UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation This Document Relates To: Orange County Water District v. Unocal Corporation, et al., Case No. 04 Civ. 4968 (SAS). This Document Relates To: The Honorable Shira A. Scheindlin The Honorable Shira A. Scheindlin

DECLARATION OF WILLIAM T. COSTLEY III IN SUPPORT OF DEFENDANTS'
FURTHER SUPPLEMENTAL MEMORANDUM RE SUMMARY JUDGMENT
MOTION ON STATUTE OF LIMITATIONS

DECLARATION OF WILLIAM T. COSTLEY III

- I, WILLIAM T. COSTLEY III, hereby declare:
- 1. I am a senior paralegal at the law firm of Arnold & Porter LLP, attorneys for defendants Atlantic Richfield Company, BP Products North America Inc. and BP West Coast Products LLC in this litigation. I have personal knowledge of the matters stated herein, and if called upon to testify, could and would competently do so.
- 2. I submitted two prior declarations in support of defendants' motion for summary judgment based on the statute of limitations in March 2006 and February 2007, respectively:

 Declaration of William T. Costley III In Support Of Defendants' Motion For Summary Judgment Based On The Statute Of Limitations, March 9, 2006 ("Costley 2006 Decl.") and Supplemental Declaration of William T. Costley III In Support Of Defendants' Motion For Summary Judgment Based On The Statute Of Limitations, February 15, 2007 ("Costley 2007 Decl.").
- 3. To prepare this declaration, I analyzed documents and electronic data produced in this case by plaintiff Orange County Water District (the "District"), by defendants and, in some cases, by the Santa Ana Regional Water Quality Control Board or other government agencies. Using information from these sources, I prepared the tables attached to this declaration. These tables fairly and accurately summarize the information taken from the sources mentioned above. In preparing this declaration, I also utilized the accrual dates, and supporting information, set forth in the District's table attached to its March 13, 2009 letter included as Exhibit 2 to the 2009 Further Supplemental Declaration of James J. Finsten.
- 4. Each of the first five tables attached to this declaration (Exhibits 1A-1E) compare the District's accrual dates for a subset of the stations included in its March 13, 2009 accrual table to additional information relevant to determining the accrual dates for the stations in

question applying the District's own accrual criteria or, in the case of Exhibit 1D, the accrual date based on California law set forth in defendants' prior briefing. In each table, the focus plume stations referred to are identified by station name and plume number in the first two columns of the table.

- 5. Table 1A, attached as Exhibit 1A, addresses the District's accrual dates based on its first accrual criterion -- the first MTBE detection above 5 parts per billion ("ppb") in an offsite monitoring well at the station. Table 1A compares the accrual date selected by the District (third column), and information regarding the offsite MTBE detection used to select this date (fourth and fifth columns), with data reporting pre-May 6, 2000 MTBE detections above 5 pbb in offsite monitoring wells at the station. For each station, the Table lists the offsite monitoring wells in which MTBE detected at or above 5 ppb before May 6, 2000 (sixth column) and the highest MTBE detection in these wells prior to May 6, 2000 (seventh column). To compile this Table, I utilized the same source documents identified in the District's March 13, 2009 table, which identifies these documents by Bates range. Such documents consisted of Monitoring Reports submitted to the Regional Board or local oversight agency by the responsible party for the station in question, and contain monitoring data for MTBE detections in on-site and offsite monitoring wells at the station.
- 6. Table 1B, attached as Exhibit 1B, addresses certain of the District's accrual dates based on its second accrual criteria -- the first MTBE detection in a production well "associated" with a station by being included in the same "plume." At each station analyzed in Table 1B, offsite monitoring wells were installed and, before May 6, 2000, MTBE was detected in one or more such wells above 5 ppb. Thus, Table 1B compares the accrual date selected by the District (third column), and information regarding the MTBE detection in an "associated" production

well used to select this date (fourth column), with data reporting pre-May 6, 2000 MTBE detections above 5 pbb in offsite monitoring wells at the station. For each station, the Table lists the offsite monitoring wells in which MTBE detected at or above 5 ppb before May 6, 2000 (sixth column) and the highest MTBE detection in these wells prior to May 6, 2000 (seventh column). To compile this Table, I utilized Monitoring Reports submitted to the Regional Board or local oversight agencies that have been produced in this litigation (identified by Bates number in the eighth column).

