerly San Diego Bay-Keeper) and Environmental Health
17 Coalition.

18 9. "HPAHs" means High Molecular Weight Polynuclear Aromatic Hydrocarbons.

19 10. "Identify" as it relates to a Document means provide the title of the Document, the
20 date the Document was generated, the name of the author of the Document, a description of the
21 Document (*e.g.*, letter, memorandum, report, book, photograph, etc.) and any other information
22 which would be required to specify the Document in a request for production of Documents.

23 11. "Identify" as it relates to a Person or Entity means to state the name, address and
24 telephone number of the Person or Entity.

25 12. "Leasehold" means and refers to BAE Systems' leasehold within the Site.

26 13. "PAHs" means Polynuclear Aromatic Hydrocarbons.

27 14. "PCBs" means Polychlorinated Biphenyls.

28 15. "PCTs" means Polychlorinated Terphenyls.

1 16. “Person(s)” or “Entity” or “Entities” means any individual, firm, association,
2 organization, joint venture, trust, partnership, corporation, or other collective organization or
3 entity.

4 17. “Relate to” or “Relating to” includes, but is not limited to, analyzing, considering,
5 constituting, defining, evidencing, containing, describing, concerning, commenting, discussing,
6 embodying, explaining, reflecting, detailing, identifying, mentioning, demonstrating, alluding to,
7 referencing, edifying, stating, summarizing, referring to, dealing with or in any way pertaining to,
8 in whole or in part, the subject.

9 18. “RWQCB,” “You” or “Your” means the California Regional Water Quality
10 Control Board, San Diego Region and all predecessors and successors thereof including, but not
11 limited to, all past or present members, directors, officers, agents, representatives, employees,
12 staff, consultants, attorneys, entities acting in joint-venture or partnership relationship with the
13 California Regional Water Quality Control Board, San Diego Region and other acting on behalf
14 of the California Regional Water Quality Control Board, San Diego Region.

15 19. “Sediment Investigation” means and refers to the Sediment Quality Investigation
16 described in Paragraph 12 of the Tentative Order.

17 20. “Shipyard Administrative Record” refers to the compilation of indexed electronic
18 documents distributed by the Cleanup Team on April 4, 2008, in the San Diego Bay sediments
19 cleanup proceedings regarding Tentative Cleanup and Abatement Order No. R9-2005-0126
20 (“2005 Tentative Order”), and any subsequent additions thereto in connection with the 2005
21 Tentative Order.

22 21. “Site” means and refers to the Shipyard Sediment Site described in the Tentative
23 Order and Draft Technical Report.

24 22. “State RWCB” means the California Water Resources Control Board and all
25 predecessors and successors thereof including, but not limited to, all past or present members,
26 directors, officers, agents, representatives, employees, consultants, attorneys, entities acting in
27 joint-venture or partnership relationship with the California Water Resources Control Board and
28 others acting on behalf of the California Water Resources Control Board.

1 23. "SWAC" refers to surface-area weighted average concentration.

2 24. "TBT" means Tributyltin.

3 25. "Tentative Cleanup Levels" means and refers to the cleanup levels for the Site
4 proposed in the Tentative Order and included in Paragraph 34, Table 2 of the Tentative Order.

5 26. "Tentative Order" refers to California Regional Water Quality Control Board, San
6 Diego Region, Tentative Cleanup and Abatement Order No. R9-2010-0002, published on
7 December 22, 2009.

8 27. "TPHs" means Total Petroleum Hydrocarbons.

9 **REQUESTS FOR ADMISSION**

10 **REQUEST FOR ADMISSION NO. 1:**

11 Admit that the City of San Diego owned the Site's and Leasehold's tideland property from
12 1911 until 1962.

13 **REQUEST FOR ADMISSION NO. 2:**

14 Admit that the City of San Diego formerly owned tideland property at the Site at times
15 during which discharges that are the subject of the Tentative Order occurred.

16 **REQUEST FOR ADMISSION NO. 3:**

17 Admit that the San Diego Unified Port District has owned the Site's and Leasehold's
18 tideland property since 1962.

19 **REQUEST FOR ADMISSION NO. 4:**

20 Admit that the San Diego Unified Port District has owned the Site at times during which
21 discharges that are the subject of the Tentative Order occurred.

22 **REQUEST FOR ADMISSION NO. 5:**

23 Admit that BAE Systems did not own or lease property at the Site before 1979.

24 **REQUEST FOR ADMISSION NO. 6:**

25 Admit that BAE Systems did not operate at the Site before 1979.

26 **REQUEST FOR ADMISSION NO. 7:**

27 Admit that discharges from 1915 to 1978 contributed to contaminants found in sediment
28 core samples taken from Leasehold sediment from 2-4 feet in depth.

1 **REQUEST FOR ADMISSION NO. 8:**

2 Admit that the Site is exempt from the Water Quality Control Plan for Enclosed Bays and
3 Estuaries of California – Part 1 Sediment Quality (“Phase I Sediment Quality Objectives”).

4 **REQUEST FOR ADMISSION NO. 9:**

5 Admit that the “pore water” analyses referenced in Paragraphs 14 and 19 of the Tentative
6 Order were not used to determine the remediation footprint proposed in the Tentative Order.

7 **REQUEST FOR ADMISSION NO. 10:**

8 Admit that the organisms the California Toxics Rule is designed to protect are not
9 exposed to pore water.

10 **REQUEST FOR ADMISSION NO. 11:**

11 Admit that the comparison of California Toxic Rule values to pore water concentrations of
12 primary constituents of concern is irrelevant for determining adverse effects in benthic
13 communities.

14 **REQUEST FOR ADMISSION NO. 12:**

15 Admit that the California Toxics Rule criteria were developed to assess water quality in
16 the open water column.

17 **REQUEST FOR ADMISSION NO. 13:**

18 Admit that the California Toxics Rule criteria are not applicable to pore water.

19 **REQUEST FOR ADMISSION NO. 14:**

20 Admit that station location SW 22 is not “likely” impaired under the corrected sediment
21 triad analysis in the Draft Technical Report.

22 **REQUEST FOR ADMISSION NO. 15:**

23 Admit that station location SW 23 is not “likely” impaired under the corrected sediment
24 triad analysis in the Draft Technical Report.

25 **REQUEST FOR ADMISSION NO. 16:**

26 Admit that the benthic community within the Leasehold is mature.

27 **REQUEST FOR ADMISSION NO. 17:**

28 Admit that the benthic community within the Leasehold is thriving.

1 **REQUEST FOR ADMISSION NO. 18:**

2 Admit that uncontrolled stormwater discharges to the San Diego Bay adversely affect the
3 benthic community within the Leasehold.

4 **REQUEST FOR ADMISSION NO. 19:**

5 Admit that physical disturbances (such as propeller testing) within the San Diego Bay
6 adversely affect the benthic community within the Leasehold.

7 **REQUEST FOR ADMISSION NO. 20:**

8 Admit that discharges of materials containing TBT from 1960 to 1978 contributed to
9 sediment contamination at the Leasehold.

10 **REQUEST FOR ADMISSION NO. 21:**

11 Admit that “July 2009 Confirmatory Benthic Triad Study” demonstrates that natural
12 attenuation is occurring within the Leasehold.

13 **REQUEST FOR ADMISSION NO. 22:**

14 Admit that concentrations of PCBs in fish are higher in reference areas outside of the
15 Leasehold than within the Leasehold.

16 **REQUEST FOR ADMISSION NO. 23:**

17 Admit that concentrations of PCBs in lobsters are higher in reference areas outside of the
18 Leasehold than within the Leasehold.

19 **REQUEST FOR ADMISSION NO. 24:**

20 Admit that there were more lesion types that were significantly elevated found in fish
21 from reference stations, relative to fish from the Site.

22 **REQUEST FOR ADMISSION NO. 25:**

23 Admit that BAE Systems’ land-side and bay-side security measures do not allow fishing
24 and lobstering within the Leasehold.

25 **REQUEST FOR ADMISSION NO. 26:**

26 Admit that You have never observed any fishing or lobstering taking place within the
27 Leasehold.

28 /////

1 **REQUEST FOR ADMISSION NO. 27:**

2 Admit there is no observed statistically significant relation between concentrations of
3 constituents of concern in sediment at the Leasehold and sediment toxicity.

4 **REQUEST FOR ADMISSION NO. 28:**

5 Admit that correlations have been observed between pesticide concentrations in sediment
6 and sediment toxicity.

7 **REQUEST FOR ADMISSION NO. 29:**

8 Admit that BAE Systems is not responsible for the discharge of pesticides into the San
9 Diego Bay.

10 **REQUEST FOR ADMISSION NO. 30:**

11 Admit that sources of pesticide discharges into the San Diego Bay are uncontrolled.

12 **REQUEST FOR ADMISSION NO. 31:**

13 Admit that locations where high toxicity in sediment has been found within the Site are
14 near locations where municipal stormwater is discharged.

15 **REQUEST FOR ADMISSION NO. 32:**

16 Admit that sediment within the Leasehold is adversely affected by sources of pollution
17 unrelated to BAE Systems or its operations.

18 **REQUEST FOR ADMISSION NO. 33:**

19 Admit that discharges of PCBs from 1915-1978 contributed to PCBs found in Leasehold
20 sediment at 2-4 feet.

21 **REQUEST FOR ADMISSION NO. 34:**

22 Admit that discharges of benzo[a]pyrene from 1915-1978 contributed to benzo[a]pyrene
23 found in Leasehold sediment at 2-4 feet.

24 **REQUEST FOR ADMISSION NO. 35:**

25 Admit that discharges of arsenic from 1915-1978 contributed to arsenic found in
26 Leasehold sediment at 2-4 feet.

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1 **REQUEST FOR ADMISSION NO. 36:**

2 Admit that discharges of cadmium from 1915-1978 contributed to cadmium found in
3 Leasehold sediment at 2-4 feet.

4 **REQUEST FOR ADMISSION NO. 37:**

5 Admit that discharges of chromium from 1915-1978 contributed to chromium found in
6 Leasehold sediment at 2-4 feet.

7 **REQUEST FOR ADMISSION NO. 38:**

8 Admit that discharges of copper from 1915-1978 contributed to copper found in
9 Leasehold sediment at 2-4 feet.

10 **REQUEST FOR ADMISSION NO. 39:**

11 Admit that discharges of mercury from 1915-1978 contributed to mercury found in
12 Leasehold sediment at 2-4 feet.

13 **REQUEST FOR ADMISSION NO. 40:**

14 Admit that discharges of nickel from 1915-1978 contributed to nickel found in Leasehold
15 sediment at 2-4 feet.

16 **REQUEST FOR ADMISSION NO. 41:**

17 Admit that remediation goals in the Tentative Order will in the future be adversely
18 affected by re-contamination from other sources.

19 **REQUEST FOR ADMISSION NO. 42:**

20 Admit that re-suspension of contaminants caused by sediment dredging would adversely
21 impact water quality.

22 **REQUEST FOR ADMISSION NO. 43:**

23 Admit that dredging proposed in the Tentative Order would adversely affect existing and
24 mature benthic communities within the Site.

25 **REQUEST FOR ADMISSION NO. 44:**

26 Admit that it is technologically infeasible to require remediation to background sediment
27 quality levels within the Site.

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1 **REQUEST FOR ADMISSION NO. 45:**

2 Admit that it is economically infeasible to require remediation to background sediment
3 quality levels within the Site.

4 **REQUEST FOR ADMISSION NO. 46:**

5 Admit that the RWQCB has never required remediation to background sediment quality
6 levels for any other site within the San Diego Bay.

7 **REQUEST FOR ADMISSION NO. 47:**

8 Admit that the RWQCB has approved sediment cleanup levels at other sites less stringent
9 than the Tentative Cleanup Levels.

10 **REQUEST FOR ADMISSION NO. 48:**

11 Admit that BAE Systems does not discharge stormwater to the San Diego Bay.

12 **REQUEST FOR ADMISSION NO. 49:**

13 Admit that the San Diego Unified Port District has required the Leasehold to be operated
14 as a shipyard and for related industrial uses under the applicable leases since 1962.

15 **REQUEST FOR ADMISSION NO. 50:**

16 Admit that the San Diego Unified Port District has obtained lease revenue since 1962 for
17 the shipyard activities that led to the alleged discharges that are the subject of the Tentative Order.

18 **REQUEST FOR ADMISSION NO. 51:**

19 Admit that the City of San Diego, prior to 1962, required the Leasehold to be operated as
20 a shipyard and for related industrial uses under the applicable leases.

21 **REQUEST FOR ADMISSION NO. 52:**

22 Admit that the City of San Diego, prior to 1962, obtained lease revenue for the shipyard
23 activities that led to the alleged discharges that are the subject of the Tentative Order.

24 **REQUEST FOR ADMISSION NO. 53:**

25 Admit that there are former tenants of the San Diego Unified Port District not named in
26 the Tentative Order as “Discharger(s)” and responsible parties that contributed to the discharges
27 which are the subject of the Tentative Order.

28 ////

1 **REQUEST FOR ADMISSION NO. 54:**

2 Admit that there are former tenants of the City of San Diego not named in the Tentative
3 Order as “Discharger(s)” and responsible parties that contributed to the discharges which are the
4 subject of the Tentative Order.

5 **REQUEST FOR ADMISSION NO. 55:**

6 Admit that former tenants of the Site, excluding the named “Discharger(s),” contributed to
7 the discharges that are the subject matter of the Tentative Order.

8 **REQUEST FOR ADMISSION NO. 56:**

9 Admit that the Tentative Cleanup Levels are the most stringent selected for any sediment
10 remediation ever conducted in San Diego Bay.

11 **REQUEST FOR ADMISSION NO. 57:**

12 Admit that the Draft Technical Report concludes that a deposition rate of 2 cm/year was
13 the applicable sediment deposition rate used in calculating depositional rates in Leasehold
14 sediment.

15 **REQUEST FOR ADMISSION NO. 58:**

16 Admit that impacts to aquatic life, aquatic-dependent wildlife, and human health alleged
17 to be caused by “Discharger(s)” are properly assessed by comparing Site conditions to reference
18 conditions in San Diego Bay, rather than to pristine controls.

