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28 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

THE BOEING COMPANY,

Plaintiff,

v.

MAZIAR MOVASSAGHI, in his official
capacity as the Acting Director of the
California Department of Toxic Substances
Control,

Defendant.

Case No. 09-cv-03165-GEB-KJM

Civil Action

**AMENDED COMPLAINT
OF THE BOEING COMPANY**

1 Plaintiff The Boeing Company ("Boeing") alleges as follows:

2 **JURISDICTION**

3 1. Pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), this Court has subject-matter
4 jurisdiction over Boeing's claims arising out of the United States Constitution and 42 U.S.C.
5 § 1983.

6 2. The relief requested is authorized pursuant to 28 U.S.C. §§ 1651 (All Writs
7 Act); 2201 (Declaratory Judgment Act); and 2202 (Further Relief).

8 3. Venue is proper in the Eastern District of California pursuant to 28 U.S.C.
9 § 1391(b) because a substantial part of the events giving rise to the claim occurred in this
10 district and because the office of Defendant is located in this district.

11 **NATURE OF THE ACTION**

12 4. This is a civil action for declaratory and injunctive relief to determine (1)
13 whether the State of California's assertion of regulatory jurisdiction over the cleanup of
14 radiological materials at the Santa Susana Field Laboratory ("Santa Susana") site in Ventura
15 County, California, pursuant to Cal. Health & Safety Code § 25359.20 ("SB 990"),
16 constitutes an impermissible intrusion of state authority in the exclusively federal field of
17 nuclear health and safety, in contravention of the Atomic Energy Act of 1954 ("AEA"), 42
18 U.S.C. §§ 2011, *et seq.*, and the Supremacy Clause of the United States Constitution; (2)
19 whether SB 990 is invalid under the Supremacy Clause of the United States Constitution
20 because it violates the doctrine of intergovernmental immunity; (3) whether SB 990
21 impermissibly conflicts with and stands as an obstacle to the accomplishment and execution
22 of the full purposes and objectives of Congress and the Department of Energy ("DOE")
23 under the Supremacy Clause of the United States Constitution; and (4) should state law be
24 found to apply, whether SB 990, which irrationally and arbitrarily singles out this one site for
25 disparate treatment, violates the Due Process Clause and the Equal Protection Clause of the
26 Fourteenth Amendment to the United States Constitution, U.S. Const. amend. XIV.

27 **INTRODUCTION**

28 5. The Supreme Court has long recognized that "the federal government has

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1 occupied the entire field of nuclear safety concerns, except the limited powers expressly
2 ceded to the states.” *Pacific Gas & Elec. Co. v. State Energy Resources Conservation &*
3 *Dev. Comm’n*, 461 U.S. 190, 212 (1983); *see English v. General Elec. Co.*, 496 U.S. 72, 82
4 (1990); *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 249 (1984).

5 6. In particular, through the AEA, 42 U.S.C. §§ 2011, *et seq.*, with exceptions
6 not applicable here, Congress has committed the safety regulation of source, special nuclear,
7 and byproduct materials (“AEA materials”) to the exclusive jurisdiction of the federal
8 government. In calling for exclusive federal control over AEA materials, Congress
9 recognized the critical need for uniform standards and federal expertise in this highly
10 sensitive field, as well as the paramount federal interest in protecting national security from
11 nuclear threats. *See Silkwood*, 464 U.S. at 250 (citing H.R. Rep. No. 1125, 86th Cong., 1st
12 Sess. 3 (1959)); 42 U.S.C. § 2201(b) (extending federal authority to regulate radiological
13 materials “to promote the common defense and security or to protect health or to minimize
14 danger to life or property”); *id.* § 5801(a) (vesting exclusive authority in the precursor to
15 DOE to conduct nuclear research on behalf of the federal government, in the interest of “the
16 general welfare and the common defense and security”); *id.* § 5801 (b), (e).

17 7. In light of these principles, attempts by states to regulate health and safety
18 aspects of the cleanup and disposal of AEA materials have consistently been struck down as
19 unconstitutional under the Supremacy Clause. The United States Court of Appeals for the
20 Ninth Circuit, for example, recently held that Washington State’s attempt to regulate the
21 cleanup of radiological materials at DOE’s Hanford Site near Richland, Washington, was
22 preempted by the AEA, affirming the federal district court’s ruling to the same effect. *See*
23 *United States v. Manning*, 527 F.3d 828 (9th Cir. 2008), *affirming United States v. Manning*,
24 434 F. Supp. 2d 988 (E.D. Wash. 2006); *see also United States v. Kentucky*, 252 F.3d 816
25 (6th Cir. 2001) (striking down Kentucky’s attempt to regulate the environmental
26 management of radiological materials at a DOE facility).

