

1 David M. Cumberland, SBN 93719
Joshua M. George, SBN 244565
2 **ADAMSKI MOROSKI MADDEN CUMBERLAND & GREEN LLP**
Mailing Address: Post Office Box 3835
3 San Luis Obispo, CA 93403-3835
Physical Address: 6633 Bay Laurel Place
4 Avila Beach, CA 93424
Telephone: (805) 543-0990
5 Facsimile: (805) 543-0980

6 Todd E. Robins, SBN 191853
Jed J. Borghei, SBN 257049
7 Corey M. Moffat, SBN 305620
Robins Borghei LLP
8 649 Mission Street, Suite 500
San Francisco, CA 94105
9 Telephone: (415) 848-8850
Facsimile: (415) 974-6745

10 Attorneys for Plaintiff Robin L. Rossi, as Trustee of the
11 Robin L. Rossi Living Trust utd October 19, 1990

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN LUIS OBISPO, PASO ROBLES BRANCH**

14
15 **ROBIN L. ROSSI, AS TRUSTEE OF THE**
16 **ROBIN L. ROSSI LIVING TRUST UTD**
OCTOBER 19, 1990

17 Plaintiff,

18 v.

19 **CONOCOPHILLIPS COMPANY;**
20 **PHILLIPS 66 COMPANY; PHILLIPS 66**
21 **PIPELINE, LLC; UNION OIL**
22 **COMPANY OF CALIFORNIA;**
23 **UNOCAL CORPORATION; and DOES 1**
24 **through 100, INCLUSIVE,**

25 Defendants.

CASE NO. **16CVP0113**

COMPLAINT FOR DAMAGES AND
OTHER RELIEF:

- (1) NUISANCE (TWO COUNTS);
- (2) TRESPASS;
- (3) VIOLATION OF PROPOSITION 65;
- (4) UNLAWFUL BUSINESS PRACTICES;
- (5) EQUITABLE INDEMNITY AND CONTRIBUTION;
- (6) BREACH OF CONTRACT;
- (7) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
- (8) DECLARATORY RELIEF (TWO COUNTS); and
- (9) PRELIMINARY AND PERMANENT INJUNCTION AND ABATEMENT OF NUISANCE & TRESPASS.

JURY TRIAL DEMANDED

Complaint Filed:

FILED

APR 29 2016

SAN LUIS OBISPO SUPERIOR COURT
BY *[Signature]*
L. LeMay, Deputy Clerk

1 Plaintiff, ROBIN L. ROSSI, AS TRUSTEE OF THE ROBIN L. ROSSI LIVING
2 TRUST UTD OCTOBER 19, 1990, individually, and as successor in interest to Santa Margarita
3 Ranch LLC and Pacific Improvement LLC (“ROSSI” or “Plaintiff”), hereby alleges as follows,
4 based on information and belief and investigation of counsel:

5 **I. INTRODUCTION**

6 1. Defendants named herein and their predecessors-in-interest are the current and
7 former owners and operators of leaking oil pipelines that have fouled and contaminated
8 portions of the historic Santa Margarita Ranch (“Ranch”) in San Luis Obispo County,
9 California. Through this lawsuit, ROSSI, a Ranch owner, requests that Defendants be held
10 accountable for their actions, and directed to clean up their contamination and compensate
11 ROSSI for any and all related damages.

12 2. The Ranch, located off Highway 101, six miles north of San Luis Obispo and
13 eighteen miles south of Paso Robles, consists of approximately 14,000 acres surrounded by
14 National Forest. ROSSI individually owns the historic 900-acre portion of the Ranch referred
15 to as the Headquarters (“HQ Property”), known as the heart of the Ranch, and is a partner in
16 one or more entities that own the entire Ranch.

17 3. The Ranch has continuously operated as a cattle ranch and farm since its
18 inception as part of the California Mission system in 1774. Prior to that, it was home to
19 Chumash and Salinian Native American tribes. The Ranch has played a significant role in
20 California and San Luis Obispo County history; notable visitors include Juan Bautista de Anza,
21 Father Junipero Serra, and Colonel John C. Fremont.

22 4. ROSSI and his predecessors have used the Ranch for agriculture and ranching
23 and to host entertainment and recreational activities. The HQ property itself has hosted tens of
24 thousands of visitors and generates substantial revenue, including significant contributions for
25 local, charitable events. ROSSI also has plans for various additional agricultural, recreational
26 and other developments on portions of the Ranch and its HQ Property, several of which are
27 now being implemented.

28 5. The Ranch’s HQ Property is bisected by oil and gas pipelines that have been, and

1 are, owned, operated, installed, maintained, used and/or replaced by Defendants and their
2 predecessors-in-interest. Defendants' predecessor-in-interest installed the original lines on the
3 HQ Property as early as 1909 pursuant to Right of Way agreements. Since then, Defendants
4 have reportedly replaced the lines at least twice. During one such pipeline maintenance
5 project, petroleum hydrocarbons were discovered in soil underlying the pipelines at numerous
6 locations on the HQ Property.

7 6. This discovery led the Central Coast Regional Water Quality Control Board
8 ("Regional Board") to open an environmental investigation into the section of the pipelines
9 crossing the HQ Property. The investigation found that Defendants' leaking pipelines have
10 caused extensive petroleum hydrocarbon contamination in soil and groundwater beneath the
11 HQ Property. According to Defendants' own consultants, the area of the HQ Property now
12 contaminated by petroleum hydrocarbons is significantly greater than the area that comprises
13 the pipelines' Right of Way. The nature and concentrations of the petroleum hydrocarbons
14 detected indicate that, in addition to historical releases, there have been environmental releases
15 emanating from the pipeline since as recently as 1995 and continuing to the present.

16 7. Beyond the threat it poses to human health and the environment, Defendants'
17 petroleum hydrocarbon contamination on the HQ Property has impeded, and, until abated, will
18 continue to impede, ROSSI's ability to freely and beneficially use, enjoy and develop the
19 Ranch and HQ Property. Beneficial uses currently and imminently impacted include, but are
20 not limited to, agriculture, ranching, housing, recreation and ROSSI's ability to use
21 groundwater beneath the HQ Property to provide drinking water for planned development and
22 irrigation water for crops.

23 8. Through this lawsuit, ROSSI seeks: (i) injunctive relief to require Defendants to
24 cease any continuing pipeline leaks on the HQ Property; (ii) injunctive relief directing
25 Defendants to delineate and remediate petroleum hydrocarbon contamination on the HQ
26 Property resulting from their pipeline releases; (iii) reimbursement and indemnification for
27 expenses incurred as a result of the contamination; (iv) damages for injury to property,
28 including but not limited to costs of restoration and remediation and loss of use damages; (v)

1 damages pursuant to contract; (vi) civil penalties for contaminating a source of drinking water;
2 (vii) declaratory relief; and (viii) reasonable attorneys' fees incurred in connection with the
3 contamination and in prosecuting this action.

4 II. PARTIES

5 9. Plaintiff ROSSI is, and at all times relevant to this action has been, the owner
6 and/or possessor of the real property that is the subject of this action, the HQ Property, located
7 in San Luis Obispo County, California and more particularly described in Exhibit A attached
8 hereto and incorporated herein by this reference. The past, present and continuing petroleum
9 hydrocarbon contamination of the HQ Property constitutes physical injury to real property for
10 which ROSSI is entitled to, and hereby does, seek damages, injunctive, declaratory, and other
11 appropriate relief. In addition, ROSSI has a significant property interest in the groundwater
12 extracted from the HQ Property. The past, present and continuing contamination of such
13 groundwater by petroleum hydrocarbons constitutes physical injury for which ROSSI is
14 entitled to, and hereby does, seek damages, injunctive, declaratory, and other appropriate relief.

15 10. Defendant, CONOCOPHILLIPS COMPANY ("CONOCO"), individually and as
16 successor-in-interest to Tosco Corporation, is a Delaware corporation with its principal place
17 of business in Houston, Texas, which at all times relevant to this action, has been doing
18 business in California. CONOCO, and/or its predecessors-in-interest, owned, operated,
19 installed, maintained, used and/or replaced the pipelines on the HQ Property that leaked,
20 discharged and/or otherwise released petroleum hydrocarbons at and onto the HQ Property and
21 thereby has caused or substantially contributed to the contamination of the HQ Property and its
22 underlying groundwater.

23 11. Defendant, PHILLIPS 66 COMPANY ("PHILLIPS") is a Delaware corporation
24 with its principal place of business in Houston, Texas, which at all times relevant to this action,
25 has been doing business in California. PHILLIPS, and/or its predecessors-in-interest, owns,
26 owned, operates, operated, installed, maintains, maintained, uses, used and/or replaced the
27 pipelines on the HQ Property that leaked, discharged and/or otherwise released petroleum
28 hydrocarbons at and onto the HQ Property, and continue to do so, and thereby has caused or

1 substantially contributed to the contamination of the HQ Property and its underlying
2 groundwater.