19 **REQUEST FOR ADMISSION NO. 59:**

20 Admit that San Diego Marine Construction Company is a former tenant at the Site and is
21 no longer a going concern.

22 **REQUEST FOR ADMISSION NO. 60:**

23 Admit that Star and Crescent Boat Company is a former tenant at the Site and is no longer
24 a going concern.

25 **REQUEST FOR ADMISSION NO. 61:**

26 Admit that Star and Crescent Investment Company is a former tenant at the Site and is no
27 longer a going concern.

28 ////

1 **REQUEST FOR ADMISSION NO. 62:**

2 Admit that Star and Crescent Ferry Company is a former tenant at the Site and is no
3 longer a going concern.

4 **REQUEST FOR ADMISSION NO. 63:**

5 Admit that Campbell Industries, Inc. is a former tenant at the Site.

6 **REQUEST FOR ADMISSION NO. 64:**

7 Admit that MCCSD is a former tenant at the Site and is no longer a going concern.

8 **REQUEST FOR ADMISSION NO. 65:**

9 Admit that Buchanan Lumber Company is a former tenant at the Site and is no longer a
10 going concern.

11 **REQUEST FOR ADMISSION NO. 66:**

12 Admit that San Diego Shipbuilding and Drydock Company is a former tenant at the Site
13 and is no longer a going concern.

14 **REQUEST FOR ADMISSION NO. 67:**

15 Admit that Warren Boat Company of San Francisco is a former tenant at the Site and is no
16 longer a going concern.

17 **REQUEST FOR ADMISSION NO. 68:**

18 Admit that Martinolich Shipbuilding Company is a former tenant at the Site and is no
19 longer a going concern.

20 **REQUEST FOR ADMISSION NO. 69:**

21 Admit that General Marine Works Harbor Boat Works is a former tenant at the Site and is
22 no longer a going concern.

23 **REQUEST FOR ADMISSION NO. 70:**

24 Admit that Lynch Shipbuilding Company is a former tenant at the Site and is no longer a
25 going concern.

26 **REQUEST FOR ADMISSION NO. 71:**

27 Admit that Robbins Marine Engine Company is a former tenant at the Site and is no
28 longer a going concern.

1 **REQUEST FOR ADMISSION NO. 72:**

2 Admit that National Iron Works is a former tenant at the Site and is no longer a going
3 concern.

4 **REQUEST FOR ADMISSION NO. 73:**

5 Admit that People's Fishpacking Corporation is a former tenant at the Site and is no
6 longer a going concern.

7 **REQUEST FOR ADMISSION NO. 74:**

8 Admit that Tuna Pak Corporation is a former tenant at the Site and is no longer a going
9 concern.

10 **REQUEST FOR ADMISSION NO. 75:**

11 Admit that Chaffee Machine Company is a former tenant at the Site and is no longer a
12 going concern.

13 **REQUEST FOR ADMISSION NO. 76:**

14 Admit that Dant & Russell Sales Company is a former tenant at the Site and is no longer a
15 going concern.

16 **REQUEST FOR ADMISSION NO. 77:**

17 Admit that Drakes Steel Supply Company is a former tenant at the Site and is no longer a
18 going concern.

19 **REQUEST FOR ADMISSION NO. 78:**

20 Admit that H.G. Fenton Material Company is a former tenant at the Site and is no longer a
21 going concern.

22 **REQUEST FOR ADMISSION NO. 79:**

23 Admit that Hills Brothers Chemical Company is a former tenant at the Site and is no
24 longer a going concern.

25 **REQUEST FOR ADMISSION NO. 80:**

26 Admit that Diesel Technical Service Inc. is a former tenant at the Site and is no longer a
27 going concern.

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1 **REQUEST FOR ADMISSION NO. 81:**

2 Admit that Dixie Lumber and Supply Company is a former tenant at the Site and is no
3 longer a going concern.

4 **REQUEST FOR ADMISSION NO. 82:**

5 Admit that Home Owner's Supply Inc. is a former tenant at the Site and is no longer a
6 going concern.

7 **REQUEST FOR ADMISSION NO. 83:**

8 Admit that Independent Paper Stock Company is a former tenant at the Site and is no
9 longer a going concern.

10 **REQUEST FOR ADMISSION NO. 84:**

11 Admit that Mueller Truck Company is a former tenant at the Site and is no longer a going
12 concern.

13 **REQUEST FOR ADMISSION NO. 85:**

14 Admit that Reconstruction Finance Corporation is a former tenant at the Site and is no
15 longer a going concern.

16 **REQUEST FOR ADMISSION NO. 86:**

17 Admit that Riverside Cement Company is a former tenant at the Site and is no longer a
18 going concern.

19 **REQUEST FOR ADMISSION NO. 87:**

20 Admit that U.S. Steel Shipbuilding Corporation is a former tenant at the Site and is no
21 longer a going concern.

22 **REQUEST FOR ADMISSION NO. 88:**

23 Admit that United States National Bank of San Diego is a former tenant at the Site and is
24 no longer a going concern.

25 **REQUEST FOR ADMISSION NO. 89:**

26 Admit that United States Shipping Board Emergency Fleet is a former tenant at the Site
27 and is no longer a going concern.

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1 **REQUEST FOR ADMISSION NO. 90:**

2 Admit that W.F. Nelson Company is a former tenant at the Site and is no longer a going
3 concern.

4 **REQUEST FOR ADMISSION NO. 91:**

5 Admit that San Francisco Bridge Company is a former tenant at the Site and is no longer a
6 going concern.

7 **REQUEST FOR ADMISSION NO. 92:**

8 Admit that Socony Mobil Oil Company is a former tenant at the Site and is no longer a
9 going concern.

10 **REQUEST FOR ADMISSION NO. 93:**

11 Admit that Richfield Oil Corporation is a former tenant at the Site and is no longer a going
12 concern.

13 **REQUEST FOR ADMISSION NO. 94:**

14 Admit that Paramount Wholesale Lumber is a former tenant at the Site and is no longer a
15 going concern.

16 **REQUEST FOR ADMISSION NO. 95:**

17 Admit that West Coast Packing Corporation is a former tenant at the Site and is no longer
18 a going concern.

19 Dated: January 25, 2010

DLA PIPER LLP (US)

20
21 By 
22 MICHAEL S. TRACY
23 AMY G. NEFOUSE
24 MATTHEW B. DART
25 ERIN O. DOYLE
26 Attorneys for BAE Systems San Diego Ship
27 Repair Inc.

EXHIBIT 3

1 MICHAEL S. TRACY (Bar No. 101456)
2 AMY G. NEFOUSE (Bar No. 159880)
3 MATTHEW B. DART (Bar No. 216429)
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10 Attorneys for Designated Party
11 BAE Systems San Diego Ship Repair Inc.

12 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

13 In re Tentative Cleanup and Abatement
14 Order No. R9-2010-0002

**DESIGNATED PARTY BAE SYSTEMS
SAN DIEGO SHIP REPAIR INC.'S FIRST
SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS TO THE CALIFORNIA
REGIONAL WATER QUALITY
CONTROL BOARD, SAN DIEGO REGION**

15 Presiding Officer: David A. King

16 PROPOUNDING PARTY: BAE SYSTEMS SAN DIEGO SHIP REPAIR INC.

17 RESPONDING PARTY: CALIFORNIA REGIONAL WATER QUALITY CONTROL
18 BOARD, SAN DIEGO REGION

19 SET NUMBER: ONE

20 Designated Party BAE Systems San Diego Ship Repair Inc. ("BAE Systems"), pursuant to
21 the Second Amended Order of Proceedings and the Presiding Officer's October 27, 2009,
22 Discovery Scheduling Order, hereby requests that the California Regional Water Quality Control
23 Board, San Diego Region ("RWQCB"), including, but not limited to, the Cleanup Team and other
24 agency staff, produce the following designated documents and provide a written response to these
25 Requests by February 10, 2010. Production of the requested documents shall take place at the
26 office of counsel for BAE Systems, and responses to these Requests should be directed to
27

28 ////

1 Michael S. Tracy, Esq. of DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California
2 92101.

3 **INSTRUCTIONS**

4 A. These Requests for Production of Documents shall be deemed to seek Documents
5 in existence as of the date of service thereof. These requests are deemed to be continuing so that
6 with respect to any request or part thereof as to which You, after responding, discover additional
7 responsive Documents, You shall produce such Documents immediately after acquiring
8 knowledge of their existence or advise in writing as to why such additional Documents cannot be
9 provided immediately.

10 B. The singular form of a word should be interpreted in the plural as well. Any
11 pronoun shall be construed to refer to the masculine, feminine, or neutral gender as in each case is
12 most appropriate. The words “and” and “or” shall be construed conjunctively or disjunctively,
13 whichever makes the request most inclusive.

14 C. These requests shall apply to all Documents in Your possession, custody or control
15 at the present time or coming into Your possession, custody or control prior to the date of the
16 production. If You know of the existence, past or present, of any Documents requested below,
17 but are unable to produce such Documents because they are not presently in Your possession,
18 custody or control, You shall so state and shall Identify such Documents, and the Person who has
19 possession, custody or control of the Documents.

20 D. If no Documents are responsive to a particular request, You are to state that no
21 responsive Documents exist.

22 E. For any responsive Documents that have been lost, destroyed or withheld from
23 production based on any ground, You shall provide a written statement setting forth:

- 24 (i) the identity of the Document;
- 25 (ii) the nature of the Document (*e.g.*, letter, memorandum, chart);
- 26 (iii) the identity of the Person(s) who received copies of the Document;
- 27 (iv) the date of the Document;
- 28 (v) a brief description of the subject matter of the Document; and

1 (vi) the circumstances of the loss or destruction of the Document and any fact,
2 statute, rule or decision upon which You rely in withholding the Document.

3 F. If You decline to produce any Document or part thereof based on a claim of
4 privilege or any other claim, provide a privilege log that identifies each Document separately and
5 specifies for each Document at least the following:

6 (i) the date;

7 (ii) the sender(s) identified by position and Entity with which they are
8 employed or associated and, if any sender is an attorney, a statement so stating;

9 (iii) the recipient(s), including copy recipients, identified by position and Entity
10 with which they are employed or associated and, if any recipient is an attorney, a statement so
11 stating;

12 (iv) the general subject matter of the Document;

13 (v) the portion(s) of the Document as to which privilege is claimed; and

14 (vi) the type of privilege asserted as well as a certification that all elements of
15 the claimed privilege have been met and not waived.

16 G. All Documents requested are to be produced in the same file or other
17 organizational environment in which they are maintained. For example, a Document that is part
18 of a file, docket, or other grouping, should be physically produced together with all other
19 Documents from said file, docket or grouping, in the same order or manner of arrangement as the
20 original. Alternatively, as to Each Document produced in response hereto, You shall Identify the
21 request for production and where applicable, the interrogatory number, in response to which the
22 Document is being produced.

23 H. Electronic records and computerized information must be produced in an
24 intelligible format or together with a description of the system from which it was derived
25 sufficient to permit rendering the materials intelligible.

26 **DEFINITIONS**

27 1. "Advisory Team" means and refers to the Advisory Team of the RWQCB,
28 specially formed in response to and for purposes of the investigation of the Site in San Diego

1 Bay, including, but not limited to, all past or present members, directors, officers, agents,
2 representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership
3 relationship with the Advisory Team and others acting on behalf of the Advisory Team.

4 2. "BAE Systems" means BAE Systems San Diego Ship Repair Inc. and Southwest
5 Marine, Inc., including, but not limited to, all past or present directors, officers, agents,
6 representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership
7 relationships with BAE Systems San Diego Ship Repair Inc. and others acting on behalf of BAE
8 Systems San Diego Ship Repair Inc.

9 3. "Cleanup Team" means and refers to the Cleanup Team of the RWQCB specially
10 formed in response to and for purposes of the investigation of the Site in San Diego Bay,
11 including, but not limited to, all past or present members, directors, officers, agents,
12 representatives, employees, consultants, attorneys, entities acting in joint-venture or partnership
13 relationship with the Cleanup Team and others acting on behalf of the Cleanup Team.

14 4. "Communication(s)" or "Communicate" means any and all contact whatsoever,
15 whether by oral, written, or electronic means, whether directly or indirectly, in any nature
16 whatsoever, including, but not limited to, any correspondence, face-to-face conversation,
17 telephonic conversation, video conversation, electronic transmission, telegraph, telex, telecopier,
18 facsimile, Internet, on-line service, electronic mail, letters, memoranda, reports, or other media.

19 5. "Document" is defined broadly to be given the full scope of that term, and includes
20 all tangible things, all originals (or, if originals are not available, identical copies thereof), all non-
21 identical copies of a document, all drafts of final documents, all other written, printed, or recorded
22 matter of any kind, and all other data compilations from which information can be obtained and
23 translated if necessary, that are or have been in Your actual or constructive possession or control,
24 regardless of the medium on which they are produced, reproduced, or stored (including, without
25 limitation, computer programs and files containing any requested information), and any electronic
26 mail, recording or writing, as these terms are defined in California Evidence Code §§ 250-260.
27 Any Document bearing marks, including, without limitation, initials, stamped initials, comments,
28 or notations not a part of the original text or photographic reproduction thereof, is a separate

1 Document. By way of example, the term “Document” encompasses, without limitation, any
2 agreements, contracts, contract files, closing statements, valuation reports, purchase orders,
3 correspondence, customer or client files, memoranda, tables, charts, graphs, schedules, reports,
4 surveys, analyses, compilations, journals, ledgers, receipts, warehouse receipts, vouchers,
5 invoices, bills of sale, bills of lading, confirmation of credit and billing statements, checks,
6 financial statements, manuals, circulars, pamphlets, bulletins, instructions, sketches, diagrams,
7 telegrams, facsimiles, e-mails, Internet and modem transmissions, stenographic and handwritten
8 notes, minutes of meetings, transcripts, news articles and press releases, computer programs,
9 printouts, punch cards, tabulations, logs, telephone records, desk calendars, diaries, appointment
10 books, computer data, tapes and discs, video tapes, photographs, films, voice recordings,
11 magnetic recordings, all drafts and/or non-identical copies of every such “writing,” glossaries of
12 all terms of art and abbreviations used in every such “writing,” or any other items of a similar
13 nature, including all originals, drafts, and non-identical copies.

