APPENDIX D

SUPPLEMENTAL CORRESPONDENCE RECEIVED RELATED TO THE DRAFT MND

EAST BAY REGIONAL PARKS PARK DISTRICT

January 19, 2005

Jerry Hall
PG&E Corporate Real Estate
Mail Code N10A
P. O. Box 770000
San Francisco, CA 94177-0001

RE: **MARTINEZ REGIONAL SHORELINE**
Richmond-to-Pittsburg Pipeline Divestiture

Dear Jerry:

This letter confirms our telephone conversation last week in which I clarified several comments contained in my colleague Brad Olson's December 15, 2004 comment letter on the proposed pipeline divestiture.

In the "Martinez Intermodal Amended Memorandum of Understanding" between EBRPD and the City of Martinez, at the City's request the Park District agreed to convey a relocated pipeline easement and a relocated electrical line easement to PG&E. In exchange, EBRPD was to receive through the City a surface trail easement over an adjacent property, as well as quitclaim for the following PG&E easements which would no longer be needed after the relocations were completed:

DOCUMENT NO.	DATE RECORDED
Book 94 of Deeds, Page 177	7/9/1902
Book 94 of Deeds, Page 178	7/9/1902
Book 94 of Deeds, Page 184	7/9/1902
Book 94 of Deeds, Page 327	7/31/1902
Book 94 of Deeds, Page 328	7/31/1902
Book 94 of Deeds, Page 329	7/31/1902
Book 5137, Page 143	6/9/1966
Book 5629, Page 144	5/21/1968
Book 7763, Page 505	2/17/1976

The Park District has not yet received the promised easements; however, per our conversation, PG&E is willing to cooperate and complete the transaction, conveying rights to the easements listed above.

On November 29, 2000, I mailed to you an executed document entitled "Agreement Modifying an Easement" and prepared by PG&E to provide for the relocation of a fuel oil pipeline on EBRPD land. Per our agreement with the City of Martinez, this conveyance was to be "subject to any interest of the State of California in the Property as it may exist in the deed giving the District fee-title interest in the Property." We have provided what we were asked to provide; however, we caution that PG&E may have remaining unresolved issues with the State Lands Commission regarding the relocation of the pipeline and possible expansion of rights, including the nature of the substances to be conveyed by the pipeline.

As a totally separate issue, I would like to reiterate that the Park District has serious objections to the proposed pipeline's location, construction and operation. Conditions have changed on the ground since the modification of the easement occurred. A $4.5 million public project for habitat improvement and flood control purposes was completed in 2002, widening the Alameda Creek channel and creating a new tidal marsh. A portion of the relocated easement runs through this highly sensitive tidal wetland habitat and improved creek corridor. In light of these changes and the resulting constraints, EBRPD staff questions the wisdom of the proposed alignment of a new pipeline.

In his December 15, 2004 letter, EBRPD Environmental Programs Manager Brad Olson reiterated his request for shut off valves at both ends of the pipeline where it passes through Martinez Regional Shoreline in order to protect its natural resources. He also stated that EBRPD will require the pipeline owner to obtain an Encroachment Permit prior to commencing construction on park district lands. These comments reflect our ongoing concerns which have not yet been addressed. As stewards of the public's land, we would be remiss if we did not continue to voice our concerns at every available opportunity in the project approval process.

Sincerely,

Nancy H. Wenninger
Land Acquisition Manager

cc: J. Lambert, PG&E, Law Department
R. Pearson, City of Martinez
B. Blanchard, CPUC
R. Doyle, Assistant General Manager, EBRPD
B. Olson, EBRPD
J. Townsend, EBRPD

STATE OF CALIFORNIA

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October 13, 2004

File Ref: G02-05

Shell Oil Products US
Attn: Mr. Larry Alexander
20945 S. Wilmington Avenue
Carson, CA 90810

Dear Mr. Alexander:

SUBJECT: Replacement of Pipeline across Alhambra Creek, City of Martinez, Contra Costa County

The State Lands Commission's staff has reviewed the map locating your project across Alhambra Creek and along Carquinez Strait, submitted under fax transmittal dated October 1, 2004, from Neilia LaValle representing Paragon Partners Ltd.

This is to advise you that area over which the project will extend are located within the legislative grant to East Bay Regional Park District pursuant to Chapter 815 Statute of 1976, therefore is not subject to the Commission's current leasing or permitting requirements.

This action does not constitute, nor shall it be construed as a waiver of any right, title, or interest by the State of California in any lands under its jurisdiction.

Should you have any questions, please contact me at the above number.

Sincerely,

NANCI SMITH
Public Land Management Specialist

cc: N. LaValle

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File No. 25414.00007

January 12, 2005

VIA FIRST-CLASS MAIL

Richmond-to-Pittsburg Divestiture
c/o Environmental Science Associates
225 Bush Street, Suite 1700
San Francisco, CA 94104
Attn: Heidi Vonblum

Re: Richmond-to-Pittsburg Pipeline Divestiture;
Response to Comments of Chevron U.S.A. Inc. to Draft Mitigated Negative Declaration (Revised) (A.00-05-035 and A.00-12-008)

Dear Ms. Vonblum:

On December 27, 2004, Chevron U.S.A. Inc. ("Chevron") submitted a letter (the "Chevron Comments") to you commenting on the Draft Mitigated Negative Declaration for Pacific Gas & Electric Company's ("PG&E") divestiture of its Richmond-to-Pittsburg Pipeline (the "Draft MND") circulated on November 24, 2004. Although not required by the California Environmental Qualify Act ("CEQA") or the Commission's rules, PG&E, Shell Pipeline Company, L.P., San Pablo Bay Pipeline Company, LLC ("SPBPC") and the Santa Clara Valley Housing Group ("SCVHG") (collectively, the "Applicants") respectfully submit this response in the interest of clarifying the record.

In its comments, Chevron attempted to identify several deficiencies in the Draft MND and asserted that the Draft MND provided "substantial evidence to support a fair argument that the project may result in a significant impacts ..." and, as a result, "the Commission is required to prepare and certify an EIR before considering the Application." As discussed in detail below, Chevron's comments are based on a misunderstanding of the "Project" that is being considered, a misapplication of the applicable law, and a misrepresentation of the facts surrounding, and historic context of, the proposed transaction.

1. Project Description and Scope of Environmental Analysis

The Chevron Comments, in numerous locations, assert that approval of the Project will result in (i) the construction of tie-ins and new pumping stations and (ii) the remediation and redevelopment of the Hercules Pump Station. These assertions are incorrect. The Project does

not include proposals to construct new tie-ins or new pumping stations, nor does it include a proposal to remediate and redevelop the Pump Station. The scope of these potential future activities has not been determined yet. Thus, the Commission's approval of the Application will not "result" in the foregoing occurring and the Commission is not required to address these potential, future activities. Further, any effort by the Commission to analyze these potential future activities would require the Commission to engage in pure speculation as to their potential scope and impact. CEQA does not require such an analysis.

(a) The Project Does Not Include Proposals to Construct New Tie-Ins or New Pumping Stations or to Remediate and Re-Develop the Existing Pump Station.

