

1 1994 of negotiations with potentially responsible parties
2 regarding the implementation of the remainder of the remedial
3 action for the Site, and EPA has provided the State with an
4 opportunity to participate in such negotiations and be a party to
5 this Consent Decree.

6 P. The State has joined in the United States' supplemental
7 complaint and is alleging that the defendants are liable to the
8 State under Section 107 of CERCLA, 42 U.S.C. § 9607, and under
9 Chapter 6.8, Section 25300 et seq., of the California Health &
10 Safety Code, for the State's past and future response costs at
11 the Site.

12 Q. In accordance with Section 122(j)(1) of CERCLA, 42
13 U.S.C. § 9622(j)(1), EPA notified the United States Department of
14 the Interior on September 15, 1994 of negotiations with
15 potentially responsible parties regarding the release of
16 hazardous substances that may have resulted in injury to natural
17 resources under federal trusteeship and encouraged the trustee(s)
18 to participate in the negotiation of this Consent Decree.

19 R. Settling Defendants deny any and all legal or equitable
20 liability under any federal, state, or local statute, regulation
21 or ordinance, or the common law, for any response costs, damages
22 or claims caused by or arising out of conditions at or arising
23 from the Burbank well field or the Site. By entering into this
24 Consent Decree, or by taking any action in accordance with it,
25 Settling Defendants do not admit any allegations contained herein
26 or in the complaints, nor do Settling Defendants admit liability
27 for any purpose or admit any issues of law or fact or any
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1 responsibility for releases of hazardous substances into the
2 environment. Nothing in this Paragraph shall alter Settling
3 Defendants' agreement not to challenge the Court's jurisdiction
4 as set forth in Section II ("Jurisdiction"), or in any manner
5 whatsoever affect Settling Defendants' obligations or rights
6 under this Consent Decree, the First Consent Decree or UAO 92-12.

7 S. The Parties recognize, and the Court by entering this
8 Consent Decree finds, that this Consent Decree has been
9 negotiated by the Parties in good faith and implementation of
10 this Consent Decree will expedite the cleanup of the Site and
11 will avoid prolonged and complicated litigation between the
12 Parties, and that this Consent Decree is fair, reasonable, and in
13 the public interest.

14 T. Solely for the purposes of Section 113(j) of CERCLA, 42
15 U.S.C. § 9613(j), the interim remedial action selected by the ROD
16 and the work to be performed by the Settling Defendants shall
17 constitute a response action taken or ordered by the President.
18 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

19 II. JURISDICTION

20 This Court has jurisdiction over the subject matter of this
21 action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§
22 9606, 9607, and 9613(b). This Court also has personal
23 jurisdiction over the Settling Defendants. Solely for the
24 purposes of this Consent Decree and the underlying complaints,
25 Settling Defendants waive all objections and defenses that they
26 may have to jurisdiction of the Court or to venue in this
27 District. Settling Defendants shall not challenge the terms of
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1 | this Consent Decree or this Court's jurisdiction to enter and
2 | enforce this Consent Decree.

3 | III. PARTIES BOUND

4 | A. This Consent Decree applies to and is binding upon the
5 | United States and the State and upon Settling Defendants and
6 | their heirs, successors and assigns. Any change in ownership or
7 | corporate status of a Settling Defendant including, but not
8 | limited to, any transfer of assets or real or personal property
9 | shall in no way alter such Settling Defendant's responsibilities
10 | under this Consent Decree.

11 | B. Settling Work Defendant (as defined below) shall
12 | provide a copy of this Consent Decree to each contractor hired to
13 | perform the O&M Activities (as defined below) required by this
14 | Consent Decree and to each person representing Settling Work
15 | Defendant with respect to the Site or the O&M Activities and
16 | shall condition all contracts entered into hereunder upon
17 | performance of the O&M Activities in conformity with the terms of
18 | this Consent Decree. Settling Work Defendant or its contractor
19 | shall provide written notice of this Consent Decree to all
20 | subcontractors hired to perform any portion of the O&M Activities
21 | required by this Consent Decree. Settling Work Defendant shall
22 | nonetheless be responsible for ensuring that its contractors and
23 | subcontractors perform the O&M Activities contemplated herein in
24 | accordance with this Consent Decree. With regard to the
25 | activities undertaken pursuant to this Consent Decree, each
26 | contractor and subcontractor shall be deemed to be in a
27 | contractual relationship with Settling Work Defendant within the
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1 meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

2 IV. DEFINITIONS

3 A. Unless otherwise expressly provided herein, terms used
4 in this Consent Decree which are defined in CERCLA or in
5 regulations promulgated under CERCLA shall have the meaning
6 assigned to them in CERCLA or in such regulations. Whenever
7 terms listed below are used in this Consent Decree or in the
8 appendices attached hereto and incorporated hereunder, the
9 following definitions shall apply:

10 "Basin-wide Response Costs" shall mean all costs, including,
11 but not limited to, direct and indirect costs and interest,
12 payroll costs, contractor costs, travel costs, laboratory costs,
13 attorneys' fees and just compensation, that the United States or
14 the State has incurred or paid or will incur and pay with regard
15 to basin-wide non-operable unit-specific response actions.