14 6. “Draft Technical Report” refers to the Draft Technical Report for Tentative
15 Cleanup and Abatement Order No. R9-2010-0002, dated December 2009.

16 7. “Each” means each and every.

17 8. “Environmental Group” means and refers to any and all non-profit and/or
18 advocacy organizations focused on environmental causes and issues, including, but not limited to,
19 Designated Parties Coastkeeper (formerly San Diego Bay-Keeper) and Environmental Health
20 Coalition.

21 9. “HPAHs” means High Molecular Weight Polynuclear Aromatic Hydrocarbons.

22 10. “Identify” as it relates to a Document means provide the title of the Document, the
23 date the Document was generated, the name of the author of the Document, a description of the
24 Document (*e.g.*, letter, memorandum, report, book, photograph, etc.) and any other information
25 which would be required to specify the Document in a request for production of Documents.

26 11. “Identify” as it relates to a Person or Entity means to state the name, address and
27 telephone number of the Person or Entity.

28 ////

1 12. "Leasehold" means and refers to BAE Systems' leasehold within the Site.

2 13. "PAHs" means Polynuclear Aromatic Hydrocarbons.

3 14. "PCBs" means Polychlorinated Biphenyls.

4 15. "PCTs" means Polychlorinated Terphenyls.

5 16. "Person(s)" or "Entity" or "Entities" means any individual, firm, association,
6 organization, joint venture, trust, partnership, corporation, or other collective organization or
7 entity.

8 17. "Relate to" or "Relating to" includes, but is not limited to, analyzing, considering,
9 constituting, defining, evidencing, containing, describing, concerning, commenting, discussing,
10 embodying, explaining, reflecting, detailing, identifying, mentioning, demonstrating, alluding to,
11 referencing, edifying, stating, summarizing, referring to, dealing with or in any way pertaining to,
12 in whole or in part, the subject.

13 18. "RWQCB," "You" or "Your" means the California Regional Water Quality
14 Control Board, San Diego Region and all predecessors and successors thereof, including, but not
15 limited to, all past or present members, directors, officers, agents, representatives, employees,
16 staff, consultants, attorneys, entities acting in joint-venture or partnership relationship with the
17 California Regional Water Quality Control Board, San Diego Region and other acting on behalf
18 of the California Regional Water Quality Control Board, San Diego Region.

19 19. "Sediment Investigation" means and refers to the Sediment Quality Investigation
20 described in Paragraph 12 of the Tentative Order.

21 20. "Shipyard Administrative Record" refers to the compilation of indexed electronic
22 documents distributed by the Cleanup Team on April 4, 2008, in the San Diego Bay sediments
23 cleanup proceedings regarding Tentative Cleanup and Abatement Order No. R9-2005-0126
24 ("2005 Tentative Order"), and any subsequent additions thereto in connection with the 2005
25 Tentative Order.

26 21. "Site" means and refers to the Shipyard Sediment Site described in the Tentative
27 Order and Draft Technical Report.

28 ////

1 **REQUEST NO. 5:**

2 All Documents Relating to any Communications between You and any Person regarding
3 the Sediment Investigation.

4 **REQUEST NO. 6:**

5 All Documents Relating to any presentation materials the Cleanup Team prepared for the
6 RWQCB Relating to the Sediment Investigation.

7 **REQUEST NO. 7:**

8 All Documents Relating to any presentation materials the RWQCB received from any
9 Person Relating to the Sediment Investigation.

10 **REQUEST NO. 8:**

11 All Documents Relating to the professional qualifications of every former and current
12 member of the Cleanup Team, including but not limited to the curriculum vitae of each such
13 individual.

14 **REQUEST NO. 9:**

15 All Documents Relating to any Communications between You and the Advisory Team
16 regarding the Tentative Order or the Draft Technical Report.

17 **REQUEST NO. 10:**

18 All Documents Relating to any Communications between the Cleanup Team and any
19 RWQCB staff regarding the Tentative Order or the Draft Technical Report.

20 **REQUEST NO. 11:**

21 All Documents Relating to any Communications between You and Environmental Groups
22 regarding the Tentative Order or the Draft Technical Report.

23 **REQUEST NO. 12:**

24 All Documents Relating to any Communications between You and any Person regarding
25 the Tentative Order or the Draft Technical Report.

26 **REQUEST NO. 13:**

27 All Documents Relating to any peer review reports regarding the Tentative Cleanup
28 Levels.

1 **REQUEST NO. 14:**

2 All Documents Relating to Your development of the Tentative Cleanup Levels and the
3 Tentative Order.

4 **REQUEST NO. 15:**

5 All Documents Relating to any Communications between You and any Person relating to
6 the allegation in the Tentative Order that testing determined there were nine exceedances for
7 benzo[a]pyrene metabolite samples from outside BAE Systems.

8 **REQUEST NO. 16:**

9 All Documents Relating to any Communication between You and any Person relating to
10 the allegation in the Tentative Order that testing determined there were two exceedances for
11 phenanthrene metabolite samples from outside BAE Systems.

12 **REQUEST NO. 17:**

13 All Documents Relating to any Communication between You and any Person relating to
14 PAH sediment chemistry data from inside BAE Systems.

15 **REQUEST NO. 18:**

16 All Documents Related to Communications between You and any Person regarding the
17 polygons selected for remediation and achievement of SWACs at the Shipyard Sediment Site.

18 **REQUEST NO. 19:**

19 All Documents Related to the criteria for selecting the reference stations used to establish
20 reference sediment quality conditions.

21 **REQUEST NO. 20:**

22 All Documents Related to the Sediment Quality Triad sampling stations discussed at
23 Tentative Order at Paragraph 17.

24 **REQUEST NO. 21:**

25 All Documents Relating to the establishment of sediment cleanup levels and proposed or
26 approved remedies for all other sites within San Diego Bay where sediment contamination was
27 remediated, including but not limited to the Campbell Shipyard Site, Paco Terminals,
28 Commercial Basin, America's Cup Harbor, and Convair Lagoon.

1 **REQUEST NO. 22:**

2 All Documents Relating to sediment cleanup levels and approved remedies established by
3 the RWQCB for any other sites within the RWQCB's jurisdiction where sediment contamination
4 was remediated.

5 **REQUEST NO. 23:**

6 All Documents Relating to sediment cleanup levels and approved remedies established for
7 all other sites throughout California where sediment contamination was remediated (or allowed to
8 naturally attenuate) in rivers, bays, estuaries, ocean, wetlands, or any other surface water body at
9 the direction of the State RWCB or another regional water quality control board.

10 **REQUEST NO. 24:**

11 All Documents Relating to any Communications between You and any Person regarding
12 the Water Quality Control Plan for Enclosed Bays and Estuaries for California – Part 1 Sediment
13 Quality, or the proposed sediment quality objectives regarding benthic community protection
14 indicators.

15 **REQUEST NO. 25:**

16 All Documents Relating to any Communications between You and any staff member of
17 any local, state or federal agency regarding the Water Quality Control Plan for Enclosed Bays and
18 Estuaries for California – Part 1 Sediment Quality, or the proposed sediment quality objectives
19 regarding benthic community protection indicators.

20 **REQUEST NO. 26:**

21 All Documents Relating to any Communication between You and any Person relating to
22 the NASSCO and Southwest Marine Detailed Sediment Investigation (Exponent, September
23 2003) and any data, analyses, or conclusions contained therein.

24 Dated: January 25, 2010

DLA PIPER LLP (US)

25
26 By


MICHAEL S. TRACY
Attorneys for BAE Systems San Diego Ship
Repair Inc.

EXHIBIT 4



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

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

TO: Distribution List (Designated Parties and Interested Persons)

FROM: David King, Presiding Officer for Prehearing Proceedings
Tentative Cleanup and Abatement Order No. R9-2005-0126
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: January 29, 2010

SUBJECT: ORDER ON REQUEST FOR EXTENSION OF DISCOVERY PERIOD
FOR TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2010-
0002

Mr. Tim Gallagher, selected by the parties to mediate these proceedings, made a request on January 19, 2010, for extension of the discovery period until August 23, 2010. The request noted that the present February 22, 2010 deadline for completion of discovery does not provide sufficient time for the San Diego Water Board to complete its California Environmental Quality Act (CEQA) review (necessary before the Tentative Cleanup and Abatement Order (CAO) can be adopted), nor sufficient time for the Shipyard Sediment Cleanup Team (Cleanup Team) and the parties "to correct certain errors in the Tentative Cleanup and Abatement Order and Draft Technical Report." With the exception of the San Diego Coastkeeper and Environmental Health Coalition (Environmental Parties), the parties responding to the request for extension support an extension of time until August 23, 2010 to complete discovery. The Environmental Parties appear to support some extension of time for the discovery process, citing receipt of in-depth discovery requests, but do not support Mr. Gallagher's request. The Environmental Parties suggest that I convene a discovery-specific prehearing conference and offer a proposed process for conducting discovery. They also express concern that any extension not result in a delay of cleanup, absent a more thorough request and explanation. Mr. Gallagher and others request clarification and guidance on the remaining schedule for these proceedings.

Based upon the information which was exchanged among the parties and the Cleanup Team in mediation, the mediator informed the Presiding Officer who publicly announced the following on June 10, 2009:

"Those potentially responsible parties that are participating in the mediation and the Regional Board Cleanup Team have reached

January 29, 2010

agreement in principle on the appropriate cleanup levels and the range of remedial actions subject to an allocation, an agreed-upon monitoring plan and the required formal approvals of the various entities. The parties are in the process of finalizing the monitoring requirements. The Regional Board Cleanup Team and the mediator will continue to work with the potentially responsible parties, the San Diego Coastkeeper and Environmental Health Coalition." (June 10, 2009 Order Extending Mediation.)

On October 26, 2009, facing a deadline to submit a revised tentative CAO, the Cleanup Team represented its "good faith" belief that "the parties responsible for the cleanup will not contest the new proposed draft Cleanup and Abatement Order should the time to release the revised cleanup and abatement order be extended, as requested [by the Cleanup Team] to December 22, 2009." (Cleanup Team Request for Reconsideration, Memorandum of Points & Authorities, p.5.)

Based upon this information, on October 27, 2009, I granted an extension of time for the Cleanup Team to release a revised tentative CAO and technical report, extended the comment period and established that "all discovery" should be completed by February 22, 2010. It is confounding that more than seven months after the public statement provided by the mediator and after 19 months of mediation that the parties have not already adduced a great deal of information that they now apparently wish to seek through the discovery process. It is also disappointing to receive claims, although unspecific, of a lack of due process¹ after 19 months of structured and comprehensive mediation which has led to a significant revision to the original tentative CAO.

When I extended the date for release of the tentative CAO and comment period and established the discovery cut-off, however, it was not known outside of the mediation whether the revised tentative CAO would propose approval of corrective actions requiring evaluation under CEQA and completion of the CEQA process prior to adoption of a final CAO. In the event that it did, my October 27, 2009 Order directed the Cleanup Team to begin the CEQA scoping process upon release of the revised tentative CAO.

Since the tentative CAO expected to be presented to the San Diego Water Board will include specific corrective action, the Board is legally required to complete its environmental review under CEQA to ensure it has considered sufficient information about the cleanup project and has fully assessed potential impacts to the environment,

¹ For example, in its January 22, 2010, letter NASSCO provides no indication how its "due process rights" have been violated or what unknowns mandate additional discovery.

before taking final action on the tentative CAO. Whether an environmental review under CEQA is completed before adoption of a final order, as anticipated in this case, or after its adoption, in any event it must be completed before remedial activities commence.² Thus, it is not accurate or appropriate to consider compliance with CEQA prior to the full Board's consideration of a final CAO as causing delays in commencing cleanup of the Site.

As the Cleanup Team remarks in its January 27, 2010 response, in late 2009, they conducted an Initial Study under CEQA which "indicates that there is a reasonable possibility of a significant effect on Air Quality and Geology/Soils." As a result of the Initial Study, the Cleanup Team believes an Environmental Impact Report (EIR) must be prepared and they are in the process of retaining a consultant to prepare one in the near term. The Cleanup Team provides a breakdown of components of the CEQA process and associated time frames to support their estimate that it will require a minimum of six months [from the February 22, 2010 discovery cut-off], or at least until August 23, 2010 to "have an appropriate environmental review of the Project completed and ready to present to the Regional Board for its consideration." (Cleanup Team Response, January 27, 2010, p. 2.) The Cleanup Team and others support a discovery period that is concurrent with the CEQA evaluation process, extended until August 23, 2010.

Based on all reasonable estimates, the environmental review cannot be completed in less than 6-7 months from the retention of a qualified consultant, or approximately the August 23, 2010 date proposed by the mediator and supported by many parties. Because of the time necessary to complete the CEQA process, which is a prerequisite to final approval of a CAO in this case, I am willing to allow the parties more time to resolve any outstanding issues relative to the matters covered in the tentative CAO, to work on allocation issues which are outside of the scope of the tentative CAO, and to complete all discovery. Orderly discovery shall proceed during the parallel CEQA process, but shall be completed no later than **August 23, 2010**.

To facilitate an orderly and efficient discovery process, I request the designated parties stipulate to a discovery plan and submit the plan for my review and acceptance. The discovery plan should account for all anticipated discovery on the tentative CAO,

² It is important to note that while it may have been legally possible from a CEQA standpoint for the Regional Board to have adopted the earlier tentative CAO (R9-2005-0126) without considering an environmental document such as an EIR, CEQA compliance and associated environmental review would have been necessary prior to the responsible parties actually undertaking cleanup activities.

whether relative to cleanup levels or liability (determination of responsible parties, not allocation of that responsibility) and any necessary discovery on CEQA-related issues. Parties unwilling or unable to reach a joint stipulation shall submit a separate plan. The Environmental Parties should consider joining other designated parties in a stipulation, but are also free to renew their discovery proposal or submit a different proposal altogether. All proposed discovery plans shall be submitted not later than 5 p.m. on **February 11, 2010** for my consideration. I will issue an order approving a discovery plan thereafter. The parties are on notice that an order approving a discovery plan will designate Mr. Gallagher as referee of discovery disputes. Unresolved disputes may be brought to the Presiding Officer for Prehearing Proceedings. I expect the parties to promptly withdraw or suspend their pending discovery requests, including requests for issuance of deposition subpoenas, and in any event I will not issue the deposition subpoenas submitted by NASSCO and joined by BAE Systems, until after I issue an order approving a discovery plan.

