

1 such costs of response if, subsequent to the Certification of
2 Completion:

- 3 1. conditions at the NHOU Site, previously unknown to
4 the Plaintiffs, are discovered, or
- 5 2. information, previously unknown to the Plaintiffs,
6 is received, in whole or in part,

7 and these previously unknown conditions or this information
8 together with other relevant information indicate that any
9 remedial action taken at the NHOU Site is not protective of human
10 health or the environment.

11 D. INFORMATION AND CONDITIONS KNOWN TO THE PLAINTIFFS.

12 For purposes of Section VI.B, the information and the conditions
13 known to the Plaintiffs shall include only that information and
14 those conditions set forth in the 1987 NHOU ROD, the
15 administrative record supporting the 1987 NHOU ROD, the San
16 Fernando Valley Phase I Groundwater RI, December 1992, and all
17 documents submitted to EPA in response to CERCLA Section 104(e)
18 inquiries or other EPA requests, including discovery requests in
19 the above-captioned action, prior to May 23, 1996. For purposes
20 of Section VI.C, the information and the conditions known to the
21 Plaintiffs shall include the information and conditions known to
22 the Plaintiffs for purposes of Section VI.B, and that information
23 and those conditions set forth in (i) any future Explanation(s)
24 of Significant Differences, ROD(s), or Amendment(s) to any ROD(s)
25 relating to the NHOU Site; (ii) the administrative record
26 supporting any future Explanations of Significant Differences,
27 ROD(s), or Amendments to any ROD(s) relating to the NHOU Site,
28 (iii) all documents submitted to EPA in response to CERCLA

1 Section 104(e) inquiries or other EPA requests, including
2 discovery requests in the above-captioned action, prior to
3 issuance of the Certification of Completion; and (iv) the record
4 for the NHOU Site maintained by EPA following issuance of any
5 ROD(s) but prior to issuance of the Certification of Completion.

6 E. PLAINTIFFS' GENERAL RESERVATION OF RIGHTS. The
7 covenant not to sue set forth above does not pertain to any
8 matters other than those expressly specified in Section VI.A.
9 The Plaintiffs reserve, and this Consent Decree is without
10 prejudice to, all rights against each Settling Defendant with
11 respect to all other matters, including, but not limited to, the
12 following:

- 13 1. claims based on a failure by that Settling Defend-
14 ant to meet a requirement of this Consent Decree;
- 15 2. liability arising from the past, present, or
16 future disposal, release, or threat of release of
17 hazardous substances outside of the NHOU Site;
- 18 3. liability for damages for injury to, destruction
19 of, or loss of natural resources;
- 20 4. liability for response costs to enforce CERCLA or
21 any other federal environmental law that have been
22 or may be incurred by any federal agencies other
23 than EPA or the Department of Justice on behalf of
24 EPA;
- 25 5. liability for response costs to enforce CERCLA or
26 any state environmental law that has been or may
27 be incurred by any state agencies other than DTSC
28 or the State Department of Justice on behalf of

1 DTSC; and

2 6. criminal liability.

3 F. PLAINTIFFS' NHOU SITE-SPECIFIC RESERVATION OF RIGHTS.

4 The covenant not to sue set forth above specifically does not
5 pertain to the performance of any RI/FS other than the 1986 OU/FS
6 that formed the basis for the 1987 NHOU ROD; additional response
7 actions that may be implemented pursuant to any final remedy or
8 pursuant to any future Explanation(s) of Significant Differences,
9 ROD(s), or Amendment(s) to any ROD(s); costs or activities
10 related to any OU other than the NHOU Site, including any future
11 OU(s); or any unknown environmental condition as to which
12 Plaintiffs have reserved their rights in Paragraphs C and D
13 above.

14 Plaintiff State currently does not fund the costs of
15 operation and maintenance of the NHOU Site remedy and is not
16 seeking to recover such costs in this action. Costs of
17 operations and maintenance are being funded by the United States
18 and LADWP pursuant to contractual agreement. However, in the
19 event that the State subsequently incurs operations and
20 maintenance costs due to a failure by either the United States or
21 the LADWP to fund the operation and maintenance costs of the NHOU
22 Site remedy, such costs are not to be considered "1987 NHOU ROD
23 response costs" as defined in this Consent Decree and the State
24 reserves the right to seek recovery of such operations and
25 maintenance costs from any potentially responsible party,
26 including each of the Settling Defendants.