3 12. Defendant, PHILLIPS 66 PIPELINE, LLC (“PHILLIPS PIPELINE”),
4 individually and as successor-in-interest to ConocoPhillips Pipe Line Company, Union
5 Pipeline Company (California), Unocal California Pipeline Company, and Producers
6 Transportation Company, is a Delaware limited liability company with its principal place of
7 business in Houston, Texas, which at all times relevant to this action, has been doing business
8 in California. PHILLIPS PIPELINE and/or its predecessors-in-interest, owns, owned,
9 operates, operated, installed, maintains, maintained, uses, used and/or replaced the pipelines on
10 the HQ Property that leaked, discharged and/or otherwise released petroleum hydrocarbons at
11 and onto the HQ Property, and continue to do so, and thereby has caused or substantially
12 contributed to the contamination of the HQ Property and its underlying groundwater.

13 13. Defendant, UNION OIL COMPANY OF CALIFORNIA (“UNION”),
14 individually and d/b/a “Unocal” and “76 Products Company,” is a California corporation with
15 its principal place of business in San Ramon, California. UNION is a wholly owned subsidiary
16 of UNOCAL CORPORATION. UNION, and/or its predecessors-in-interest, owned, operated,
17 installed, maintained, used and/or replaced the pipelines on the HQ Property that leaked,
18 discharged and/or otherwise released petroleum hydrocarbons at and onto the HQ Property and
19 thereby has caused or substantially contributed to the contamination of the HQ Property and its
20 underlying groundwater.

21 14. Defendant, UNOCAL CORPORATION (“UNOCAL”) is a Delaware
22 corporation with its principal place of business in San Ramon, California. UNOCAL, and/or
23 its predecessors-in-interest, owned, operated, installed, maintained, used and/or replaced the
24 pipelines on the HQ Property that leaked, discharged and/or otherwise released petroleum
25 hydrocarbons at and onto the HQ Property and thereby has caused or substantially contributed
26 to the contamination of the HQ Property and its underlying groundwater.

27 15. Since at least 2009, UNION and CONOCO have represented to ROSSI that the
28 two entities executed a contract regarding environmental liabilities related to former “76

1 assets,” which include the Rights of Way and pipelines on the HQ Property. According to
2 Defendants’ representations, that agreement includes provisions requiring UNION to
3 indemnify, defend, and hold harmless CONOCO against claims relating to these former “76
4 assets.”

5 16. The names and capacities, whether individual, corporate, or otherwise, of
6 Defendants named herein as DOES 1 through 100, inclusive, are current and/or former owners,
7 operators, installers, maintainers, users and/or replacers of the pipelines on the HQ Property, or
8 their successors-in-interest, and thereby caused, substantially contributed to, and/or are liable
9 for petroleum hydrocarbon contamination on the HQ Property and in its underlying
10 groundwater. DOES 1 through 100, inclusive, are unknown at this time to Plaintiff who
11 therefore sues said Defendants by such fictitious names. Plaintiff will amend this Complaint to
12 show the true names and capacities of said Defendants when their identities and capacities
13 have been ascertained.

14 17. CONOCO, PHILLIPS, PHILLIPS PIPELINE, UNION, UNOCAL, and
15 Defendant DOES 1 through 100, inclusive, are referred to collectively herein as “Defendants.”
16 Plaintiff is informed and believes and thereon alleges that Defendants controlled and/or control
17 the operation, policies and activities associated with the pipelines on the HQ Property.
18 Defendants are responsible in whole or in part for the acts and/or omissions referred to herein
19 and are liable as herein alleged.

20 18. When reference is made in this Complaint to the acts, omissions, and liabilities
21 of Defendants, that reference shall also include and encompass the acts, omissions, and
22 liabilities of Defendants’ predecessors-in-interest.

23 19. When reference is made in this Complaint to any act or omission of any of the
24 Defendants, it shall be deemed that the officers, directors, agents, employees or representatives
25 of the Defendants committed or authorized such act or omission, or failed to adequately
26 supervise or properly control or direct their employees, agents and/or representatives while
27 engaged in the management, direction, operation or control of the affairs of Defendants, and
28 did so while acting within the scope of their duties, employment and/or agency.

1 Improvement LLC, acquired an ownership interest in the Ranch and exclusive rights to the HQ
2 Property. In 2001, ROSSI acquired title to the HQ Property in ROSSI's name, and continues
3 to use it as a regional center for entertainment and recreation, as well as for agriculture and
4 ranching. In addition, ROSSI and his partners plan various new agricultural, residential and
5 recreational development options for the Ranch, including his HQ Property, some of which are
6 now being implemented.

7 **Background on the Pipeline and Contamination**

8 27. Oil and gas pipelines that have been, and are, owned, operated, installed,
9 maintained, used and/or replaced by the Defendants bisect the HQ Property. These pipelines,
10 known as the Santa Margarita Pipeline Project ("Pipeline"), cover a distance of approximately
11 3.4 miles between the Santa Margarita Pump Station and Tassajara Creek Road in San Luis
12 Obispo County. The Pipeline itself is one part of a transmission system extending 78 miles
13 from the Santa Maria refinery to the Junction Pump Station in the San Joaquin Valley.

14 28. A 1.8 mile section of the Pipeline transverses the southern half of the HQ
15 Property from the northeast to the southwest. Pursuant to Right of Way agreements,
16 Defendants' predecessor-in-interest installed the original lines that transmitted petroleum
17 hydrocarbons on the HQ Property as early as 1909. Under the Right of Way agreement
18 executed in 1909, Defendants' predecessor-in-interest agreed "to become responsible for and
19 to pay to the party or parties entitled thereto, any damages which may arise to crops, trees,
20 fences, or any improvements, whatever or to said lands, or any part thereof, from or which may
21 be caused by the laying, erecting, maintaining, operating or removing of any of said pipe,
22 telephone or telegraph lines, or by leakage from any of said pipe lines[.]"

23 29. In the years since 1909, Defendants reportedly removed and replaced the
24 Pipeline crossing the HQ Property at least twice. During one such maintenance project,
25 petroleum hydrocarbons were discovered in soil underlying the existing Pipeline at numerous
26 locations on the HQ Property. In light of this discovery, the Regional Board opened an
27 environmental investigation into the section of Pipeline traversing the HQ Property. Chevron
28 Environmental Management Company currently manages this environmental project on behalf

1 of Defendant UNION as Chevron Site No. 35-1313. Formerly, Defendant CONOCO oversaw
2 management of the project as Site No. 3475.

3 30. Under the oversight of the Regional Board, chemicals associated with crude oil
4 and semi-refined petroleum products have been detected at elevated concentrations in
5 groundwater, soil vapor, and soil in and adjacent to the Pipeline easement on the HQ Property.
6 According to Defendants' own consultants, the area of the HQ Property now contaminated by
7 petroleum hydrocarbons is significantly greater than the area that comprises the Pipeline Right
8 of Way.

9 31. The available evidence suggests that the Pipeline leaks causing this
10 contamination are not solely historical. Petroleum hydrocarbon chemicals detected on the HQ
11 Property include Total Petroleum Hydrocarbons ("TPH") in the gasoline range, TPH in the
12 diesel range, benzene, toluene, ethylbenzene, and xylenes. The presence of elevated
13 concentrations of these chemicals is an indicator of releases of products transported through the
14 Pipeline since 1995 and continuing to present. Also, ethanol was detected in soil vapor
15 samples collected near the Pipeline in 2015. Ethanol has been used as an oxygenate in
16 reformulated gasoline since approximately 2000, and is rarely, if ever found in crude oil. The
17 presence of ethanol in soil vapor is indicative of releases of products transported through the
18 Pipeline from 2000 through the present.

19 **Contamination to a Source of Drinking Water**

20 32. ROSSI uses and will continue to use groundwater on the HQ Property, including
21 groundwater under and around the Pipeline, for domestic purposes and for irrigation. ROSSI
22 owns and operates several potable groundwater wells on and around the HQ Property,
23 including one or more wells that may be at risk of contamination as the Pipeline pollution
24 spreads. ROSSI intends to increase his use of groundwater underlying the HQ Property for
25 potable purposes.

26 33. The SMR Mutual Water Company, working with ROSSI, is now moving
27 forward with its plan to utilize Nacimiento Water Project water for groundwater recharge on
28 the east side of the HQ Property. These plans relate to ROSSI and his partners' pending

1 construction of new residential estates that will consist of approximately 111 residential parcels
2 to be located southeast of the community of Santa Margarita.¹ The SMR Mutual Water
3 Company intends to provide water to the subdivision's residents by relying on groundwater
4 resources in the southern portion of the Ranch (not on the HQ Property) in amounts equal to
5 the Nacimiento recharge water applied on the HQ Property. Portions of the currently
6 designated recharge field lay up-gradient from the Pipeline and known petroleum hydrocarbon
7 contamination plume.

8 34. The Regional Board's Water Quality Control Plan for the Central Coastal Basin
9 ("Basin Plan") identifies the groundwater underlying the HQ Property as suitable for municipal
10 and domestic water supply. The source of water for the communities of Santa Margarita and
11 Garden Farms is a system of local wells completed in the alluvial basin created by the
12 watersheds of Santa Margarita Creek and Yerba Buena Creek. The Basin Plan also identifies
13 municipal and domestic supply as a beneficial use for Tassajara Creek.