Through notices from the mediator, the parties have given public notice that they continue to work on the allocation of responsibility. The Presiding Officer has repeatedly advised the parties that allocation, as distinct from "liability" (determining those responsible for the investigation and cleanup as "responsible parties") need not be resolved prior to the Board's consideration of the CAO for adoption, but recognizes that the closer the responsible parties are to a separate agreement on allocation, the more likely they will support the tentative CAO. The parties may conduct whatever discovery they wish to complete regarding the allocation of responsibility during the discovery period (or the responsible parties are free to employ a blindfolded chef to slice up a pie). The parties are warned that future delays to address allocation issues alone will not be sanctioned.

Finally, the October 27, 2009 Order also established a March 22, 2010 deadline for comments to the revised tentative CAO and revised tentative Technical Report. While comments may be submitted at any time, I hereby vacate the March 22, 2010 comment deadline and will establish a later deadline after ruling on a discovery plan. Hearing dates for consideration of the revised tentative CAO and revised Technical Report will be established in a future ruling.

EXHIBIT 5



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

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

TO: Designated Parties and Interested Persons

FROM: David King, Presiding Officer for Prehearing Proceedings
Tentative Cleanup and Abatement Order No. R9-2005-0126
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: February 18, 2010

SUBJECT: ORDER ISSUING FINAL DISCOVERY PLAN FOR TENTATIVE
CLEANUP AND ABATEMENT ORDER NO. R9-2010-0002 AND
ASSOCIATED DRAFT TECHNICAL REPORT

In my Order dated January 29, 2010, I extended the discovery period for Tentative Cleanup and Abatement Order No. R9-2010-0002 (TCAO) and the associated Draft Technical Report (DTR) until August 23, 2010, to run parallel with the California Environmental Quality Act (CEQA) process underway for the TCAO and DTR. I requested that the designated parties submit a discovery plan for my review and that any parties unwilling or unable to reach a joint stipulation submit a separate plan. The discovery plan was to account for all anticipated discovery on the tentative CAO, whether relative to cleanup levels or liability (determination of responsible parties, not allocation of that responsibility) and any necessary discovery on CEQA-related issues.

By close of business February 11, 2010, I received a plan submitted by the "mediation parties," which I infer has the support of all designated parties remaining in the mediation except for the City of San Diego, which submitted its own plan. The City of San Diego's plan differs from the "mediation parties" plan only in that it proposes that the scope of discovery on liability issues include successor liability issues. As reflected in the attached Final Discovery Plan, I agree with the City of San Diego that successor liability issues are appropriately included within the scope of discovery for this matter.

San Diego Coastkeeper and Environmental Health Coalition (Environmental Groups) did not submit a new proposal, having submitted a discovery alternative in their January 27, 2010, letter concerning extension of the schedule. The San Diego Unified Port District (Port District) notified the San Diego Water Board and all designated parties that like the Environmental Groups, it has withdrawn from the mediation. It has not agreed to the "mediation parties" proposed discovery plan but reserves its right to conduct appropriate discovery.

Having reviewed the designated parties' submittals, this Order approves the attached plan as the Final Discovery Plan (Plan) for the above proceedings. The Plan largely approves the mediation parties' plan, with inclusion of successor liability within the scope of discovery as proposed by the City of San Diego and with other discrete changes. The Plan governs discovery to be conducted by all designated parties to the proceeding, whether or not they continue to be participants in the mediation.

The Port District is incorrect when it states that I previously determined that no discovery is appropriate on allocation. To the contrary, the designated parties are free to conduct concurrent discovery on allocation issues and to agree to procedures governing that discovery process. This Plan, however, applies only to discovery on cleanup levels and liability (determination of responsible parties and successor liability issues). Determination of the allocation of responsibility among the responsible parties is not necessary prior to the consideration of the TCAO for adoption by the full Board.

The Plan clarifies that the San Diego Water Board has designated the Cleanup Team as a party to this proceeding and that the Cleanup Team has responsibility for responding to discovery directed to the San Diego Water Board or the Cleanup Team unless it is unqualified or ineligible to respond. Discovery that seeks to inquire into the thought processes of the San Diego Water Board's decision-makers or their advisors with regard to this pending proceeding is not appropriate. The Plan also explicitly notes the Presiding Officer for Prehearing Proceedings' authority to issue protective orders and to quash subpoenas in appropriate cases. Finally, the Plan specifies that all designated party witnesses, whether expert or non-expert, must be disclosed by June 22, 2010.

As previously indicated, a hearing schedule and comment deadline for the TCAO and DTR will be established in a future communication.

Attachment

SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2010-0002 AND
DRAFT TECHNICAL REPORT
FINAL DISCOVERY PLAN FOR CLEANUP LEVELS AND LIABILITY ISSUES

I. TYPES OF PERMISSIBLE DISCOVERY

Procedures for written discovery and expert witness disclosures shall generally be governed by applicable Code of Civil Procedure (“CCP”) sections, as modified herein and subject to the Discovery Schedule set forth in Section III.I., *infra*. See CCP §§ 2030.010 *et seq.* (Interrogatories); 2031.010 *et seq.* (Inspection and Production of Documents); 2033.010 *et seq.* (Requests for Admission); 2034.010 *et seq.* (Expert Witness Information).

Depositions and subpoenas duces tecum to be governed by Chapter 4.5, Article 11 (Subpoenas), of the California Administrative Procedures Act, which authorizes the use of subpoenas and subpoenas duces tecum (for production of documents) in administrative adjudications. Gov. Code § 11450.10(a).

A. Form Interrogatories

1. 30 days to respond, unless the Presiding Officer (or designated Discovery Referee) lengthens or shortens time for response, or parties agree in writing to extend time. CCP § 2030.260 – 2030.270.

B. Special Interrogatories

1. 30 days to respond, unless the Presiding Officer (or designated Discovery Referee) lengthens or shortens time for response, or parties agree in writing to extend time. CCP § 2030.260 – 2030.270.
2. The number of interrogatories is not limited at this time:
 - a. CCP limits parties to 35 special interrogatories, unless a greater number of interrogatories is warranted because of: (1) the complexity or quantity of the existing and potential issues in the case; (2) the financial burden of conducting the discovery entailed by oral deposition; (3) expedience to provide responding party time to conduct investigation. CCP § 2030.30 – 2030.50.
 - b. Such circumstances under (1) and (3) above exist in the present case.

C. Requests For Document Production

1. Requests for documents pertaining to the Tentative Cleanup and Abatement Order (“CAO”), Draft Technical Report (“DTR”), and these proceedings (including relevant e-mails and other electronic data from Regional Board staff that have been involved in the sediment investigation or the development of the Tentative CAO and DTR).
2. Includes electronically-stored information.
3. 30 days to respond, unless the Presiding Officer (or designated Discovery Referee) lengthens or shortens time for response, or parties agree in writing to extend time. CCP § 2031.260 – 2031.270.

D. Requests For Admission

1. 30 days to respond, unless the Presiding Officer (or designated Discovery Referee) lengthens or shortens time for response, or parties agree in writing to extend time. CCP § 2033.250 – 2033.260.
2. Requests for Admission should not be limited:
 - a. CCP limits parties to 35 RFAs that do not relate to the genuineness of documents, unless the greater number is warranted by the complexity or quantity of existing and potential issues in the case. CCP § 2033.030 – 2033.050.
 - b. The complexity and quantity of issues in this case warrant exceeding 35 RFAs.

E. Depositions and Subpoenas Duces Tecum

1. Deposition subpoenas to be issued by Presiding Officer or designated Discovery Referee for witnesses who submit evidence in the proceedings or have knowledge of the proceedings. This should include non-designated parties that present more than “policy” statements. Cal. Code Regs. tit. 23, § 648.1(d). Deposition notices shall be sufficient for designated party witnesses. Subpoenas must be issued for non-designated party witnesses, including experts, former employees, third parties, etc.
2. Right to depositions includes right to take “person most knowledgeable” depositions.
3. Deposition subpoenas for non-designated party witnesses shall be issued by the Presiding Officer or designated Discovery Referee

and, if denied, reasons for denial shall be provided in writing to the requesting party.

4. Deposition notices and subpoenas are subject to motions for protective order, including motions to quash, and the Presiding Officer may quash deposition notices or subpoenas on motion by a party or on Presiding Officer's own motion to protect witnesses from unreasonable or oppressive demands. (Gov. Code § 11450.30.) .

F. Other

1. August 23, 2010 is the last day to complete discovery; hearing date to be scheduled by the Presiding Officer at least 30 days following discovery cutoff.
2. Timing and process for discovery motions shall be established as needed by the Presiding Officer (or designated Discovery Referee) at the request of any designated party.

II. PRESERVATION OF PROCEDURAL AND DUE PROCESS RIGHTS

A. General Principles Underlying the Discovery Plan

1. The Designated Parties are entitled to the procedural and due process safeguards provided in Title 23 of the California Code of Regulations ("CCR"), Division 3, Chapter 1.5, Sections 648, *et seq.*, in Chapter 4.5 of the California Administrative Procedure Act ("APA") (Cal. Gov't Code § 11400, *et seq.*), in Section 11513 of Chapter 5 of the APA (Cal. Gov't Code § 11513), and in the State and federal constitutions.
2. The Regional Board Cleanup Team is designated by the Regional Board as a party for purposes of this proceeding, and the procedural requirements of the Discovery Plan apply to it as well. Cal. Govt. Code § 11405.60 (defining a "party" to include "the agency that is taking action"). The Cleanup Team is responsible for responding to all discovery directed to the Cleanup Team and/or the Regional Board except for matters for which the Cleanup Team is ineligible or unqualified to respond.

B. Certain Key Rights Must Be Preserved

1. Retention of right to depose authors of any scientific or expert reports submitted into the record. Public comment in the form of policy statements can be accepted as long as public comment is open, but submission of expert evidence must adhere to discovery schedule to preserve all parties' procedural and due process rights.
2. Retention of right to cross-examine anyone who is permitted to

submit comments containing evidence beyond policy-statements.
Parties shall retain the right to cross-examine anyone who is permitted to submit comments containing evidence beyond policy-statements.

C. Discovery Referee

1. Presiding Officer appoints Timothy Gallagher as designated Discovery Referee.
2. Decisions by the Discovery Referee may be appealed to the Presiding Officer.

III. DISCOVERY PLAN

- A.** Discovery on liability issues are strictly limited to the naming of PRPs as dischargers and successor liability (liability) issues. Discovery regarding cleanup levels shall include any issues upon which the Cleanup and Abatement Order and Draft Technical Report are based. Discovery on allocation of responsibility issues is not prohibited nor is it governed by this Discovery Plan. Designated parties are free to agree to procedures to govern discovery on allocation of responsibility issues.
- B.** Parties may propound written discovery related to liability and cleanup levels issues no sooner than ten (10) days after the Presiding Officer approves a discovery plan, or March 8, 2010, whichever is later.
- C.** Parties will have thirty (30) days to respond to written discovery requests.
- D.** Parties may commence depositions forty-five (45) days after written discovery has commenced.
- E.** Expert and non-expert witness designations by all designated parties are due no later than 5 p.m. on June 22, 2010.
- F.** Expert counter-designations are due within fifteen (15) days after expert designations are exchanged.
- G.** Discovery shall be concluded no later than 5 p.m. on August 23, 2010.
- H.** Service shall be by electronic mail and deemed served the next business day.
- I.** Schedule

Timeframe	Event
February 11, 2010	All proposed discovery plans submitted to the Presiding Officer
February 18, 2010	Presiding Officer approves final discovery plan
March 8, 2010	First day for parties to propound written discovery requests on cleanup levels and liability
April 22, 2010	Commencement of deposition period on cleanup levels and liability
June 22, 2010	Deadline for expert and non-expert witness designations due for cleanup levels and liability issues
July 7, 2010	Expert counter-designations due for experts' opinion on cleanup levels and liability
August 23, 2010	Last day to take discovery on cleanup and liability issues

EXHIBIT 6



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January 25, 2010

David A. King
Presiding Officer and Vice-Chairman
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

**Re: Shipyard Sediment Site Cleanup Project and Tentative Cleanup and Abatement
Order No. R9-2010-0002**

Dear Presiding Officer King:

We understand that any subpoenas or subpoenas duces tecum must be issued by the Presiding Officer pursuant to the terms of the Second Amended Order of Proceedings. BAE Systems respectfully joins in the request of NASSCO that you issue deposition subpoenas and subpoenas duces tecum for the following individuals and persons most knowledgeable on subject matter areas related to the Tentative Cleanup and Abatement Order No. R9-2010-0002 ("Tentative Order"):

1. Cynthia Gorman-Test, Regional Water Quality Control Board, San Diego Region
2. Peter Peuron, Regional Water Quality Control Board, San Diego Region
3. Jimmy Smith, Regional Water Quality Control Board, San Diego Region
4. John Robertus, Regional Water Quality Control Board, San Diego Region
5. David Gibson, Regional Water Quality Control Board, San Diego Region
6. Julie Chan, Regional Water Quality Control Board, San Diego Region
7. Alan Monji, Regional Water Quality Control Board, San Diego Region
8. Benjamin Tobler, Regional Water Quality Control Board, San Diego Region
9. Laurie Walsh, Regional Water Quality Control Board, San Diego Region
10. Chris Beegan, State Water Resources Control Board
11. Stephen Weisberg, Southern California Coastal Water Research Project
12. Joy Williams, Environmental Health Coalition
13. Sonia Rodriguez, Environmental Health Coalition
14. Laura Hunter, Environmental Health Coalition
15. Robert Brodberg, Office of Environmental Health Hazard Assessment
16. Todd Thornburg, Anchor QEA
17. Donald MacDonald, MacDonald Environmental Sciences Ltd.
18. Person Most Knowledgeable, Regional Water Quality Control Board, San Diego Region
19. David Barker, Regional Water Quality Control Board, San Diego Region
20. Craig Carlisle, Regional Water Quality Control Board, San Diego Region
21. Tom Alo, Regional Water Quality Control Board, San Diego Region



David A. King
January 25, 2010
Page Two

BAE Systems intends to participate in each of these depositions as noticed and has requested copies of the documents identified the subpoenas duces tecum for each deponent. BAE Systems will work with NASSCO and the parties to accommodate any modifications to the proposed schedule if needed.

