

1 ROGERS JOSEPH O'DONNELL  
 ROBERT C. GOODMAN (State Bar No. 111554)  
 2 *rgoodman@rjo.com*  
 ANN M. BLESSING (State Bar No. 172573)  
 3 *ablessing@rjo.com*  
 D. KEVIN SHIPP (State Bar No. 245947)  
 4 *kshipp@rjo.com*  
 311 California Street  
 5 San Francisco, California 94104  
 Telephone: 415.956.2828  
 6 Facsimile: 415.956.6457

7 Attorneys for Defendants  
 CHEVRON U.S.A. INC. and  
 8 CHEVRON CORPORATION

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 OAKLAND DIVISION

13 NORTHERN CALIFORNIA RIVER  
 WATCH, a non-profit corporation,

14 Plaintiff,

15 vs.

16 CHEVRON U.S.A. INC., CHEVRON  
 17 CORPORATION, and DOES 1-10,  
 Inclusive,

18 Defendants.

Case No. 4:09-cv-00669-CW

**STIPULATION AND PROTECTIVE  
 ORDER REGARDING CONFIDENTIAL  
 INFORMATION**

21 Subject to the approval of this Court, Defendants Chevron U.S.A. Inc. and  
 22 Chevron Corp. (collectively "Defendants") and Plaintiff Northern California River Watch  
 23 ("Plaintiff") in the matter entitled *Northern California River Watch vs. Chevron U.S.A. Inc.*  
 24 *and Chevron Corporation Case; No. 4:09-cv-00669-CW* (the "Action") hereby stipulate to  
 25 this agreement and proposed protective order ("Stipulation and Protective Order").

26 This Stipulation and Protective Order is designed to: 1) maintain the  
 27 confidentiality of business information, and 2) provide for the return of inadvertently  
 28 produced attorney-client and work product protected information.

**Confidential Material**

1  
2           1.       The term “Confidential Material” as used in this Stipulation and Protective  
3 Order means trade secrets and commercial and financial information that is entitled to  
4 confidential treatment, including but not limited to: information which has not been made  
5 public and which concerns or relates to the processes, operations, type of work, or apparatus,  
6 or to the production, sales, shipments, purchase, transfers, identification of customers,  
7 inventories, amount or source of any income, profits, losses, or expenditures of any persons,  
8 firm, partnership, corporation, or other organization, the disclosure of which information may  
9 have the effect of causing harm to the competitive position of the person, firm, partnership,  
10 corporation, or to the organization from which the information was obtained.

11           2.       In connection with discovery proceedings in this action, the parties may  
12 designate any documents, things, materials, testimony or other information derived therefrom  
13 as Confidential Material under the terms of this Stipulation and Protective Order. By  
14 designating a document, thing, material, testimony or other information derived therefrom as  
15 Confidential Material, the party making the designation is certifying to the Court that there is  
16 a good faith basis both in law and in fact for the designation within the meaning of Federal  
17 Rule of Civil Procedure 26(g).

18           3.       The producing party may designate Confidential Material as follows:

19                   (a)       The producing party may designate documents as Confidential Material  
20 by placing or affixing on documents produced the word “CONFIDENTIAL.” The  
21 information may be stamped "CONFIDENTIAL" on one or more pages of the document.  
22 Stamping “CONFIDENTIAL” on the cover of any multipage document shall designate all  
23 pages of the document as Confidential Material, unless otherwise indicated by the producing  
24 party. The information in a series of documents also may be identified as Confidential  
25 Material by a warning attached to the folder in the compact disk (or similar storage device)  
26 that contains the documents. If a readily identifiable set of documents contains Confidential  
27 Material in its entirety, that set may be designated as Confidential Material by a written  
28 statement provided at the time such documents are produced. All such documents shall be

1 referred to in this Stipulation and Protective Order as “unredacted Confidential Material” and  
2 shall be treated in their entirety, without specific designation of the particular confidential  
3 information therein, as confidential in accordance with the provisions of this Stipulation and  
4 Protective Order.

5 (b) The responding party may designate information set forth in an answer  
6 to an interrogatory as Confidential Material by clearly indicating that portion of the response  
7 which the party is designating as confidential. Information contained in an answer to any  
8 question asked during a deposition taken pursuant to Fed. R. Civ. P. 30 or 31 may be so  
9 designated by a statement indicated on the record during the course of the deposition and on  
10 the same day that the answer is given, or within thirty (30) days after a party receives a copy  
11 of the deposition transcript. Any answers given, or exhibits introduced, during the course of a  
12 deposition that contain Confidential Material shall be treated as confidential under this  
13 Stipulation and Protective Order. The deposition cover page shall be stamped as follows:

14 This deposition contains Confidential Material subject to a  
15 Stipulation and Protective Order Governing Confidential  
16 Information entered in *Northern California River Watch v.*  
17 *Chevron U.S.A Inc., et al.*, Case No. 4:09-cv-00669-CW.

