

ORIGINAL

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FILED
SAN LUIS OBISPO
SUPERIOR COURT

SEP 11 2012

BY *José Domínguez*
DEPUTY CLERK

*Attorneys for Plaintiff
State Water Resources Control Board*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

**PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. STATE WATER
RESOURCES CONTROL BOARD,**

Plaintiff,

v.

**JACO OIL COMPANY, a corporation;
FASTRIP FOOD STORES, INC., a
corporation; FASTRIP FOOD STORES,
INC. OF FRESNO, a corporation; JACO-
JAMIESON COMPANY, LLC, a limited
liability corporation; FASTRIP
FINANCIAL, LP, a limited partnership;
FASTRIP OIL COMPANY, LP, a limited
partnership; BASIC PROPERTIES, LP, a
limited partnership; JACO HILL
COMPANY, a partnership; and
JAMIESON HILL COMPANY, a
partnership,**

Defendants.

Case No. *W128129*

[PROPOSED] CONSENT JUDGMENT

(Health & Saf. Code, Div. 20, Chapter 6.7)

JUN 27 2012

1 This Consent Judgment and Stipulation for Entry of Final Judgment (“Consent Judgment”)
2 is entered into by Plaintiff the People of the State of California, ex rel. State Water Resources
3 Control Board (State Water Board) and Defendants Jaco Oil Company; Fastrup Food Stores, Inc.;
4 Fastrup Food Stores, Inc. of Fresno; Jaco-Jamieson Company, LLC; Fastrup Financial, LP; Fastrup
5 Oil Company, LP; Basic Properties, LP; Jaco Hill Company; and Jamieson Hill Company
6 (collectively, the “Jaco Entities”). For purposes of this Consent Judgment, the State Water Board
7 and the Jaco Entities shall be referred to herein collectively as the “Parties,” and individually as
8 “Party.”

9 The Parties have agreed to settle the above-captioned matter without further litigation, as
10 set forth below.

11 INTRODUCTION

12 In this action, the State Water Board filed a civil complaint (the “Complaint”)
13 alleging that the Jaco Entities violated Chapter 6.7 of Division 20 of the Health and Safety Code
14 and the implementing regulations governing the operation and maintenance of underground
15 storage tanks (USTs) and UST systems, at specific facilities owned/or operated by Jaco Entities
16 identified in **Exhibit A**, attached hereto and incorporated herein by reference (“Covered
17 Facilities”).

18 The Parties previously stipulated to toll the statute of limitations as to the alleged
19 violations so as to allow a discussion of a negotiated resolution. In these negotiations, the State
20 Water Board was represented by the Attorney General of the State of California and the Jaco
21 Entities were represented by their counsel.

22 The Parties have now agreed to settle this matter in order to avoid prolonged and
23 complicated litigation. The Parties settle this action on the terms set forth in this Consent
24 Judgment and request that this Court enter a Final Judgment incorporating the terms of this
25 Consent Judgment.
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1 made by check, payable to the State Water Board's "State Water Pollution Cleanup and
2 Abatement Account." These funds may be used by the State Water Board, at its discretion, to
3 fund activities associated with the investigation and/or enforcement of UST requirements,
4 including those codified at Chapter 6.7 of the California Health and Safety Code and the UST
5 Regulations, and the investigation and/or protection of the Underground Storage Tank Cleanup
6 Fund. These activities may include, but are not limited to, training State and local enforcement
7 staff, hiring State enforcement staff, expert witness support, and criminal investigation
8 development and support.

9 4.3. Reimbursement of Costs of Investigation and Enforcement: Within thirty (30)
10 days of entry of this Consent Judgment, the Jaco Entities shall collectively pay a total of
11 SEVENTY FIVE THOUSAND DOLLARS (\$75,000) to the State Water Board and regulatory
12 agencies for reimbursement of attorneys' fees, costs of investigation and other costs of
13 enforcement to the Plaintiff. Payment shall be made by check in accordance with the terms in
14 **Exhibit B**, attached hereto and incorporated herein by reference as though fully set forth.