14 35. The groundwater under and around the HQ Property, and surface water of
15 Tassajara Creek, Santa Margarita Creek, and Yerba Buena Creek, are sources of drinking water
16 into which Defendants' leaking Pipeline has discharged or released, or is likely to discharge or
17 release, petroleum hydrocarbons as described and alleged herein.

18 **Land Use on the HQ Property**

19 36. Defendants' petroleum hydrocarbon contamination on the HQ Property, in
20 addition to posing a continuing threat to human health and the environment, has impeded and,
21 until abated, will continue to impede ROSSI's ability to freely and beneficially use, enjoy and
22 develop his property.

23 37. ROSSI currently uses portions of the HQ Property to raise crops and livestock.
24 ROSSI also has sought, and still intends, to use portions of the HQ Property for intensified
25 agricultural purposes (i.e. irrigated seasonal and permanent crops) but, to date, has been
26 prevented from doing so by Defendants' contamination.

27
28 ¹ See the June 2008, Environmental Impact Report for Santa Margarita Ranch, available at:
[http://www.slocounty.ca.gov/planning/environmental/EnvironmentalNotices/
Santa_Margarita_Ranch_Agricultural_Residential_Cluster_Subdivision.htm](http://www.slocounty.ca.gov/planning/environmental/EnvironmentalNotices/Santa_Margarita_Ranch_Agricultural_Residential_Cluster_Subdivision.htm).

1 38. In addition, ROSSI has developed plans for several future intended land uses on
2 the portion of the Ranch in the vicinity of Defendants' contamination plume, including portions
3 of the HQ Property. These land uses include, but are not limited to: a bed and breakfast, a café,
4 an amphitheater, craft studios, galleries, shops, an interpretive center, a winery, a school, a dude
5 ranch and a horse ranch/equestrian center.

6 39. Defendants' contamination effectively restricts ROSSI's use and enjoyment of
7 the Ranch and HQ Property, presents ongoing liabilities, interferes with farming, ranching, his
8 ability to beneficially use groundwater, groundwater recharge, development and other uses, and
9 impedes financing and conservation efforts. Moreover, the HQ Property provides a significant
10 revenue stream for ROSSI, and the environmental work necessary to remediate Defendants'
11 contamination is likely to negatively impact that revenue stream.

12 **Indemnification Agreement with Defendant CONOCO**

13 40. In or around May of 2005, ROSSI and Defendant CONOCO entered into an
14 Environmental Indemnification Agreement ("Indemnification Agreement"), which is attached
15 hereto as Exhibit B and incorporated herein by this reference.

16 41. Therein, CONOCO agreed to, among other things, indemnify ROSSI "against
17 and from all claims, loss, cost, damages, reasonable attorney's fees, liens or expenses arising
18 out of or related to" the petroleum hydrocarbon contamination caused by CONOCO and its
19 predecessors-in-interest.

20 42. CONOCO has reimbursed ROSSI for some costs incurred within the scope of the
21 Indemnification Agreement. However, CONOCO has refused to reimburse ROSSI for
22 substantial costs, including attorneys' fees, incurred as a direct result of the contamination.
23 Out of the approximately \$1,000,000 for which ROSSI has sought reimbursement from
24 CONOCO pursuant to the Indemnity Agreement, approximately \$200,000 remains unpaid.
25 CONOCO's refusal to reimburse such costs and fees arises out of its improperly narrow
26 interpretation of the scope of the Indemnity Agreement and its breach of the implied covenant
27 of good faith and fair dealing.

28 ///

1 **Defendants' Contamination has Caused ROSSI Significant Harm**

2 43. Defendants are responsible for petroleum hydrocarbon contamination on the HQ
3 Property caused by leaks from the Pipeline. This contamination impacts soil and groundwater
4 on the HQ Property, thereby fouling portions of this historic site.

5 44. Defendants' contamination has caused significant physical injury to ROSSI's
6 property and constitutes an unreasonable interference with ROSSI's ability to freely and
7 beneficially use, enjoy and develop his property. The resulting damages to ROSSI include, but
8 are not limited to: (i) past, current and future injuries, costs and expenses associated with the
9 loss of use of the damaged property; (ii) the costs of investigating and remediating the
10 contamination; and (iii) attorneys' fees associated with the investigation and remediation of the
11 contamination and the prosecution of this action.

12 45. Defendants' contamination will continue to injure ROSSI's property and
13 unreasonably interfere with his ability to freely and beneficially use, enjoy and develop that
14 property unless and until the contamination is remediated.

15 46. ROSSI's interest in protecting the HQ Property and the groundwater beneath it
16 constitutes a reason personal to ROSSI for seeking the damages, injunctive, declaratory and
17 other appropriate relief requested herein.

18 47. ROSSI has incurred and, during the pendency of this action, will incur expenses
19 for attorneys' fees and costs herein. Such attorneys' fees and costs are necessary for the
20 prosecution of this action. The exact sum of such attorneys' fees and costs is presently
21 unascertained and ROSSI requests the Court's permission to amend this claim for costs and
22 attorneys' fees when the amounts are determined.

23 48. Accordingly, through this lawsuit, ROSSI seeks: (i) injunctive relief to require
24 Defendants to cease any continuing Pipeline leaks on the HQ Property; (ii) injunctive relief
25 directing Defendants to delineate and remediate petroleum hydrocarbon contamination on the
26 HQ Property resulting from their Pipeline releases; (iii) reimbursement and indemnification for
27 expenses incurred as a result of the contamination; (iv) damages for injury to property,
28 including but not limited to costs of restoration and remediation and loss of use damages; (v)

1 damages pursuant to contract; (vi) civil penalties for contaminating a source of drinking water;
2 (vii) declaratory relief; and (viii) reasonable attorneys' fees incurred in connection with the
3 contamination and in prosecuting this action.

4 49. ROSSI is informed and believes and based thereon alleges that he has suffered
5 damages in excess of \$25,000.

6 **FIRST CAUSE OF ACTION**

7 **(Continuing Private Nuisance Against All Defendants)**

8 50. Plaintiff realleges and incorporates herein by reference the allegations contained
9 in each of the preceding paragraphs.

10 51. At all times relevant to this Complaint, Plaintiff owned, occupied and/or
11 controlled the property that is the subject of this Complaint: the HQ Property and the use rights
12 to its underlying groundwater.

13 52. The negligent, reckless, intentional, and/or hazardous acts and omissions of
14 Defendants, and each of them, as alleged herein, have resulted in the continuing contamination
15 of the HQ Property and the groundwater underlying it, which constitutes a nuisance under
16 California Civil Code §§ 3479 and 3481. Each Defendant has caused, maintained, assisted
17 and/or participated in the creation of such nuisance, and is a substantial contributor to such
18 nuisance.

19 53. Defendants, and each of them, have caused and/or permitted the nuisance on the
20 HQ Property and the groundwater underlying it as a result of releases of petroleum
21 hydrocarbons and other contamination from pipelines that are and/or were owned, operated,
22 installed, maintained, used and/or replaced by Defendants.

23 54. The nuisance caused, contributed to, maintained, assisted in and/or participated
24 in by Defendants, and each of them, has caused substantial injury to property in which Plaintiff
25 has a significant, possessory interest. The nuisance alleged herein has and continues to
26 substantially and unreasonably interfere with, obstruct, and/or disturb Plaintiff's free use and
27 enjoyment of his land and groundwater.

28 55. Plaintiff did not consent to Defendants' acts and omissions, as alleged herein,

1 which constitute a nuisance.

2 56. An ordinary person would be reasonably annoyed and/or disturbed if, as has
3 happened to Plaintiff, Defendants' acts and omissions caused their property to be contaminated
4 with petroleum hydrocarbons.

5 57. The contamination of the HQ Property and its groundwater, as alleged herein,
6 has varied over time and has not yet ceased. Petroleum hydrocarbons continue to migrate,
7 spread and/or enter into the HQ Property and its groundwater. The contamination alleged
8 herein is reasonably abatable.

9 58. As a direct and proximate result of Defendants' acts and omissions as alleged
10 herein, the HQ Property and the groundwater beneath it have been, and continue to be,
11 contaminated with petroleum hydrocarbons, causing significant injury and damage to property
12 in which Plaintiff has a possessory interest. As a direct and proximate result of such injury and
13 damage to Plaintiff's property, Plaintiff has suffered, and will continue to suffer, substantial
14 damages, including but not limited to past, current and future costs and expenses associated
15 with the loss of use, restoration, repair, and/or remediation of the damaged property, as alleged
16 herein, in an amount to be proven at trial. Defendants, and each of them, are jointly and
17 severally liable for all such damages, and Plaintiff is entitled to recover all such damages in
18 this action.

19 59. Unless Defendants, and each of them, abate the nuisance that they have caused,
20 through their acts and omissions, Plaintiff will continue to incur harm related to the ongoing
21 petroleum hydrocarbon contamination of the HQ Property and its underlying groundwater.