27 8. Nonetheless, in 2007, the Legislature of the State of California enacted SB
28 990, seeking to assert state authority and control over the health and safety regulation of

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1 DOE-related AEA materials at a single site in the state. The law, which by its terms applies
2 nowhere in California other than the Santa Susana site, amends existing California law to
3 authorize the California Department of Toxic Substances Control (“DTSC”) “to compel a
4 responsible party or parties to take or pay for appropriate removal or remedial action” of
5 radiological materials, as “necessary to protect the public health and safety and the
6 environment at the Santa Susana Field Laboratory site.” Cal. Health & Safety Code
7 § 25359.20(a). In addition, SB 990, which is subject to civil and criminal enforcement,
8 prohibits Boeing and the federal government, as owners of the Santa Susana site, from
9 transferring any ownership interest in the land until the State certifies that its cleanup process
10 has been satisfied.

11 9. SB 990 represents an unprecedented encroachment by the State of California
12 in an area of exclusive federal responsibility. On information and belief, this is the only
13 instance in which the California legislature has enacted legislation purporting to regulate the
14 cleanup of AEA materials for health and safety purposes where the power to do so has not
15 been “expressly ceded to the” State, *Pacific Gas*, 461 U.S. at 212. Moreover, SB 990
16 irrationally and arbitrarily mandates a site-wide cleanup process for Santa Susana that is
17 substantially more onerous and invasive than the process prescribed by generally applicable
18 state law, which the State has deemed sufficient to protect human health and public safety at
19 other sites in the state. Singling out Santa Susana for a cleanup process over and above the
20 process mandated at other sites bears no rational relationship to a legitimate government
21 interest.

22 10. Boeing is committed to cleaning up the Santa Susana site in a manner that
23 fully protects public health and safety. Whether controlled by federal or state law, that
24 cleanup effort will demand enormous resources, substantial time, and the sustained hard
25 work and cooperation of those involved. In order to ensure that this enormous and important
26 effort is undertaken under the correct legal standard, Boeing requires a resolution from this
27 Court as to whether federal or state law governs the cleanup of radiological materials at Santa
28 Susana.

1 11. Because Boeing is concerned with clarifying the appropriate cleanup
2 requirements to be applied at Santa Susana, in this complaint Boeing does not seek damages
3 or attorney's fees. Rather, Boeing seeks (1) a declaration, pursuant to 28 U.S.C. § 2201, that
4 SB 990 is invalid facially and as applied and (2) a preliminary and permanent injunction
5 precluding Defendant from enforcing or taking any action against Boeing based on SB 990.
6 At the present time, Boeing seeks a declaration that SB 990 is invalid under the Supremacy
7 Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, because it is preempted by
8 federal law, *see, e.g.*, 42 U.S.C. §§ 2011, *et seq.*, and violates the doctrine of
9 intergovernmental immunity. Only if it is determined that state law applies to the cleanup of
10 radiological materials at the Santa Susana site will it be necessary to reach Boeing's
11 alternative claims that SB 990 violates the Due Process Clause and the Equal Protection
12 Clause of the Fourteenth Amendment to the United States Constitution, U.S. Const. amend.
13 XIV.

14 **PARTIES**

15 12. Plaintiff Boeing is a Delaware corporation with its principal place of business
16 in Chicago, Illinois. Boeing is a Department of Energy prime contractor at Santa Susana and
17 an owner of most of the Santa Susana site, which SB 990 expressly targets as the sole subject
18 of its regulation.

19 13. Defendant Maziar Movassaghi is the acting Director of the California DTSC,
20 and is being sued in his official capacity. The DTSC Director's office is located in
21 Sacramento, California. The Director of DTSC is charged with implementing SB 990 on
22 behalf of the State of California. The Director is required, for example, to assess the
23 requirements for satisfying the cleanup process described in the statute, Cal. Health & Safety
24 Code § 25359.20(c), and, as a condition of any sale or transfer of Santa Susana land, to
25 "certify that the land has undergone complete remediation pursuant to the most protective
26 standards" described in the statute, *id.* § 25359.20(e).