16 "Blending Facility" shall mean the blending facility and
17 related pipeline designed and constructed by the UAO Parties
18 pursuant to UAO 92-12, beginning generally with the B-5
19 Connection and concluding with the Point of Interconnection, as
20 "B-5 Connection" and "Point of Interconnection" are defined in
21 the First Consent Decree.

22 "CERCLA" shall mean the Comprehensive Environmental
23 Response, Compensation, and Liability Act of 1980, as amended, 42
24 U.S.C. §§ 9601 et seq.

25 "City" or "City of Burbank" shall mean the City of Burbank,
26 California, as a charter city, and any of its divisions,
27 departments and other subdivisions. "City" or "City of Burbank"
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1 shall not include any joint powers authority of which the City of
2 Burbank is a member.

3 "Consent Decree" or "Second Consent Decree" shall mean this
4 Consent Decree and all appendices attached hereto (listed in
5 Section XXX). In the event of conflict between this Consent
6 Decree and any appendix, this Consent Decree shall control.

7 "Date of Commencement" shall mean, in general, the date
8 specified by EPA that Settling Work Defendant will assume the O&M
9 responsibilities for the Burbank Operable Unit interim remedy,
10 and Lockheed Martin and the UAO Parties shall cease their
11 respective obligations to perform under the First Consent Decree
12 or UAO 92-12. The parties anticipate that this date will be two
13 years after the System Operation Date for phase two of the
14 Remedial Action Work as specified in the First Consent Decree
15 unless delays, including without limitation delays which any
16 party attributes to a force majeure event, cause that date to be
17 extended. Within thirty (30) days of the System Operation Date
18 for phase two of the Remedial Action Work as specified in the
19 First Consent Decree, EPA will specify the tentative Date of
20 Commencement and notify the Settling Work Defendant, Lockheed
21 Martin and the UAO Parties of the tentative Date of Commencement.
22 EPA may revise the tentative Date of Commencement at any time
23 during phase two of the Remedial Action Work as specified in the
24 First Consent decree, and shall notify the Settling Work
25 Defendant, Lockheed Martin and the UAO Parties of any such
26 revision. EPA's specified tentative Date of Commencement shall
27 control all reporting and similar requirements which are required
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1 to occur in relation to the Date of Commencement. However, in no
2 event shall the Date of Commencement specified by EPA extend the
3 amount of time the interim remedy is required to operate under
4 the ROD.

5 "Day" shall mean a calendar day unless expressly stated to
6 be a working day. "Working Day" shall mean a day other than a
7 Saturday, Sunday, or federal or State of California holiday. In
8 computing any period of time under this Consent Decree, where the
9 last day would fall on a Saturday, Sunday, or federal or State of
10 California holiday, the period shall run until the close of
11 business of the next Working Day.

12 "Department of Health Services," or "DHS" shall mean the
13 California pollution control agency of that name and any
14 successor departments or agencies of the State of California with
15 authority to implement the Safe Drinking Water Act.

16 "Department of Toxic Substances Control" or "DTSC" shall
17 mean the California pollution control agency of that name and any
18 successor departments or agencies of the State of California.

19 "Design Defect" shall mean a failure of any system required
20 to be designed and constructed pursuant to the First Consent
21 Decree or UAO 92-12 to perform as originally designed, which
22 results from a failure by a design professional used by Lockheed
23 Martin or the UAO Parties to adequately design the system to
24 perform in the manner intended, and as described in the design
25 specifications contained in the Final Remedial Design Reports
26 prepared by Lockheed Martin pursuant to the First Consent Decree
27 or the UAO Parties pursuant to UAO 92-12.
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1 "Downstream Facilities" shall mean the Blending Facility
2 constructed by the UAO Parties pursuant to UAO 92-12 and
3 facilities constructed or repaired by the City of Burbank
4 pursuant to the First Consent Decree. Downstream Facilities also
5 shall mean additional facilities which may be constructed
6 pursuant to this Consent Decree downstream of the Upstream
7 Facilities, as defined in this Section. "Downstream" shall mean
8 the flow of extracted, treated groundwater beginning generally
9 with the Point of Delivery as "Point of Delivery" is defined by
10 the First Consent Decree.