Our ability to depose the witnesses is dependent on receiving responses to BAE System's pending discovery requests, served today. Therefore, if discovery requests remain unanswered at the scheduled time of deposition, BAE Systems will work to further adjust the deposition schedule, including scheduling supplemental depositions, to meet the February 22, 2010 completion date mandated in the October 27, 2009 Order.

Sincerely,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Mike Tracy', written over a light blue horizontal line.

Mike Tracy
Partner

Admitted to practice in California
Enclosure

WEST\21869487.2

EXHIBIT 7

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

In the matter of Tentative Cleanup
and Abatement Order No. R9-2010-
0002 (Shipyard Sediment Cleanup)

San Diego Water Board Cleanup
Team's (1) Notice Of Motion And
Motion To Extend Certain Discovery
Deadlines From The Presiding
Officer's February 18, 2010, Order
Issuing Final Discovery Plan For
Tentative Cleanup And Abatement
Order No. R9-2005-0002 And
Associated Draft Technical Report;
Or (2) In The Alternative, Regional
Board Cleanup Team's Notice Of
Appeal Of The Presiding Officer's
February 18, 2010 Order To The
Regional Board; And (3) Regional
Board Cleanup Team's
Memorandum Of Points And
Authorities In Support Thereof

**NOTICE OF MOTION AND MOTION TO EXTEND DISCOVERY
DEADLINES**

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN;

PLEASE TAKE NOTICE that on June 16, 2010, or as soon thereafter as
the matter may be heard, Designated Party in the above-captioned matter
the Cleanup Team for the California Regional Water Quality Control Board,
San Diego Region ("Cleanup Team") will, and hereby does, move for a
120-day extension of: (1) the June 22, 2010 deadline for expert and non-
expert witness designations on cleanup levels and liability issues; (2) the

July 7, 2010 deadline for expert counter-designations for experts' opinions on cleanup levels and liability issues; and (3) the August 23, 2010 discovery cut off on cleanup and liability issues set forth in Presiding Officer for Prehearing Proceedings Mr. David King's February 18, 2010 Order Issuing Final Discovery Plan For Tentative Cleanup And Abatement Order No. R9-2010-0002 And Associated Draft Technical Report (the "Order"). The Cleanup Team's Motion is based on the Presiding Officer's statutory authority to regulate the course of this proceeding under Government Code section 11445.40 and all applicable law. Because good cause exists, because no designated party will be prejudiced and because the public interest will be served, the Motion should be granted. The Motion is supported by this Notice, the attached Memorandum of Points and Authorities, the Declaration of David T. Barker, submitted concurrently herewith, and any other matter the Presiding Officer may deem just and proper.

IN THE ALTERNATIVE – NOTICE OF APPEAL

PLEASE TAKE FURTHER NOTICE that in the event the Presiding Officer determines not to grant the Cleanup Team's Motion, the Cleanup Team will, and hereby does, appeal the Order to the San Diego Water Board. The Cleanup Team's appeal seeks a 120-day extension of: (1) the June 22, 2010 deadline for expert and non-expert witness designations on cleanup levels and liability issues; (2) the July 7, 2010 deadline for expert counter-designations for experts' opinions on cleanup levels and liability issues; and (3) the August 23, 2010 discovery cut off on cleanup and liability issues. It is beyond dispute that the Presiding Officer acts in this matter on behalf of the San Diego Water Board, and that his decisions are subject to its

discretionary review. (See egs. 9/26/05 Notice of Pre-Hearing Conference, p. 1 [the presiding officer will “conduct the prehearing conference on behalf of the Board.”]; 5/2/08 Second Amended Order of Proceedings, p. 1 [“Rulings by the Presiding Officer contained in Paragraphs 1 and 2 and 4 through 13 of this Order are final, subject to clarifications as necessary by the Presiding Officer and otherwise subject only to discretionary review by the Regional Board.”].)

In the event the Presiding Officer determines not to grant the Cleanup Team’s Motion for Reconsideration, the Cleanup Team hereby respectfully requests the San Diego Water Board to grant its request for an appeal, and hear the matter of whether the above-recited discovery deadlines should be extended for 120 days.

Dated: June 16, 2010

Respectfully submitted,

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN
DIEGO REGION CLEANUP TEAM

By: /s/

Christian Carrigan

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR 120-DAY EXTENSION OF CERTAIN DISCOVERY DEADLINES

Under California's Administrative Procedure Act (Gov. Code, § 11370 et seq.), the presiding officer in an informal adjudicative hearing "shall regulate the course of the proceeding." (Gov. Code, § 11445.40.) Indeed, the Presiding Officer in this matter has done so on numerous occasions, including when he issued the Order setting forth the discovery deadlines that are the subject of the instant Motion. Because there is good cause to extend the discovery deadlines, because no designated party will be prejudiced by extending the discovery deadlines and because the public interest will be served by extending the discovery deadlines, the Presiding Officer should exercise his authority to regulate the course of this proceeding by granting the Cleanup Team's Motion.

GOOD CAUSE EXISTS TO GRANT THE MOTION

Although a showing of good cause is not required for the Presiding Officer to grant the Cleanup Team's Motion, good cause exists because granting the Motion will result in a more scientifically-robust Draft Technical Report ("DTR") and is likely to streamline the hearing on the merits of this matter. Since the DTR was first released for public comment on December 22, 2009, the Cleanup Team and the Designated Parties who continue to participate in the mediation (the "Remaining Mediation Parties")¹ have diligently worked to refine the technical analysis that supports the directives

¹ The Unified Port of San Diego, San Diego Coastkeeper and Environmental Health Coalition are Designated Parties that have withdrawn from the mediation. The Remaining Mediation Parties include the Cleanup Team, the City of San Diego, NASSCO, BAE, SDG&E, the United States Navy and Marine Construction & Design.

in Tentative Cleanup and Abatement Order No. R9-2010-0002 (the “CAO”). (6/15/10 Declaration of David T. Barker in Support of Cleanup Team’s Motion to Extend Certain Discovery Deadlines; “Barker Decl.”, ¶ 2.) The additional technical analyses developed by the Remaining Mediation Parties also bolsters the evidentiary support for important proposed findings in the CAO concerning the protection of relevant beneficial uses. (*Id.*) As a result of the Remaining Mediation Parties’ development of additional and more robust technical analyses, the Cleanup Team intends to release for public comment a substantially augmented DTR and CAO by August 27, 2010. (*Id.*) The augmented documents will also contain additional data to support the technical analyses. (*Id.*)

Moreover, upon the August 27, 2010, release of the augmented DTR and Tentative CAO, the Cleanup Team expects that the Remaining Mediation Parties will have considerably narrowed the issues in dispute among them. (Barker Decl., ¶ 3.) The Cleanup Team expects the Remaining Mediation Parties to agree to fund the proposed cleanup while they resolve the issues of liability and allocation between them in their pending federal litigation. (*Id.*) This agreement will obviate the need for the Remaining Mediation Parties other than the Cleanup Team to designate experts or non-expert witnesses to testify at the hearing on the merits of the CAO, or, at a minimum, considerably narrow the number of experts or non-expert witnesses who need to be designated. Narrowing the issues in dispute and reducing the number of witnesses who will be designated to testify at the hearing on the merits will result in a streamlined and more orderly hearing before the San Diego Water Board. Because extending the discovery deadlines will produce a more scientifically-sound DTR and narrow the

disputed issues to be adjudicated at the hearing on the merits of the CAO, good cause exists to grant the Cleanup Team's Motion.

**NO DESIGNATED PARTIES WILL BE MATERIALLY PREJUDICED BY
THE 120-DAY EXTENSIONS**

First, as of June 16, 2010, no Designated Parties, including the Remaining Mediation Parties, the Unified Port of San Diego, Coastkeeper and Environmental Health Coalition, have propounded written discovery or noticed any depositions in this proceeding. (Barker Decl., ¶ 4.) In the event any of the Designated Parties intend to take discovery, granting the Motion and extending discovery deadlines would appear to benefit them, but certainly does not prejudice them with respect to preparing for and/or participating in the hearing on the merits of the CAO. In any event, extending the discovery deadlines preserves all the Designated Parties' discovery rights under the Order.

Second, California Environmental Quality Act ("CEQA") compliance must control the time when a public hearing on the merits of the CAO can take place (See *Fort Mojave Indian Tribe v. California Department of Health Services*, (1995) 38 Cal.App.4th 1574, 1601), and the best information the Cleanup Team has regarding when a Final EIR can be completed and ready for the San Diego Water Board's certification is that this will take approximately 40 weeks. (Barker Decl., ¶ 5.) Indeed, the Presiding Officer has not set a hearing date or a deadline for public comments on the CAO and DTR (Order, p. 2), and extending the discovery deadlines is unlikely, in any event, to delay the public hearing on the merits in light of the need to

prepare an EIR for this project. Accordingly, no Designated Party will be materially prejudiced if the Motion is granted.

**THE PUBLIC INTEREST WILL BE SERVED BY GRANTING THE
CLEANUP TEAM'S MOTION**

The Cleanup Team expects the revised DTR and CAO to be released for public comment on August 27, 2010, will be a more scientifically-robust document, contain additional analyses to support the CAO's directives and contain additional analyses to support findings that the proposed cleanup will not unreasonably affect present or anticipated future beneficial uses in San Diego Bay. The Cleanup Team believes the augmented CAO and DTR will provide a more transparent "roadmap" for the public and the San Diego Water Board to follow when navigating from evidence to findings to ultimate conclusions about the effectiveness of the cleanup proposal.

(Barker Decl., ¶ 2.) Extending the discovery deadlines until a reasonable time after the augmented DTR and CAO are released will be in the public interest because it will allow the Designated Parties who have withdrawn from the mediation time to assess the new analyses and additional data and determine whether they want to engage in discovery under the Order now that the documents have been augmented.

For these reasons, the Cleanup Team respectfully requests the Presiding

Officer grant its Motion to extend certain discovery deadlines.

Dated: June 16, 2010

Respectfully Submitted

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN
DIEGO REGION CLEANUP TEAM

By: */s/*

Christian Carrigan

EXHIBIT 8



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Mediation Privileged

June 24, 2010

OUR FILE NO. 367420-3

David A. King, Esq.
Presiding Officer and Chairman
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Ste 100
San Diego CA 92123

**Re: *Shipyard Sediment Site Cleanup Project and Tentative Cleanup
and Abatement Order No. R9-2010-0002***
Response to June 17th Inquiries

Dear Mr. King:

In your June 17, 2010 letter, you request the Designated Parties (the "Parties") address two issues. First, you ask the Parties to address the appropriate period of time the February 18, 2010 Final Discovery Plan (the "Plan") should be extended. Second, you ask the Parties to comment upon the Cleanup Team's stated expectation that the Mediation Parties will agree to fund the proposed cleanup while they resolve liability and allocation issues among them. On behalf of the Parties listed below as signatories to this letter, the Parties respond to your inquiries as follows:

Final Discovery Plan Comments

The Parties agree with the Cleanup Team that the discovery deadlines in the Plan should be extended, and that such an extension would not prejudice any party to these proceedings. But the Parties believe that the revised discovery deadlines should be based on defined benchmarks in the California Environmental Quality Act ("CEQA") process for the final Cleanup and Abatement Order ("CAO"), rather than a fixed period of 120 days. Tying discovery deadlines to the CEQA process is logical because the "project" will be better defined and explained through the CEQA process and in the resulting Environmental Impact Report ("EIR"). The Parties will not know whether or to what extent they are agreeable to the final CAO (and therefore, can waive discovery) until after the CEQA process has been completed, including the submission of public comments and responses by the Regional Board and an analysis of proposed mitigation measures. It therefore makes sense for the discovery period to coincide with the CEQA process, so that the parties may take any discovery they believe is necessary as a result of the CEQA process, or waive discovery entirely. Doing so would also reduce the likelihood that further discovery extensions would be sought from the Presiding Officer as the CEQA process plays out, and avoid a scenario where parties may be forced to propound protective discovery, which ultimately proves to be unnecessary, as a result of uncertainty caused by the pending CEQA process.



David A. King, Esq.
June 24, 2010
Page Two

Providing for the discovery to coincide with the CEQA process would not delay the Regional Board's review and approval of a CAO or the implementation of site remediation. As noted by the Cleanup Team, the Regional Board will not be able to consider adoption of a CAO until after the CEQA process has been completed, and the CEQA process "will control the time when a public hearing on the merits of the CAO can take place" Motion to Extend Discovery Deadlines at p. 6, (*citing Fort Mojave Indian Tribe v. Cal. Dept. of Health Svcs.*, 38 Cal. App. 4th 1574, 1601 (1995)). Further, the Cleanup Team has indicated that an EIR will not be ready for certification by the Regional Board for at least 280 days, or approximately April 2011, so there is no need for discovery to be completed by August 23, 2010 (the original date in the February 18, 2010), or within 120 days thereof.

Accordingly, the Parties request that the remaining discovery deadlines be set to match the following CEQA process benchmarks:

Discovery Deadline	CEQA Process Benchmark
Expert and non-expert witness designations on cleanup levels and liability issues due at 5 p.m.	Close of public comment on the Draft EIR
Expert counter-designations due at 5 p.m.	15 days after close of public comment on the Draft EIR
Close of discovery at 5 p.m.	30 days prior to public hearing to certify the EIR, and adopt the CAO and DTR

In the alternative, should the Presiding Officer disagree with this approach, the Parties request that the discovery deadlines be extended by at least 280 days, to allow more time to complete the CEQA process, and so that the close of discovery would not occur in the midst of year-end holidays, as it would if a 120-day extension were granted (which would lead to a close of discovery on December 21, 2010). None of the CEQA consultants interviewed anticipated the CEQA process taking less than 280 days to conclude.

Commitment to Fund the Remediation

As you know, the Parties collectively have spent thousands of hours collecting and analyzing data that ultimately will be contained in the final CAO and corresponding Draft Technical Report ("DTR"). While the initial CAO and DTR were issued in December 2009, considerable supplemental effort has been required to assist the Cleanup Team in preparing documents that can meet the rigors and scrutiny of public review.