15 4.4. All payments made pursuant to this Consent Judgment shall be made by check
16 and delivered to the Office of the California Attorney General, 300 South Spring Street, Suite
17 1700, Los Angeles, California, 90013, attention Sarah Morrison, Deputy Attorney General, for
18 distribution by the California Attorney General pursuant to the terms of this Consent Judgment.
19 The Jaco Entities shall send a photocopy of all payments made by check, to the State Water
20 Resources Control Board, 1001 I Street, 16th Floor, Sacramento, CA 95814, attention David
21 Boyers.

22 **5. INJUNCTIVE RELIEF**

23 Pursuant to the provisions of Health and Safety Code section 25299.01, but subject to the
24 termination Paragraph 20 below, upon approval and entry of this Consent Judgment by the Court,
25 the Jaco Entities are enjoined to comply with Chapter 6.7 of Division 20 of the Health and Safety
26 Code and the UST Regulations pertaining to UST systems at the Covered Facilities. Specifically,
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1 the Jaco Entities are enjoined to comply with the following requirements at the Covered
2 Facilities:

3 5.1. USTs installed pursuant to Health and Safety Code sections 25290.1, 25290.2
4 and 25291 shall be constructed such that the secondary containment shall prevent structural
5 weakening as a result of contact with any released hazardous substances, and shall also be
6 capable of storing hazardous substances for the maximum anticipated period of time necessary for
7 the recovery of any released hazardous substance, as required by Health and Safety Code sections
8 25290.1(c)(2), 25290.2(c)(2) and 25291(a)(2).

9 5.2. USTs installed pursuant to Health and Safety Code sections 25290.1 and
10 25290.2 shall have secondary containment that is constructed, operated, and maintained to
11 prevent water intrusion into the system by precipitation, infiltration, or surface runoff, in
12 accordance with Health and Safety Code sections 25290.1(c)(3) and 25290.2(c)(3). USTs
13 installed pursuant to Health and Safety Code section 25291 shall contain a means of monitoring
14 for water intrusion and for removing the water by the owner or operator if water could enter into
15 the secondary containment by precipitation or infiltration, in accordance Health and Safety Code
16 section 25291(e).

17 5.3. USTs shall be equipped with an overflow prevention system, as required by
18 Health and Safety Code section 25290.1(f), 25290.2(e), 25291(c), 25292(d), and 25292.1(a), and
19 the overflow prevention system shall not allow for manual override, as required by Title 23,
20 California Code of Regulations section 2635(b)(2).

21 5.4. The UST monitoring system shall meet the requirements of Title 23, California
22 Code of Regulations sections 2636(f)(5)(A) and 2636(f)(5)(B).

23 5.5. Facility employee training shall be conducted by the designated UST operator,
24 as required by Title 23, California Code of Regulations section 2715(f). A list of facility
25 employees who have been trained by the designated UST operator shall be maintained and
26 provided to the local agency upon request, as required by Title 23, California Code of Regulations
27 section 2715(f)(3).
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1 5.6. Evidence of financial responsibility shall be maintained at all times, as required
2 by Health and Safety Code section 25292.2.

3 5.7. USTs shall be equipped with under dispenser containment, as required by Title
4 23, California Code of Regulations sections 2636(g) and 2666(e).

5 5.8. Notification shall be made to the local agency of any changes in the usage of
6 the UST within 30 days, including storage of new hazardous substances, changes in monitoring
7 procedures, as required by Health and Safety Code section 25286(a). Notification shall be made
8 if there has been any unauthorized release, as required by Health and Safety Code section 25294
9 and 25295.

10 5.9. Monthly UST inspections shall be performed by a designated UST operator and
11 the results of the monthly inspection shall be recorded in a monthly inspection report, as required
12 by Title 23, California Code of Regulations section 2715(c).

13 5.10. Underground pressurized piping that conveys a hazardous substance shall be
14 equipped with an automatic line leak detector, as required by Health and Safety Code sections
15 25290.1(h), 25290.2(g), 25291(f), 25292(e) and Title 23, California Code of Regulations sections
16 2636(f)(2) and 2643(c)(1).

17 5.11. UST piping that is not secondarily contained that conveys hazardous substances
18 under pressure shall be monitored using either an annual 0.1 gallon per hour test, or a monthly 0.2
19 gallon per hour test, as required by Title 23, California Code of Regulations section 2643(c).

20 5.12. Automatic line leak detectors for underground pressurized piping which is not
21 secondarily contained shall be capable of shutting off the pump when a release occurs, and the
22 pumping system shall shut down automatically if the automatic line leak detector fails or is
23 disconnected, as required by Title 23, California Code of Regulations section 2666(c).