- 7. Table 1C, attached as Exhibit 1C, addresses other of the District's accrual dates based on its second accrual criteria. The accrual dates analyzed in Table 1C are for stations in the District's Plumes 3 and 7, and are based on alleged "first" MTBE detections in well OCWD-M10 (Plume 3) and City of Anaheim well A-29 (Plume 7) after May 6, 2000. Thus, this Table compares the accrual date selected by the District (third column), and information regarding the MTBE detection in an "associated" production well used to select this date (fourth column), with other data from the District's own testing showing MTBE detections in the wells in question before May 6, 2000. To compile this Table, I utilized the District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing.
- 8. Table 1D, attached as Exhibit 1D, addresses the District's accrual dates for stations not included in Tables 1A, 1B or 1C. This Table compares the accrual date selected by the District (third column), and information regarding the MTBE detection in either offsite monitoring wells or production wells used to select this date (fourth, fifth and sixth columns), with data reporting MTBE detection in on-site monitoring wells at the station in question (seventh, eighth and ninth columns). To compile this Table, I utilized Monitoring Reports submitted to the Regional Board or local oversight agencies that have been produced in this

litigation, documents produced by the District or defendants in this litigation, the District's Second Supplemental Responses to Defendants' Preliminary Interrogatories re Standing, and the Santa Ana Regional Water Quality Control Board Database of MTBE Detections (as identified in each case in the tenth column). The data reporting on-site MTBE detections at the stations listed in this Table was previously submitted in my prior declarations.

- 9. Table 1E, attached as Exhibit 1E, addresses the stations that are designated as "not ripe" in the District's March 13, 2009 accrual table. For each such station, the Table lists the offsite monitoring wells at the station in which MTBE was detected above 5 ppb before May 6, 2000 (fourth column) and the highest MTBE detection in these wells prior to May 6, 2000 (fifth column). To compile this Table, I utilized Monitoring Reports submitted to the Regional Board or local oversight agencies that have been produced in this litigation (identified by Bates number in the sixth column).
- 10. Table 2, attached as Exhibit 2, contains a more detailed analysis of the District's accrual dates based on its first criterion at three exemplar stations. This Table compares the District's basis for accrual, including the well, detection level, and date of detection, with detections of MTBE above 5 ppb in off-site monitoring wells before May 6, 2000, using these same factors. To compile this Table, I utilized the Monitoring Reports submitted to the Regional Board or local oversight agencies used in preparing Table 1A.
- 11. Table 3, attached as Exhibit 3, summarizes the accrual information contained in the five tables making up Exhibit 1, and indicates for each focus plume station (1) whether this station is time-barred using the District's own accrual criteria or (2) whether the District's claims at this station have not yet accrued applying its accrual criteria. Because this Table is limited to applying the District's accrual criteria, it does not encompass stations analyzed in Table 1D,

which presents accrual information applying the California law accrual standard set forth in defendants' prior briefing. In composing Table 3, I consulted the same information addressed in paragraphs 4-9 of this Declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on May 4, 2009 at Los Angeles, California.

William T. Costley III

Exhibit 1A

OCWD Accrual Dates Based On First Criterion Compared To Data Showing Off-Site Monitoring Well Detections Before May 6, 2000 Exhibit 1A