The Project for which approval is being sought and the environmental analysis is being performed is properly described by the Draft MND and the Application. The Project is simply the transfer of ownership of the Richmond-to-Pittsburg Pipeline (the "Pipeline"), along with the right to construct a 5,500 foot replacement pipeline segment, and the transfer of ownership of the Hercules Pump Station (the "Pump Station") in accordance with the terms of the transactions described in the Application and reflected in the agreements included with the Application. The "Project," and the required environmental analysis, does not extend beyond what is contemplated by, or a reasonably foreseeable result of, this proposed transaction.

Under the proposed transaction, ownership of the Pipeline will transfer to SPBPC. It is a condition to the transfer that, among other things, SPBPC have certain land rights required to construct and install a 5,500 foot replacement segment of pipeline and that it have the right to use the Pipeline for transporting crude oils, black oils and refined petroleum products. Because both of these issues are expressly contemplated by the transaction, these issues are properly considered within the scope of the Project and the environmental analysis. The proposed transaction does not contemplate that SPBPC will install new tie-ins or construct a new pumping station nor is the proposed transaction conditioned on SPBPC having the right to do so. To the extent that SPBPC ultimately elects to install new tie-ins or to construct a new pumping station, SPBPC will need to obtain the necessary approvals, and perform the necessary environmental review of the actual specific items and locations, when, and if, it elects to do so.

The proposed transaction also contemplates that ownership of the Pump Station will transfer to the SCVHG or its affiliate. SCVHG will assume certain responsibilities associated with such ownership, including obligations with respect to any remediation of the Pump Station. The proposed transaction does not, however, contemplate that SCVHG is required to remediate and re-develop the Pump Station, nor is the proposed transaction conditioned on SCVHG having the right to do so. In fact, the applicants have expressly acknowledged that whether, and under what conditions, SCVHG will have the ability to remediate and re-develop the Pump Station will be the subject of a separate CEQA review process to be conducted by the City of Hercules.

(b) Approval of the Application Will Not "Result" In The Construction of New Tie-Ins or New Pumping Stations or the Dismantling, Remediation and Re-Development the Existing Pump Station.

As discussed above, the scope of authority that SPBPC and SCVHG have requested from the Commission is limited to the transfer and ownership of the relevant assets. SPBPC and SCVHG have not requested authority to construct new tie-ins or pumping stations or to remediate and redevelop the Pump Station. To the extent that SPBPC and/or SCVHG seek authority in the future to undertake these activities, further governmental approvals of the actual plans, with the necessary environmental compliance, will be required.

As noted in the Application and the Draft MND, SPBPC has not yet determined the final use of the Pipeline. Making this determination will involve a detailed decision-making process and technical analysis outlined in the Draft MND. To the extent this decision-making process results in SPBPC identifying a final use of the Pipeline that involves the construction of new tie-ins, pumping stations or other facilities, SPBPC will be required to seek the necessary permits and governmental approvals at that time. Any required environmental review or CEQA process will be performed in connection with proposals to construct specific tie-ins and, if necessary, pumping stations. If SPBPC is unable to obtain the necessary approvals to construct particular tie-ins or, if necessary, a particular pumping station, SPBPC will need to identify alternate tie-ins, pump stations or potentially alternate uses for the Pipeline. Whether, and the conditions under which, SPBPC will be able to construct any tie-ins or pumping stations will be determined in accordance with the applicable laws and regulations. The Commission's approval of the Application will not authorize SPBPC to construct any such tie-ins or pumping stations.

Similarly, the Commission's approval of the Application will not authorize SCVHG to dismantle, remediate and re-develop the Pump Station. The Pump Station is located within the City of Hercules (the "City") and is currently zoned for "Heavy Industrial" use, which use does not permit residential development. In order for SCVHG to remediate and re-develop the Pump Station, the City will need to develop and approve an amendment to its existing General Plan and ultimately identify and approve specific plans for remediating and developing the site. The extent to which SCVHG will need to remediate the Pump Station site under the direction of the Department of Toxic Substances Control (the "DTSC") will depend on the ultimate use of the site approved by the City. This approval process will require that the City perform an extensive CEQA review. The Commission's approval of this Application will not "result" in the remediation and re-development of the Pump Station site.

CEQA does not require the Commission to evaluate the potential environmental impacts of potential future actions where there is no causal link between (i.e., will not "result from") the Commission's decision and those future actions. In Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District, 9 Cal. App. 4th 464 (1992), the court assessed whether a school district's resolution to establish a community facilities district to raise funds for future

acquisition of school sites and related facilities qualified as a "project" under CEQA.[1] The court concluded that a causal connection between the public agency's present approval and a future physical impact is necessary to invoke CEQA and such a connection was missing from the subject approval.[2] The court found that "the only foreseeable impact from the formation of [the facilities district] is that when the [school district] does determine sometime in the future to acquire sites for the construction of schools ... it will have the funds necessary to do so."[3] The court went on to note that when the school district makes the decision to construct new schools, it will be required to evaluate the environmental impacts at that time.[4] Similarly, in Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura, 51 Cal. App. 3d 648 (1975), the court concluded that approving the detachment of 10,000 acres of undeveloped land from a park district which did not change the zoning of the property or "make any change whatever in the uses to which the land might be put" did not invoke CEQA notwithstanding the fact that future residential development in the area was anticipated.[5]

The present Application is substantially similar to both Kaufman and Simi. No change in the Pipeline (other than the construction of the 5,500 foot replacement segment, which is fully analyzed by the Draft MND) is proposed or will result from the Commission's approval of the Application. Similarly, there will be no remediation or re-development of the Pump Station as a result of the Commission's approval. Both of these actions require further permitting and/or governmental approvals, and the appropriate environmental review, including any necessary CEQA review, will be performed when the relevant governmental approval will lead to an actual change to the environment. This process would be applicable to any owner of the Pipeline or Pump Station, whether it is PG&E, SPBPC, SCVHG or any other entity. Because these future actions cannot occur until future approvals are obtained, there is no causal link between the Commission's decision and the potential future activities and no need for the Commission to analyze the potential environmental impact of such potential future activities.

(c) The Commission is Not Required to Analyze the Potential Environmental Impacts of Speculative, Future Activities

Under CEQA, the Commission is not required to analyze the potential environmental impacts of speculative, future activities: "[W]here future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences."[6] Under Laurel Heights Improvement Assn. v. Regents of the University of California, 47 Cal. 3d 376 (1988), the California Supreme Court found that under CEQA the "environmental analysis 'should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet

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[1] 9 Cal. App. 4th 464 at 466.
[2] *Id.* at 474.
[3] *Id.*
[4] *Id.*
[5] 51 Cal. App. 3d 649 at 666.
[6] Kings County Farm Bureau v. City of Hanford 221 Cal. App. 3dd 692, 712 (1990).

late enough to provide meaningful information for environmental assessment.'"[7] In order to balance these competing interests, the Court established a standard that requires CEQA review to include an analysis of the environmental effects of future activities if: "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects."[8]

Laurel Heights establishes the standard for the scope of an environmental analysis.[9] This standard is consistent with the "principle that 'environmental considerations do not become submerged by chopping a large project into many little ones ...'"[10] and "gives due deference to the fact that that premature environmental analysis may be meaningless and financially wasteful."[11] This standard does not require proponents "to commit themselves to a particular use or to predict precisely what the environmental effects, if any, of future activity will be,"[12] nor does it "require discussion in an EIR of specific future action that is merely contemplated ...."[13]