27 G. SETTLING DEFENDANTS' RESERVATION OF RIGHTS.

28 Settling Defendants reserve any and all defenses or rights they

1 may have with respect to any actions concerning the NHOU Site
2 except any rights expressly waived in this Consent Decree.
3 Settling Defendants retain any and all rights, claims, remedies
4 and defenses that they have or may have against any person or
5 entity not expressly waived in this Consent Decree, except for
6 rights, claims and remedies any Settling Defendant has or may
7 have against any other Settling Defendant(s) or Releasees for
8 matters addressed in this Consent Decree, which are hereby
9 expressly waived. This reservation shall not affect each
10 Settling Defendant's obligation to perform its obligation under
11 this Consent Decree, and shall not affect EPA's ability to assess
12 stipulated penalties in accordance with Section V.C.2 (Stipulated
13 Penalties).

14 H. SETTLING DEFENDANTS' COVENANT. The Settling Defendants
15 hereby covenant not to sue and agree not to assert any claims or
16 causes of action against either Plaintiff with respect to 1987
17 NHOU ROD Response Costs and Past Basin-wide Response Costs
18 including, but not limited to, (i) any direct or indirect claim
19 for reimbursement from the Hazardous Substance Superfund
20 (established pursuant to the Internal Revenue Code, 26 U.S.C.
21 § 9507), under CERCLA §§106(b)(2), 107, 111, 112, or 113, or any
22 other provision of law; (ii) any claim against the United States
23 or the State, including any department, agency, or
24 instrumentality of the United States or State pursuant to
25 Sections 107 and 113 of CERCLA related to the 1987 NHOU ROD
26 Response Costs or the Past Basin-wide Response Costs; or (iii)
27 any claims arising out of response activities at the NHOU Site.
28 However, and notwithstanding the foregoing, nothing in this

1 Consent Decree shall be interpreted as waiving, abrogating, or
2 resolving (1) any claims which any Settling Defendant has or may
3 have based upon any alleged liability which the United States
4 Department of Defense, any branch or division thereof, or any
5 predecessor agency has or may have for conditions at the NHOU
6 Site pursuant to CERCLA Section 106, 107, 113, 120 or 310, 42
7 U.S.C. §§ 9606, 9607, 9613, 9620 or 9659, or RCRA Section 7002,
8 42 U.S.C. § 6972, or (2) any claims which any Settling Defendant
9 has or may have with respect to the 1987 NHOU ROD response costs
10 or Past Basin-wide Response Costs against the United States
11 pursuant to any contract between any Settling Defendant and the
12 United States or any government contractor(s). Nothing in this
13 Consent Decree shall be deemed to constitute preauthorization of
14 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.
15 § 9611, or 40 C.F.R. § 300.700(d).

16 VII. CONTRIBUTION PROTECTION

17 A. Except for the Releasees as defined in Section II,
18 nothing in this Consent Decree shall be construed to create any
19 rights in, or grant any cause of action to, any person not a
20 party to this Consent Decree. Each of the Parties expressly
21 reserves any and all rights (including, but not limited to, any
22 right to contribution), defenses, claims, demands, and causes of
23 action which each party may have with respect to any matter,
24 transaction, or occurrence relating in any way to the NHOU Site
25 against any person not a party hereto or a Releasee.

26 B. With regard to claims for contribution against the
27 Releasees for matters addressed in this Consent Decree, the
28 Parties hereto agree that the Releasees are entitled to the

1 protection from contribution actions or claims provided by
2 Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

3 C. "Matters addressed in this Consent Decree" mean 1987
4 NHOU ROD Response Costs and Past Basin-wide Response Costs and
5 shall include any claim for such costs that either Plaintiff has
6 or may have against any Releasee with respect to any facility
7 located within the NHOU Site.

8 D. The Settling Defendants agree that with respect to any
9 suit or claim for contribution brought by them for matters
10 addressed in this Consent Decree they will notify the Plaintiffs
11 in writing no later than sixty (60) days prior to the initiation
12 of such suit or claim. The Settling Defendants also agree that
13 with respect to any suit or claim for contribution brought
14 against them for matters addressed in this Consent Decree they
15 will notify in writing the Plaintiffs within sixty (60) days of
16 service of the complaint on them. In addition, the Settling
17 Defendants shall notify the Plaintiffs within ten (10) days of
18 service or receipt of any Motion for Summary Judgment for matters
19 addressed in this Consent Decree and within ten (10) days of
20 receipt of any order from a court setting a case for trial for
21 matters addressed in this Consent Decree.