24 5.13. USTs constructed of steel shall be protected from corrosion, in accordance with
25 Title 23, California Code of Regulations sections 2635(a) and 2662(c).

26 5.14. When a UST operating permit is issued to the Jaco Entities as the owner of the
27 UST, the Jaco Entities shall enter into a written agreement with the operator of the UST and
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1 comply with each of the requirements specified in Health and Safety Code section 25284(a)(3)
2 and Title 23, California Code of Regulations section 2620(b).

3 5.15. All monitoring programs shall include a release response plan in accordance
4 with the requirements of Title 23, California Code of Regulations sections 2632(d)(2), 2634(e),
5 and 2641(h).

6 5.16. Secondary containment testing shall be conducted in accordance with the
7 requirements of Title 23, California Code of Regulations section 2637.

8 5.17. The UST monitoring system shall be capable of detecting an unauthorized
9 release from any portion of the underground storage system at the earliest possible opportunity, as
10 required by Health and Safety Code sections 25290.1(d), 25290.2(d), 25291(b) and 25292(a) and
11 Title 23, California Code Regulations section 2630(d) and 2641(a).

12 5.18. USTs shall be equipped with a spill container that will collect any hazardous
13 substances spilled during product delivery operations to prevent the hazardous substance from
14 entering the subsurface environment, as required by Health and Safety Code section 25284.2 and
15 Title 23, California Code of Regulations section 2635(b)(1).

16 5.19. UST systems shall be monitored using the method specified on the operating
17 permit, as required by Health and Safety Code section 25293, and Title 23, California Code of
18 Regulations sections 2632(b), 2634(b) and 2641(a).

19 5.20. Updated and approved monitoring plans and accurate plot plans/site maps shall
20 be maintained on-site at each facility. These plans/maps shall be consistent with the UST
21 monitoring systems and monitoring equipment employed at each facility, as required by Title 23,
22 California Code of Regulations sections 2632(b) and (d), 2634(d), 2641(g) and (h) and 2712(i).

23 5.21. Cathodic protection testing shall be performed every three years for all USTs
24 constructed of steel, as required by Title 23, California Code of Regulations section 2635(a)(2).

25 5.22. Accurate and current UST information shall be maintained on Unified Program
26 Consolidated Forms, as required by Health and Safety Code section 25286(a) and Title 23,
27 California Code of Regulation section 2711(a).

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1 5.23. All UST double wall systems shall be equipped with continuous monitoring and
2 all UST single wall systems shall be equipped and monitored using a quantitative release
3 detection method listed in, and as required by Health and Safety Code sections 25290.1(d),
4 25290.2(d), 25291(b) and Title 23, California Code of Regulations section 2643(b). Written
5 records of monitoring shall be kept in accordance with the requirements specified in Title 23,
6 California Code of Regulations section 2712(b).

7 5.24. A coatings expert or special inspector shall inspect the lining of all steel USTs
8 that have been retrofitted in compliance with Title 23, California Code of Regulations 2662(c)
9 within ten years of the retrofit, and every five years thereafter, as required by Title 23, California
10 Code of Regulations section 2663(h).

11 5.25. All records shall be kept as required by Health and Safety Code section 25293
12 and Title 23 California Code of Regulations 2712(b) and 2715(e) and (f) in the manner as
13 required by said provisions.

14 5.26. USTs shall be maintained so that the primary and secondary containment is
15 “product tight,” as required by Health and Safety Code sections 25290.1(c), 25290.2(c) and
16 25291(a)(1).

17 5.27. All monitoring equipment shall be maintained every twelve months, as required
18 by Title 23, California Code of Regulations section 2638.

19 5.28. USTs installed pursuant to 25292 shall be quantitatively monitored and USTs
20 installed pursuant to 25290.1, 25290.2 and 25291 shall be continuously monitored to ensure that
21 the USTs are able to detect the entry of liquid or vapor phase of hazardous substances from the
22 primary into the secondary containment or water intrusion into the secondary containment, as
23 required by Health and Safety Code sections 25290.1(d), 25290.2(d) and 25291(b).