27 **STATUTORY AND REGULATORY BACKGROUND**

28 14. Over a span of nearly sixty years, the United States Department of Energy

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1 (“DOE”) (or its predecessor agencies) and the National Aeronautics and Space
2 Administration (“NASA”) (or its predecessors), directly and by means of facilities-operation
3 contracts with Boeing’s predecessor companies, conducted rocket engine testing and/or
4 nuclear energy research activities at Santa Susana. Federally sponsored research and
5 development at Santa Susana has included the testing of pioneering rocket-engine
6 technology, which has supported the development of almost every major space program in
7 United States history, from the first satellite launches to the Space Shuttle. The federal
8 government also conducted work related to a number of national defense programs at Santa
9 Susana, as well as important research, development, and testing related to the peacetime use
10 of nuclear and other energy sources.

11 15. As a result of these federal research and national defense programs, some
12 amount of nuclear and chemical waste was generated. The cleanup of those materials is
13 subject to federal regulation under the AEA, 42 U.S.C. §§ 2011, *et seq.*, the Comprehensive
14 Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C.
15 §§ 9601 *et seq.*, and/or the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42
16 U.S.C. §§ 6901, *et seq.*

17 16. In enacting the AEA, 42 U.S.C. §§ 2011, *et seq.*, Congress created a
18 comprehensive federal scheme governing the regulation for health and safety purposes of
19 AEA materials. The radiological materials to be cleaned up at Santa Susana are AEA
20 materials.

21 17. As originally enacted in 1954, the AEA authorized the Atomic Energy
22 Commission, a predecessor agency to DOE and the Nuclear Regulatory Commission
23 (“NRC”), to promulgate rules, regulations, and orders to govern the possession and use of
24 AEA materials as necessary to promote the common defense and security, protect health, and
25 minimize danger to life or property. 42 U.S.C. § 2201(b). In the 1970s, those authorities
26 were transferred to the NRC and DOE, as successor agencies to the Atomic Energy
27 Commission. *See* 42 U.S.C. §§ 5801, 5811-5821, 5841-5853.

28 18. The AEA today grants the NRC exclusive federal authority over the licensing

1 and regulation for safety reasons of various commercial nuclear activities, including the
2 operation of production and utilization facilities and the disposal of AEA materials. *See, e.g.*,
3 42 U.S.C. §§ 2201(b), 2071-2078, 2091-2099, 2111-2114, 2021(c).

4 19. In addition, the AEA grants DOE exclusive federal authority over the nuclear
5 research and development programs that it administers on behalf of the federal government.
6 42 U.S.C. §§ 2201(b), 5801(b).

7 20. Pursuant to its AEA authority and responsibilities, DOE has established a
8 comprehensive health, safety, and environmental program for managing its nuclear facilities.
9 Among other things, DOE has promulgated a series of regulations and orders addressing the
10 management and cleanup of radiological material and radiological waste resulting from its
11 research activities. *See, e.g.*, 10 C.F.R. Parts 820, 830, 835; DOE Orders 231.1A, Chg. 1;
12 450.1A; 435.1, Chg. 1; 5400.1, Chg. 1; 5400.5, Chg. 2 (appended hereto in Attachment B).

13 21. From the late 1940s until 1988, pursuant to its AEA responsibilities, DOE and
14 its predecessor agencies administered nuclear energy research programs at Santa Susana.
15 DOE regulates the cleanup of AEA materials resulting from those programs pursuant to its
16 exclusive authority under the AEA, as supplemented by its authorities and responsibilities
17 under other federal statutes, such as the Energy Reorganization Act of 1974, 42 U.S.C.
18 §§ 5801, *et seq.*; Department of Energy Organization Act, 42 U.S.C. §§ 7101, *et seq.*;
19 Nuclear Waste Policy Act of 1982, 42 U.S.C. §§ 10101, *et seq.*; the Clean Air Act, 42 U.S.C.
20 §§ 7401, *et seq.*; the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*; RCRA, 42 U.S.C. §§ 6901,
21 *et seq.*; and/or CERCLA, 42 U.S.C. §§ 9601 *et seq.*

22 22. RCRA, 42 U.S.C. §§ 6901, *et seq.*, authorizes the United States
23 Environmental Protection Agency (“EPA”) to regulate the management of hazardous waste.
24 Pursuant to RCRA, the EPA may authorize states to administer and enforce their own
25 hazardous waste management programs in lieu of the federal program developed by the EPA.
26 42 U.S.C. § 6926.