22 60. The gravity of the harm to Plaintiff caused by Defendants' contamination
23 outweighs the public benefit of Defendants' conduct.

24 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

25 **SECOND CAUSE OF ACTION**

26 **(Continuing Public Nuisance Against All Defendants)**

27 61. Plaintiff realleges and incorporates herein by reference the allegations contained
28 in each of the preceding paragraphs.

1 62. At all times relevant to this Complaint, Plaintiff owned, occupied and/or
2 controlled the property that is the subject of this Complaint: the HQ Property, and the use
3 rights to its underlying groundwater.

4 63. The negligent, reckless, intentional, and/or hazardous acts and omissions of
5 Defendants, and each of them, as alleged herein, have resulted in the continuing contamination
6 of the HQ Property and the groundwater underlying it, which constitutes a nuisance under
7 California Civil Code §§ 3479, 3480, and 3493. Each Defendant has caused, maintained,
8 assisted and/or participated in the creation of such nuisance, and is a substantial contributor to
9 such nuisance.

10 64. Defendants, and each of them, have caused and/or permitted the nuisance on the
11 HQ Property and the groundwater underlying it as a result of releases of petroleum
12 hydrocarbons and other contamination from pipelines that are and/or were owned, operated,
13 installed, maintained, used and/or replaced by Defendants.

14 65. The nuisance caused, contributed to, maintained, assisted in and/or participated
15 in by Defendants, and each of them, affects at the same time an entire community and/or a
16 considerable number of persons, in that, among other things, (i) the nuisance perpetrated by
17 Defendants has caused harm to waters of the State of California, which are a quintessential
18 public resource; and (ii) Defendants' pollution has fouled a property of historical significance
19 to the region and State that hosts thousands of guests each year.

20 66. The nuisance caused, contributed to, maintained, assisted in and/or participated
21 in by Defendants, and each of them, is especially injurious to Plaintiff, who has suffered harm
22 that is different from the type of harm suffered by others, as the nuisance has caused substantial
23 injury to property in which Plaintiff has a significant, possessory interest. The nuisance
24 alleged herein has and continues to substantially and unreasonably interfere with, obstruct,
25 and/or disturb Plaintiff's free use and enjoyment of his land and groundwater.

26 67. Plaintiff did not consent to Defendants' acts and omissions, as alleged herein,
27 which constitute a nuisance.

28 68. An ordinary person would be reasonably annoyed and/or disturbed if, as has

1 happened to Plaintiff, Defendants' acts and omissions caused their property to be contaminated
2 with petroleum hydrocarbons.

3 69. The contamination of the HQ Property and its groundwater, as alleged herein,
4 has varied over time and has not yet ceased. Petroleum hydrocarbons continue to migrate,
5 spread and/or enter into the HQ Property and its groundwater. The contamination alleged
6 herein is reasonably abatable.

7 70. As a direct and proximate result of Defendants' acts and omissions as alleged
8 herein, the HQ Property and the groundwater beneath it have been, and continue to be,
9 contaminated with petroleum hydrocarbons, causing significant injury and damage to property
10 in which Plaintiff has a possessory interest. As a direct and proximate result of such injury and
11 damage to Plaintiff's property, Plaintiff has suffered, and will continue to suffer, substantial
12 damages, including but not limited to past, current and future costs and expenses associated
13 with the loss of use, restoration, repair, and/or remediation of the damaged property, as alleged
14 herein, in an amount to be proven at trial. Defendants, and each of them, are jointly and
15 severally liable for all such damages, and Plaintiff is entitled to recover all such damages in
16 this action.

17 71. Unless Defendants, and each of them, abate the nuisance that they have caused,
18 through their acts and omissions, Plaintiff will continue to incur harm related to the ongoing
19 petroleum hydrocarbon contamination of the HQ Property and its underlying groundwater.

20 72. The gravity of the harm to Plaintiff caused by Defendants' contamination
21 outweighs the social utility of Defendants' conduct.

22 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

23 **THIRD CAUSE OF ACTION**

24 **(Continuing Trespass Against All Defendants)**

25 73. Plaintiff realleges and incorporates herein by reference the allegations contained
26 in each of the preceding paragraphs.

27 74. At all times relevant to this Complaint, Plaintiff owned, occupied and/or
28 controlled the property that is the subject of this Complaint: the HQ Property, and the use

1 rights to the underlying groundwater.

2 75. Defendants, and each of them, negligently, recklessly and/or intentionally failed
3 to properly own, operate, install, maintain, use and/or replace pipelines traversing the HQ
4 Property, such that they proximately caused petroleum hydrocarbons to enter, invade, intrude
5 upon and injure Plaintiff's possession of property, by contaminating the HQ Property and its
6 underlying groundwater. Each Defendant has caused, maintained, assisted and/or participated
7 in the creation of such trespass, and is a substantial contributor to such trespass.

8 76. Plaintiff has not consented to, and does not consent to, the contamination alleged
9 herein. Defendants, and each of them, knew or reasonably should have known that Plaintiff
10 would not consent to this trespass.

11 77. The trespass caused, contributed to, maintained, assisted in and/or participated in
12 by Defendants, and each of them, has caused substantial injury to property in which Plaintiff
13 has a significant, possessory interest. The trespass alleged herein constitutes a physical
14 invasion of Plaintiff's property and has and continues to substantially and unreasonably
15 interfere with, obstruct and/or disturb Plaintiff's property interests.

16 78. The contamination of the HQ Property and its groundwater, as alleged herein,
17 has varied over time and has not yet ceased. Petroleum hydrocarbons continue to migrate,
18 spread and/or enter into the HQ Property and its groundwater. The contamination alleged
19 herein is reasonably abatable.

20 79. As a direct and proximate result of Defendants' acts and omissions as alleged
21 herein, the HQ Property and the groundwater beneath it have been, and continue to be,
22 contaminated with petroleum hydrocarbons, causing significant injury and damage to property
23 in which Plaintiff has a possessory interest. As a direct and proximate result of such injury and
24 damage to Plaintiff's property, Plaintiff has suffered, and will continue to suffer, substantial
25 damages, including but not limited to past, current and future costs and expenses associated
26 with the loss of use, restoration, repair, and/or remediation of the damaged property, as alleged
27 herein, in an amount to be proven at trial. Defendants, and each of them, are jointly and
28 severally liable for all such damages, and Plaintiff is entitled to recover all such damages in

1 this action.

2 80. Unless Defendants, and each of them, abate the trespass that they have caused,
3 through their acts and omissions, Plaintiff will continue to incur harm related to the ongoing
4 petroleum hydrocarbon contamination of the HQ Property and its underlying groundwater.

5 81. As a result of Defendants' trespass, as alleged herein, Plaintiff is entitled to
6 damages pursuant to California Civil Code § 3334, which include the value of the use of the
7 property at issue for the duration of the wrongful occupation, the reasonable cost of repair or
8 restoration of the property, and the costs, if any, of recovering the possession.

9 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

10 **FOURTH CAUSE OF ACTION**
11 **(Violations of Proposition 65 Against Defendants PHILLIPS and PHILLIPS PIPELINE)**

12 82. Plaintiff realleges and incorporates herein by reference the allegations contained
13 in each of the preceding paragraphs.

14 83. The Safe Drinking Water and Toxic Enforcement Act of 1986, beginning at
15 Health and Safety Code § 25249.5, is an initiative statute that was placed before the voters in
16 November, 1986 as "Proposition 65" and approved via a State-wide vote.

17 84. Proposition 65 prohibits any business from "knowingly discharge[ing] or
18 releas[ing] a chemical known to the state to cause cancer or reproductive toxicity into water or
19 onto or into land where such chemical passes or probably will pass into any source of drinking
20 water" Health and Safety Code § 25249.5.

21 85. Under Proposition 65, the phrase "source of drinking water" means "either a
22 present source of drinking water or water which is identified or designated in a water quality
23 control plan adopted by a regional board as being suitable for domestic or municipal uses."
24 Health and Safety Code § 25249.11(d).

25 86. Violations of Proposition 65 may be enforced by any person "in the public
26 interest" if they have: (i) provided 60-days written notice of the violations to Defendants, the
27 Attorney General and to the District Attorney; and (ii) no public prosecutors have commenced
28 and are diligently prosecuting an action against the violations. Health & Safety Code §

1 25249.7(d).

2 87. Any business that is “violating or threatening to violate” Proposition 65 may be
3 “enjoined in any court of competent jurisdiction” and held liable for civil penalties of up to
4 \$2,500 per day for each violation, recoverable in a civil action brought by any person in the
5 public interest. Health & Safety Code § 25249.7(a)-(b).