The application of this standard has lead to different results depending on the facts and circumstances of each case. For example, in Laurel Heights, a university prepared an EIR in connection with the acquisition of a building. The acquisition allowed the university to immediately use a significant portion of the building and would allow it to use the balance of the building once vacated by the current tenant. The EIR analyzed the environmental impacts associated with the immediate use of the building. It did not, however, consider the environmental impacts associated with the use of the balance of the building even though (i) the EIR acknowledge that the university planned to occupy the entire building and included estimates of the number of faculty, staff and students, (ii) the university had publicly announced that it planned to use the entire facility and was conducting an EIR to evaluate the *future* use of the building, (iii) minutes of one of the university's planning committee's acknowledged that the entire building would be dedicated primarily to biomedical research, and (iv) the university's Chancellor acknowledged in writing that "at least 80 percent of the building after total occupancy by UCSF will be devoted to academic units primarily related to biomedical research".[14] Under these circumstances, the court concluded that there was "telling evidence that the University, by the time it prepared the EIR, had either made decisions or formulated reasonably definite proposals as to future uses of the building" and "it is clear that the future expansion and the general types of future activity at the facility are reasonably foreseeable."[15]

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[7] 47 Cal. 3d 376 at 395, internal citations omitted.
[8] *Id.* at 396.
[9] In Section 1.d below, we discuss more fully Chevron's inaccurate application of Laurel Heights and misplaced reliance on related case law.
[10] 47 Cal.3d 376 at 396, citing Bozung v. Local Agency Formation Com. 13 Cal.3d 263 (1975).
[11] *Id.* at 396.
[12] *Id.* at 398.
[13] *Id.*
[14] *Id.* at 393, 396, 397.
[15] *Id.* at 397.

As a result, the university was required to consider the environmental impacts of the future use in the EIR.

Conversely, in Sacramento Old City Ass'n v. City Council of Sacramento, 229 Cal. App. 3d 1011 (1991), the Court of Appeal analyzed a situation in which the City Council of Sacramento (the "City") conducted an EIR associated with the expansion of a downtown convention center.[16] In the EIR, the City found that the proposed project would have potential traffic impacts, and adopted a mitigation measure requiring the City to prepare a transportation management plan to mitigate the traffic and parking impacts of the proposed project.[17] The proposed mitigation plan also called for the potential construction of additional parking facilities, along with potentially implementing other proposed traffic and parking mitigation measures.[18] The EIR did not, however, adopt any specific mitigation measure nor did it address the cumulative environmental impacts associated with any proposed mitigation measure.[19] In response to questions concerning the City's failure to adopt and analyze the environmental impacts of any specific mitigation measures to alleviate the impact on parking, the City asserted that "it was too soon in the design process of the [project] to make specific recommendations."[20] The Court of Appeal upheld the City's finding, holding that "until specific measures are adopted and more fully fleshed out, their [environmental] effects remain abstract and speculative."[21] This court based its decision on the reasoning of Laurel Heights, but distinguished it from the case at bar because in Laurel Heights "the University *knew* it would be expanding in the immediate future, and knew *exactly* how many square feet the expansion would be ..." whereas in this case "the City ... knows only that it will have to mitigate parking, probably by implementing some or all of the mitigation measures listed in the EIR."[22] Further, the court found that "until these specific measures are adopted and more fully fleshed out, their effects remain abstract and speculative."[23] Under these circumstances, deferring the environmental impacts of the potential parking mitigation measures, including the potential construction of new parking facilities, was not an improper segmentation of the CEQA analysis.

Similarly, in Topanga Beach Renters Assn. v. Department of General Services, 58 Cal. App. 3d 188 (1976), the court considered and rejected an argument that any CEQA review should include not only demolition of beach structures but also future development. Explaining that "no evidence has been presented that future development of Topanga Beach is anything more than an optimistic gleam in a state planner's eye," the court saw no purpose in ordering an EIR "that could only speculate on future environmental consequences."[24] It concluded

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[16] 229 Cal. App. 3d 1011 at 1015.
[17] *Id.* at 1020.
[18] *Id.* at 1021.
[19] *Id.* at 1019-22.
[20] *Id.* at 1017.
[21] *Id.* at 1025.
[22] *Id.* at 1025 (emphasis in original).
[23] *Id.* at 1025.
[24] 58 Cal. App. 3d 188 at 196.

"[e]valuation of future environmental effects must await the future decisions that could cause the effects."[25]

The scope of the environmental analysis used by the Commission in the Draft MND is appropriate. The Project for which approval is sought is limited to the transfer of certain assets, as discussed above. Approval of the Project does not involve approving the construction or installation of any new tie-ins or a new pump station, nor does it involve the remediation and redevelopment of the Pump Station. SPBPC has not identified the locations of any tie-ins nor has it identified the location of any potential pumping station. To the contrary, the SPBPC and Shell have expressly stated to Commission that they cannot yet identify the location of tie-ins and have not determine whether a new pumping station will be required and, if so, where it will be located. The Pipeline can be operated without the use of a new pump station if it is connected to an existing pump station located at one of the refineries or if it is connected with another pipeline to which an existing pump station is connected. If the ultimate use of the Pipeline requires the construction of a new pump station, SPBPC will seek the necessary approvals when, and if, it seeks to develop any such pump station. At that time, the environmental impacts associated with the location, size and use of a new pump station can be adequately analyzed. Clearly, the environmental impacts associated with any new pumping station will be heavily influenced by its potential location, its design and the products that will be pumped. Attempting to analyze the environmental impacts of a pumping station without this critical information would require the Commission and SPBPC to engage in wholesale speculation and would provide no meaningful environmental information.

Similarly, SCVHG has not yet identified any specific details associated with the potential remediation and development of the Pump Station. SCVHG is not proposing any particular housing project at this time, there are no plans that could be evaluated for aesthetic, visual or land use impacts and a population density range for the potential development has not been identified. Even to the extent the Commission or SCVHG could guess at potential ranges, there is no certainty that the City will approve the project, let alone any density ranges that could be assumed now. Without reasonably detailed information, the Commission has no ability to analyze the potential impacts on air quality, noise, hydrology, parks and recreation, population and housing, public services, utilities and service systems or traffic. Further, the DTSC's remediation requirements will be dependant on the ultimate use of the site. Any effort by the Commission to evaluate the potential environmental impacts associated with remediating and redeveloping the Pumping Station without any information concerning the proposed use and required remediation would require the Commission to engage in pure speculation. This is not required by CEQA.

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[25] *Id.* (*See also* Rio Vista Farm Bureau Center v. County of Solano, 5. Cal. App. 4th 351 at 373 (where an EIR cannot provide meaningful information about a speculative future project, deferral of an environmental assessment does not violate CEQA); Pala Band of Mission Indians v. County of San Diego, 68 Cal. App. 4th 556, 576 (1998) (preparation of EIR to evaluate tentative landfill sites "wholly speculative" at current planning stage).

(d) Chevron's Cited Case Law Does Not Support Its Argument That The Commission Has Improperly Deferred Review of Project Components and Impacts.