27 23. RCRA expressly excludes AEA materials from the definition of “hazardous
28 waste” subject to regulation under the statute. *See* 42 U.S.C. § 6903(5), (27). Likewise, in

1 cases of “mixed waste” where the radiological and nonradiological components of such
2 waste are inextricably intertwined, regulation is governed by the AEA, and not RCRA. *See*
3 *Manning*, 527 F.3d at 837-39; *Kentucky*, 252 F.3d at 823-24; *Brown v. Kerr-McGee Corp.*,
4 767 F.2d 1234, 1236 (7th Cir. 1985).

5 24. RCRA further provides that “[n]othing in this chapter shall be construed to
6 apply to (or authorize any State, interstate, or local authority to regulate) any activity or
7 substance which is subject to the ... [AEA] except to the extent that such application (or
8 regulation) is not inconsistent with the requirements of such Act [.]” 42 U.S.C. § 6905(a).

9 25. California has been authorized to implement its own hazardous waste
10 program, which is the state-law analog to RCRA. Prior to the enactment of SB 990, the State
11 regulated the cleanup of non-AEA materials at Santa Susana, as well as at other sites
12 throughout the state, under generally applicable environmental laws. *See* Cal. Health &
13 Safety Code ch. 6.5.

14 26. CERCLA, 42 U.S.C. §§ 9601 *et seq.*, provides a comprehensive statutory
15 scheme for cleaning up releases or threatened releases of hazardous substances. CERCLA
16 authorizes the President “to remove or arrange for the removal of” hazardous substances,
17 pollutants, or contaminants whenever there is a release or threat of release of such materials
18 that may endanger human health or the environment. 42 U.S.C. § 9604(a)(1)(B).

19 27. Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), delegates from the
20 President to the Secretary of Energy certain CERCLA response authorities for facilities—
21 such as DOE’s Santa Susana facilities—under DOE jurisdiction, custody, or control. *See* 40
22 C.F.R. § 300.100. For environmental response actions conducted under CERCLA authority
23 at DOE sites, DOE is typically the lead agency, although the EPA also has certain authorities
24 at such sites. *See Non-Time-Critical Removal Actions* (DOE April 1998) (appended hereto in
25 Attachment B); *see also Policy on Decommissioning Department of Energy Facilities Under*
26 *CERCLA* (DOE-EPA May 22, 1995) (appended hereto in Attachment B).

27 28. Nothing in CERCLA grants states the authority to regulate AEA materials,
28 particularly those generated from DOE-related activities. With respect to the cleanup of

1 AEA materials resulting from such activities, the AEA mandates exclusive federal
2 jurisdiction.

3 **FACTS**

4 **Santa Susana Site History**

5 29. Santa Susana occupies approximately 2,850 acres in the Simi Hills in
6 southeastern Ventura County, California. Boeing owns approximately 2,398 acres of the site,
7 approximately 90 acres of which is leased by DOE, which also owns facilities at the site.
8 The federal government owns the remaining 452 acres, over which NASA currently
9 exercises administrative jurisdiction and control.

10 30. In the late 1940s, North American Aviation acquired Santa Susana for use as a
11 rocket-engine testing facility. Shortly after acquiring the property, North American
12 transferred ownership of the portion of the site currently managed by NASA to the federal
13 government, and began leasing a separate portion of the site to DOE's predecessor agency
14 for use in its nuclear energy research programs authorized by the AEA.

15 31. North American Aviation's Atomics International division, a federal prime
16 contractor, originally operated the federal nuclear energy program at Santa Susana for DOE's
17 predecessor. North American Aviation's Rocketdyne division conducted rocket engine
18 testing at Santa Susana on behalf of NASA. In 1967, North American Aviation merged with
19 the Rockwell Standard Corporation to form North American Rockwell, which later became
20 Rockwell International.

21 32. In 1996, Boeing acquired the aerospace and defense divisions of Rockwell
22 International, including its interest in the Santa Susana site.