6 88. Due to leaks from pipelines that are and were owned, operated, installed,
7 maintained, used and/or replaced by Defendants PHILLIPS and PHILLIPS PIPELINE, the
8 following toxic chemicals, among others, have been found in, and are present in, soil and
9 groundwater on and beneath the HQ Property: benzene, toluene, ethylbenzene,
10 benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene,
11 dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and naphthalene. These chemicals were listed
12 by the Governor as human carcinogens or reproductive toxins under Proposition 65 on the
13 following dates: benzene (February 27, 1987), toluene (January 1, 1991), ethylbenzene (June
14 11, 2004) , benz(a)anthracene (July 1, 1987), benzo(a)pyrene (July 1, 1987),
15 benzo(b)fluoranthene (July 1, 1987), benzo(k)fluoranthene (July 1, 1987), chrysene (January 1,
16 1990), dibenz(a,h)anthracene (January 1, 1988), indeno(1,2,3-cd)pyrene (January 1, 1998),
17 naphthalene (April 19, 2002).

18 89. The groundwater under and around the Pipeline traversing the HQ Property and
19 the surface water of Tassajara Creek, Santa Margarita Creek, and Yerba Buena Creek have
20 been, are, and will continue to be used as sources of drinking water. Additionally, the
21 Regional Board’s Water Quality Control Plan for the Central Coastal Basin identifies the
22 groundwater underlying the HQ Property as suitable for municipal and domestic water supply.

23 90. By committing the acts alleged above, Defendants PHILLIPS and PHILLIPS
24 PIPELINE have knowingly discharged or released, are discharging or releasing, and there is a
25 substantial probability that they will continue to discharge or release chemicals known to the
26 state to cause cancer or reproductive toxicity – including but not limited to benzene, toluene,
27 ethylbenzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene,
28 benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and

1 naphthalene – into water or onto or into land where such chemicals have passed and probably
2 will continue to pass into a source of drinking water.

3 91. Each day that Defendants PHILLIPS and PHILLIPS PIPELINE discharge(d) or
4 release(d) chemicals known to the state to cause cancer or reproductive toxicity into water or
5 onto or into land where such chemicals pass, or probably will pass, into any source of drinking
6 water is a new and distinct violation of Health and Safety Code § 29249.5.

7 92. Plaintiff has provided written notice of the Proposition 65 violations alleged
8 herein to Defendants PHILLIPS and PHILLIPS PIPELINE, the Attorney General and to the
9 District Attorney as required under Health & Safety Code § 25249.7(d). No public prosecutors
10 have commenced and are diligently prosecuting an action against these violations.

11 93. In light of Defendants PHILLIPS’ and PHILLIPS PIPELINE’s Proposition 65
12 violations, these Defendants are each liable for civil penalties (not to exceed \$2,500 per day for
13 each violation) and Plaintiff is entitled to a portion of the civil penalties as well as injunctive
14 and declaratory relief. Continuing commission by Defendants PHILLIPS and PHILLIPS
15 PIPELINE of the actions alleged herein will irreparably harm Plaintiff, for which harm
16 Plaintiff has no plain, speedy or adequate remedy at law.

17 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

18 **FIFTH CAUSE OF ACTION**

19 **(Violations of Business and Professions Code Section 17200**
20 **Against Defendants CONOCO, PHILLIPS, and PHILLIPS PIPELINE)**

21 94. Plaintiff realleges and incorporates herein by reference the allegations contained
22 in each of the preceding paragraphs.

23 95. Plaintiff has suffered damage to its property as a result of Defendants
24 CONOCO’s, PHILLIPS’, and PHILLIPS PIPELINE’s unlawful business practices, which
25 constitutes injury in fact pursuant to Business and Professions Code § 17204.

26 96. Defendants CONOCO, PHILLIPS, and PHILLIPS PIPELINE leaked,
27 discharged, disposed of and/or otherwise released petroleum hydrocarbons into or onto the HQ
28 Property and its underlying groundwater.

1 97. By leaking, discharging, disposing of and/or otherwise releasing petroleum
2 hydrocarbons into or onto the HQ Property and its underlying groundwater, Defendants
3 CONOCO, PHILLIPS, and PHILLIPS PIPELINE, and each of them, violated California
4 statutes and regulations, including but not limited to the following: California Water Code §§
5 13050, 13260, 13264, 13272, and 13350; California Health & Safety Code §§ 5410, 5411,
6 5411.5, and 25249.5; California Fish & Game Code §§ 5650 and 12015; and California
7 Government Code §§ 8670.25, and 8670.66 and 8670.66. All such violations have occurred in
8 connection with and/or as a result of Defendants CONOCO's, PHILLIPS', and PHILLIPS
9 PIPELINE's normal business activities, rendering them unlawful business practices within the
10 meaning of California's Unfair Competition Laws, pursuant to California Business &
11 Professions Code §§ 17200 et seq.

12 98. Yerba Buena Creek, Santa Margarita Creek, Tassajara Creek and the
13 groundwater under the HQ Property are waters of the State of California.

14 99. Defendants CONOCO's, PHILLIPS', and PHILLIPS PIPELINE's leaked,
15 discharged, disposed of and/or released petroleum hydrocarbons, as alleged herein, have
16 contaminated the waters of the State of California.

17 100. Defendants CONOCO's, PHILLIPS', and PHILLIPS PIPELINE's discharges
18 and/or releases of the petroleum hydrocarbons, as alleged herein, were not and are not in
19 accordance with the laws and regulations of the State of California and no permit or
20 authorization was obtained prior to the discharges.

21 101. As a direct, proximate, and foreseeable result of Defendants CONOCO's,
22 PHILLIPS', and PHILLIPS PIPELINE's wrongful conduct, as alleged herein, Defendants'
23 business acts, omissions, and/or practices have caused injury to Plaintiff and the public, and
24 Plaintiff is entitled to relief.

25 102. As a result of the violation by Defendants CONOCO, PHILLIPS, and PHILLIPS
26 PIPELINE, and each of them, of California's Unfair Competition Laws, Plaintiff is entitled to
27 injunctive relief: (i) directing Defendants CONOCO, PHILLIPS, and PHILLIPS PIPELINE to
28 fully comply with applicable California statutes and regulations relating to Defendants'

1 unlawful and improper leakage, discharge, disposal and/or release of petroleum hydrocarbons
2 into or onto the HQ Property and its underlying groundwater; (ii) enjoining similar future
3 unlawful acts, omissions, and/or practices by Defendants CONOCO, PHILLIPS, and
4 PHILLIPS PIPELINE; and (iii) directing Defendants CONOCO, PHILLIPS, and PHILLIPS
5 PIPELINE to delineate and remediate petroleum hydrocarbon contamination on the HQ
6 Property resulting from their unlawful and improper Pipeline leaks, discharges, and/or releases.

7 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

8 **SIXTH CAUSE OF ACTION**

9 **(Equitable Indemnity and Contribution Against All Defendants)**

10 103. Plaintiff realleges and incorporates herein by reference the allegations contained
11 in each of the preceding paragraphs.

12 104. Defendants, and each of them, violated the law and caused a continuing trespass
13 and nuisance condition on Plaintiff's property.

14 105. Defendants' misconduct in adversely affecting the condition of Plaintiff's
15 property and violating applicable law should, in equity, require Defendants, and each of them,
16 to remediate their petroleum hydrocarbon contamination on the HQ Property and hold
17 harmless, defend, and/or indemnify Plaintiff from and against all losses, costs, liabilities,
18 and/or claims arising from the contamination.

19 106. Plaintiff has and will be compelled to expend substantial amounts of money
20 relating to the investigation and remediation of the HQ Property and its underlying
21 groundwater. In so doing, Plaintiff has discharged and will discharge a liability that should
22 legally and equitably be attributed to Defendants, and each of them. All costs that have been
23 and will be incurred by Plaintiff relating to the investigation and remediation of the property at
24 issue were and will be incurred because Defendants, and each of them, have failed and
25 continue to fail to recognize their legal and equitable obligations to remediate the HQ Property.

26 107. Because Plaintiff is a participant in redressing the consequences of Defendants'
27 unlawful and improper conduct, Plaintiff is entitled under equitable principles of law to
28 equitable indemnity and contribution from Defendants, and each of them, for all costs which

1 have been incurred, or will be incurred, relating to the investigation and remediation of the
2 contamination originating from Defendants' Pipeline, as alleged herein. If Plaintiff incurs
3 attorneys' fees as a result of responding to orders and/or actions by regulatory authorities or
4 other third parties regarding the contamination originating from Defendants' Pipeline, as
5 alleged herein, Plaintiff is entitled to recover from Defendants, and each of them, his costs,
6 including reasonable attorneys' fees, to defend against any third party orders and/or actions.
7 Defendants, and each of them, are jointly and severally liable for providing all such relief, and
8 Plaintiff is entitled to recover all such relief in this action.

9 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

10 **SEVENTH CAUSE OF ACTION**

11 **(Breach of Contract Against Defendant CONOCO)**

12 108. Plaintiff realleges and incorporates herein by reference the allegations contained
13 in each of the preceding paragraphs.

14 109. Plaintiff and Defendant CONOCO entered into an Indemnification Agreement in
15 2005. Under the Indemnification Agreement, Plaintiff is entitled to indemnity and contribution
16 from CONOCO for all costs that have been incurred for investigation and remediation of the
17 petroleum hydrocarbon contamination from Defendants' Pipeline, as alleged herein, including
18 attorney's fees.