In its comments, Chevron has attempted to overwhelm the Commission with numerous cases in an effort to support its assertion that the Commission has improperly segmented its CEQA analysis. As discussed in detail above, Laurel Heights sets forth the standard concerning which future activities must be included in a CEQA review, and the Draft MND properly implements that standard. Each of the cases cited by Chevron as support for a contrary interpretation are not applicable to the present Application. For example, both Azuza Land Reclamation Company v. Main San Gabriel Basin Watermaster, 52 Cal. App. 4th 1165 (1997) and McQueen v. Board of Directors of the Midpeninsula Regional Open Space District, 202 Cal. App. 3rd 1136 (1988) involved efforts by one party to avoid CEQA review in its entirety. Azuza involved, among other things, a claim by a landfill owner that re-opening a landfill contributing to the contamination of a water supply and obtaining the permits required therefor did not constitute a "project" under CEQA. McQueen involved a claim by an open space district that it did not need to perform a CEQA review to purchase real property that contained hazardous materials even though immediately on acquisition of the property the district would necessarily be storing these hazardous materials and the district already had made plans to dispose of those materials. Clearly, neither case has any application to the matter currently before the Commission because a CEQA review is currently being performed.

Under Santee v. Count of San Diego, 214 Cal. App. 3d 1438 (1989), a county failed to consider the environmental effects of a comprehensive plan to ease overcrowding in its jails when it performed the environmental analysis associated with the construction of a temporary facility that was part of the comprehensive plan. Orinda Ass'n v. Board of Supervisors, 182 Cal. App. 3d 1145 (1986) involved a situation in which a city attempted to issue a permit to perform a demolition that was part of a specifically announced plan to construct a new building, which plan was already the subject of a pending CEQA review. In that case the court held that the city could not approve this aspect of the project until the entire project had completed the CEQA review process. As discussed above, the Project that is the subject of this CEQA review does not include any specific future plans beyond those described in the proposed transaction and the Application. There is no specific plan to construct new tie-ins or new pumping stations and no specific plan to remediate and re-develop the Pump Station. As a result, both of these cases have little bearing on the subject Application.

Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d 692 (1998) is similarly off point. This case involved the failure of a city to consider an array of issues when approving an EIR conducted in connection with the construction of a coal fired power plant, not the least of which was the fact that the city ignored the environmental impacts associated with the air emissions of vehicles that would supply coal to the facility. Other issues included, among other things, the failure to consider whether a mitigation measure intended to mitigate the impact on ground water was even feasible, the failure to adequately consider alternatives as required by CEQA, the failure to consider the full project life, and the failure to consider the cumulative

impacts of the project. None of the issues supporting the court's decision in that case are present in the Draft MND.

Finally, Chevron cited Commission Decision 98-07-092, as a "relatively recent pipeline divesture proceeding"[26] as support for its position that a full EIR had to be performed prior to approving the sale of assets. First, this decision did not address the sale of a pipeline. This decision addressed PG&E's ability to continue with the auction process for the sale of its Hunters Point, Potrero, Pittsburg and Contra Costa fossil-fuel plants and Geysers geothermal plants. These were not pipeline assets. Second, the cited decision deferred conclusion of the sale of any asset until the environmental impact of the proposed sale had been addressed. This environmental analysis is precisely what the Commission is doing now. Finally, the Commission did not initiate its environmental assessment with the pre-conceived notion that a full EIR had to be prepared. In fact, the Commission specifically contemplated that the sale was subject to any conditions the Commission may impose "to avoid or reduce to non-significant levels any adverse environmental impacts that [the Commission] may determine will arise from the physical changes reasonably foreseeable in connection with the transfer of the plant."[27] The Application and the Draft MND are entirely consistent with this decision: SPBPC's acquisition of the Pipeline is being subject to those requirements necessary to mitigate the environmental impacts that will arise from the physical changes reasonably foreseeable in connection with the transfer of this asset.

2. The Draft MND Correctly Identifies the Baseline For Purposes of the CEQA Review

To assess the environmental impacts of the sale of the Pipeline — and the foreseeable use of the pipeline for the transport of crude oil, black oils, and refined petroleum products — the Draft MND adopts a baseline that reflects "PG&E's historical use of the Pipeline for the transport of fuel oil and cutter stock."[28] It does not, as Chevron asserts, adopt a baseline that includes "crude oils, black oils, and refined petroleum products,"[29] but instead compares historic uses of the pipeline (transporting fuel oil and cutter stock) with the proposed future uses (transporting crude oils, black oils and refined petroleum products).[30]

Chevron argues that the MND should have used as the baseline the physical conditions existing at the time the environmental analysis was commenced (2000 for this project), citing Section 15125 of the Guidelines to Implementation of the California Environmental Quality Act ("CEQA Guidelines").[31] Chevron further asserts that the pipeline "has not be operated for over 20 years"[32] and "has been out of operation since 1982,"[33] so that the "existing conditions" would not include operation of the pipeline "in any capacity."[34]

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[26] Chevron Comments at 21 (emphasis added).
[27] D. 98-07-092, Order 2. 1998 Cal. PUC LEXIS 1105 at 22.
[28] Draft MND at 1-3.
[29] Chevron Comments at 10.
[30] Draft MND at 1-3.
[31] Chevron Comments at 10.
[32] *Id.* at 10.

Chevron's baseline argument collapses on a faulty factual foundation. Although PG&E stopped transporting fuel oil from the Chevron Refinery through the Pipeline to its power plants in the mid-1980's, the Pipeline facilities were maintained to provide stand-by capability in case of natural gas supply interruptions or similar circumstances, and were periodically used to maintain the integrity of the Pipeline and to move oil between storage facilities at the Pittsburg and Contra Costa Power Plants and/or the Hercules Pumping Station. A relatively large number of shipments of oil (approximately 27) moved through the pipeline in 1996. The last movement of oil through the pipeline was in May 1998, when all oil remaining in the pipeline was pushed out with nitrogen and portions of the pipeline were capped to make way for construction of a train station in Martinez.[35] *See* pipeline usage list showing pipeline usage in 1990's, attached hereto as Exhibit A. In 1999, PG&E sold its Pittsburg and Contra Costa Power Plants as well as the portion of the pipeline between those plants. The remaining pipeline facilities were offered for bid in 2000, resulting in the proposed sale.

Thus, although the Pipeline facilities were not being operated in 2000 when the application to the CPUC was filed, they had been operational shortly before the application was filed, had been used periodically to transport fuel oil and cutter stock within five years, and had been used to transport fuel oil and cutter stock for over 20 years. There is no question that, at a minimum, PG&E has a long-existing legal entitlement to transport fuel oil through these facilities.[36] Using the authorized and historical use of the Pipeline as a baseline to assess project impacts is entirely logical and consistent with CEQA.

Section 15125 of the CEQA Guidelines provides no specific rule for determining the appropriate baseline in a particular case. Rather, the relevant CEQA Guideline states that the environmental setting when environmental analysis is commenced is "normally" the baseline for assessing impacts.[37] Because environmental conditions may vary from year to year, the "date for establishing baseline cannot be a rigid one."[38]

Where, as here, the project under review merely constitutes a modification of a previously-approved project previously subjected to environmental analysis, the baseline for CEQA analysis can be adjusted so that the originally-approved project is assumed to exist.[39] For example, in Temecula Band of Luiseno Mission Indians v. Rancho California Water District 43

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[33] *Id.* at 2; see also p. 18.
[34] *Id.* at 18; see also p. 10.
[35] The pipeline facilities were on "caretaker" status with the State Fire Marshal once the lines were cleaned and free of all hazardous liquids. PG&E thus had fewer reporting and maintenance requirements than when the pipeline transported or contained cutter stock and/or fuel oil. As of January 15, 2003, PG&E requested and received an exemption from 49CFR Part 195.134,300,420,444, allowing the pipeline to convert to "inactive" status with fewer maintenance responsibilities. The Draft MND, at 1-2 should be corrected to reflect this history.
[36] See CPCN, CPUC Decision 84448.
[37] CEQA Guidelines, § 15125, subdiv. (a).
[38] Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors, 87 Cal. App. 4th 99, 125 (2001).
[39] Benton v. Board of Supervisors 226 Cal. App. 3d 1467 (1991).