23 33. In the portion of the site known as Area IV, DOE (or its predecessor agencies)
24 operated nuclear power engineering programs, nuclear research and development programs
25 involving reactors, and nuclear fuel manufacturing operations. In furtherance of those
26 nuclear research and development activities, DOE (or its predecessors) constructed a number
27 of government-owned facilities on Area IV. DOE nuclear operations were performed both
28 by DOE (or its predecessors), pursuant to its authority under the AEA, and by Boeing's

1 predecessors, in their capacity as DOE prime contractors. Active nuclear energy research at
2 Area IV ceased in 1988, and DOE has retained jurisdiction, custody, and control over a
3 portion of the site.

4 34. DOE-related activities in Area IV, including nuclear energy research, and the
5 operation of DOE-owned experimental nuclear reactors and programs in support of those
6 reactors, resulted in the release of chemical waste, low-level radiological waste, and mixed
7 low-level waste.

8 35. Today, the only remaining activity in Area IV involves the cleanup of the
9 waste materials associated with the nuclear research and other DOE-related programs
10 described above.

11 **Cleanup of Radiological Materials**

12 36. In its capacity as a prime contractor for DOE and as an owner of the Santa
13 Susana property, Boeing (or one of its predecessors) has performed most of the
14 environmental remediation and restoration activities at Santa Susana since the late 1960s.

15 37. Since the cessation of nuclear energy research and other activities at Area IV
16 in 1988, DOE, pursuant to its AEA and CERCLA authority, and Boeing (or its predecessor),
17 in its capacity as a DOE prime contractor and as an owner of the Santa Susana property, have
18 conducted the cleanup and decontamination of the remaining inactive radiological facilities,
19 carried out the investigation of potential radiological contamination throughout the site, and
20 managed the off-site disposal of radiological waste originating from operations at Area IV.
21 Boeing, as a DOE contractor, is legally obligated to comply with the DOE cleanup
22 requirements set forth in DOE orders. *See, e.g.,* DOE Order 5400.5, *Radiation Protection of*
23 *the Public and the Environment* (DOE 1990); DOE Order 435.1, *Radioactive Waste*
24 *Management* (DOE 1999) (appended hereto in Attachment B). In addition, DOE Order
25 5400.5 requires Boeing, as a DOE contractor, to submit for DOE approval cleanup
26 procedures that will be implemented during those activities.

27 38. In May 2007, many of the demobilization and cleanup actions in Area IV
28 were suspended pending DOE's completion of an Environmental Impact Statement

1 concerning its continued cleanup activities in Area IV, pursuant to the National
2 Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347. *See Natural Res. Def. Council*
3 *v. DOE*, No. C-04-04448SC, 2007 WL 1302498 (N.D. Cal. May 2, 2007). The
4 Environmental Impact Statement is currently scheduled for completion on or around March
5 2013. Investigatory actions at Area IV and throughout the site have continued.

6 39. In August 2007, the State of California, Boeing, DOE, and NASA entered into
7 a Consent Order for Corrective Action entered pursuant to the State's RCRA authorities,
8 governing the investigation and cleanup of non-AEA hazardous waste at Santa Susana. That
9 Consent Order did not address or purport to govern the cleanup of AEA materials at the
10 Santa Susana site. Rather, because the cleanup of DOE-related AEA material is subject to
11 exclusive federal control, DOE remained responsible for regulating the cleanup of
12 radiological material pursuant to its authority under the AEA and CERCLA.

13 **California Enacts SB 990**

14 40. SB 990 was passed on September 11, 2007, and was signed into law on
15 October 14, 2007. Entitled "Cleanup of Santa Susana Field Laboratory," SB 990 is targeted
16 exclusively at the cleanup of this one site.

17 41. Expressing the State's disagreement with the manner in which DOE is
18 regulating the cleanup of AEA materials at Santa Susana, SB 990 purports to authorize
19 DTSC to take "action necessary to protect the public health and safety" against Boeing,
20 DOE, and/or NASA with respect to cleanup of AEA materials at the site, in addition to the
21 chemical materials already subject to state regulation. Cal. Health & Safety Code
22 § 25359.20(a); *see* SB 990 § 2 (reciting legislative findings that refer to past nuclear activities
23 and resulting radiological material at the site) (appended hereto in Attachment A).

24 42. In addition to being at odds with the exclusive authority granted to the federal
25 government under the AEA, SB 990 conflicts with and undermines the role of the federal
26 government with respect to the Santa Susana facility, the regulation of radiological material
27 at Santa Susana, and the regulation of government contractors engaging in the federally
28 directed cleanup of AEA materials.

