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13 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

14 SAN DIEGO REGION

15 **IN THE MATTER OF:**

16 TENTATIVE CLEANUP AND
 17 ABATEMENT ORDER NO. R9-2010-0002
 18 (SHIPYARD SEDIMENT CLEANUP)

19 **NATIONAL STEEL AND
 20 SHIPBUILDING COMPANY'S MOTION
 21 FOR CLARIFICATION THAT THE
 22 REGIONAL WATER QUALITY
 23 CONTROL BOARD WILL ADDRESS ITS
 24 CEQA MOTION**

1 **MOTION FOR CLARIFICATION THAT THE REGIONAL BOARD WILL ADDRESS**
2 **NASSCO'S CEQA MOTION**

3 Designated Party National Steel and Shipbuilding Company ("NASSCO") hereby moves
4 for clarification of the Presiding Officer's August 6, 2010 Order that NASSCO's Motion
5 Requesting Determination That Tentative Cleanup and Abatement Order No. R9-2010-0002 Is
6 Exempt From the California Environment Quality Act ("NASSCO's CEQA Motion") will now
7 be set for hearing before the members of the Regional Water Quality Control Board, San Diego
8 Region ("Regional Board"), at the Regional Board's earliest opportunity.

9 On July 23, 2010, NASSCO moved the full Regional Board to determine whether
10 Tentative Cleanup and Abatement Order No. R9-2010-0002 (the "Tentative CAO") is exempt
11 from CEQA pursuant to sections 15307, 15308 and 15321 of CEQA's implementing regulations
12 set forth in Title 14 of the California Code of Regulations ("CEQA Guidelines"). NASSCO's
13 CEQA Motion was addressed to the full Regional Board, based on the Regional Board's
14 responsibility—as the acting lead agency for the Tentative CAO—to determine if CEQA applies
15 as a matter of Board policy. *See* CEQA Guidelines § 15061(a). NASSCO's CEQA Motion gave
16 notice that it was moving for consideration from the full Regional Board at the Regional Board's
17 August 11, 2010, regularly-scheduled hearing, or as soon thereafter as the matter could be heard.
18 *See* NASSCO's Notice of Motion and Motion at 1.

19 On July 27, 2010, the Presiding Officer issued an Order requesting that NASSCO
20 "submit additional memoranda in support of its motion setting forth the legal authority of the
21 Presiding Officer to determine whether the CAO is categorically exempt from CEQA."
22 Presiding Officer's July 27, 2010, Order at 1. On August 2, 2010, NASSCO submitted the
23 requested additional briefing setting forth the Regional Board's jurisdiction to decide the CEQA
24 issue and the limited circumstances where the Presiding Officer may decide with delegated
25 Board authority.

26 On August 6, 2010, the Presiding Officer issued an Order concluding that he "does not
27 have the authority either as a Presiding Officer or as a Board member to make the determination
28 of whether a categorical exemption [from CEQA] is appropriate for [the Tentative CAO]."

1 Presiding Officer's August 6, 2010, Order at 2. On this basis, the Presiding Officer styled his
2 order as a denial of NASSCO's CEQA Motion. *Id.*

3 While as a matter of time and efficiency it may have been constructive for the Presiding
4 Officer to consider whether he had the authority to rule directly on NASSCO's CEQA Motion,
5 NASSCO's CEQA Motion was originally presented for the full Regional Board's consideration,
6 and the Presiding Officer's determination that he lacks the authority to decide NASSCO's CEQA
7 Motion does not resolve NASSCO's CEQA Motion on the merits.

8 As NASSCO originally moved for the Regional Board's consideration, and as CEQA
9 Guidelines § 15061 makes clear that this determination is properly within the Regional Board's
10 authority as the lead agency for the Tentative CAO, NASSCO now moves for clarification that
11 its CEQA Motion will be presented to the full Regional Board at its next regularly schedule
12 hearing on September 8, 2010, or as soon thereafter as it may be heard, for the Regional Board to
13 make a public policy determination that its review and issuance of the Tentative CAO is
14 categorically exempt from CEQA.

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Dated: August 7, 2010

LATHAM & WATKINS LLP

By 

Kelly E. Richardson
Attorneys for Designated Party
NATIONAL STEEL AND
SHIPBUILDING COMPANY

PROOF OF SERVICE

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

On August 7, 2010, I served the following document described as:

NATIONAL STEEL AND SHIPBUILDING COMPANY'S MOTION FOR CLARIFICATION THAT THE REGIONAL WATER QUALITY CONTROL BOARD WILL ADDRESS ITS CEQA MOTION

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

BY ELECTRONIC MAIL

Upon written agreement by the parties, the above-described document was transmitted via electronic mail to the parties noted below on August 7, 2010.

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

13 Executed on **August 7, 2010**, at San Diego, California.

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16 Shelley Campbell
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