22 E. The Parties recognize and acknowledge that the
23 settlement embodied in this Consent Decree relates only to the
24 Interim Remedial Action selected in the 1987 NHOU ROD, as well as
25 Past Basin-wide Response Costs, and that additional remedial
26 actions may be necessary to address the contamination at the NHOU
27 Site. In any subsequent administrative or judicial proceeding
28 initiated by the United States or the State and not precluded by

1 this Consent Decree, for injunctive relief, recovery of response
2 costs, or other appropriate relief relating to the NHOU Site, the
3 Settling Defendants shall not assert, and may not maintain, any
4 defense or claim based upon the principles of waiver, res
5 judicata, collateral estoppel, issue preclusion, claim-splitting,
6 or other defenses based upon any contention that the claims
7 raised by the United States or the State in the subsequent
8 proceeding were or should have been brought in the instant case;
9 provided, however, that nothing in this Section VII.E affects
10 the enforceability of the covenants not to sue set forth in
11 Section VI.

12 VIII. NHOU SITE ACCESS

13 A. Commencing upon the date of entry of this Consent
14 Decree and terminating upon issuance of a final ROD for the NHOU
15 Site, the Settling Defendants who own property at the NHOU Site
16 agree to provide the Plaintiffs and their representatives access
17 at all reasonable times to their facilities located at the NHOU
18 Site and any other property owned or controlled by the Settling
19 Defendants to which access is required for the implementation of
20 response actions for the NHOU Site, including, but not limited
21 to, the following actions:

- 22 1. monitoring, investigation, remedial, or other
23 activities at the NHOU Site;
- 24 2. verifying any data or information submitted to
25 either Plaintiff;
- 26 3. conducting investigations relating to
27 contamination at or near the NHOU Site;
- 28 4. obtaining samples; and

1 5. assessing the need for, planning, or implementing
2 response actions at or near the NHOU Site.

3 To the extent Plaintiffs deem consistent with protection of
4 human health and the environment, Plaintiffs will provide the
5 Settling Defendant with twenty-four (24) hours' notice prior to
6 entry to properties accessed pursuant to this Consent Decree. In
7 accessing Settling Defendants' properties pursuant to this
8 Consent Decree, Plaintiffs shall not unreasonably interfere with
9 Settling Defendants' business activities. However, nothing in
10 this paragraph shall provide any Settling Defendant with any
11 claim or cause of action whatsoever against Plaintiffs, including
12 without limitation any claim for injunctive relief. It shall not
13 constitute an unreasonable interference with Settling Defendants'
14 business activities for a Plaintiff to take any action in
15 response to an emergency deemed by such Plaintiff to constitute
16 an endangerment to human health or the environment. Plaintiffs
17 agree to split samples taken on property owned or controlled by a
18 Settling Defendant if requested by the Settling Defendant.

19 B. Notwithstanding any provision of this Consent Decree,
20 the Plaintiffs retain all of their respective access authorities
21 and rights, including enforcement authorities related thereto,
22 under CERCLA and any other applicable statute or regulation.

23 IX. ACCESS TO INFORMATION

24 A. The Settling Defendants shall provide to the
25 Plaintiffs, upon request, copies of all non-privileged documents
26 and information within their possession or control or that of
27 their contractors or agents relating to the NHOU Site Interim
28 Remedial Action, including, but not limited to, sampling,

1 analysis, chain of custody records, manifests, trucking logs,
2 receipts, reports, sample traffic routing, correspondence, or
3 other documents or information related to the NHOU Site Interim
4 Remedial Action.

5 B. The Settling Defendants may assert business
6 confidentiality claims covering part or all of the documents or
7 information submitted to the Plaintiffs under this Consent Decree
8 to the extent permitted by and in accordance with Section
9 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.
10 § 2.203(b). Documents or information determined to be
11 confidential by EPA will be afforded the protection specified in
12 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality
13 accompanies documents or information when they are submitted to
14 either Plaintiff, or if EPA has notified the Settling Defendants
15 that the documents or information are not confidential under the
16 standards of Section 104(e)(7) of CERCLA, the public may be given
17 access to such documents or information without further notice to
18 the Settling Defendants.