24 5.29. It is the Parties’ intent that nothing in Sections 5.1 through 5.28 shall require
25 any of the Jaco Entities to undertake any duties, acts or responsibilities beyond what may
26 otherwise be required of the Jaco Entities under the cited statute or regulation in the absence of
27 this Consent Judgment (e.g., if a particular statute or regulation does not apply to any (or one) of
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1 the Jaco Entities in the absence of this Consent Judgment, nothing in this Consent Judgment shall
2 be interpreted to require the Jaco Entity(ies) to otherwise comply with said statute or regulation).

3 **6. MATTERS COVERED BY THIS CONSENT JUDGMENT**

4 6.1. This Consent Judgment is a final and binding resolution and settlement of (a)
5 all claims, violations, penalties and causes of action alleged by the State Water Board in the
6 Complaint regarding the Covered Facilities, and (b) all claims, violations, penalties and causes of
7 action related to the Covered Facilities which could have been asserted by the State Water Board
8 based upon the acts, omissions and/or events that are alleged in the Complaint (hereinafter
9 referred to as "Covered Matters").

10 6.2. The Covered Matters do not include and this Consent Judgment does not apply
11 to any claims, actions or penalties for performance of, or lack of performance of, cleanup,
12 corrective action, or response action concerning or arising out of actual past or future releases,
13 spills, leaks, discharges or disposal of motor vehicle fuels, hazardous wastes, or hazardous
14 substances caused or contributed to by the Jaco Entities at locations at or around Covered
15 Facilities. This Consent Judgment does not prevent any claims, actions, or penalties by the State
16 Water Board based upon the actual release of any hazardous substances into the soil and/or
17 groundwater.

18 6.3. The State Water Board covenants not to sue or pursue any further civil claims,
19 actions or penalties against the Jaco Entities or any of their officers, directors or employees for
20 the Covered Matters. Except for the Covered Matters, this Consent Judgment does not resolve or
21 settle any claims, violations, or causes of action against the Jaco Entities, including, but not
22 limited to, any violations that occur after the date of entry of the Consent Judgment in this matter.

23 6.4. The Jaco Entities, and each of them, covenant not to pursue any civil or
24 administrative claims against the State Water Board or against any agency of the State of
25 California, any county or city in the State of California or any Certified Unified Program Agency
26 (CUPA), Participating Agency or local agency, or against their officers, employees,
27 representatives, agents or attorneys arising out of or related to any Covered Matters.
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1 **7. NON-ADMISSION OF LIABILITY**

2 None of the Jaco Entities admits any allegation, finding, determination or conclusion
3 contained, alleged or asserted in the Complaint, and this Consent Judgment is not an admission by
4 the Jaco Entities regarding any issue of law or fact alleged in the Complaint (and shall not be
5 construed as an admission by any of the Jaco Entities regarding the same). Except as otherwise
6 expressly provided for in this Consent Judgment, nothing in this Consent Judgment shall
7 prejudice, waive or impair any right, remedy or defense that any of the Jaco Entities have against
8 any person or entity not a Party to this Consent Judgment.

9 **8. PLAINTIFF IS NOT LIABLE**

10 The Plaintiff shall not be liable for any injury or damage to persons or property resulting
11 from acts or omissions by the Jaco Entities in carrying out activities pursuant to this Consent
12 Judgment, nor shall the Plaintiff be held as a party to or guarantor of any contract entered into by
13 the Jaco Entities, their directors, officers, employees, agents, representatives or contractors in
14 carrying out activities required pursuant to this Consent Judgment.

15 **9. APPLICATION OF CONSENT JUDGMENT**

16 This Consent Judgment shall apply to and be binding upon the State Water Board, and upon
17 the Jaco Entities.

18 **10. RETENTION OF JURISDICTION**

19 Pursuant to section 664.6 of the Code of Civil Procedure, the Court shall retain continuing
20 jurisdiction over this matter and the Parties for the purpose of interpreting and enforcing the terms
21 of this Consent Judgment.

22 **11. EFFECT OF JUDGMENT**

23 Except as expressly provided in this Consent Judgment or applicable statutory or common
24 law, nothing in this Consent Judgment is intended nor shall it be construed to preclude the State
25 Water Board from exercising its authority under any law, statute or regulation. Except as
26 expressly provided by this Consent Judgment, the Jaco Entities retain all of their defenses and
27 rights to the exercise of such authority.