David A. King, Esq.
June 24, 2010
Page Three

At the request of the Cleanup Team, the Parties began several months ago to search for qualified and experienced CEQA consultants to perform and evaluate remedial alternatives and biological impacts in an EIR. The process of identifying and interviewing experienced non-conflicted consultants took months to accomplish, as the Parties cast a wide conflict shadow that was difficult to overcome. The Cleanup Team has, however, informed the Parties that later this week, CEQA consultants likely will be chosen. The Parties have already committed to fund the CEQA process, and also are covering the oversight costs of Regional Board staff in connection with the site cleanup.

As all who have participated in a CEQA review know, it takes a substantial amount of time to prepare and shepherd to conclusion an EIR. The CEQA consultants interviewed by the Cleanup Team and the Parties estimate that it will take at least 40 weeks to obtain final approval of the EIR. Remediation of the NASSCO and BAE shipyards could commence shortly thereafter, subject to completion of the necessary permitting processes.

The Parties as well as two other entities, including the San Diego Unified Port District, are now focusing on the federal lawsuit filed in October 2009. The Parties are beginning discovery in the federal lawsuit and have committed to completing discovery and the mediation process with mediator Tim Gallagher, Esq. at or about when the CEQA process is expected to conclude.

A number of the Parties, including the United States Navy and the City of San Diego, given statutory and other requirements, are unable to commit at present to an allocation of responsibility for remediation costs. The Navy and City's allocation dilemma leads to a domino effect on the other Parties, causing an allocation agreement to be presently unobtainable, and it is not feasible or realistic to expect only some of the Parties to fully fund the remediation before an allocation agreement is reached.

Specifically, with regard to the Navy, the Assistant United States Attorney representing the Department of the Navy in this matter cannot "agree to fund the proposed cleanup" or otherwise make a binding commitment to admit liability for a portion of the cost of the cleanup as mentioned by the Presiding Officer in his June 17, 2010 Order. As an initial matter, the ability of any federal officer to commit the expenditure of funds is strictly limited. The Antideficiency Act prohibits "[m]aking or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law" as well as "[i]nvolving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law." 31 U.S.C. § 1341(a)(1)(A),(B). An officer or employee who violates the Antideficiency Act "shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office." 31 U.S.C. §§ 1349(a), 1518. In addition, an officer or employee who "knowingly and willfully" violates any of the three provisions cited above "shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both." 31 U.S.C. §§ 1350, 1519.



David A. King, Esq.
June 24, 2010
Page Four

The question of whether the Navy is responsible for a proportionate share of the cleanup cost is pending in the district court litigation. City of San Diego v. National Steel and Shipbuilding Company et al., 09CV2275. Within the context of that litigation and the mediation which has been under way for several months, the Navy anticipates that an allocation will be made and it is likely that the Navy will agree to a settlement of its responsibility by agreeing to contribute to the cost of the proposed cleanup. However, there are significant limitations on the authority of counsel to enter into a compromise settlement.

Attorneys for the United States cannot legally make any commitments to expend federal funds in the settlement of litigation without obtaining the approval of appropriate officials within the Department of Justice and the concurrence of the appropriate officials within the client agency. Control of litigation on behalf of the United States, including settlement authority, is vested in the Attorney General of the United States. In actions against the Department of the Navy, the Secretary of the Navy has authority to concur in or consent to settlement on behalf of that agency. The Attorney General has delegated settlement authority to other officials within the Department of Justice, including United States Attorneys. See 28 C.F.R. §§ 0.160 et seq. However, for amounts in excess of \$2,000,000.00, the approval of the Deputy Attorney General or Associate Attorney General (the two most senior officials below the Attorney General) must be obtained.

Counsel for the United States expects that any allocated share of the cost of the proposed cleanup will very likely require approval by the Deputy Attorney General or Associate Attorney General. The process of obtaining such approval involves several levels of review within the Department and will require extensive analysis and briefing based upon a full investigation of the claims and defenses raised in the litigation. Concurrence from the highest levels in the Department of the Navy will also be required. Due to these circumstances, counsel cannot commit the United States to an agreement to fund even a portion of the proposed cleanup at this time.

As to the City, it cannot commit to agree to fund a proposed cleanup at this time. First, prior to entering into any such agreement, the City must follow very strict municipal law procedures, beginning with City Council approval. It is not expected that City Council approval to fund the proposed cleanup can be obtained for an Order that is not yet final. Second, the City believes that there are multiple factual subject areas directly impacting the City's liability for which the City needs to conduct discovery in the federal action.

As seen from the Navy and City examples, several of the Parties indicate that limited discovery will greatly assist them in gathering the data and information required to determine allocation issues. After gathering the required information, the Navy, City and the other parties will be in much more knowledgeable positions than presently exists enabling them to fully evaluate their respective allocation positions. Moreover, it is clear that discovery involving the Port, who has



David A. King, Esq.
June 24, 2010
Page Five

not been participating in the mediation for months, also will be needed before an allocation can be reached that includes all responsible parties.

While the Parties cannot now commit to fund the proposed cleanup until they resolve liability and allocation issues for the reasons cited above, the Parties are committed to reaching an agreed upon allocation by the time the CEQA process is concluded and the Regional Board has approved the CAO. Furthermore, the Parties anticipate that funding should be available at that time so that the remediation can commence shortly after the Regional Board approves the final CAO.

We trust that our letter fully addresses the issues you raise. If, however, you feel you require additional information from the undersigned, please let us know and we will endeavor to provide you with what you need.

Respectfully submitted,

**BAE SYSTEMS SAN DIEGO SHIP
REPAIR INC.**


By: Michael S. Tracy, Esq.

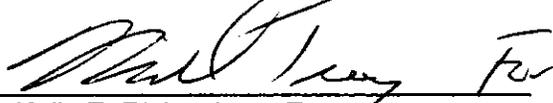
CAMPBELL INDUSTRIES


By: James V. Handmacher, Esq.

CITY OF SAN DIEGO


By: Brian M. Ledger, Esq.

GENERAL DYNAMICS NASSCO


By: Kelly E. Richardson, Esq.

SAN DIEGO GAS & ELECTRIC


By: Jill A. Tracy, Esq.

U.S. NAVY


By: Thomas Stahl, Esq.,
Assistant U.S. Attorney



David A. King, Esq.
June 24, 2010
Page Six

cc: Timothy Gallagher
Christian M. Carrigan, Esq.
All Parties

EXHIBIT 9



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

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

Via E-Mail Only

TO: David King, Presiding Officer for Prehearing Proceedings
Tentative Cleanup and Abatement Order No. R9-2010-0002
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

FROM: David T. Barker, Supervising WRC Engineer
Shipyard Sediment Site Cleanup Team
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: June 24, 2010

**SUBJECT: RESPONSE TO PRESIDING OFFICER KING'S JUNE 17 ORDER
REQUESTING RESPONSES TO MOTION**

This responds, on behalf of the Cleanup Team only, to Presiding Officer David King's June 17, 2010 Order Requesting Responses to Motion of the San Diego Water Board Cleanup Team to Extend by 120 Days the Remaining Deadlines in the Final Discovery Plan For Tentative Cleanup and Abatement Order No. R9-2010-0002 and Associated Draft Technical Report (the "Order").

- A. Cleanup Team's Response to Request Concerning the Cleanup Team's "expectations that the Mediation Parties will agree to fund the proposed cleanup while they resolve liability and allocation issues among them and that the Mediation Parties will have considerably narrowed the issues in dispute among them by the August 27, 2010 anticipated release of a revised tentative CAO and DTR."**

Since the December 22, 2009 release of the Tentative CAO and DTR for this matter, the Designated Parties, other than those that have withdrawn from the mediation, have continued to work with the Cleanup Team to develop detailed additional technical analyses to be included in the revised DTR, and to support the findings and directives in the CAO. The Cleanup Team views much of the detailed additional technical analyses as important bases for, in part, the findings required under State Water Board Resolution No. 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*. Resolution No. 92-49

California Environmental Protection Agency

requires, in part, that the proposed cleanup be consistent with maximum benefit to the people of the state, that it not unreasonably affect present and anticipated beneficial use of waters of the state, and that it not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Water Boards.

Since December 22, 2009, the Designated Parties, other than those that have withdrawn from the mediation, have consistently provided the Cleanup Team with ready access to respective technical consultants and specialists to assist the Cleanup Team with developing the detailed additional technical analyses to be included in the revised DTR. It is the cooperative approach of the Designated Parties that have not withdrawn from the mediation of assisting the Cleanup Team with preparing the often difficult and complex technical analyses we have requested that has narrowed the issues in dispute between us. It is this same cooperative approach that, in part, gives rise to our expectation that the Mediation Parties will agree to continue to fund the tasks necessary to advance the proposed cleanup. Moreover, some of the Designated Parties continue to pay staff oversight costs for all Cleanup Team work done on this matter, and have agreed to pay costs incurred by a CEQA consultant to be retained by the Cleanup Team for the important environmental review that is to be undertaken for the cleanup project. To sum, the Cleanup Team's expectation is grounded in the facts that the Designated Parties that have not withdrawn from the mediation continue to cooperate with the Cleanup Team to provide requested technical assistance to advance the proposed cleanup, and that all current tasks necessary to advance the cleanup are being funded in good faith by some of the Designated Parties.

B. Cleanup Team's Response Describing CEQA-Related Activities Since December 23, 2009.

- On November 24, 2009, the Cleanup Team released its Notice of CEQA Scoping Meeting. Between November 24 and December 22, 2009, while it was drafting the tentative CAO and supplemental DTR, the Cleanup Team also did its initial potential environmental impact screening analysis and drafted its Notice of Availability of and its Initial Study. During this time period, the Cleanup Team also prepared CEQA's mandatory Notice of Preparation to all responsible and trustee agencies.
- On December 22, 2009, the Cleanup Team published its Notice of Availability and Initial Study and began preparing materials for a slide show presentation to be presented at the CEQA Scoping Meeting.

- On January 21, 2010, the Cleanup Team held its CEQA Scoping Meeting at the San Diego Water Board Office. Shortly thereafter, the Cleanup Team began reviewing the public comments submitted and determined it would be appropriate to extend the public comment period.
- On February 3, 2010, the Cleanup Team posted its Notice of Extension of Public Review and Comment Period on the CEQA Initial Study. It also assisted with preparation of the Executive Officer's Report on the CEQA Scoping Meeting. After reviewing and analyzing the issues raised by the Initial Study and the public comments on the Initial Study, the Cleanup Team determined not to undertake environmental review "in house," but, rather, to retain a professional CEQA consultant. Accordingly, in mid-February, the Cleanup Team began its initial consultant screening efforts, and developed a list of eight potential consulting firms with appropriate qualifications from which it would seek proposals. From mid-to-late February, the Cleanup Team developed a proposed scope of services to distribute to the select list of consultants.
- On March 9, 2010, the Cleanup Team distributed its requests for proposals to the list of qualified consultants. On March 22, the public comment period on the Initial Study closed, and the Cleanup Team reviewed the comments submitted. By March 24, the deadline for submission of proposals from CEQA consultants, the Cleanup Team had received responses from four consultants that they would not submit proposals for the CEQA work and no responses from the remaining consultants. Accordingly, the Cleanup Team broadened its search for consultants and engaged in follow up with the non-responsive consultants to try to find out why no proposals were submitted.
- On March 24, 2010, the Cleanup Team distributed its second request for proposals to a broader group of potential CEQA consultants. One consulting firm submitted a proposal by the April 9 deadline. The Cleanup Team immediately coordinated a date for the bidding consultant to meet with the mediation parties to discuss the proposal and respond to questions. The first available mediation date was April 20, 2010.
- On April 20, 2010, the single bidding consultant met with the mediation parties and it was discovered during the interview that one of the key sub-consultants had a potential conflict of interest with one of the Designated Parties that had withdrawn from the mediation. The Cleanup Team immediately contacted the Designated Party, which refused to waive the conflict. While the bidding consultant began its search for a replacement

sub-consultant, an additional consulting firm that was willing to bid on the CEQA work was identified.

- On May 11 and May 13, respectively, the Cleanup Team received proposals from consultants to undertake the CEQA environmental review. On May 17, the Cleanup Team requested that one of the consultants revise its proposal to account for some sub-consultant costs. The following day, Cleanup Team leadership determined to add a new staff person to be the coordinator on CEQA issues and to facilitate the retention of a CEQA consultant.
- On May 24, 2010, the Cleanup Team received complete proposals from two consultants.
- On June 15, 2010, the second bidding consultant made a presentation on its proposal to the mediation parties. On June 22, a key sub-consultant made its presentation to the mediation parties and the Cleanup Team made its decision to retain a specific CEQA consultant.

C. Modified Request to Extend Discovery Deadlines Consistent with CEQA Process.

Since the Cleanup Team made its June 16, 2010 Motion to extend by 120 days the remaining discovery deadlines, it has been pointed out to us that, in light of the contemplated 40-week (at a minimum) CEQA process, it would be more desirable to integrate the remaining discovery deadlines with the CEQA process. The Cleanup Team believes that integrating the remaining discovery deadlines with the CEQA process will provide a longer discovery period, allowing the Designated Parties more time to develop expert reports specific to the soon-to-be released augmented DTR, and to probe the strengths and weaknesses of those reports. Because the CEQA process must determine the timing of the San Diego Water Board's consideration of the tentative CAO and DTR in any event, the Cleanup Team does not believe there is any good reason not to integrate the timing of the remaining discovery deadlines with the CEQA process and hereby requests an Order from the Presiding Officer adopting the following revised discovery deadlines.

Discovery Deadline	CEQA Process Benchmark
Expert and non-expert witness designations on cleanup levels and liability issues due at 5 p.m.	Close of public comment on the Draft EIR
Expert counter-designations due at 5 p.m.	15 days after close of public comment on the Draft EIR
Close of discovery at 5 p.m.	30 days prior to public hearing to certify the EIR, and adopt the CAO and DTR

In the alternative, should the Presiding Officer disagree with this approach, the Cleanup Team requests that the discovery deadlines be extended by at least 280 days, to allow more time to complete the CEQA process and discovery in the CAO proceeding. None of the CEQA consultants interviewed anticipated the CEQA process taking less than 280 days to conclude.