1 43. Moreover, SB 990 irrationally and arbitrarily singles out Santa Susana to
2 comply with special hazardous waste cleanup requirements that prescribe cleanup to levels
3 far beyond what is required to protect citizens elsewhere in California under generally
4 applicable state law. Specifically, SB 990 directs that the following process be followed at
5 Santa Susana—and only Santa Susana—in calculating the sitewide cleanup standard:

6 In calculating the risk, the cumulative risk from radiological and chemical
7 contaminants at the site shall be summed, and the land use assumption
8 shall be either suburban residential or rural residential (agricultural),
9 whichever produces the lower permissible residual concentration for each
10 contaminant. In the case of radioactive contamination, the department
11 shall use as its risk range point of departure the concentrations in the
12 Preliminary Remediation Goals issued by the Superfund Office of the
13 United States Environmental Protection Agency in effect as of January 1,
14 2007.

15 Cal. Health & Safety Code § 25359.20(c). The State deems public health and safety to be
16 adequately protected throughout the rest of California through existing laws and standards of
17 general applicability, and it has offered no rational explanation why this site should be
18 singled out for disparate treatment.

19 44. SB 990 also prohibits Boeing and the federal government from transferring
20 any part of their property interests in Santa Susana, unless and until these special cleanup
21 requirements are met. *See* Cal. Health & Safety Code § 25359.20(a). This provision requires
22 the DTSC Director to implement the requirements and, as a condition prior to any sale or
23 transfer of lands within the original boundaries of the Santa Susana Field Laboratory, to
24 “certify that the land has undergone complete remediation pursuant to the most protective
25 standards” described in the statute. *Id.* § 25359.20(e).

26 45. SB 990 mandates a significant departure from generally applicable state law.
27 Under normal state law, a risk assessment is performed to determine the pathways and extent
28 of potential exposure that could occur, based on the reasonably foreseeable future use of the
land. Accordingly, prior to the passage of SB 990, Boeing and the State were basing the
ongoing risk assessment on the assumption that the land would be used in the future as
suburban-residential property, which is the predominant use in the surrounding community.
SB 990, however, has the effect of requiring the assumption that the future land use will be

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1 “rural residential” (meaning full subsistence agricultural), regardless of whether the land is
2 likely to be used or even could be used for that purpose. *Compare* Cal. Health & Safety
3 Code § 25356.1.5(d) *with* Cal. Health & Safety Code § 25359.20(c). Thus, while neither the
4 landowners nor the State has even suggested that Santa Susana might be used for full-
5 subsistence farmland in the future—and Boeing has publicly committed to restrict and
6 protect the land for use only as public open space—SB 990 irrationally and arbitrarily
7 requires cleanup of Santa Susana to this “rural residential” standard. Such a standard would
8 require cleanup to a level stringent enough to allow the entire site to be used as a farm by
9 full-time residents who obtain 100% of their food and drinking water from the Santa Susana
10 land. Such an intensive agricultural use will never occur.

11 46. The difference between the cleanup process required under SB 990 and that
12 which would be required under generally applicable law is enormous. By some estimates,
13 cleanup under SB 990 procedures would require removing (and backfilling) four times as
14 much soil as what would be required if cleanup were conducted under generally applicable
15 law—enough additional soil to fill the Rose Bowl stadium three times over. Excavation
16 activities of this scale would destroy considerably more of the existing ecological habitat at
17 Santa Susana than would otherwise occur and would require an estimated 100,000 additional
18 round trips through the community by dump trucks carrying soil and equipment, causing
19 further disruption and harm to the surrounding community and environment.

20 47. Imposing such irrational, arbitrary, and retroactive cleanup requirements
21 targeted solely at Santa Susana—requiring the application of heightened cleanup
22 requirements that apply to no other similarly situated site in the state—and doing so in a
23 manner that impairs the transfer of property until such requirements are satisfied, bears no
24 rational relationship to any legitimate state purpose.

25 **The Current Dispute**

26 48. An actual dispute regarding whether SB 990 is preempted by federal law or is
27 otherwise unconstitutional exists between Boeing and Defendant, who have genuine and
28 opposing interests that are direct and substantial. To comply with SB 990’s irrational and

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1 arbitrary cleanup requirements, Boeing has been obligated to alter the investigatory process
2 and anticipated cleanup plans and procedures under which it has operated at Santa Susana,
3 which has already led—and continues to lead—to the expenditure of substantial additional
4 funds, resources, and time. A judicial determination of the parties’ interests is therefore
5 necessary, and any such determination will be final and conclusive.