Cal. App. 4th 425 (1996), the court approved an environmental analysis covering only the incremental impacts of realigning a pipeline that was part of a project approved five years earlier, even though the pipeline had not yet been constructed. Since there is no dispute that PG&E's previous approval allowed it to transport fuel oil and cutter stock (at a minimum), and this approval was supported by an EIR and vested with long usage, it is even more appropriate for the CPUC to consider only the incremental impacts of transporting "crude oils, black oils and refined petroleum products" rather than fuel oil and cutter stock.

The Draft MND's baseline is similar to that approved in Fairview Neighbors v. County of Ventura 70 Cal. App. 4th 238 (1999), where the court was asked to review the baseline used to analyze expansion of a mining operation. There, the original conditional use permit for the mine was issued in 1976, was supported by an EIR, and allowed mining that would generate the equivalent of 810 truck trips per day. The EIR for the expanded project, certified in 1996, adopted a baseline of 810 truck trips per day, even though fewer trips were being made at that time, and then examined only the incremental impacts of truck trips over 810 per day. In approving this baseline, the court pointed out that the mine had peaked at more than 810 truck trips per day in 1989, even though it currently was lower than 810 per day, and recognized that "[t]he flow of traffic for mining operation fluctuates considerably based on need, capacity and other factors."[40] The court stated:

> Discussing the possible environmental effects of the project based on actual traffic counts would have been misleading and illusory under the facts here. The flow of traffic for a mining operation fluctuates considerably based on need, capacity and other factors. (Citations omitted.) In Hansen, our Supreme Court stated that '[t]he volume of material that has been mined and quarried in past years has been driven by market forces and has varied from year to year. Demand for the aggregate is seasonal and fluctuates with the needs of the building industry.' So it is here.[41]

The court also noted that the case was similar to those in which categorical exemptions have been granted for existing facilities, such as Committee for a Progressive Gilroy v. State Water Resources Control Board 192 Cal. App. 3d 847, 864-865 (1987). There, a waste treatment facility proposed to resume operations at a higher level after operating at reduced capacity. The court found that it was an "existing facility" exempt from CEQA because the project had originally been approved for the higher capacity in compliance with CEQA.[42]

The Fairview Neighbors and Progressive Gilroy courts approved baselines that were consistent with the entitlements previously granted rather than ones that were fixed at the start of

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[40] 70 Cal. App. 4th 238 at 243.
[41] *Id.* at 244.
[42] *Id.*

the current environmental analysis. The Draft MND's baseline is entirely consistent with these cases, in particular in light of PG&E's 20-year history of actively using the Pipeline and the fact that fuel oil and cutter stock transport stopped only shortly before PG&E sought to sell the assets. Chevron has offered no logical reason why the Commission should adopt a baseline that is not representative of the authorized and actual historic use of the assets nor has Chevron offered any compelling explanation as to why CEQA requires such a result. The Draft MND's baseline is appropriate under CEQA and supported by the relevant case law.

3. History of the Pipeline and Proceeding

Chevron's understanding of the history of the Pipeline, the Pump Station and the Commission's proceeding is frequently in error and skewed in an effort to support Chevron's position, thereby contributing to the errors that permeate its comments. Applicants hereby present an accurate history of the Pipeline and the instant proceeding.

(a) The Pipeline Certification

Chevron states that while "[t]he MND assumes that the pipeline 'has the capability to transport and was granted a license per its 1975 CPCN to transport 'oil, petroleum, and products thereof,'" Decision No. 84448 does not contain the phrase 'oil, petroleum and products thereof' such that the MND can not now claim that the Pipeline was somehow certified for this use.[43] Chevron's comments show that it has not done its homework and therefore reached an incorrect conclusion. Chevron is technically correct that the Decision 84448 does not mention "oil, petroleum, and products thereof." But the analysis does not end with the text of the decision.

In Decision 84448, dated May 20, 1975, the Commission granted PG&E a certificate of public convenience and necessity to exercise the right, privilege and franchise granted to it by Resolution No. 74/1084 (the "Resolution") of the Board of Supervisors of Contra Costa County (the "County"). This Resolution accepted PG&E's bid to install pipelines in County highways pursuant to the County's franchise ordinance. PG&E's bid for such franchise was "for the grant of the franchise of installing, maintaining and using pipes and appurtenances in so many and in such parts of the public roads within the County of CONTRA COSTA as the grantee of such franchise may from time to time elect to use for the purpose of conveying and transporting oil, petroleum or products thereof, together with all manholes, service connection and other appurtenances necessary or convenient for the operation of said pipeline." By failing to complete the analysis by examining the Resolution 74/1084 that is the basis for the CPCN issued in Decision 84448 and examining PG&E's bid which was accepted in Resolution 74/1084, Chevron reached an incorrect conclusion.

[43] Chevron Comments at 10, ftn. 7.

(b) History of the Proceeding

Chevron's understanding of the history of this proceeding is similarly faulty and leads it to many of the same errors. To correct any misunderstanding, Applicants provide the following summary of this proceeding.

On May 15, 2000, PG&E filed A.00-05-035 requesting Commission approval to establish a competitive auction to value the Richmond to Pittsburg Pipeline and Hercules Pump Station for purposes of Public Utilities Code Section 367(b) and to sell these assets to the winning bidder pursuant to the provisions of Public Utilities Code Section 851. When PG&E filed A.00-05-035, the winning bidder had not been identified. Thus, Chevron's statement that PG&E's Application was filed on December 12, 2000 and that San Pablo Bay Pipeline Company ("SPBPC") was identified as the buyer is incorrect.[44]

Later that spring, PG&E held the auction and Tosco Corporation ("Tosco") was the winning bidder. On August 1, 2000, PG&E filed a supplement to the original application identifying the winning bidder and requesting final orders.

On November 8, 2000, PG&E supplemented its application by filing a Proponent's Environmental Assessment ("PEA"). Contrary to Chevron's statement that the PEA assumed that the pipeline would continue to be used for the same purposes for which it had historically and exclusively been used, the PEA stated on the very first page in the first paragraph that: "The sale of the Pipeline Assets is also based on their current CPUC-approved use: transport of 'oil, petroleum, and products thereof.'"[45] Other portions of the PEA also state that it assumes that the Pipeline will be used for "fuel" transportation, which of course is totally different than "fuel oil" transportation.

On December 12, 2000, SPBPC, a wholly-owned Tosco subsidiary, filed A. 00-12-008, seeking authorization to purchase the Pipeline Assets and to operate them as a common carrier pipeline corporation.