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12. REGULATORY CHANGES

Nothing in this Consent Judgment shall excuse the Jaco Entities from complying with any more stringent requirements that may be imposed by changes in applicable law. To the extent any future regulatory or statutory changes make the obligations of the Jaco Entities less stringent than as provided for in Paragraph 5 of this Consent Judgment, any of the Jaco Entities may seek modification(s) of any of the obligations contained in Paragraph 5 hereof pursuant to the provisions of Paragraph 19 of this Consent Judgment.

13. AUTHORITY TO ENTER CONSENT JUDGMENT

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

14. PAYMENT OF LITIGATION EXPENSES AND FEES

Each of the Parties shall bear and pay their own fees and costs, including, but not limited to, their attorney fees, expert witness fees, and costs and all other costs of litigation, investigation, inspection, enforcement, prosecution and suit incurred to date, in and regarding this action, although nothing in this Paragraph 14 is intended to abridge the allocation of the payments made by the Jaco Entities pursuant to Paragraph 4 of this Consent Judgment.

15. COUNTERPART SIGNATURES

This Consent Judgment may be executed by the Parties in counterpart.

16. ENTRY OF JUDGMENT

The Parties seek approval of this Consent Judgment and request that the Court make a determination that the Consent Judgment is fair and in the public interest.

17. INTEGRATION

This Consent Judgment constitutes the whole agreement between the Parties and may not be amended or modified except as provided for in the Consent Judgment.

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18. NOTICES

All notices and submissions required by this Consent Judgment shall be sent to the following via personal delivery, overnight mail using a reputable delivery courier, or United States Postal Service mail, certified or registered mail, return receipt requested:

For Plaintiff:

State Water Resources Control Board,
1001 I Street, 16th Floor,
Sacramento, CA 95814
Attn: David M. Boyers

and

Office of the California Attorney General
300 Spring Street, Suite 1702
Los Angeles, CA 90013
Attn: Sarah E. Morrison

For the Jaco Entities:

Lee Jamieson
Jaco Oil Company
3101 State Road
Bakersfield, CA 93308-4931

and

José R. Allen
Skadden, Arps, Slate, Meagher & Flom LLP
525 University Avenue, Suite 1100
Palo Alto, CA 94301

Any Party may change the individual or address for purpose of notice to that Party by written notice specifying the new individual or address, but no such change is effective until the written notice is actually received by the Party sought to be charged with its contents.

19. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment may be amended or modified only on a noticed motion by one of the Parties with subsequent approval by the Court or upon written consent by all of the Parties and the subsequent approval of the Court.

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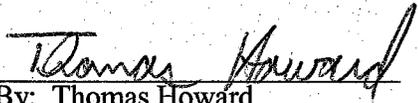
20. TERMINATION OF INJUNCTIVE RELIEF PROVISIONS

At any time after this Consent Judgment has been in effect for five (5) years, any of the Jaco Entities may file a motion seeking to have the Court relieve the Jaco Entities from any further compliance with all and/or some of the injunctive relief provisions of Paragraph 5 of this Consent Judgment based upon the Jaco Entities' history of compliance with Paragraph 5. If the State Water Board agrees that the Jaco Entities have substantially complied with Paragraph 5, it will file a statement of non-opposition to such motion.

IT IS SO STIPULATED.

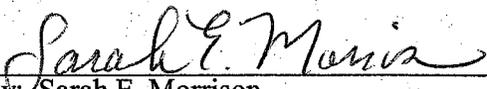
FOR THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:

Dated: June 21, 2012


By: Thomas Howard
Executive Director
State Water Resources Control Board

APPROVED AS TO FORM:

Dated: June 21, 2012

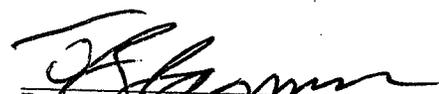

By: Sarah E. Morrison
Deputy Attorney General
California Attorney General's Office
Attorneys for the State Water Resources Control Board

1 **FOR JACO OIL COMPANY:**

2

3 Dated: June 11, 2012

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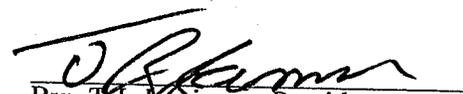

By: T.J. Jamieson, President

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6 **FASTRIP FOOD STORES, INC.:**