6 49. Boeing has attempted to resolve this issue with Defendant through extensive
7 negotiations with the State. Indeed, in the days before SB 990 was signed into law, Boeing
8 and the State of California signed a Letter of Intent in which Boeing agreed to donate its
9 Santa Susana land to the State of California and restrict its use as open space, in exchange for
10 a commitment by the State to sponsor legislation in the next legislative session that would
11 amend SB 990 to exclude Boeing’s donation from the requirements of SB 990 and instead
12 negotiate a cleanup to a standard “acceptable for residential use, ... which would protect
13 individuals living in the vicinity of the property.” In January 2008, however, the State chose
14 not to support the Letter of Intent with Boeing, but instead entered into a separate Letter of
15 Intent with various third parties, indicating that SB 990 as originally enacted would continue
16 to govern the cleanup at Santa Susana. Despite this decision by the State, Boeing remains
17 committed to restrict and protect the site for permanent open-space use.

18 50. Since January 2008, Boeing has continued in good faith to attempt to work
19 with DTSC to achieve a negotiated resolution, while preserving its position that SB 990 is
20 preempted by federal law and violates the Due Process and Equal Protection Clauses of the
21 Fourteenth Amendment to the United States Constitution. Boeing and DTSC, however,
22 continue to disagree over whether federal or state cleanup standards control with respect to
23 the AEA materials at Santa Susana. Resolution of this dispute will ensure that the
24 appropriate cleanup proceeds as expeditiously and efficiently as possible.

25 51. Boeing remains committed to cleaning up the Santa Susana site in a manner
26 that fully protects public health and safety. Indeed, Boeing maintains the commitment it
27 made in the Letter of Intent to clean up the site to “levels which would be acceptable for
28 residential use,” even though that standard is more stringent than the standard that would

1 apply to the actual future use of the property as open space. The parties require guidance
2 from this Court, however, regarding whether the cleanup of AEA material is subject to
3 exclusive federal regulation or may also be regulated by the State and, should state law be
4 found to apply, whether SB 990 violates the Due Process and Equal Protection Clauses of the
5 Fourteenth Amendment to the United States Constitution.

6 **COUNT ONE—Supremacy Clause**
7 **(Field Preemption)**

8 52. Boeing incorporates by reference herein Paragraphs 1 through 51.

9 53. SB 990 is preempted by the AEA pursuant to the Supremacy Clause of the
10 United States Constitution because it seeks to regulate for safety purposes AEA materials
11 subject to exclusive federal regulation under the AEA's pervasive regulatory scheme.

12 54. If Defendant enforces SB 990, Boeing, as a DOE contractor and landowner,
13 will be immediately and irreparably injured in its business and property.

14 **COUNT TWO—42 U.S.C. § 1983**
15 **(Supremacy Clause—Field Preemption)**

16 55. Boeing incorporates by reference herein Paragraphs 1 through 54.

17 56. The AEA provides the relevant parties with the right to answer only to the
18 federal government regarding the regulation of the safety aspects of AEA materials subject to
19 exclusive federal regulation under the AEA's pervasive regulatory scheme.

20 57. By taking action to enforce SB 990, Defendant, acting in his official capacity
21 and under color of State law, will, through the conduct described in this Complaint,
22 impermissibly regulate the safety aspects of AEA materials subject to exclusive federal
23 regulation under the AEA's pervasive regulatory scheme, thus depriving Boeing of its rights,
24 privileges, or immunities secured by the Constitution and laws of the United States.

25 58. If Defendant enforces SB 990, Boeing, as a DOE contractor and landowner,
26 will be immediately and irreparably injured in its business and property.

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COUNT THREE—Supremacy Clause
(Intergovernmental Immunity)

59. Boeing incorporates by reference herein Paragraphs 1 through 58.

60. SB 990 is invalid pursuant to the Supremacy Clause of the United States Constitution because it singles out and seeks to regulate directly the federal government, its contractor, and its facilities in a manner that violates the doctrine of intergovernmental immunity.

61. If Defendant enforces SB 990, Boeing, as a DOE contractor and landowner, will be immediately and irreparably injured in its business and property.