18 4. In addition to producing documents containing unredacted Confidential  
19 Material pursuant to the provisions of this Stipulation and Protective Order, the parties may  
20 make available copies of such documents from which Confidential Material has been  
21 redacted. The parties shall cooperate reasonably with one another in redacting Confidential  
22 Material from documents for the purposes of preparing exhibits or papers in this action, to the  
23 extent such redaction is necessary. Such redacted documents may be disclosed to any person  
24 or party without restriction by any provision of this Stipulation and Protective Order.

25 5. Documents produced by the parties prior to the entry of this Stipulation and  
26 Protective Order may be designated as Confidential Material by the producing party by letter  
27 to the requesting party mailed within thirty (30) days of the date of entry of this Stipulation  
28 and Protective Order indicating the Bates number or other information identifying the

1 documents to be so designated, and the documents so designated shall be subject to the terms  
2 of this Stipulation and Protective Order.

3 6. All persons receiving copies of documents, deposition transcripts, responses to  
4 written discovery, or other matter designated as unredacted Confidential Material shall  
5 maintain such Confidential Material in their possession in a manner sufficient to protect such  
6 material against unauthorized disclosure. Any person who is permitted access to unredacted  
7 Confidential Material in accordance with this Stipulation and Protective Order may make  
8 copies, duplicates, extracts, summaries, or descriptions of such documents or any portion  
9 thereof only for the purposes stated in Paragraph 7 below. All copies or duplicates shall be  
10 subject to the terms of this Stipulation and Protective Order just as if they were originals and  
11 shall be dealt with under the terms of this Stipulation and Protective Order to protect against  
12 unauthorized disclosure.

13 7. Unredacted Confidential Material shall be used solely for the purpose of  
14 prosecuting, defending, settling, or otherwise conducting the Action and any appeals thereof,  
15 and not for any other purpose whatsoever. Except as the Court in this Action may otherwise  
16 provide, unredacted Confidential Materials and any copies thereof, and notes made thereof,  
17 shall be disclosed only to counsel for a party to this Action or any appeals thereof, and the  
18 following "Authorized Persons":

- 19 (a) the paralegal, clerical, and secretarial staff employed by counsel for a  
20 party;
- 21 (b) a party, or an officer, director, or employee of a party deemed necessary  
22 by counsel to aid in the prosecution, defense, or settlement of this Action or any appeals  
23 thereof;
- 24 (c) Experts or consultants (together with their clerical and secretarial staff)  
25 retained by a party or its counsel to assist in the prosecution, defense, or settlement of this  
26 Action or any appeals thereof.
- 27 (d) court reporter(s) employed in this Action or any appeals thereof;
- 28 (e) a witness at any deposition or other proceeding in this Action or any

1 appeals thereof; and

2 (f) any other person as to whom the parties in writing agree.

3 8. Prior to receiving any unredacted Confidential Material, each Authorized  
4 Person shall be provided with a copy of this Stipulation and Protective Order and shall  
5 execute a Nondisclosure Certification in the form of Attachment A. Counsel for the party to  
6 this Action disclosing the unredacted Confidential Material to an Authorized Person shall  
7 retain a copy of all such agreements. In the event that further disclosure is made by an  
8 Authorized Person, consistent with the terms and conditions of this Stipulation and Protective  
9 Order, such Authorized Person shall forward to counsel for the party that originally disclosed  
10 the information copies of any Certifications executed by persons to whom such further  
11 disclosure is made. Counsel for the disclosing party shall, upon request, forward all such  
12 Certifications to counsel for the other parties. The provisions of this Stipulation and  
13 Protective Order shall be binding upon each person to whom disclosure is made. Counsel for  
14 a party to this Action shall be deemed bound by the provisions of this Stipulation and  
15 Protective Order by virtue of his or her execution of this Stipulation and Protective Order on  
16 behalf of the party or parties he or she represents. Execution of this Stipulation and  
17 Protective Order by any counsel for any party in this Action shall be sufficient to bind any  
18 member or associate of that counsel's law firm, including non-attorney employees of a law  
19 firm representing a party to this Action.

20 9. Counsel to any party to the Action or any appeals thereof, who has not  
21 executed this Stipulation and Protective Order prior to its approval and entry by the Court  
22 shall execute a counterpart signature page prior to disclosure of Confidential Material to such  
23 counsel or any other Authorized Person acting on behalf of such counsel or the party he or  
24 she represents. All such counterpart signature pages shall be filed with the Court.