On October 31, 2001, the Commission environmental staff issued its Draft Mitigated Negative Declaration ("2001 Draft MND"). The 2001 Draft MND states: "The Initial Study assumes the sale of the Pipeline would not change its current CPUC-approved use; the transportation of "oil, petroleum, and products thereof' (CPUC Decision No. 84448)."[46]

Thereafter, on April 23, 2002, the environmental staff circulated Final Mitigated Negative Declaration ("2002 Final MND"). Again, the 2002 Final MND stated: "The Initial Study (i.e. the Final MND) assumes the sale of the Pipeline would not change its current CPUC

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[44] Chevron Comments at 2.
[45] PEA, Chapter 1, Executive Summary, p.1-1.
[46] 2001 Draft MND, Section 1.1 Introduction, p.1-2.

approved use: transport of 'oil, petroleum and products thereof' (CPUC Decision No. 84448)."[47]

Elsewhere, however, in responding to various comments with respect to the products that would be conveyed in the Pipeline, the 2002 Final MND included Master Response 1 (pp 5-2 to 5-5). This response assumed that the existing permit issued by the City of Hercules for the Pump Station, which limited the use of the Pump Station to fuel oil, would have the effect of also limiting the use of the Pipeline to the transportation of fuel oil. Thus, while the Final MND assumed the sale would not change the approved use of the Pipeline, the Master Response had the effect of creating an ambiguity with respect to the products that the Pipeline could transport.

A prehearing conference was held on June 20, 2002, in which SPBPC raised this ambiguity. On August 14, 2002, the environmental staff requested that the parties advise it whether they desired to move forward with the existing 2002 Final MND or whether they wished the staff to prepare and re-circulate a draft MND or focused environmental report which would address an expanded list of pipeline uses.

On November 6, 2002, PG&E submitted Motion for an Order Requiring Additional Environmental Review. PG&E cited the perceived ambiguity in the Final MND and requested that the Commission issue an order requiring additional environmental review to augment the 2002 Final MND. PG&E suggested that the Commission undertake additional analysis to determine the environmental impact of all uses allowed by the CPCN. Contrary to Chevron's assertion,[48] PG&E did not amend its application. The motion notes that while the CPCN allows the transport of a wide range of petroleum products, the environmental staff seemingly had only studied the transport of hot oil. PG&E requested that the CPUC augment its review to consider all uses allowed by the CPCN.

Furthermore, Chevron's assertion that the 2002 proposal eliminated the Pumping Station is incorrect. PG&E's Motion did not eliminate the Pump Station, but simply correctly notes that the Pump Station is not necessary to the operation of the Pipeline itself.

Chevron errs again when it states that the 2002 proposal also provided for "SCVHG's brief ownership of SPBPC in order to transfer the Pumping Station Property to itself or an affiliate."[49] SCVHG did not become involved as a potential owner of the Pump Station until 2004.

On May 6, 2004, PG&E, SPBPC, Shell and SCVHG filed First Amendment to A.00-05-035 and 00-12-008. On June 24, 2004, Chevron filed its Protest. Up to this point in the nearly four-year history of this proceeding, Chevron had never intervened in the consolidated applications or commented on the Draft MND or Final MND. It was only when the applications were amended on May 6, 2004 and it was disclosed that SPBPC now would be owned by Shell,

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[47] 2002 Final MND, Section 1.1. p.1-2.
[48] Chevron Comments at 3.
[49] *Id.* at 3.

rather than ConocoPhillips,[50] that Chevron became involved.

Thereafter, on September 9, 2004, PG&E, SPBPC, Shell and SCVHG, filed a Second Amendment to A.00-05-035 and A.00-12 008. Again, Chevron distorts the facts and misinterprets the filing. Chevron states: "Following Chevron's protest, the Application was amended again. Instead of claiming that the proposed use of the Pipeline was permitted by the 1975 CPCN, the Application now concedes that the proposed use requires authorization for the 'more expansive use of the pipeline for the transport of crude oil, black oils and refined petroleum products.'" [51] The Second Amendment, however, makes no such concession. In fact, just the opposite is true. Rather than conceding that the proposed use requires additional authorization, the Second Amendment voluntarily limits the existing uses for which the pipeline is certificated. The Second Amendment states that the Pipeline Assets will be used to transport "oil, petroleum, and products thereof," but then goes on to voluntarily to state that it will not be used to transport products other than crude oil, black oil and refined products without seeking further authority and environmental review.

4. Other Issues Raised in the Chevron Comments

In addition to the misstated facts and misapplication of the applicable law discussed above, the Chevron Comments are filled with numerous other baseless challenges to the Draft MND and factual mistakes, discussed below. The plenitude of these mistakes and baseless assertions further calls into question the validity of all of Chevron's assertions. Below, Applicants briefly refute many of Chevron's misstatements (in addition to those discussed above).

(i) Chevron Comments at 2: Chevron asserts that "the pipeline originates on property not owned by the Applicants ..." This statement mischaracterizes the facts. The Pipeline is located on a series of easements and other real property rights that are held by PG&E. Those easements and other real property rights will be transferred to SPBPC, giving SPBPC the real property interests that are required to own the Pipeline as it is currently configured.

(ii) Chevron Comments at 8: Chevron asserts that "... the MND ... fails to provide adequate information to determine whether its design can accommodate the wider range of products it will be used to transport." The Draft MND specifically requires SPBPC to verify the pipeline's integrity and chemical compatibility with the California State Fire Marshal before operation of the Pipeline. *See* Mitigation Measure 2.H-1. This mitigation measure is sufficient to ensure that the Pipeline is not returned to operation if its design cannot accommodate the proposed use.

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[50] As a result of a series of acquisitions or mergers, first an acquisition by Phillips Petroleum Company ("Phillips") of certain of Tosco's assets and subsequently a merger between Phillips and Conoco Inc., SPBPC became an indirect subsidiary of ConocoPhillips.

[51] Chevron Comments at 3.

(iii) Chevron Comments at 8: Chevron asserts that "[t]he MND ... does not explain how SPBPC would gain access to property needed to conduct diagnostic and maintenance activities such as the 'smart pig' launcher/receiver at Richmond located on Chevron's property ...." This assertion incorrectly suggests that the "smart pig" launcher at Chevron's facility is the only launcher available to SPBPC. A "smart pig" launcher/receiver is also located at the Pump Station. To the extent that SPBPC requires access to additional location(s), it will need to obtain such access in order to comply with the Commission's mitigation measures. There is no reason to expect that there will be any significant environmental impact associated with obtaining such additional access if it is required.

(iv) Chevron Comments at 8: Chevron asserts that "[t]the MND ... does not explain ... which refinery would have to furnish the water treatment facility needed to facilitate the maintenance process." This assertion incorrectly suggests that a refinery would be required to allow the use of a water treatment facility and that there is any significant environmental impact associated with providing such use. To the extent that SPBPC is able to make arrangements with a refinery to provide a water treatment facility, any resulting waste water discharges would be consistent with that refinery's permits, thereby having no significant environmental impact. Alternately, the water used for maintenance can be drained into vacuum trucks, transport trucks, or other suitable containers, after which it is transported to a treatment facility and discharged in accordance with that treatment facility's permits. Again, no significant environmental impact would result.

(v) Chevron Comments at 9-10: Chevron asserts that the decision as to which products would be transported by the Pipeline would be made "without input from the public." The purpose of the current Draft MND is explicitly to evaluate the proposed use of the Pipeline to transport "crude oil, black oils and refined petroleum products." Comment from the public and the appropriate governmental agencies is currently being solicited by the Commission. As a result, the public and all appropriate governmental agencies have the opportunity to comment on the proposed use of the Pipeline.