Plume No.	Station Name	3/13/09 OCWD Accrual Date	Off-Site Well Used For OCWD Accrual Date	MTBE Concentration on Accrual Date (ppb)	All Off-Site Wells w/ pre-5/6/00 MTBE Detections above 5 ppb	Highest MTBE Concentration in Off- Site Well pre-5/6/00 (ppb)	Source
P	Exxon #7-4283	05/05/05	MW-13i	5.6	WW-8	18 (MW-8)	OCWD-MTBE-001-257753
2	G&M Oil #4	09/12/01	W-25d	5.1	W-11, W-16, W-17, W-18, W-19, W20, W-21, W-22	22,600 (W-17)	OCWD-MTBE-001-255790
P2	Mobil #18-HDR	09/01/04	MW-16B	18.5	MW-5A, MW-5B, MW-6A, MW-7, MW-9A, MW-9B, MW-10A, MW-10B	71,000 (MW-5A)	OCHCA-MTBE-013887
P 2	Mobil #18-JMY	11/02/01	MW-15	4.9	BH-5, MW-14, MW-17, MW-19A, MW-19B	200,000 (BH-5)	OCWD-MTBE-001-182388
P3	ARCO #1912	03/14/07	MW-8	9.7	B-5, E-7, E-15	600,000 (E-15)	OCHCA-MTBE-043871
P4	Thrifty #008	04/08/03	BW-28	43	BW-9, BW-10, BW-13, BW-14, BW-15, BW-16	8,000 (BW-16)	SARWQCB-MTBE-020055
P 4	Unocal #7470	03/16/04	MW-20	98	B-7, B-11, B-12	10,000 (B-7)	SARWQCB-MTBE-028019
82	ARCO #3085	10/02/01	MW-5	170	MW-3, MW-4	2,200 (MW-3)	SARWQCB-MTBE-000023
82	Beacon Bay Car Wash (SA)	01/16/03	6-WW	18	MW-7, MW-8	34,000 (MW-8)	SARWQCB-MTBE-026407
82	Chevron #9-1921	01/02/07	MW-13	41 (TBA)	MW-10, MW-11, MW-14, MW-16	3,460 (MW-14)	SARWQCB-MTBE-004568
ድ	Shell #6502	00/90/60	B-46	Not Found*	B-7, B-8, B-11, B-21	4,800 (B-7)	OCWD-MTBE-001-183180
82	Unocal #5123	60/90/20	MW-15	15	MW-4, MW-14, MW-17	910 (MW-17)	OCWD-MTBE-001-184473
P10	Four Star Ventures	10/31/07	S-1B	19	MW-13, MW-14	1,500 (MW-13)	OCHCA-MTBE-079731
P10	Shell #8990	03/07/03	B-22	14	B-14, B-15, B-16	17 (B-14)	SARWQCB-MTBE-016784
5	Texaco #3311	01/27/99	S9-MW	23.5	Pre-May 6, 2000 Accrual Date From OCWD		OCHCA-MTBE-088873
70	ARCO #6036	08/16/01	VA-2D	Not Found**	MW-8, MW-10	86 (MW-10)	OCWD-MTBE-001-267076
62	Chevron #9-5568	10/13/97	MW-10	54	Pre-May 6, 2000 Accrual Date From OCWD		OCWD-MTBE-001-266123

^{*}While no MTBE was found on 9/6/00 in well B-46, MTBE was detected at 10 ppb in well B-46 on 6/6/00.

^{**}While no MTBE was found on 8/16/01 in well VA-2D, MTBE was detected at 37 ppb in well VA-2D on 5/31/05.

Exhibit 1B

OCWD Accrual Dates Based On Second Criterion Compared To Data Showing Off-Site Monitoring Well Detections Before May 6, 2000 Exhibit 1B

Plume No.	Station Name	3/13/09 OCWD Accrual Date	Production Well MTBE Used For Concentra OCWD Accrual on Accrual Date (ppb)	MTBE Concentration on Accrual Date (ppb)	All Off-Site Wells w/ pre-5/6/00 MTBE Detections above 5 ppb	Highest MTBE Concentration in Off- Site Well pre-5/6/00 (ppb)	Source
2	ARCO #1887	08/03/05	NB-TAMD	0.12	MW-15, MW-17, BC-1	48 (MW-17)	OCWD-MTBE-001-261571
<u>P</u>	Texaco #8520/121608	08/03/05	NB-TAMD	0.12	MW-9, MW-10	2,610 (MW-10)	OCWD-MTBE-001-254912
٣	Unocal #5376	08/03/05	NB-TAMD	0.12	MW-9, MW-10, MW-13, MW-14, MW-15	990 (MW-14)	OCWD-MTBE-001-260049
P2	ARCO #6131	08/02/05	MCWD-5	0.08	B-8, B-9, B-10	130,000 (B-9)	OCWD-MTBE-001-187837
8	ARCO #1905	05/07/02	OCWD-M10*	3.0**	W-26, W-27	110 (W-27)	OCWD-MTBE-001-265078
P4	Thrifty #376	90/60/80	SA-16	0.13	W-8S	20 (W-8S)	OCWD-MTBE-001-253290
8	Thrifty #085	08/02/05	NB-DOLD	0.04	MW-9, MW-11, MW-K1, MW-K2, MW-102, MW-103	300 (MK-K1)	OCWD-MTBE-001-263952
82	Thrifty #368	09/23/01	HB-13	Non-Detect	MW-9, MW-12	(9-WW) 97.7	OCWD-MTBE-001-188636
82	Westminster Shell	01/18/05	HB-13	Non-Detect	MW-5, MW-8, MW-9, MW-11	90 (MW-9)	OCWD-MTBE-001-184125
D5	Mobil #18-668	11/17/08	IRWD-16	0.03	MW-5, MW-6, MW-7, MW-14	130,000 (MW6, MW14)	OCWD-MTBE-001-138918