25 10. All depositions in this Action of persons who have specific knowledge of  
26 Confidential Material shall be held in the presence only of the deponent, the parties, their  
27 counsel, officers of the Court involved in this Action (including the court reporter), and any  
28 other persons described in Paragraph 7 who have executed the Nondisclosure Certification

1 attached as Attachment A hereto. If, during the course of a deposition of a witness other than  
2 one who has specific knowledge of Confidential Material, it becomes necessary to reveal any  
3 Confidential Material, all persons other than those described in this Paragraph may be asked  
4 to leave the deposition room and, if asked, shall comply. It shall be the duty of counsel to  
5 ensure compliance with this Paragraph. The deposition transcript and any exhibits thereto  
6 shall be treated in accordance with Paragraph 3, above.

7 11. If a party seeks to submit, or present to, or file any portion of any pleading,  
8 motion, deposition transcript or other document with the Court which contains unredacted  
9 Confidential Material, it shall do so in accordance with United States District Court, Northern  
10 District of California's Civil Local Rule 79-5. It will be presumed that all Confidential  
11 Material is sealable unless the Court determines otherwise or the parties meet and confer and  
12 agree that the Confidential Material is not sealable.

13 12. Nothing in the foregoing provisions of this Stipulation and Protective Order  
14 shall be deemed to preclude the parties from objecting to the designation of documents or  
15 other discovery material as Confidential Material. In such event, the party objecting to any  
16 such designation shall have the burden of filing a motion with the Court challenging such  
17 designation; the party designating such material as confidential shall have the burden of  
18 demonstrating that there is good cause to designate the documents or materials as such and  
19 that they properly are subject to treatment under this Stipulation and Protective Order.  
20 During the pendency of any motion under this Paragraph, the documents that are the subject  
21 of such motion shall continue to be treated as confidential under this Stipulation and  
22 Protective Order.

23 13. The provisions of this Stipulation and Protective Order shall not be construed  
24 as preventing: (a) the disclosure of Confidential Material by the party which designated the  
25 information as such, and (b) the disclosure of Confidential Material to any judge, special  
26 master, magistrate or employee of a court for purposes of this Action or any appeals thereof.

27 14. In the event that any unredacted Confidential Material is used in any  
28 proceeding in this Action or any appeals thereof, it shall not thereby lose its confidential

1 status and, to the greatest extent possible, the party using such unredacted Confidential  
2 Material shall preserve its confidentiality during such use, as required by and consistent with  
3 the terms of this Stipulation and Protective Order.

4 15. In the event of inadvertent disclosure of unredacted Confidential Material by  
5 any person bound by the terms of this Stipulation and Protective Order, the party making such  
6 disclosure shall take steps to remedy any breach of confidentiality resulting from the  
7 disclosure. Steps to be taken shall include, as appropriate, limiting further dissemination of  
8 the information disclosed, retrieving copies of documents inadvertently circulated,  
9 withdrawing and refileing papers under seal, and similar actions. In the event of a dispute  
10 between the parties concerning the scope or application of this Paragraph, any person who is  
11 bound by the terms of this Stipulation and Protective Order or who has submitted unredacted  
12 Confidential Material pursuant to this Stipulation and Protective Order may petition the Court  
13 for appropriate relief.

14 16. Within sixty (60) days after the termination of this Action or any appeal  
15 thereof, or within such other time as counsel for the parties may agree, counsel for the parties  
16 shall assemble and return to the producing party all unredacted Confidential Material and  
17 copies of same or certify the destruction thereof.

18 17. This Stipulation and Protective Order shall survive the termination of this  
19 Action, and the Court shall retain jurisdiction to enforce and resolve disputes under this  
20 Stipulation and Protective Order. All unredacted Confidential Material shall continue to be  
21 treated as confidential in accordance with this Stipulation and Protective Order. The Clerk of  
22 the Court shall maintain under seal all papers filed under seal until the Court orders  
23 otherwise.

24 18. Pending Court approval of this Stipulation and Protective Order, counsel for  
25 any party who has signed this Stipulation and Protective Order and any person who has  
26 executed the Nondisclosure Certification attached hereto as Attachment A shall be bound by  
27 the terms of this Stipulation and Protective Order and shall treat all Confidential Material  
28 received in accordance with the terms thereof. In the event that this Stipulation and

1 Protective Order or a modification hereof agreed to by the parties is not approved by the  
2 Court, all Confidential Material shall be treated in accordance with Paragraph 16, above.