(vi) Chevron Comments at 11: Chevron inexplicably asserts that, with respect to biological resources, the Draft MND "... does not include any analysis or evaluation of the existing environmental which would be necessary to evaluate and mitigate the Project's impacts," and defers "preparation of required studies and surveys until after Project approval." However, the Draft MND includes a thorough analysis of the biological resources that may be impacted by the pipeline replacement project, based upon extensive background research and several biological surveys -- by ESA biologists in February 2001 and September 2004, by Applicants' biologists in May and August 2000, and by East Bay Regional Park District ("EBRPD") prior to marsh restoration activities in 1999. *See* Draft MND at 2.D-1 and 2.D-6 – 2.D-7, Supplement to Proponent's Environmental Assessment ("SPEA") at 9-1. The background research identified a broad range of species potentially present in the general project area. The

surveys assessed the vegetation and wildlife present, found no sensitive species within the immediate pipeline replacement corridor, and identified areas with potential to support sensitive plant and wildlife habitats. *See generally* Draft MND at 2.D-1 *et seq.*; SPEA at Ch. 9. The analyses recognized that the project area is "immediately adjacent to an existing railroad bridge, an industrial building, and other transportation facilities (e.g., roads, railway, and parking lots)" (2.D-11), with a generally low likelihood for sensitive species (*see* 2.D-6 – 2.D-7, 2.D-11; SPEA 9-7), but also that the adjacent marsh restoration project being undertaken by EBRPD is improving native marsh vegetation and habitat. (2.D-11.) Since sensitive habitats, including wetlands, and the presence of sensitive plants and wildlife vary with time, pre-construction surveys are a logical requirement to insure that no significant impacts will result from the pipeline replacement project. The Draft MND recognizes the likelihood that impacts to sensitive species, habitat and wetlands can be avoided, but provides for minimum measures as well as mandatory consultation with the appropriate wildlife agencies if later surveys prove such measures necessary. *See* Mitigation Measures 2.D-1 through 2.D-3b. As the Draft MND points out, these measures "are commonly used and approved by resource agencies to reduce potential adverse effects to less than significant levels for species that might be affected at this site." (2.D-11.)

This is precisely the type of mitigation measures approved by the court in Defend the Bay v. City of Irvine, 119 Cal. App. 4th 1261 (2004), where the court rejected charges that the City improperly deferred mitigation of significant impacts to three species. The court approved mitigation measures that required the applicant to conduct surveys, consult with the United States Fish and Wildlife Service and the California Department of Fish and Game, obtain necessary permits, and coordinate avoidance measures with those agencies that included seven specific items. *Id.* at 1274. Under the circumstances presented here, where the pipeline replacement project could negatively impact biological resources in only a few isolated areas in any event, where detailed, commonly-used mitigation measures address any potential for impacts to sensitive species or habitat, and where the CPUC itself will monitor compliance with these measures, nothing more is required.

(vii) Chevron Comments at 12: Chevron asserts that the Draft MND's conclusion that "that operation of the Pipeline along the entire 'pipeline corridor' will not result in any significant impacts on biological resources due to an accidental pipeline spill" is not "based upon substantial evidence." To the contrary, the Draft MND specifically discusses the evidence upon which this conclusion is reached at page 2.D10. The Draft MND contains further discussion of the evidence supporting this conclusion in Section 2.G.

(viii) Chevron Comments at 12: Chevron asserts that the Draft MND improperly relies on "block valves" to the mitigate the risks of certain spills and that this proposed mitigation measure is "vague", "incomplete" and "untested." First, Chevron's comment ignores the fact that there are numerous block valves installed along the Pipeline. There

are statutory requirements associated with the design of pipelines, which include the installation of block valves at certain intervals. In addition to those existing block valves, the Commission has required that additional block valves be installed to further mitigate any potential significant impact. The installation of block valves is also not the only mitigation measure proposed in the Draft MND. Mitigation Measure 2.G-4 requires that SPBPC develop a new spill prevention and containment plan covering the entire length of the Pipeline and submit that plan for approval by the Commission and the California Department of Fish & Game. Finally, these mitigation measures are not "vague, incomplete or untested." To the contrary, these are the industry standard measures imposed on pipelines under California and Federal law used to protect against potential pipeline spills, including spills into water resources. In fact, these measures are the same measures that Chevron and its affiliates are required to implement in connection with their operation of pipelines in California.

(ix) Chevron Comments at 13: Chevron asserts that the Draft MND improperly relies an a "30-year old" leak detection system. This comment ignores the fact that the California State Fire Marshal and California Government Code Section 51010 *et seq.* impose express requirements on pipeline operators to maintain acceptable leak detection systems. To the extent that the existing leak detection system does not satisfy the applicable requirements, SPBPC will be responsible for making the necessary upgrades.

(x) Chevron Comments at 13: Chevron asserts that "... pipeline maintenance that occurs only once every five years cannot be deemed 'frequent'." First, Chevron has misstated the facts. As indicated in the Draft MND, the Pipeline has been subject to frequent maintenance as required by the applicable regulations. The pipeline is tested once every five years as required by law. The Pipeline has been maintained and tested in accordance with the applicable laws and regulations; the same laws and regulations to which Chevron and its affiliates are subject. There is no reason to suggest that maintaining and testing pipeline in accordance with applicable laws and regulations is inadequate to maintain the integrity of a pipeline.

(xi) Chevron Comments at 13: Chevron asserts that "[t]he MND ... concedes that it is unknown whether 'the Pipeline material is chemically compatible with the petroleum products to be transported'" and that "no additional mitigation measure is imposed." As noted above, this statement is simply incorrect. The Draft MND specifically requires that before operating the Pipeline SPBPC must verify with the California State Fire Marshal the chemical compatibility of the Pipeline with the products being transported. *See* Mitigation Measure 2.H-1. This mitigation measure is sufficient to ensure that the Pipeline is chemically compatible with the proposed use.

(xii) Chevron Comments at 13-15: Chevron challenges the adequacy of the environmental assessment and mitigation measures proposed in connection with the protection of Special Status Species during the construction of the 5,500 foot replacement segment of pipeline. Chevron generally asserts that the mitigation measures do not allow

impacts to sensitive species to be avoided through project redesign and the imposition of concrete mitigation measures. This comment clearly ignores the lead-in to Mitigation Measure 2.D-1, which clearly states that if pre-constructions surveys indicate that Special Status Species are present and a potential impact is unavoidable, "SPBPC shall develop a Special-Status Species Protection Plan to prevent significant impacts to Special-Status Species and provide the Plan to the CPUC staff as well as the applicable regulatory agencies ... for review and approval." This mitigation measure clearly affords the Commission and other regulatory agencies with the ability to impose any necessary "concrete mitigation measures." *See also* section (vi) *supra.*

(xiii) Chevron Comments at 16: Chevron challenges the adequacy of the environmental assessment and mitigation measures proposed in connection with the ability of the existing Pipeline to withstand seismic events. Again, this comment clearly ignores the mitigation measures that are expressly set forth in the Draft MND. Specifically, the Draft MND requires that SPBPC evaluate the ability of the Pipeline to withstand a major seismic event of the Hayward or Concord fault, and to make the necessary repairs or modifications if, in its current state, it is unable to withstand such an event. *See* Mitigation Measure 2.F-1. Further, Mitigation Measure 2.F-2 specifically imposes certain requirements on SPBPC in connection with the seismic evaluation of the location of the 5,500 foot replacement pipeline segment and the design requirements associated with that segment. This mitigation measure also requires that the seismic evaluation and design be submitted to the CPUC for "review of the analysis and recommendations such as modifications to the proposed design to strengthen sections of the Pipeline."