^{*}OCWD-M10 does not produce water for consumption, but is treated as a production well under the District's accrual theory.

^{**}OCWD's WRMS Database

Exhibit 1C

Exhibit 1C

OCWD Accrual Dates Based On Second Criterion Compared to Dates Showing

Dectection Before May 6, 2000 in Production* Wells Designated by OCWD

Plume No.	Station Name	3/13/09 OCWD Accrual Date	Production Well Used For OCWD Accrual Date	duction MTBE Jsed For Concentration on CWD Accrual Date ual Date (ppb)	MTBE Detection Pre-5/6/00?	Sampling Date For First MTBE Detection	MTBE Concentration (ppb)	Source
P3	ARCO #1905	05/07/02	OCWD-M10*	3.0**	Yes	9/12/95	1.00	PI.'s Second Supp. Responses to Defs.' Preliminary Interrogatories re Standing Ex. 1A, "OCWD Owned Wells" p.5.
P3	Beacon Bay Car Wash (FV)	05/07/02	OCWD-M10*	3.0**	Yes	9/12/95	1.00	PI.'s Second Supp. Responses to Defs.' Preliminary Interrogatories re Standing Ex. 1A, "OCWD Owned Wells" p.5.
P3	Thrifty #383	05/07/02	OCWD-M10*	3.0**	Yes	9/12/95	1.00	PI.'s Second Supp. Responses to Defs.' Preliminary Interrogatories re Standing Ex. 1A, "OCWD Owned Wells" p.5.
7д	ARCO #1994	12/14/05	A-29	0.09***	Yes	10/12/95	3.70	PI.'s Second Supp. Responses to Defs.' Preliminary Interrogatories re Standing Ex. 1A, "Water Supply Wells" p.1.
P7	Unocal #5869	12/14/05	A-29	0.09***	Yes	10/12/95	3.70	PI.'s Second Supp. Responses to Defs.' Preliminary Interrogatories re Standing Ex. 1A, "Water Supply Wells" p.1.

*OCWD-M10 does not produce water for consumption, but is treated as a production well under the District's accrual theory.

^{**}PI.s' Second Supp. Responses to Defs.' Preliminary Interrogatories re Standing Ex. 1A does not report any MTBE detection in OCWD-M10 on May 7, 2002; OCWD's WRMS Database reports a detection of 3.0 ppb on this date.

^{***}PI.'s Second Supp. Responses to Defs.' Preliminary Interrogatories re Standing Ex. 1A, "Friedman Bruya" p.1 shows MTBE detected at 0.09 ppb on 10/4/05, not 12/14/05.

Exhibit 1D

Exhibit 1D
Stations Not Listed In Exhibits 1A, 1B or 1C With Accrual Dates
OCWD Accrual Dates Compared To Pre-May 6, 2000 On-Site MTBE Detections