EXHIBIT 10



California Regional Water Quality Control Board

San Diego Region



Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

Date: July 16, 2010

To: Designated Parties and Interested Persons

From: David A. King, Presiding Officer for Prehearing Proceedings
Tentative Cleanup and Abatement Order No. R9-2010-0002
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

Subject: Ruling on Cleanup Team's Motion to Extend Remaining Discovery Deadlines and Related Matters Addressed at Prehearing Conference

On June 16, 2010, the California Regional Water Quality Control Board, San Diego Region, (San Diego Water Board) Cleanup Team's filed a motion to extend the remaining deadlines in the Final Discovery Plan for tentative Cleanup and Abatement Order (CAO) No. R9-2010-0002 (Motion). I requested and received responses to the Motion from the Designated Parties on June 24, 2010. At the July 14, 2010, prehearing conference Designated Parties spoke in support of and in opposition to the Cleanup Team's motion and responded to questions by members of the San Diego Water Board. After considering the Motion, responses to the Motion and the comments of the Designated Parties, and for all the reasons stated at the prehearing conference, I, acting as presiding officer for prehearing proceedings for the above matter, denied the Cleanup Team's Motion. The Cleanup Team's Motion included an alternative request for reconsideration by the full San Diego Water Board as presiding officer. All other board members were present during the prehearing conference, expressed support for the ruling and therefore declined to overrule my decision to deny the Motion. The ruling to deny the Motion stands.

Therefore, in accordance with the Final Discovery Plan adopted February 18, 2010, the discovery period for tentative CAO and the draft Technical Report ends August 23, 2010. As indicated in the June 17, 2010, Request for Responses to the Motion, because the Motion was denied, the Designated Parties have an additional five days from July 14, 2010, to disclose expert and non-expert witnesses under the Final Discovery Schedule. I will timely rule on motions to quash unreasonable or oppressive discovery requests.

At the prehearing conference, I directed the Executive Officer to immediately submit a request to the State Water Resources Control Board for an emergency sole source allocation to authorize the hiring of the identified consultant to complete an

California Environmental Protection Agency

Environmental Impact Report (EIR) for the cleanup project in the event the Designated Parties fail to timely agree to a cost-sharing arrangement to fully compensate the consultant.

Finally, I terminated the mediation to which the matter was formally referred in June 2008. The Designated Parties are welcome to continue mediation or engage in other settlement discussion under their own terms.

DAK:mch:ftm

Attachment: Designated Parties and Interested Persons mailing list

Order No.	R9-2010-0002
CIWQS Place ID	712610
Reg. Measure No.	340860

EXHIBIT 11

California Regional Water Quality Control Board
San Diego Region

SECOND AMENDED
ORDER OF PROCEEDINGS
PRE-HEARING CONFERENCES FOR TENTATIVE CLEANUP AND ABATEMENT
ORDER NO. R9-2005-0126.

Date: May 2, 2008

To: Distribution List (designated parties and interested persons)

The 1st Pre-Hearing Conference was held on Monday, September 26, 2005 at the office of the California Regional Water Quality Control Board, San Diego Region (Regional Board). The 2nd Pre-Hearing Conference was held on December 6, 2005 at the Regional Board office. Regional Board Chairman John Minan, serving as the Presiding Officer, conducted the 1st and 2nd Pre-Hearing Conferences on behalf of the Regional Board. The 3rd Pre-Hearing was held on April 25, 2008 at the Regional Board office. Regional Board Vice Chair David King, serving as the Presiding Officer, conducted the 3rd Pre-Hearing Conference. The Pre-Hearing Conferences were properly noticed and open to and attended by the public. Audio tape recordings of the pre-hearing conference proceedings were made.

Additional pre-hearing conferences may be convened.

The primary goal of the Pre-Hearing Conferences is to ensure that the future hearing(s) for the Tentative Cleanup and Abatement Order No. R9-2005-0126 (CAO) proceed in an orderly manner. At the three Pre-Hearing Conferences, there has been no discussion of the merits of any provisions of the Tentative CAO.

This Second Amended Order of Proceedings reflects the nature of the discussions and agreements that have occurred at the Pre-Hearing Conferences and contains certain procedural decisions by the Presiding Officer. Rulings by the Presiding Officer contained in Paragraphs 1 and 2 and 4 through 13 of this Order are final, subject to clarification as necessary by the Presiding Officer and otherwise subject only to discretionary review by the Regional Board.¹

Attendees at the 1st Pre-Hearing Conference for the recommended and prospective designated parties included the following representatives:

Jim Dragna – Bingham McCutchen LLP (BP West Coast Products)
David Mulliken – Latham and Watkins LLP (NASSCO)

¹ Changes for clarification purposes have been made to Paragraphs 2, 4, 5 and 12 as a result of the 3rd pre-hearing conference.

Kelly Richardson – Latham and Watkins LLP (NASSCO)
Vincent Gonzales – Semptra Energy (SDG&E)
Chris McNevin – Pillsbury, Winthrop, Shaw & Pittman LLP (Chevron USA)
Tim Miller – City of San Diego
Chris Zirkle – City of San Diego
Marco Gonzales – Environmental Health Coalition & San Diego Bay-Keeper
David Merk – Port of San Diego
Jim Mathison – Daley & Heft LLP (San Diego)
Shaun Halvax – BAE Systems
Lloyd Schwartz – BAE Systems
David Silverstein – U.S. Navy
Tom Fetter – San Diego Port Tenants Association
Craig Anderson – Industrial Environmental Association
John Richards – Regional Board Cleanup Team

Attendees at the 2nd Pre-Hearing Conference for the Designated Parties included the following representatives:

David Silverstein – U.S. Navy
Lloyd Schwartz – BAE Systems
Shaun Halvax – BAE Systems
David Mulliken – Latham and Watkins LLP (NASSCO)
Kelly Richardson – Latham and Watkins LLP (NASSCO)
Lance McVey—NASSCO
Mike Chee—NASSCO
Tom Mulder—TN Assoc. (SDG&E)
Barbara Montgomery—SDG&E
Chris Zirkle—City of San Diego
Tim Miller—City of San Diego
Mark Elliot-- Pillsbury, Winthrop, Shaw & Pittman LLP (Chevron USA)
Marco Gonzalez—EHC
Laura Hunter—EHC
Paul Brown—Port of San Diego
Jim Mathison—Daley and Heft LLP (Port of San Diego)
John Richards—Regional Board Cleanup Team

Attendees at the 3rd Pre-Hearing Conference for the Designated Parties included the following representatives:

BAE Systems Ship Repair Inc.
Shaun Halvax
Lloyd Schwartz
Robert Longstreh, DLA Piper LP
Michael Tracy, DLA Piper LP

BP West Coast Products LLC

Michael McDonough, Bingham McCutchen LLP

Chevron USA, Inc.

Amy Gaylord, Pillsbury Winthrop Shaw Pittman LLP

City of San Diego

Ruth Kolb

Kris McFadden

Frederick Ortlieb

Richard Haimann, MWH

Environmental Health Coalition & San Diego Coastkeeper

Marco Gonzalez, Coast Law Group LLP

Gabe Solmer, San Diego Coastkeeper

Marine Construction and Design Company/Campbell Industries, Inc.

No representatives present.

National Steel and Shipbuilding Company

Christopher Barnes

Mike Chee

Scott Koreski

Ashley Coreen, Latham & Watkins LLP

David Mulliken, Latham & Watkins LLP

Kelly Richardson, Latham & Watkins LLP

Regional Board Cleanup Team

David Barker

Craig Carlisle

Lisa Honma

Alan Monji

Ben Tobler

Erik Spiess, State Water Resources Control Board, Office of Enforcement

San Diego Gas & Electric Company

Jill Tracy

Pete Nyquist, Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP

San Diego Port Tenants Association

Richard Cloward

San Diego Unified Port District

Leslie FitzGerald

Bill Brown, Brown & Winters LLP

Sandi Nichols, Allen, Matkins, Leck, Gamble, Mallory & Natsis LLP

U.S. Navy
Nate Cushman
David Silverstein
Len Sinfield

The topics addressed in the Pre-Hearing Conferences and the respective discussions, agreements, and decisions are as follows:

1. Executive Officer's Participation on the Advisory Team.

The Presiding Officer considered motions objecting to participation by John Robertus, the Regional Board Executive Officer, as a member of the Advisory Team for the Regional Board. (See memorandum from John Robertus dated June 30, 2005 that describes the separation of staff into an Advisory Team and a Cleanup Team for this proceeding.)

The Presiding Officer placed Mr. Robertus under oath, permitted the parties to examine Mr. Robertus about his involvement in the development of the tentative CAO, his views regarding the need for cleanup of contaminated sediments, and related matters. Mr. Robertus testified that he would be able to provide advice to the Board in an open, unbiased manner based solely on the record and testimony to be presented. No substantial evidence was presented to warrant disqualifying action.

As a result of Mr. Robertus' testimony and his response to questions, the Presiding Officer has determined that Mr. Robertus has not been personally involved in the investigation, prosecution, or advocacy roles of the staff to any extent that would preclude his involvement as a neutral advisor to the Regional Board. The Presiding Officer has further determined that Mr. Robertus has not developed any biases that would prevent him from providing neutral advice to the Regional Board in this matter.

The Presiding Officer, therefore, has determined that Mr. Robertus may continue to participate on the Advisory Team. The Presiding Officer has determined that Mr. Robertus shall provide all technical, scientific, and policy advice to the Regional Board in public meetings or in correspondence copied to all of the parties.

2. Designation of Parties.

The First Pre-Hearing Conference provided an opportunity for persons seeking designated party status to address the Presiding Officer. The Presiding Officer hereby waives the strict applicability of Government Code Section 11440.50. (See Government Code Section 11440.50(a) and Title 23, California Code of Regulations, Section 648(d).) The Presiding Officer is applying Title 23, California Code of Regulations, Section 648.1.

The Presiding Officer determined that the Regional Board Cleanup Team is a Designated Party.

The Presiding Officer also considered requests from five persons requesting Designated Party status. Persons requesting Designated Party status submitted written requests and were provided the opportunity to address the Presiding Officer. All Designated Parties were provided the opportunity to comment on each request by persons seeking Designated Party status.

The Presiding Officer has determined that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the Bay-Keeper (now named San Diego Coastkeeper), the Environmental Health Coalition, and the San Diego Port Tenants Association to be Designated Parties. These entities are representative advocacy groups with a history of involvement in similar types of issues. The interests of their members that may be affected by this proceeding are, to some extent, different from the interests of the other Designated Parties. Therefore, the benefits to be derived from their participation outweighs the burdens. The San Diego Bay-Keeper (now named San Diego Coastkeeper), the Environmental Health Coalition, and the San Diego Port Tenants Association are hereby granted Designated Party status.

The Industrial Environmental Association and the Port of San Diego Ship Repair Association are denied Designated Party status. These entities' interests are adequately represented by having some of their members participate as Designated Parties. Moreover, their participation as Designated Parties may impede the orderly and prompt conduct of the hearing. To the extent that the San Diego Port Tenants Association desires to continue to collaborate with these entities, they may, of course, continue to do so. Otherwise, the participation of the Industrial Environmental Association and the Port of San Diego Ship Repair Association is limited to that of interested persons. They may present non-evidentiary policy statements, but may not present evidentiary testimony.

The Advisory Team's proposal to designate the San Diego Bay Council as a Designated Party is hereby rejected. The request for this designation was withdrawn by the Coast Law Group on behalf of the San Diego Bay Council in their correspondence of September 20, 2005.

As of April 25, 2008, the Designated Parties for the proceeding are as follows:

1. BAE Systems San Diego Ship Repair, Inc. (formerly Southwest Marine, Inc.)
2. National Steel and Shipbuilding Company (NASSCO)
3. San Diego Gas & Electric Company, a subsidiary of Sempra Energy Company
4. Chevron USA, a subsidiary of Chevron Texaco
5. BP, the parent company of and successor to Atlantic Richfield Co. (ARCO)
6. U.S. Department of the Navy
7. City of San Diego
8. Marine Construction and Design Company / Campbell Industries, Inc.
9. San Diego Unified Port District

10. San Diego Coastkeeper (formerly San Diego Baykeeper)
11. Environmental Health Coalition
12. San Diego Port Tenants Association
13. Regional Board Cleanup Team

3. The Proposed Order of Proceeding

The Presiding Officer proposes the following schedule and process. The schedule and process may be revisited whenever the Presiding Officer deems appropriate. Any Designated Party may request an extension of the schedule or a revision to the process. All such requests shall include specific reasons why the existing schedule and process are insufficient and a specific explanation about how the Designated Party intends to take advantage of the requested additional time or revised process. Any extensions or revisions shall be in the sole discretion of the Presiding Officer.

The following narrative describes the various phases of the schedule and process to be followed. For the convenience of the reader, Appendix A to this Order provides a chronological outline of the phases.

Phase I: The 1st Pre-Hearing Conference was conducted on Sept. 26, 2005. The 2nd Pre-Hearing Conference was conducted on December 6, 2005.

Phase II: The Cleanup Team was directed to distribute to all Designated Parties a Technical Report that supports the proposed issuance of the Tentative CAO. In addition, the Cleanup Team was directed to identify, index, and make available to all Designated Parties all directly relevant technical information related to the Tentative CAO and Technical Report. The Cleanup Team was also directed to investigate the feasibility of converting the technical information into a digitized, electronic format to facilitate the Designated Parties' review, and report back to the Advisory Team on its proposed course of action.

Note: Phase II was completed and Phase III commenced on April 4, 2008. The Cleanup Team distributed hard drives containing an indexed electronic record for the proceeding to each of the Designated Parties and posted a revised Technical Report and Tentative Cleanup and Abatement Order on the Regional Board website on that date. The Cleanup Team is further directed to post redline/strikeout versions of the Technical Report and Tentative Cleanup and Abatement Order showing the revisions from the previous versions. The Cleanup Team is also directed to provide additional details regarding other entities that were consulted, as described in the Cleanup Team's April 22, 2008 memorandum. The Cleanup Team is directed to work with the Advisory Team to produce and distribute to the Designated Parties an acceptable method for searching the electronic record.