(xiv) Chevron Comments at 17: Chevron asserts that the Draft MND acknowledges that "construction activities will occur in areas known to have hazardous substances." This statement is false. The Draft MND contains no such acknowledgement. Further, the proposed mitigation measures adequately mitigate the potential environmental impacts that could arise should any such hazardous substances be encountered.

(xv) Chevron Comments at 17: Chevron asserts that the Draft MND fails to require "SPBPC design its construction route or activities in a manner which minimizes aesthetic resource impacts, or any indication that it can be required to alter its plans if either the EBRPD or the City of Martinez determine that the potential impacts to resources in their jurisdictions require alterations." This comment ignores the express mitigation measures included in the Draft MND. Specifically, Mitigation Measure 2.A-1a provides that "SPBPC shall not commence construction activities along the replacement pipeline segment in Martinez until the aesthetics resource plan is reviewed and approved by EBRPD, the City of Martinez and the CPUC Staff." The mitigation measure squarely addresses Chevron's comment.

5. Conclusion

Chevron's comments miss the mark. They are based on (i) a misunderstanding of the scope of the Project, its history, and its context, (ii) a misapplication of the applicable law, (iii) reliance on irrelevant decisions, and (iv) a disregard for the environmental analysis and mitigation measures presented in the Draft MND. There is no support in Chevron's comments for the proposition that an EIR is required and no support for Chevron's position that the Commission has improperly segmented its environmental analysis. As a result, there is no need for the Commission to modify the Draft MND to accommodate these comments or to prepare an EIR. Such an effort would be a waste of time and resources, and afford the Commission no additional, meaningful information upon which to base its decision.

Very truly yours,

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EXHIBIT A

Hercules Pump Station and Pipeline	
Operations Log entries	
(NOTE: Not complete due to missing log books)	
Date	Comments
12/6/91	Tested leak detection system by relieving pressure at the PPP end of pipeline. Total of 24 barrels[1] of cutter stock moved from Hercules to PPP for test.
11/16/92	CCPP received 1911 barrels of cutter stock from Hercules
11/18/92	Hercules received 8826 barrels of cutter stock purge 16 inch line for a hydro test from PPP.
11/19/92	Hercules receives 20,167 barrels of cutter stock from PPP
11/20/92	Hercules receives 29,566 barrels of cutter stock from PPP
11/23/92	Pressured up 16 inch line from Hercules to PPP for test
11/25/92	Bled off pressure (at PPP end?) Hercules to PPP hydro test ended – small amount
10/11/93	Hydro tested Richmond to Hercules pipeline, Hercules received 460 barrels of cutter stock
10/12/93	Hercules receives 1820 barrels of cutter stock from Richmond
10/13/93	Hercules receives 3,218 barrels of cutter stock displaced by city water at the Richmond end
10/14/93	Hercules receives 2,555 barrels of cutter stock from Richmond displaced by water
6/21/94	Bled down pressure in pipe from Crockett to PPP at PPP end – small amount
9/16/94	Bled down pressure in pipe from Richmond to Hercules at Hercules end – small amount of oil
5/11/95	Ran pig from Hercules to PPP using water to push pig and in front of pig moving oil to PPP approximately 1335 barrels of cutter stock
5/23/95	Ran pig from Hercules to PPP using cutter stock to push pig 16,000 barrels of cutter stock moved and in line
5/24/95	Ran (2) more pigs from Hercules to CCPP pumped 18,914 barrels of cutter stock
6/1/95	Pumped approximately 1,107 barrels to test pump system flow from Hercules to PPP
7/24/95	Bled down pressure in pipe from Richmond to Hercules at Hercules end – small amount- could be only water
9/19/95	Pumped 5905 barrels of cutter stock from CCPP to Hercules
9/25/95	Pumped 30,874 barrels of cutter stock from Hercules to PPP
9/27/95	Pumped 12,928 barrels of cutter stock from CCPP to Hercules
9/28/95	Pumped 29,850 barrels of cutter stock from Hercules to PPP
9/29/95	Pumped 8135 barrels from (not sure if from Richmond or PPP) to Hercules
10/2/95	Ran pig and pumped 8182 barrels of cutter stock from Richmond to Hercules
10/3/95	Ran pig and pumped 8494 barrels of cutter stock from Richmond to Hercules
1/30/96	Pressurized PPP to Hercules pipeline – unknown amount of cutter stock used

[1] A barrel of oil is 42 U.S. gallons.

1/31/96	Pressurized PPP to Hercules pipeline – unknown amount of cutter stock used
4/26/96	Received Catfeed[2] oil from Wickland Oil to Hercules, total approximately 22,081 barrels
4/27/96	Received oil from Wickland Oil to Hercules, 29,749 barrels
4/28/96 thru 4/29	Received oil from Wickland Oil to Hercules, 407,992 barrels
5/7/96	Pumped oil from Hercules to Wickland Oil, 11,586 barrels
5/8/96	Pumped oil from Hercules to Wickland Oil, 58,700 barrels
5/9/96	Pumped oil from Hercules to Wickland Oil, 90,446 barrels
5/10/96	Pumped oil from Hercules to Wickland Oil, 31,228 barrels
5/15/96	Pumped oil from Hercules to Wickland Oil, 14,152 barrels
5/16/96	Received oil from Wickland Oil, 78,662 barrels
5/18/96	Pumped oil from Hercules to Wickland Oil, 44,446 barrels
5/19/96	Pumped oil from Hercules to Wickland Oil, 49,005 barrels
5/29/96	Received oil from Wickland Oil to Hercules, 7640 barrels
5/30/96	Received oil from Wickland Oil to Hercules, 38,265 barrels
5/31/96	Received oil from Wickland Oil to Hercules, 15,879 barrels
6/1/96	Received oil from Wickland Oil to Hercules, 45,606 barrels
6/2/96	Received oil from Wickland Oil to Hercules, 56,557 barrels
6/3/96	Received oil from Wickland Oil to Hercules, 13,103 barrels
7/23/96	Pumped oil from Hercules to Wickland Oil, 21,705 barrels
7/24/96	Pumped oil from Hercules to Wickland Oil, 58,799 barrels
7/25/96	Pumped oil from Hercules to Wickland Oil, 39,155 barrels
7/26/96	Pumped oil from Hercules to Wickland Oil, 14,875 barrels
7/27/96	Pumped oil from Hercules to Wickland Oil, 62,186 barrels
7/28/96	Pumped oil from Hercules to Wickland Oil, 59474 barrels
7/29/96	Pumped oil from Hercules to Wickland Oil, 50,367 barrels
7/30/96	Pumped oil from Hercules to Wickland Oil, 50,886 barrels
7/31/96	Pumped oil from Hercules to Wickland Oil, 51,004 barrels
8/1/96	Pumped oil from Hercules to Wickland Oil, 24,517 barrels
5/27/98	Installed pigs and pushed oil (cutter stock) with Nitrogen from Hercules to CCPP, approximately 11390 barrels
5/28/98	Capped pipeline in two places in Martinez for AmTrack Station
12/15/98	Filled Hercules to Richmond pipeline with water for a hydro test

[2] Partially-refined oil with viscosity characteristics similar to fuel oil. It was standard practice to follow each shipment of fuel or catfeed oil with cutter stock to clear the pipeline of the heavier oil.