19 110. As a direct and proximate result of the contamination caused by Defendants,
20 including CONOCO, as alleged herein, Plaintiff has expended substantial amounts of money
21 for the investigation and remediation of the HQ Property. All costs incurred by Plaintiff
22 relating to the investigation and remediation of the property at issue were incurred because
23 Defendants, including CONOCO, failed and continue to fail to recognize their obligation to
24 remediate the HQ Property.

25 111. The costs that Plaintiff has incurred for the investigation and remediation of the
26 HQ Property are costs within the scope of the Indemnification Agreement with CONOCO.

27 112. Plaintiff has met, or been excused from meeting, all of its obligations under the
28 Indemnity Agreement.

1 113. Plaintiff has submitted to CONOCO expenses incurred in the investigation and
2 remediation described above but, to date, CONOCO has failed and refused to indemnify
3 Plaintiff for same. Said failure is a breach of CONOCO's obligations under the
4 Indemnification Agreement.

5 114. As a direct and proximate result of CONOCO's breach of the Indemnification
6 Agreement, Plaintiff has been damaged in an amount according to proof at trial.

7 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

8 **EIGHTH CAUSE OF ACTION**

9 **(Breach of Implied Covenant of Good Faith and**
10 **Fair Dealing Against Defendant CONOCO)**

11 115. Plaintiff realleges and incorporates herein by reference the allegations contained
12 in each of the preceding paragraphs.

13 116. Plaintiff and Defendant CONOCO entered into an Indemnification Agreement in
14 2005. Under the Indemnification Agreement, Plaintiff is entitled to indemnity and contribution
15 from CONOCO for all costs that have been incurred for investigation and remediation of the
16 petroleum hydrocarbon contamination from Defendants' Pipeline, as alleged herein, including
17 attorney's fees.

18 117. As a direct and proximate result of the contamination caused by Defendants,
19 including CONOCO, as alleged herein, Plaintiff has expended substantial amounts of money
20 for the investigation and remediation of the HQ Property. All costs incurred by Plaintiff
21 relating to the investigation and remediation of the property at issue were incurred because
22 Defendants, including CONOCO, failed and continue to fail to recognize their obligation to
23 remediate the HQ Property.

24 118. The costs that Plaintiff has incurred for the investigation and remediation of the
25 HQ Property are costs within the scope of the Indemnification Agreement with CONOCO.

26 119. Plaintiff has met, or been excused from meeting, all of its obligations under the
27 Indemnity Agreement.

28 120. Plaintiff has submitted to CONOCO expenses incurred in the investigation and

1 remediation described above but, to date, CONOCO has failed and refused to indemnify
2 Plaintiff for same.

3 121. In failing to meet its obligations under the Indemnity Agreement, CONOCO has
4 breached the implied covenant of good faith and fair dealing.

5 122. CONOCO has acted at the behest of, in the interest of and/or for the benefit of
6 UNION pursuant to their contract regarding environmental liabilities related to former “76
7 assets,” which include the Right of Way and pipelines on the HQ Property and, in so doing, has
8 unfairly interfered with Plaintiff’s right to receive the benefits of the Indemnification
9 Agreement.

10 123. As a direct and proximate result of CONOCO’s breach of the implied covenant
11 of good faith and fair dealing, Plaintiff has been damaged in an amount according to proof at
12 trial.

13 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

14 **NINTH CAUSE OF ACTION**

15 **(Declaratory Relief Against All Defendants)**

16 124. Plaintiff realleges and incorporates herein by reference the allegations contained
17 in each of the preceding paragraphs.

18 125. An actual controversy has arisen and now exists between Plaintiff and
19 Defendants, and each of them, concerning the parties’ respective obligations and liabilities
20 arising from the petroleum hydrocarbon contamination on the HQ Property and its underlying
21 groundwater, and the attendant harm posed thereby to Plaintiff and environment. Plaintiff
22 contends and Defendants deny that Defendants have obligations and potential obligations
23 under law for:

- 24 a. The responsibility and associated costs of undertaking an investigation,
25 characterization, treatment, removal, replacement, clean up and/or remediation of
26 petroleum hydrocarbon contamination on the HQ Property and its underlying
27 groundwater.
- 28 b. Indemnifying Plaintiff for any and all costs and damages incurred (including

1 attorneys' fees) as a result of petroleum hydrocarbon contamination on the HQ
2 Property and its underlying groundwater, as well as the remediation thereof.

3 c. Such other and further costs and liabilities as hereafter arise relating to the
4 presence of petroleum hydrocarbon contamination on the HQ Property and its
5 underlying groundwater.

6 126. Unless a judicial declaration is issued, setting forth the parties' rights and
7 obligations with respect to the costs, damages, investigative and remedial work, and liabilities
8 identified above, a multiplicity of actions will result. Plaintiff therefore requests a judicial
9 determination of the rights, duties, and obligations of the parties with respect to the costs,
10 damages, investigative and remedial work, duty to defend, and liabilities identified above.

11 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

12 **TENTH CAUSE OF ACTION**

13 **(Declaratory Relief Against Defendant CONOCO)**

14 127. Plaintiff realleges and incorporates herein by reference the allegations contained
15 in each of the preceding paragraphs.

16 128. As described above, Plaintiff and CONOCO entered into an Indemnification
17 Agreement in 2005. Under the Indemnification Agreement, Plaintiff is entitled to indemnity
18 and contribution from CONOCO, for all costs, including attorneys' fees, which will be
19 incurred relating to the investigation and remediation of the contamination originating from
20 Defendants' releases of petroleum hydrocarbons, as alleged herein.

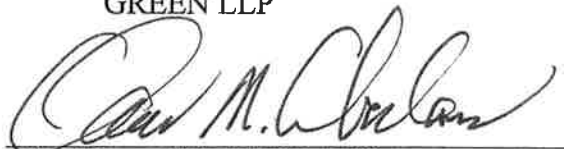
21 129. As a direct and proximate result of the conduct of Defendants, including
22 CONOCO, as alleged herein, Plaintiff will be compelled to expend substantial amounts of
23 money relating to the investigation and remediation of the HQ Property in the future. In so
24 doing, Plaintiff has discharged and will discharge a liability that should legally and equitably
25 be attributed to Defendants, and each of them. All costs which have been and will be incurred
26 by Plaintiff relating to the investigation and remediation of its property at issue were and will
27 be incurred because Defendants, and each of them, have failed and continue to fail to recognize
28 their legal and equitable obligations to remediate the HQ Property.

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- proof;
- 8. An order granting Plaintiff its reasonable attorneys' fees in prosecuting this action, according to proof, including but not limited to attorneys' fees pursuant to California Code of Civil Procedure §§ 1021.5 and 1021.9 and attorney's fees pursuant to the Indemnification Agreement.
 - 9. An order awarding Plaintiff prejudgment interest to the full extent permitted by law;
 - 10. An order permitting the Court to retain jurisdiction over this action after entry of the requested relief for the purpose of granting further relief as may be necessary and/or proper to effectuate the will of the Court; and
 - 11. Such other and further relief as the Court may deem just and proper.

Dated: April 29th, 2016

ADAMSKI MOROSKI MADDEN CUMBERLAND &
GREEN LLP



DAVID M. CUMBERLAND
Attorneys for Plaintiff Robin L. Rossi, as Trustee of the
Robin L. Rossi Living Trust utd October 19, 1990

EXHIBIT A

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of San Luis Obispo, State of California, described as follows:

PARCEL 1 OF COAL 00-0264, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 9, 2001 AS INSTRUMENT NO. 2001-076580 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PROPERTY SITUATED IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, WHICH LIES WITHIN THE BOUNDARIES OF THE RANCHO SANTA MARGARITA AS SHOWN ON THE MAP OF THE SAID RANCHO RECORDED JULY 21, 1880, IN BOOK A OF MAPS AT PAGE 42, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS DESCRIBED IN THAT CERTAIN DEED FROM REIS ESTATE COMPANY, A CORPORATION, DATED OCTOBER 15, 1914 IN BOOK 102 AT PAGE 274 OF DEEDS, THAT LIES EAST OF THE EAST LINE OF THE LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED APRIL 5, 1949 IN BOOK 516 OF OFFICIAL RECORDS AT PAGE 398 AND THAT LIES EAST OF THE EAST LINE OF THE LAND DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED MARCH 19, 1956 IN BOOK 839 OF OFFICIAL RECORDS AT PAGE 442 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BOUNDED ON THE WEST BY THE EASTERLY RIGHT-OF-WAY OF STATE HIGHWAY 101.

BOUNDED ON THE NORTH BY THE SOUTHERLY LINE OF SANTA MARGARITA TRACT NO. 1, AS SHOWN ON THE MAP RECORDED JUNE 6, 1922 IN BOOK 3 OF MAPS AT PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BOUNDED ON THE SOUTH BY THE CENTERLINE OF HIGHWAY 58.