Phase III: The 3rd Pre-Hearing Conference was conducted on April 25, 2008.

In the interest of promoting prompt resolution of this proceeding, Phase III shall be bifurcated into two stages: the Cleanup Levels Stage and the Liability Stage. The timing of the two stages will overlap, but the Cleanup Levels Stage will be conducted more expeditiously and will conclude first.

As described in the Notice of Settlement Conference dated April 28, 2008, a Settlement Conference has been scheduled for **May 16, 2008** on the cleanup levels issue. The Designated Parties are required to submit initial briefs and any technical reports addressing the cleanup levels proposed by the Cleanup Team, any other proposed cleanup levels, and directly-related issues by **June 30, 2008**. The Designated Parties are required to submit final briefs by **July 30, 2008**. Limited discovery by the Designated Parties regarding the cleanup levels may be authorized by the Presiding Officer in accordance with Government Code section 11450.05 (et seq.). Any requests for subpoenas or subpoenas duces tecum regarding the appropriate cleanup levels must be filed with the Presiding Officer no later than **July 7, 2008**. The Cleanup Levels Stage will conclude on **July 30, 2008**, at which time the Presiding Officer intends to notice a second settlement conference and/or an adjudicatory hearing before the Regional Board to determine the cleanup levels.

The Liability Stage of Phase III shall address the liability of the potential responsible parties for compliance with the Cleanup and Abatement Order and any other relevant issues not related to the appropriate cleanup levels. The Liability Stage will commence upon the determination by the Presiding Officer that the Cleanup Team has distributed an acceptable method for searching the electronic record. No later than **30 days** after the commencement of the Liability Stage, the Designated Parties shall submit a proposed comprehensive discovery plan. To the extent some or all of the Designated Parties agree on a proposed discovery plan, they shall so indicate. The Presiding Officer will approve the final comprehensive discovery plan. It is anticipated that the Liability Stage of Phase III shall conclude no later than **November 21, 2008**. The Designated Parties shall submit all evidence and comments and a summary list of the disputed material issues of fact and law, and Interested Persons shall submit all comments, by **November 21, 2008**.

Phase IV: The Designated Parties shall then have **30 days** following the close of Phase III to conduct any discovery, including cross-examination of witnesses, and submit any evidence and comments for the purposes of rebutting evidence and comments submitted under Phase III above. Only rebuttal evidence and related comments will be accepted.

Phase V: The Cleanup Team shall have **60 days** to consider all of the evidence and comments submitted under Phases III and IV above, and submit a Response to Comments and any proposed revisions to the Technical Report and/or Tentative CAO. The Cleanup Team should not submit any new evidence in Phase

V. In addition, the Cleanup Team shall also provide a summary of all continuing areas of disagreement.

Phase VI: There will be a minimum 45-day public notice and comment period prior to the hearing before the Regional Board. The Designated Parties may submit hearing briefs and Interested Persons may submit written non-evidentiary comments at the conclusion of this period. No further written materials will be accepted from Designated Parties, excluding the Cleanup Team, or from Interested Persons, except as described in Phases VII and VIII, below. The Cleanup Team may submit a response, which may not contain any new evidence, to these hearing briefs and comments.

Phase VII: The Regional Board will then conduct a hearing with the primary purpose to receive comments from the public and summaries of the previously-submitted evidence and comments by the Designated Parties. Cross-examination may be available to the Designated Parties at the discretion of the Presiding Officer. No new evidence will be admitted at the hearing, subject to the Presiding Officer's discretion. Also, the Presiding officer will not allow the introduction of new or additional evidence following the close of the hearing.

Phase VIII: The Regional Board will subsequently conduct a non-evidentiary meeting to consider whether to adopt, modify, or reject the Cleanup Team's final Tentative CAO. Brief public comments will be allowed on the proposed changes, if any, to the revised Tentative CAO. No new or additional evidence will be admitted at this meeting. However, the Regional Board may direct questions to any of the Designated Parties.

4. **General Requirements for the Submittal of Documents**

The Advisory Team shall be responsible for receiving and maintaining all documents and electronic submissions submitted by Designated Parties and Interested Persons that comprise the administrative record for this proceeding, and shall, to the extent feasible, post them on the San Diego Regional Board website (<http://www.waterboards.ca.gov/sandiego/>).

In order to facilitate the development of the administrative record, all documents submitted by the Designated Parties shall be provided to the Advisory Team in an electronically digitized, text searchable Adobe PDF file format and shall be accompanied by an electronic index entry that follows the format established in Appendix B to this Order. The documents shall also follow the specific format contained in Appendix C to this Order to facilitate the review of submitted comments and the development of responses to comments. In addition, an authorized representative for the Designated Parties shall submit a signed paper copy certification that the electronic submittal is a true and accurate copy of the submitted signed original.

The Designated Parties shall also provide 12 hard copies of all submissions to the Advisory Team and shall simultaneously distribute electronic versions of all submissions to the complete list of Designated Parties.

5. Identity of Additional Responsible Parties

The deadline for the Designated Parties to identify any additional potential responsible parties will be **August 29, 2008**, in order to provide an adequate opportunity for any additional potential responsible parties to participate in this proceeding. All of the Designated Parties (with the exception of the Environmental Health Coalition, the San Diego Coastkeeper, the San Diego Port Tenants Association, and the Cleanup Team) are on notice that they may ultimately be found by the Regional Board to be responsible for compliance with the Cleanup and Abatement Order. There will be no final determination regarding which parties are responsible for compliance prior to the Regional Board's adoption of a final Cleanup and Abatement Order.

6. Removal of Additional Responsible Parties

In order to conserve the resources of the Regional Board and the remaining Designated Parties, there will not be a separate summary process for Designated Parties to request to be removed from further consideration as a potential responsible party under the Tentative CAO proposed by the Cleanup Team.

7. Consideration of creating a comprehensive list of contested issues of fact and law.

The Presiding Officer directed the Designated Parties to establish a list of contested material issues of fact and law. This shall occur in accordance with the provisions of Paragraph 3, Phase III above. If the parties are unable to reach agreement, no party will be precluded from raising additional issues.

8. The length and date of the hearing(s).

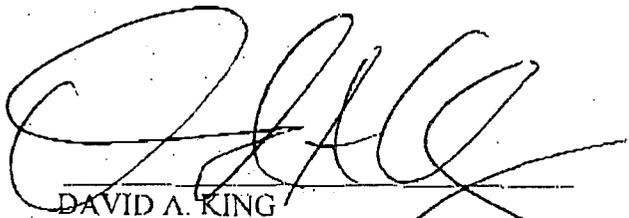
The Presiding Officer determined that the Designated Parties, the Regional Board, and the public will have a reasonable amount of time to review and comment on the Tentative CAO, the Technical Report and the comments submitted by all parties. Because of the limited time to speak and present information at the hearing and the above limitation on the submission of new evidence at the hearing, the parties should be prepared to focus primarily on advanced written submissions of testimony and evidence. The parties should similarly expect that the opportunity for live cross-examination during the hearing will be limited, and should therefore take advantage of the discovery process to conduct reasonable cross-examination of witnesses.

9. Location of the hearing.

The hearing may be conducted at the Regional Board, or at a facility in the vicinity of the cleanup site if reasonable arrangements can be made for a suitable site.

10. **Participation by non-English speaking persons.**
All parties should be aware that non-English speaking persons may be in attendance at the hearing and allowance for translation should be considered.
11. **Logistics for the workshops, tours, and other methods for providing background information to the Board Members and the public.**
The Presiding Officer does not anticipate any Board Member tours of the proposed cleanup site because of the difficulties inherent in creating a clear record, preventing ex parte communications, and providing for complete public access.
12. **Designated Parties Contacts, Organizations, E-mail Address, and Regular Mail Address.**
All designated parties shall submit in writing to the Advisory Team any revision to the contact information consisting of the organization representative, email address, and regular mail address. The Advisory Team shall maintain a current distribution list on the Regional Board website.
13. **Service to Regional Board Advisory Team:**

Michael P. McCann, Supervising Engineer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, California 93123
Mmccann@waterboards.ca.gov
14. **Pre-Hearing Conferences.**
The Presiding Officer may schedule additional pre-hearing conferences as needed.



DAVID A. KING
Presiding Officer of the Pre-Hearing Conference and
Vice-Chairman, SDRWQCB

APPENDIX A OUTLINE OF SCHEDULE AND PROCESS

Phase I	Phase II	Phase III	Phase IV	Phase V	Phase VI	Phase VII	Phase VIII
Pre-Hearing Conference	Release of Tentative CAO & Technical Report	Public Comment (formatted sequential structure based upon the tentative CAO & Technical Report)	30-Day Public Comment on the Phase III Public Comments	60-Day Cleanup Team Response to "All Public Comments"	45-Day Preparation & Noticing of CAO Hearing	Hearing on CAO & Proposed Responsible Parties (Record closed at conclusion of hearing.)	Regional Board Meeting Deliberate & Vote on CAO
		Discovery	Additional Discovery	No new evidence submitted.			
		Submission of Evidence	Submission of Rebuttal Evidence	Revisions to CAO and/or Technical Report			
		List of Unresolved Issues		Final List of Unresolved Issues			
26 Sep 2005	04 Apr 2008						
Cumulative Days		0					

**APPENDIX B
INDEX VALUES FOR COMMENTS ON
TENTATIVE CAO NO. R9-2005-0126**

Index Category	Entry
Assign To	FMELBOURN
Program	Site Cleanup Program (SCP)
Program Activity	Enforcement
Program Action	Cleanup and Abatement Order
Program Subaction	Public Comments and Responses
Document Date	MM/DD/YY
Date Received	Regional Board Staff will fill in
Subject	Comments on Tentative Cleanup and Abatement Order No. R9-2008-0126
Regulatory Measure	340860
From (Name Person)	Commenter to fill in
From Organization Type	Regional Board Staff will fill in
From – Organization Name	Commenter to fill in
To - Name (Person)	John Robertus, Executive Officer
To - Party Type	Regional Water Quality Control Board
To - Organization Name	RWQCB 9 - San Diego Region
File Code	N/A
File Volume	N/A
Related Document Handle	N/A
Place Number	712610
Place Name	Auto fill
Place Address	Auto fill
Place Number 2	Regional Board Staff will fill in
Confidential	No
Doc File Type	Regional Board Staff will fill in
Admin. Record Desc.	Shipyards Sediment Site CAO Proceedings

**APPENDIX C
COMMENT FORM
SHIPYARD SEDIMENT SITE**

INSTRUCTIONS: Persons representing Designated Parties to the Cleanup and Abatement Order (CAO) Proceeding, excluding the San Diego Water Board Cleanup Team, shall submit all written testimony, argument, and exhibits¹ to the San Diego Water Board in the formats presented below.

Each submittal by persons representing Designated Parties to the proceeding shall provide the following information on the cover page of their submittal:

Name: _____
Title: _____
Company/Agency: _____
Street Address: _____
City, State, Zip Code: _____
Phone Number: _____
Email Address: _____
Party Representing: _____

Each comment² shall be preceded by an information table as illustrated below. A separate information table shall be used for each individual comment. A single information table may refer to multiple document types (i.e., Tentative CAO, Draft Technical Report, Shipyard Administrative Record, or Written Testimony, Argument, and Exhibits Submitted by Participants), provided that the single information table is expanded to include all of the fields for those document types. A single information table may also refer to multiple documents, provided that pinpoint citations to each of those documents are contained in the information table. Citations to other materials should follow the California Style Manual and contain pinpoint citations to the extent feasible. Comments which do not conform to this format may be stricken by the Presiding Officer and excluded from the administrative record.

¹ Exhibits may include written testimony, technical documentation, factual information, expert opinions, statements of qualifications of expert witnesses, and other documents to be used as evidence.

² A "comment" is defined as any reasonably segregable issue, concern, or argument.

Tentative Cleanup & Abatement Order Comment Information

Document Name	Tentative CAO No. R9-2005-0126
Document Date	
Finding or Directive Number	
Page, Paragraph, Sentence Number	
Concise Summary of Issue	

Draft Technical Report for Tentative Cleanup & Abatement Order Comment Information

Document Name	Draft Technical Report for Tentative CAO No. R9-2005-0126
Document Date	
Section Number	
Page, Paragraph, and Sentence Number	
Concise Summary of Issue	

Shipyard Administrative Record³

Document Name	
Document Date	
Document Type	Shipyard Administrative Record
SAR Number ⁴	
Page, Paragraph, Sentence Number	
Concise Summary of Issue	

Written Testimony, Argument, and Exhibits Submitted by Participants⁵

Document Name	
Name of "Person" and Organization Document is From	
Document Date	
Document Type	Public Comment
Page, Paragraph, and Sentence Number	
Concise Summary of Issue	

³ The term "Shipyard Administrative Record" refers to the indexed administrative record in electronic format provided by the San Diego Water Board to the Parties to the Cleanup and Abatement Order Proceeding.

⁴ An individual Shipyard Administrative Record (SAR) Number is assigned to every page of every document in the electronic Shipyard Administrative Record.

⁵ Participants in the San Diego Water Board CAO proceedings are either "designated parties" or "interested persons."

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California 92101-4297. On July 22, 2010, I served the within documents:

SEE ATTACHED DOCUMENT LIST

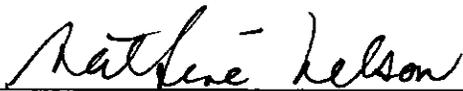
by transmitting via e-mail the document(s) listed above to the recipient(s) set forth below on this date

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 22, 2010, at San Diego, California.



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1. BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.'S NOTICE OF MOTION AND MOTION TO COMPEL (1) RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES TO RWQCB; (2) RESPONSES TO REQUESTS FOR ADMISSIONS TO RWQCB (SET ONE); AND (3) RESPONSES TO FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO RWQCB
2. DECLARATION OF MICHAEL S. TRACY IN SUPPORT OF BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.'S NOTICE OF MOTION AND MOTION TO COMPEL (1) RESPONSES TO FIRST SET OF SPECIAL INTERROGATORIES TO RWQCB; (2) RESPONSES TO REQUESTS FOR ADMISSIONS TO RWQCB (SET ONE); AND (3) RESPONSES TO FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO RWQCB

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