19 C. The Settling Defendants may assert that certain
20 documents, records, and other information are privileged under
21 the attorney-client privilege or any other privilege recognized
22 by federal or state law. If the Settling Defendants assert such
23 a privilege in lieu of providing documents, they shall provide
24 the Plaintiffs with the following: (i) the title of the
25 document, record, or information; (ii) the date of the document,
26 record, or information; (iii) the name and title of the author of
27 the document, record, or information; (iv) the name and title of
28 each addressee and recipient; (v) a description of the subject of

1 the document, record, or information; and (vi) the privilege
2 asserted. However, no documents, reports, or other information
3 created or generated pursuant to the requirements of this or any
4 other consent decree with the United States shall be withheld on
5 the grounds that they are privileged. If a claim of privilege
6 applies only to a portion of a document, the document shall be
7 provided to Plaintiffs in redacted form to mask the privileged
8 information only.

9 D. No claim of confidentiality or privilege shall be made
10 with respect to any document that falls within Section
11 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F).

12 E. Notwithstanding any provision of this Consent Decree,
13 the Plaintiffs retain all of their respective information
14 gathering authorities and rights, including enforcement
15 authorities related thereto, under CERCLA and any other
16 applicable statute or regulation.

17 X. RETENTION OF RECORDS

18 A. Until ten (10) years after the entry of this Consent
19 Decree, each Settling Defendant shall preserve and retain all
20 records and documents now in its possession or control or which
21 come into its possession or control that relate in any manner to
22 releases of hazardous substances or liability for response
23 actions taken at the NHOU Site or the liability of any person for
24 releases of hazardous substances or liability for response
25 actions conducted and to be conducted at the NHOU Site,
26 regardless of any corporate retention policy to the contrary.

27 B. At the conclusion of this document retention period,
28 the Settling Defendants shall notify the Plaintiffs at least

1 ninety (90) days prior to the destruction of any such records or
2 documents, and, upon request by either Plaintiff, the Settling
3 Defendants shall deliver any such records or documents to the
4 Plaintiff who made the request. The Settling Defendants may
5 assert that certain documents, records, and other information are
6 privileged under the attorney-client privilege or any other
7 privilege recognized by federal or state law. If the Settling
8 Defendants assert such a privilege, they shall provide the
9 Plaintiffs with the following: (i) the title of the document,
10 record, or information; (ii) the date of the document, record, or
11 information; (iii) the name and title of the author of the
12 document, record, or information; (iv) the name and title of each
13 addressee and recipient; (v) a description of the subject of the
14 document, record, or information; and (vi) the privilege
15 asserted. However, no documents, reports, or other information
16 created or generated pursuant to the requirements of this or any
17 other consent decree with the United States shall be withheld on
18 the grounds that they are privileged. If a claim of privilege
19 applies only to a portion of a document, the document shall be
20 provided to Plaintiffs in redacted form to mask the privileged
21 information only.

22 C. Each Settling Defendant hereby certifies, individually,
23 that it has not since notification of potential liability by the
24 United States or the State or the filing of suit against it
25 regarding the NHOU Site altered, mutilated, discarded, destroyed,
26 or otherwise disposed of any records, documents, or other
27 information relating to its potential liability regarding the
28 NHOU Site which are the sole record of factual information,

1 | except as such documents are destroyed or altered in the ordinary
2 | course of Settling Defendants' business and in compliance with
3 | State and federal law, and have not been destroyed for an
4 | improper purpose. Each Settling Defendant further warrants that
5 | it has fully complied with any and all EPA requests for
6 | information pursuant to Sections 104(e) and 122(e) of CERCLA, 42
7 | U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of the Resource
8 | Conservation and Recovery Act, 42 U.S.C. § 6927.

9 | XI. NOTICES AND SUBMISSIONS

10 | Whenever, under the terms of this Consent Decree, notice is
11 | required to be given or a document is required to be sent by one
12 | Party to another, it shall be directed to the individuals at the
13 | addresses specified below, unless those individuals or their
14 | successors give notice of a change to the other Parties in
15 | writing. Written notice as specified herein shall constitute
16 | complete satisfaction of any written notice requirement of the
17 | Consent Decree with respect to the United States, EPA, the State,
18 | and the Settling Defendants, respectively.

19 | As to the United States:

20 | David B. Glazer
21 | Environmental Enforcement Section
22 | Environment and Natural Resources Division
23 | United States Department of Justice
24 | 301 Howard Street, Suite 870
25 | San Francisco, California 94115

26 | Chief, Environmental Enforcement Section
27 | Environment and Natural Resources Division
28 | U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: Case No. 90-11-3-1149

As to EPA:

Duane James