BOUNDED ON THE SOUTHEAST BY THE NORTHWESTERLY LINE OF THE TOWN OF SANTA MARGARITA AS SHOWN ON THE MAP OF THE TOWN OF SANTA MARGARITA FILED FOR RECORD ON MARCH 26, 1904, IN BOOK A OF MAPS AT PAGE 121, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BOUNDED ON THE EAST BY THE CENTERLINE OF EL CAMINO REAL.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LAND WHICH HAVE BEEN CONVEYED TO THE SOUTHERN PACIFIC RAILROAD COMPANY, BY DEEDS RECORDED IN BOOK 328 AT PAGE 322, IN BOOK 300 AT PAGE 247, IN BOOK 310 AT PAGE 22, IN BOOK 214 AT PAGE 432, IN BOOK 310 AT PAGE 24 ALL OF OFFICIAL RECORDS; AND IN BOOK 50 AT PAGE 108 OF DEEDS, AND IN BOOK 160 AT PAGE 497 OF DEEDS.

APN: 070-091-036

First American Title

EXHIBIT A

EXHIBIT B

ENVIRONMENTAL INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL INDEMNIFICATION AGREEMENT (this "Agreement") is entered into this 6th day of May 2005 by and among ConocoPhillips Company ("Indemnitor"), a Delaware corporation with its principal place of business located at 600 North Dairy Ashford, Houston, Texas 77079 and Robin L. Rossi, Trustee of the Robin L. Rossi Living Trust utd October 19, 1990 ("Indemnitee"), located at 750 Plsno Street, San Luis Obispo, California 93401. The foregoing parties are collectively referred to herein as the "Parties".

Recitals

WHEREAS, Indemnitee is the legal owner of all of that certain real property described in Appendix "A" attached hereto and all improvements located thereon (the "Property"); and

WHEREAS, Indemnitor is the successor-in-interest to the grantee of a certain "Right of Way," granted for petroleum pipeline and other purposes over a portion(s) of the Property, all as more specifically described in that certain "Right of Way," dated August 19, 1909 and recorded September 11, 1911 at volume 90 of Deeds, page 70 in the office of the San Luis Obispo County Recorder, as amended by that certain "Modification of Right of Way Agreement, dated August 8, 2002 and recorded August 19, 2002 as Document No. 2002-067619, in the Official Records of the San Luis Obispo County Recorder (hereinafter referred to as the "Right of Way"); and

WHEREAS, when Indemnitor or its predecessor-in-interest previously replaced petroleum pipelines in the Right of Way, it was discovered that there had been releases of petroleum hydrocarbon contamination into the portions of the Property within the Right of Way and portions of the Property not within the Right of Way. This petroleum hydrocarbon contamination and any other contamination discharged on the Property by Indemnitor or its predecessor owners of the Right of Way is hereinafter referred to collectively as "CP Caused Contamination;" and

WHEREAS, currently, due to the aforementioned petroleum hydrocarbon contamination releases the contaminated portions of the Property have, under authority and review of the California Regional Water Quality Control Board (the "RWQCB"), become subject to present and future environmental assessment, investigation, response and/or remediation (collectively "Environmental Work"); and

WHEREAS, on or about October 1, 2001, Indemnitee's predecessor-in-interest, Santa Margarita Ranch, LLC, entered into a certain "License Agreement" with Indemnitor's predecessor-in-interest, Tosco Corporation, a Nevada corporation, which granted Tosco access to the Property for the purposes described therein, and specifically to perform certain Environmental Work. A copy of such License Agreement is attached hereto as Appendix "B" and incorporated herein by this reference; and

WHEREAS, on or about December 7, 2004, the RWQCB, by correspondence to Indemnitor and Indemnitee, a copy of which is attached as Appendix "C," notified them that (i) they "are jointly considered responsible parties," by RWQCB and (ii) "eventually all Property contaminant sources and contaminated media must be spatially defined and remediated;" and

WHEREAS, the term of the License Agreement expires August 31, 2005 and Indemnitor is requesting that Indemnitee extend the term of the License Agreement in order to complete all necessary or required Environmental Work on the Property; and

WHEREAS, Indemnitor is currently being required by the RWQCB to conduct additional certain Environmental Work at the Property, including testing, monitoring and remediating the CP Caused Contamination; and

WHEREAS, Indemnitor acknowledges that Indemnitee is in no way responsible for the CP Caused Contamination; and

WHEREAS, Prospective lenders of the Indemnitee ("Lender" or "Lenders") have conditioned the making of a loan to Indemnitee secured by the Property upon Indemnitee's obtaining a full and complete Indemnity from Indemnitor for matters arising from the CP Caused Contamination; and

WHEREAS, non-profit land conservation groups have indicated to Indemnitee that they will condition the consummation of any land conservation transaction(s) regarding a portion of the Property subject to CP Caused Contamination upon the remediation of the CP Caused Contamination; and

WHEREAS, a Lender's security or the value of the Property to Indemnitee may be impaired if Indemnitor does not remediate or mitigate the CP Caused Contamination; and

NOW THEREFORE, FOR AND IN CONSIDERATION OF THESE PREMISES and in the interest of the Parties, the Parties hereby agree as follows:

1. ConocoPhillips' Indemnity.

1.1 Indemnitor expressly agrees, to the maximum extent permitted by law, to indemnify, defend (with counsel reasonably satisfactory to Indemnitee) and hold harmless Indemnitee and each of its successors, assigns, heirs, estates, trustees, lessees, administrators and Lenders making a loan(s) with the Property being the security for such loan(s) ("Applicable Loans):

1.1.1 against and from all claims, loss, cost, damages, reasonable attorneys' fees, liens or expenses arising out of or related to the CP Caused Contamination, including but not limited to attorney's fees incurred by Indemnitee for the drafting and negotiation of this Agreement; and

1.1.2 against and from any fine, penalty, sanction, damage, charges, government orders and demands imposed for any violations of any law, ordinance, or regulation arising out of, or attributable to said CP Caused Contamination; and

1.1.3 against and from any and all claims, loss, cost, damage, liens, expense (including reasonable attorney's fees), government orders and demands on or related

to the Property caused by Indemnitor, its employees, consultants, contractors or agents in implementing, monitoring, performing or failing to perform any Environmental Work in connection with the CP Caused Contamination, including remediation.

1.2 For all purposes under this Agreement, "Contamination" or "contamination" shall mean any product, substance, or waste whose presence, use, disposal, or release is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Property, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Indemnitee or Indemnitor to any governmental agency or third party under any applicable statute or common law theory and shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof.

2. Government Ordered Environmental Work. In connection with current Environmental Work, and promptly after the issuance to Indemnitor or Indemnitee of a request or order regarding additional Environmental Work related to the CP Caused Contamination issued by RWQCB, any other governmental agency with jurisdiction, or any court of competent jurisdiction, Indemnitor shall expeditiously, diligently, and in a good and workmanlike manner, ~~take all actions~~ reasonably necessary or required, including, but not limited to, obtaining all necessary or required governmental permits from those agencies having jurisdiction, to complete the requested or ordered Environmental Work in accordance with the standard set forth in any such request or order.

May 1, 2009

3. Extension of License Agreement. The Parties hereby agree to extend the term of the License Agreement through May 1, 2009. By execution of this Indemnity Agreement, Indemnitor hereby assumes all of the rights and obligations of "Tosco" and Indemnitee hereby assumes all of the rights and obligations of Santa Margarita Ranch, LLC under the License Agreement. Except as otherwise required by the RWQCB, or other governmental agency or court order, Indemnitor or its consultant(s) or contractor(s) shall inform Indemnitee at least twenty-four (24) hours in advance of all Environmental Work to be undertaken on the Property, pursuant to the License Agreement.

4. Performance of Activities. Except as otherwise provided hereby, any Environmental Work conducted or caused to be conducted by Indemnitor on the Property in accordance with this Agreement shall be performed without any cost or expense to Indemnitee.

~~5. Mutual Cooperation. The Parties agree to cooperate in good faith with each other with respect to the matters covered hereby. Such cooperation shall include, without limitation, reasonable advance notice and coordination of any activities on the Property that may impact or affect the Parties and further~~

5.1 Indemnitor agrees to conduct or cause to be conducted any Environmental Work on the Property in such a way as to minimize any inconvenience or interruption of business operations (including any demolition, construction, and commercial land development activities) conducted on the Property.

5.2 In order to mitigate any potential damages (i) Indemnitee agrees to not materially interfere with or materially impede any Environmental Work; and (ii) Indemnitee shall cause its employees, consultants, contractors, agents, invitees and lessees to abide by the same.

~~6. Restoration. Within sixty (60) days of completion of any Environmental Work on the Property, Indemnitor shall, at no cost to Indemnitee, commence repair of any damage to and~~

restore those portions of Property damaged or disturbed by such Environmental Work to the condition substantially similar to the condition that it was in immediately prior to the commencement of same and any excavations shall be filled with clean fill as per applicable local, state and federal guidelines.

7. Reports. Indemnitor shall provide Indemnitee with copies of all documentary reports, studies, correspondence from or to governmental authorities, surveys, and final results related to any Environmental Work on the Property. Indemnitor will endeavor to provide such reports, studies and surveys to Indemnitee in electronic format.