COUNT FOUR—Supremacy Clause
(Conflict Preemption)

62. Boeing incorporates by reference herein Paragraphs 1 through 61.

63. SB 990 is preempted by federal law pursuant to the Supremacy Clause of the United States Constitution because it conflicts with and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress and DOE, including by undermining and conflicting with DOE's execution of its duties under the AEA.

64. If Defendant enforces SB 990, Boeing, as a DOE contractor and landowner, will be immediately and irreparably injured in its business and property.

COUNT FIVE—42 U.S.C. § 1983
(Supremacy Clause—Conflict Preemption)

65. Boeing incorporates by reference herein Paragraphs 1 through 64.

66. By taking action to enforce SB 990, Defendant, acting in his official capacity and under color of State law, will, through the conduct described in this Complaint, conflict with and stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress and DOE, including by undermining and conflicting with DOE's execution of its duties under federal law, thus depriving Boeing, a DOE contractor, of its rights, privileges, or immunities secured by the Constitution and laws of the United States.

67. If Defendant enforces SB 990, Boeing, as a DOE contractor and landowner,

1 will be immediately and irreparably injured in its business and property.

2 **COUNT SIX—Equal Protection Clause**

3 68. Boeing incorporates by reference herein Paragraphs 1 through 67.

4 69. SB 990, which is directed specifically and exclusively at the Santa Susana
5 site, singles out Boeing for disparate treatment without a rational basis, thus depriving
6 Boeing of its rights, privileges, or immunities secured by the Fourteenth Amendment of the
7 Constitution of the United States.

8 70. If Defendant enforces SB 990, Boeing will be immediately and irreparably
9 injured in its business and property.

10 **COUNT SEVEN—42 U.S.C. § 1983**
11 **(Equal Protection Clause)**

12 71. Boeing incorporates by reference herein Paragraphs 1 through 70.

13 72. By taking action to enforce SB 990, Defendant, acting in his official capacity
14 and under color of State law, will, through the conduct described in this Complaint, require
15 Boeing to comply with a law that singles out Boeing for disparate treatment without a
16 rational basis, thus depriving Boeing of its rights, privileges, or immunities secured by the
17 Constitution and laws of the United States.

18 73. If Defendant enforces SB 990, Boeing will be immediately and irreparably
19 injured in its business and property.

20 **COUNT EIGHT—Due Process Clause**

21 74. Boeing incorporates by reference herein Paragraphs 1 through 73.

22 75. SB 990 violates the Due Process Clause of the Fourteenth Amendment to the
23 United States Constitution because it irrationally and arbitrarily deprives Boeing of a
24 substantial property right.

25 76. If Defendant enforces SB 990, Boeing will be immediately and irreparably
26 injured in its business and property.

COUNT NINE—42 U.S.C. § 1983
(Due Process Clause)

77. Boeing incorporates by reference herein Paragraphs 1 through 76.

78. By taking action to enforce SB 990, Defendant, acting in his official capacity and under color of State law, will, through the conduct described in this Complaint, irrationally and arbitrarily deprive Boeing of a substantial property right, thereby depriving Boeing of its rights, privileges, or immunities secured by the Fourteenth Amendment to the United States Constitution.

79. If Defendant enforces SB 990, Boeing will be immediately and irreparably injured in its business and property.

PRAYER FOR RELIEF

WHEREFORE, Boeing prays that this Court order the following relief:

(1) declare, pursuant to 28 U.S.C. § 2201, that SB 990 is invalid and unconstitutional in its entirety under the Supremacy Clause because it regulates in a federally occupied field;

(2) declare, pursuant to 28 U.S.C. § 2201, that SB 990 is invalid and unconstitutional in its entirety under the Supremacy Clause because it violates the intergovernmental immunity doctrine;

(3) declare, pursuant to 28 U.S.C. § 2201, that SB 990 is invalid and unconstitutional in its entirety under the Supremacy Clause because it conflicts with and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress and DOE;

(4) if state law is deemed to apply, declare, pursuant to 28 U.S.C. § 2201, that SB 990 is invalid and unconstitutional in its entirety because it violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

(5) if state law is deemed to apply, declare, pursuant to 28 U.S.C. § 2201, that SB 990 is invalid and unconstitutional in its entirety because it violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

1 (6) enjoin Defendant, preliminarily and permanently, from enforcing or taking
2 any action against Boeing based on SB 990; and

3 (7) grant other such relief as may be just and proper.

4 Respectfully submitted,

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6 DATED: December 28, 2009

/s/ Mark D. Flanagan

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