Plume No.	Station Name	3/13/09 OCWD Accrual Date	Off-Site Well Used For OCWD Accrual Date	Off-Site Well Production Well Concentration Used For OCWD Used For OCWD on Accrual Date (ppb)	MTBE Concentration on Accrual Date (ppb)	On-Site MTBE Detection Pre-5/6/00?	Sampling Date	MTBE Concentration (ppb)	SOURCE
P	Mobil #18-G6B	04/02/03	MW-6S		14.4	Yes	11/7/99	34,000	OCWD-MTBE-001-258933
7	Shell #204359403	90/80/80		NB-TAMD	0.12	Yes	8/17/98	312	OCWD-MTBE-001-259385
2	Texaco #121681	50/60/80		NB-TAMD	0.12	Yes	3/27/00	41,000	See Finsten 2008 Decl., Ex. 1
2	Unocal #5399	90/60/80		NB-TAMD	0.12	Yes	11/20/96	2,000	See Sartoris 2006 Decl., Ex. 15
P5	Unocal #5356	07/19/02	MW-22		840	Yes	4/24/97	1,900,000	See Sartoris 2006 Decl., Ex. 15
9 <u>6</u>	ARCO #6116	04/03/01	VA-4S		1,300	Yes	86/2/6	43,000	See Sartoris 2006 Decl., Ex. 15
9d	Exxon #3738	08/04/00		NB-DOLD	Not Found*	Yes	96/5/2	26,000	See Sartoris 2006 Decl., Ex. 15
B8	G&M Oil #24	04/11/03	MW-15		063	Yes	86/6/6	1,015,000	See Sartoris 2006 Decl., Ex. 15
8d	Mobil #18-HEP	09/19/02	MW-14		101	Yes	2/7/00	100,000	See Finsten 2008 Decl., Ex. 1
82	Chevron #9-5401	07/02/01		HB-13	Non-Detect	Yes	6/13/97	65,000	See Finsten 2008 Decl., Ex. 1
න	Huntington Beach ARCO	08/09/01		HB-13	Non-Detect	Yes	3/20/00	76,000	See Finsten 2008 Decl., Ex. 1
62	Unocal #5226	11/03/03	MW-16		1.5	Yes	5/11/98	480,000	See Sartoris 2006 Decl., Ex. 15
2	USA Gasoline #141	01/18/05		HB-13	Non-Detect	Yes	96/9/9	510	OCWD-MTBE-001-191559
5	Unocal #5792	60/90/90	MW-7D		4	Yes	5/11/98	19,000	OCWD-MTBE-001-268681

*While no MTBE was found on 8/4/00 in well NB-DOLD, MTBE was detected at 0.04 ppb in well NB-DOLD on 8/2/05.

Exhibit 1E

Stations Designated As "Not Ripe:" Off-Site Monitoring Well Dectections Before May 6, 2000 Exhibit 1E

Source	OCWD-MTBE-001-267373	OCWD-MTBE-001-268624	OCWD-MTBE-001-267251	OCWD-MTBE-001-266715	OCWD-MTBE-001-268101
Highest MTBE Concentration in Off-Site Well pre- 5/6/00 (ppb)	1,090 (B-13)	80,000 (RMC-7)	200 (MW-6)	110,000 (MW-5)	20 (MW-6)
All Off-Site Wells w/ pre-5/6/00 MTBE Detections above 5 ppb	B-13	RMC-6, RMC-7	MW-6, MW-7	MW-5, MW-7, MW-8	WW-6
3/13/09 OCWD Accrual Date	Not Ripe	Not Ripe	Not Ripe	Not Ripe	Not Ripe
Station Name	Shell #4001/Shell #135218	Unocal #4727	ARCO #6160	Mobil #18-FYE	ARCO #3094
Plume No.	70	5	D2	23	D10

Exhibit 2

Exhibit 2

Illustrative Examples Of OCWD Accrual Dates Based On First Criterion Compared To Data Showing Off-Site Monitoring Well Detections Before May 6, 2000