8. Meetings. Indemnitor shall notify Indemnitee promptly upon scheduling any meetings between Indemnitor or anyone acting on behalf of Indemnitor, and any Governmental Authority, concerning the Property or CP Caused Contamination, or both, of the date and time of each meeting, and Indemnitee, its agents and representatives, shall have the right, without the obligation, to attend and participate in each such meeting.

9. Samples. Indemnitor shall give Indemnitee at least ten (10) business days notice of any samples to be taken at the Property in order that Indemnitee or Indemnitee's employees, agents or representatives, or all of them, may be present at the time of the sampling, and Indemnitee, its employees, agents or representatives, or all of them, shall have a right, without obligation, to be present at the time of sampling and to split all samples for testing, all at Indemnitor's cost and expense. Indemnitee shall notify Indemnitor whether Indemnitee, its employees, agents or representatives shall be present at least three (3) business days prior to the scheduled sampling.

10. Third Party Beneficiary; Assignment. This Agreement may not be assigned by any Party without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided, however, this Agreement is assignable without Indemnitor's consent upon thirty (30) days prior notice to Indemnitor (i) by Indemnitee to a successor owner of the Property or any portion thereof or any interest therein and (ii) by Lender to any successor owner of, or participant in, an Applicable Loan. Any Lender regarding an Applicable Loan is a third party beneficiary of the rights of Indemnitee under this Agreement.

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11. Indemnitee Representations. Indemnitee represents and warrants that through the date of this Environmental Indemnification Agreement, ~~Indemnitee has not suffered any actual damages from loss of use of the Property or actual lost profits arising out of the existence of the CP Caused Contamination on the Property.~~ This representation is not intended to limit the amount of exemplary, punitive, actual, direct, indirect, incidental or consequential damages, accruing in favor of Indemnitee on or after the date of this Agreement, for which Indemnitor may be liable to indemnify Indemnitee under this Agreement, or for a breach thereof, or arising in connection with any other cause of action accruing in favor of Indemnitee on or after the date of this Agreement.

12. Tolling of Statutes of Limitations. From and after the date of mutual execution of this Agreement, the running of any statutes of limitations in connection with any cause or causes of action accruing in favor of Indemnitee, arising directly or indirectly out of or related to the CP Contamination discharged onto the Property, shall be tolled until a date thirty (30) days after notice of termination of such tolling from Indemnitor to Indemnitee.

13. Change In Property Ownership. Indemnitee shall notify Indemnitor of any change in ownership within thirty (30) days of the sale of the Property.

14. Notices. Any and all notices, requests, consents, results, demands, or other communications or documents required or permitted to be made or given under this Agreement shall be in writing and shall be given to a Party at its address or facsimile number set forth in this paragraph or at such other address or facsimile number as such Party may hereafter specify for such purpose by written notice to the other Parties. Notices will be deemed to have been made or given (i) if given by facsimile, when sent, and the appropriate confirmation is received, and (ii) if given by any other means, when delivered. Unless changed in accordance with this paragraph, the address and facsimile numbers for notices are as follows:

CONOCOPHILLIPS: JOHN EMBICK
 CONOCOPHILLIPS
 1660 W. Anahelm Street
 Wilmington, CA 90744
 Telephone: (310) 952-6123
 Facsimile: (310) 952-6014

With Copy to: DERRICK VALLANCE
 Senior Counsel
 Room ML 1110
 CONOCOPHILLIPS,
 600 North Dairy Ashford, Houston, TX 77079
 Telephone: (281) 293-2247
 Facsimile: 281-293-1987

ROSSI TRUST: ROBIN L. ROSSI LIVING TRUST UTD 10/19/1990
 Robln L. Rossi, Trustee
 750 Pismo Street, San Luis Obispo, CA 93401
 Telephone: (805) 543-4333
 Facsimile: (805) 543-4220

With Copy to: PAUL G. METCHIK, ESQ.
 1316 Broad Street, San Luis Obispo, CA 93401
 Telephone: (805) 783-2450
 Facsimile: (805) 783-2451

15. Effective Date. This Agreement shall immediately and automatically become effective and fully-enforceable in all respects on the date first written above.

16. Execution of Agreement. Each of the undersigned hereby represents and warrants that it is authorized to execute this Agreement on behalf of the respective Parties to the Agreement and that this Agreement, when executed by those Parties, shall become a valid and binding obligation, enforceable in accordance with its terms. Upon execution, this Agreement shall be binding as to the Parties' respective parent companies, subsidiaries, affiliates, successors, heirs and assigns.

17. Governing Law. This Agreement is governed by the laws of the State of California.

18. Interpretation.

18.1. This Agreement supersedes any contrary provisions of any prior agreements and this Agreement and the License Agreement contain the entire agreement of the Parties on the matters covered herein; provided, however, the Indemnity Provisions of this Agreement and the License Agreement shall be construed together so as to afford Indemnitee the highest level of applicable indemnity provided for in the two agreements. The rights, obligations and remedies of the Parties under this Agreement are independent of any other agreement between the Parties, and are independent of any causes of action which Indemnitee may otherwise have against Indemnitor. No other agreement, statement or promise made by any Party or agent of any Party that is not in writing and signed by all the Parties shall be binding. Any amendments to this Agreement must be in writing and signed by any authorized representative of each of the Parties.

18.2. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts when taken together shall constitute but one agreement.

18.3. The captions in this Agreement are for convenience and reference only. The words contained herein shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement.

18.4. If any clause or provision of this Agreement is declared illegal, invalid, or unenforceable by a court of competent jurisdiction, it is the intention of the Parties that the validity and enforceability of the remaining clauses and provisions of this Agreement shall not be affected thereby and shall nonetheless remain in full force and effect to the greatest extent permitted by law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties have executed this Agreement in four (4) multiple originals on the dates set forth below with the understanding and agreement that this Agreement shall become effective and fully-enforceable in all respects commencing on the date first written above.

CONOCOPHILLIPS COMPANY

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By: William A. Kitchen
Typed Name: William A. Kitchen
Title: Mgr. Risk Mgt & Remediation

ROBIN L. ROSSI LIVING TRUST UTD OCTOBER 19, 1990

By: [Signature]
Typed Name: Robln L. Rossi
Title: Trustee

APPENDIX "A"
TO
ENVIRONMENTAL INDEMNITY AGREEMENT

LEGAL DESCRIPTION OF REAL PROPERTY

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of San Luis Obispo, State of California, described as follows:

PARCEL 1 OF COAL 00-0264, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 9, 2001 AS INSTRUMENT NO. 2001-076580 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN PROPERTY SITUATED IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, WHICH LIES WITHIN THE BOUNDARIES OF THE RANCHO SANTA MARGARITA AS SHOWN ON THE MAP OF THE SAID RANCHO RECORDED JULY 21, 1880, IN BOOK A OF MAPS AT PAGE 42, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS DESCRIBED IN THAT CERTAIN DEED FROM REIS ESTATE COMPANY, A CORPORATION, DATED OCTOBER 15, 1914 IN BOOK 102 AT PAGE 274 OF DEEDS, THAT LIES EAST OF THE EAST LINE OF THE LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED APRIL 5, 1949 IN BOOK 516 OF OFFICIAL RECORDS AT PAGE 398 AND THAT LIES EAST OF THE EAST LINE OF THE LAND DESCRIBED IN FINAL ORDER OF CONDEMNATION RECORDED MARCH 19, 1956 IN BOOK 839 OF OFFICIAL RECORDS AT PAGE 442 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BOUNDED ON THE WEST BY THE EASTERLY RIGHT-OF-WAY OF STATE HIGHWAY 101.

BOUNDED ON THE NORTH BY THE SOUTHERLY LINE OF SANTA MARGARITA TRACT NO. 1, AS SHOWN ON THE MAP RECORDED JUNE 6, 1922 IN BOOK 3 OF MAPS AT PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BOUNDED ON THE SOUTH BY THE CENTERLINE OF HIGHWAY 58.

BOUNDED ON THE SOUTHEAST BY THE NORTHWESTERLY LINE OF THE TOWN OF SANTA MARGARITA AS SHOWN ON THE MAP OF THE TOWN OF SANTA MARGARITA FILED FOR RECORD ON MARCH 26, 1904, IN BOOK A OF MAPS AT PAGE 121, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BOUNDED ON THE EAST BY THE CENTERLINE OF EL CAMINO REAL.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LAND WHICH HAVE BEEN CONVEYED TO THE SOUTHERN PACIFIC RAILROAD COMPANY, BY DEEDS RECORDED IN BOOK 328 AT PAGE 322, IN BOOK 300 AT PAGE 247, IN BOOK 310 AT PAGE 22, IN BOOK 214 AT PAGE 432, IN BOOK 310 AT PAGE 24 ALL OF OFFICIAL RECORDS; AND IN BOOK 50 AT PAGE 108 OF DEEDS, AND IN BOOK 160 AT PAGE 497 OF DEEDS.

APN: 070-091-036