7 Dated: June 11, 2012

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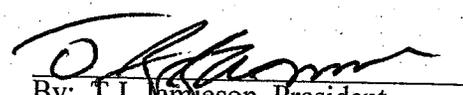

By: T.J. Jamieson, President

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10 **FASTRIP FOOD STORES, INC. OF
FRESNO**

11 Dated: June 11, 2012

12


By: T.J. Jamieson, President

13

14 **JACO-JAMIESON COMPANY, LLC**

15 Dated: June 11, 2012

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By: T.J. Jamieson, President

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18 **FASTRIP FINANCIAL, LP**

19 Dated: June 11, 2012

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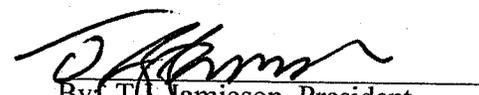

By: T.J. Jamieson, President
Fastrip Food Stores, Inc.
General Partner

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22 **FASTRIP OIL COMPANY, LP**

23 Dated: June 11, 2012

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By: T.J. Jamieson, President
Petroleum Manager, Inc.
General Partner

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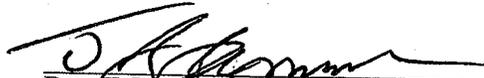
BASIC PROPERTIES, LP

Dated: June 11, 2012


By: T.J. Jamieson, President
Jaco Oil Company
General Partner

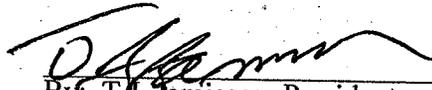
JACO HILL COMPANY

Dated: June 11, 2012


By: T.J. Jamieson, President
Jaco Oil Company
General Partner

JAMIESON HILL COMPANY

Dated: June 11, 2012


By: T.J. Jamieson, President

APPROVED AS TO FORM:

Dated: June 13, 2012


By: JOSE R. ALLEN
SKADDEN, ARPS, SLATE, MEAGHER,
FLOM LLP
Attorneys for JACO ENTITIES

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2012

Judge of the Superior Court

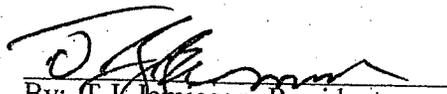
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1 BASIC PROPERTIES, LP

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3 Dated: June 11, 2012

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By: T.J. Jamieson, President
Jaco Oil Company
General Partner

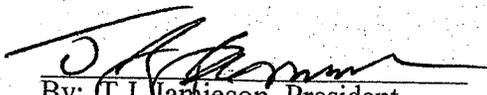
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6 JACO HILL COMPANY

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8 Dated: June 11, 2012

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By: T.J. Jamieson, President
Jaco Oil Company
General Partner

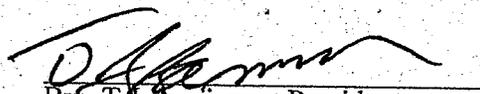
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11 JAMIESON HILL COMPANY

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13 Dated: June 11, 2012

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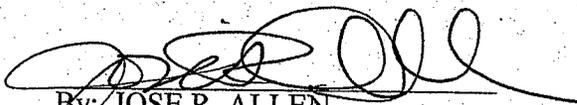

By: T.J. Jamieson, President

15 APPROVED AS TO FORM:

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17 Dated: June 13, 2012

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By: JOSE R. ALLEN
SKADDEN, ARPS, SLATE, MEAGHER,
FLOM LLP
Attorneys for JACO ENTITIES

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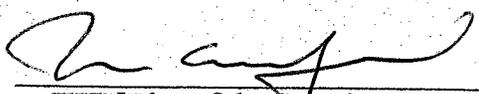
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22 IT IS SO ORDERED, ADJUDGED AND DECREED.

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24 Dated: 9/11/12, 2012

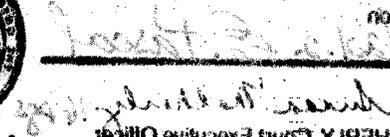
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27 LA2010601496



Judge of the Superior Court
I certify that this is a correct copy of the original on
file with the Clerk of the Superior Court of California,
County of San Diego. Attest my hand and seal
of said court on
September 11, 2012 (Date)

SUSAN MATHERLY, Court Executive Officer

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