3 **Privileged Material**

4 19. During discovery, attorney-client privileged and attorney work product  
5 protected information may be inadvertently disclosed through documents, testimony, or other  
6 means (“Privileged Material”). Plaintiff and Defendants stipulate that such inadvertent  
7 disclosure of Privileged Material does not constitute a waiver. Pursuant to Federal Rules of  
8 Evidence Rule 502(d), this Stipulation and Protective Order shall be binding on all persons  
9 and entities in all state and federal proceedings, whether or not they are parties to the matter  
10 before the Court.

11 20. The terms “attorney-client privilege” and “work product protected” as used in  
12 this Stipulation and Protective Order shall have the same meaning as those phrases are giving  
13 in Federal Rules of Evidence Rules 502(f)(1)-(2).

14 21. If a party discovers or suspects that Privileged Material was produced  
15 inadvertently, the material shall only be examined to the extent necessary to determine that it  
16 is Privileged Material.

17 22. If a party discovers or suspects that it has received Privileged Material, that  
18 party shall immediately notify counsel for the opposing party or parties by email.

19 23. If a party discovers or suspects that it has produced or otherwise transmitted  
20 Privileged Material to another party, it shall immediately inform the receiving party by e-  
21 mail.

22 24. If a party receives notice or discovers that it is in possession of Privileged  
23 Material, it shall immediately take steps to prevent any further inadvertent disclosure. In  
24 addition, the receiving party shall transmit the Privileged Material to the party or attorney  
25 holding the attorney-client privilege or work product protection within five (5) business days.

26 25. If a party disputes the claim that material is Privileged Material, the parties will  
27 attempt to resolve the dispute informally or refrain from using the material until a order can  
28 be obtained by the Court.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

This agreement may be signed by counsel in counterparts.

Attachments: Attachment A – Nondisclosure Certification

IT IS SO STIPULATED

Dated: May \_\_, 2010

ROGERS JOSEPH O'DONNELL

By: \_\_\_\_\_  
ROBERT C. GOODMAN  
Attorneys for DEFENDANTS CHEVRON  
U.S.A. INC. AND CHEVRON  
CORPORATION

Dated: May \_\_, 2010

LAW OFFICE OF JACK SILVER

By: \_\_\_\_\_  
JACK SILVER  
Attorneys for NORTHERN CALIFORNIA  
RIVER WATCH.

1 **Attachment A**

2 **NONDISCLOSURE CERTIFICATION**

3 The undersigned is currently working at \_\_\_\_\_, which is located at  
4 \_\_\_\_\_ . *[During the past one (1) year period, the undersigned has been*  
5 *employed or otherwise engaged as an attorney or employee of, or a consultant or contractor*  
6 *to, the following entity, located at the following address:*

7 *Company Name:* \_\_\_\_\_

8 *Address:* \_\_\_\_\_]

9 The undersigned hereby states, under penalty of perjury, that he/she has read the  
10 Stipulation and Protective Order Protecting Confidential Information entered by the Court in  
11 *Northern California River Watch v. Chevron U.S.A. Inc, et al.*, Case No. 4:09-cv-00669-CW,  
12 understands the terms thereof, and agrees, upon threat of penalty of contempt of court, civil  
13 claims by the party whose claim of confidentiality has been breached, and/or criminal  
14 penalties under 18 U.S.C. § 1905 or 42 U.S.C. § 9604(e)(7)(B), to be bound by such terms.  
15 The undersigned further agrees to submit to the jurisdiction of the Court in connection with  
16 any claim that he/she failed to abide by the terms of the Stipulation and Protective Order.  
17 The undersigned further agrees to keep any Confidential Material obtained by him/her within  
18 his/her exclusive possession, place the material in a secure and segregated location, and  
19 agrees not to disclose the material other than to those to whom disclosure is specifically  
20 authorized by the Stipulation and Protective Order. He/she further agrees not to use or  
21 disclose the material other than as authorized by the Stipulation and Protective Order. The  
22 undersigned agrees that the pledge of secrecy under this agreement continues in perpetuity  
23 after the above-captioned litigation is concluded.

24 Executed this \_\_\_\_ day of \_\_\_\_\_, in

25 \_\_\_\_\_.

26 \_\_\_\_\_  
27 [SIGNED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO ORDERED.

PURSUANT TO STIPULATION IT IS HEREBY ORDERED:

The Court finds that good cause exists for the issuance of an order requiring limited disclosure of Confidential Information and for the claw back of inadvertently disclosed Privileged Material. Entry of this Protective Order is appropriate pursuant to Federal Rule of Civil Procedure 26(c).

Dated: May 12, 2010

  
\_\_\_\_\_  
HONORABLE CLAUDIA WILKEN  
United States District Court Judge