Station	OCWD's Basis For Claimed Accrual	Pre-May 6, 2000 Detections in Off-site Monitoring Wells
Mobil 18-JMY (Plume 2)	Well MW15 MTBE detected on 11/7/2001 at 4.9 ppb. No other MTBE detection in this well.	Well BH5 MTBE first detected above 5 ppb on 5/3/1994 (13 ppb); thereafter 18 more MTBE detections above 5 ppb before 5/6/2000; highest was 200,000 ppb. Well MW14 MTBE first detected above 5 ppb on 9/16/98 (14 ppb); thereafter 4 more MTBE detections above 5 ppb before 5/6/2000; highest was 29 ppb. Well MW17 MTBE first detected above 5 ppb on 6/23/98 (1,000 ppb); thereafter 6 more MTBE detections above 5 ppb before 5/6/2000; highest was 1,000 ppb. Well MW19 (A&B)
		MTBE first detected above 5 ppb on 6/23/98 (15 ppb); thereafter four more MTBE detections above 5 ppb before 5/6/2000; highest was 11 ppb.
Beacon Bay Car Wash (Plume 8)	Well MW9 MTBE detected on 1/16/2003 at 18 ppb. No other MTBE detection in this well. OCWD originally designated 6/25/1996	Well MW7 MTBE first detected above 5 ppb on 9/26/1996 (23 ppb); thereafter ten more MTBE detections above 5 ppb before 5/6/2000; highest was 23 ppb.
	as the accrual date for this station (see 2/6/2009 Letter from M. Axline to Hon. Shira Scheindlin), which would makes its claims time-barred.	Well MW8 MTBE first detected above 5 ppb on 6/25/1996 (7,200 ppb); thereafter 12

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Station	OCWD's Basis For Claimed Accrual	Pre-May 6, 2000 Detections in Off-site Monitoring Wells
		more MTBE detections above 5 ppb before 5/6/2000; highest was 34,000 ppb.
Shell 6502 (Plume 9)	Well B46 No MTBE on OCWD's accrual date of 9/6/2000. MTBE was detected at 10 ppb on 6/6/2000, followed by either no detection or a detection well below 5 ppb over the next five years. Starting on 11/6/2005, MTBE detection just above 5ppb (highest 5.8 ppb) on three of ten monitoring events through 3/25/2008.	1
		5/6/2000; highest was 450 ppb.

Exhibit 3

Exhibit 3 Stations That Are Time-Barred By Statute Of Limitations Or Have Not Accrued Based On OCWD's First or Second Criteria

		Time-l		Not A	
		According to 0		According to 0	No MTBE
Plume No.	Station Name	Pre-5/6/00 Detection Above 5 ppb in Off-Site Monitoring Well	Pre-5/6/00 Detection in Production Well "Associated" with Station	OCWD's Accrual Date Based on Off- Site Monitoring Well Detection Below 5 ppb	
P1	ARCO #1887	X			
P1	Exxon #4283	Х			
P1	G&M Oil #4	X			
P1	Mobil #18-G6B				
P1	Shell #204359403				
P1	Texaco #121681				
P1	Texaco #8520/121608	Х			
P1	Unocal #5376	X			
P1	Unocal #5399				
P2	ARCO #6131	X			
P2	Mobil #18-HDR	X			
P2	Mobil #18-JMY	X		х	
P3	ARCO #1905	X	x	1	
P3	ARCO #1912	×			
P3	Beacon Bay Car Wash (FV)		Х		
P3	Thrifty #383		X		
P4	Thrifty #008	X			
P4	Thrifty #376	X			
P4	Unocal #7470	X			
P5	Unocal #5356	+^-			
P6	<u> </u>				
	ARCO #6116 Exxon #3738				
P6	 				
P6	Thrifty #085	X	V		
P7	ARCO #1994		X		
P7	Unocal #5869	ļ	X		
P8	ARCO #3085	X			
P8	Beacon Bay Car Wash (SA)	X			
P8	Chevron #1921	X			
P8	G&M Oil #24				
P8	Mobil #18-HEP				
P9	Chevron #9-5401				X
P9	Huntington Beach ARCO	_			X
P9	Shell #6502	<u> </u>			
P9	Thrifty #368	X			X
P9	Unocal #5123	X			
P9	Unocal #5226			X	
P9	Westminster Shell	X			X
P9	USA Gasoline #141				X
P10	Four Star Ventures	X			
P10	Shell #8990	X			
D1	Shell #4001/Shell #135218	X			
D1	Texaco #3311	X			
D1	Unocal #5792			X	
D1	Unocal #4727	Х			
D2	ARCO #6160	X			
D3	Mobil #18-FYE	X			
D4	ARCO #6036	X			
D5	Mobil #18-668	X			
D9	Chevron #9-5568	X			
D10	ARCO #3094	Х			