11 "EPA" shall mean the United States Environmental Protection
12 Agency and any successor departments or agencies of the United
13 States.

14 "Explanation of Significant Differences 1" or "ESD1" shall
15 mean the document dated November 21, 1990, Appendix B to the
16 First Consent Decree. "Explanation of Significant Differences 2"
17 or "ESD2" shall mean the Explanation of Significant Differences
18 dated February 12, 1997, Appendix 5 to this Consent Decree.

19 "First Consent Decree" shall mean the consent decree entered
20 by this Court on March 25, 1992, resolving the underlying
21 complaint filed by the United States against defendants Lockheed
22 Martin, the City of Burbank and Weber, appended to this Consent
23 Decree as Exhibit 1, and any amendments or modifications to that
24 consent decree.

25 "Future Basin-wide Response Costs" shall mean all Basin-wide
26 Response Costs incurred or paid by EPA after September 30, 1995
27 or incurred or paid by the State after March 31, 1996.
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1 "Future Site-Specific Response Costs" shall mean all types
2 of costs described in the definition of Basin-wide Response
3 Costs, (e.g., payroll costs) above, incurred or paid by the
4 United States after the Certification of Completion issues with
5 respect to the First Consent Decree, or by the State after March
6 31, 1996, with regard to Burbank Operable Unit-specific response
7 actions.

8 "Interest" shall mean interest at the rate specified for
9 interest on investments of the Hazardous Substance Superfund
10 established under Subchapter A of Chapter 98 of Title 26 of the
11 U.S. Code, compounded on October 1 of each year, in accordance
12 with 42 U.S.C. § 9607(a).

13 "Los Angeles Department of Water and Power" or "LADWP" shall
14 mean the department of the City of Los Angeles, and any successor
15 agencies or departments, with which EPA has entered into
16 cooperative agreements for the performance of the Basin-wide
17 Remedial Investigation and Feasibility Study for the San Fernando
18 Valley Superfund sites.

19 "National Contingency Plan" or "NCP" shall mean the National
20 Oil and Hazardous Substances Pollution Contingency Plan
21 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
22 codified at 40 C.F.R. Part 300, including, but not limited to,
23 any amendments thereto.

24 "Operation and Maintenance" or "O&M" or "O&M Activities"
25 shall mean the activities required to operate, maintain and
26 monitor the effectiveness of the interim remedial action as
27 required under the Operation and Maintenance Plan(s) approved or
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1 developed by EPA in conformance with this Consent Decree, UAO 92-
2 12, the Second Stage O&M Work Plan to be developed under this
3 Consent Decree, and the Second Stage Statement of Work attached
4 as Appendix 4 to this Consent Decree.

5 "O&M Trust Account" shall mean the trust account which
6 Lockheed Martin shall be required to establish pursuant to
7 Section XIV (Funding of Response Activities), Paragraph D of this
8 Consent Decree.

9 "Operations and Maintenance Contractor" or "O&M Contractor"
10 shall mean the principal contractor retained by the Settling Work
11 Defendant to perform the O&M Activities. The O&M Contractor
12 shall, inter alia: (1) provide the staff to operate and maintain
13 the Plant Facilities; (2) conduct the day-to-day physical tasks
14 of operating the Plant Facilities; (3) perform routine water
15 quality monitoring; (4) physically perform the routine and non-
16 routine maintenance of the Plant Facilities; and (5) maintain the
17 daily operational records of the Plant Facilities.

18 "Owner Settling Defendants" shall mean the Settling
19 Defendants listed in Appendix 2.

20 "Paragraph" shall mean a portion of this Consent Decree or
21 the First Consent Decree identified by an Arabic numeral or an
22 upper case letter.

23 "Parties" shall mean the United States, the State of
24 California DTSC and the Settling Defendants.

25 "Past Basin-wide Response Costs" shall mean all Basin-wide
26 Response Costs incurred and paid by EPA prior to September 30,
27 1995, or incurred and paid by the State prior to March 31, 1996.
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1 "Past Site-Specific Response Costs" shall mean all costs,
2 including, but not limited to, all types of costs described in
3 the definition of Basin-wide Response Costs, (e.g. payroll
4 costs), above, that the United States incurred and paid with
5 regard to the Burbank Operable Unit Site prior to the issuance of
6 the Certification of Completion for the First Consent Decree or
7 that the State incurred and paid prior to March 31, 1996.

8 "Performance Standards" shall mean those operation and
9 maintenance standards, standards of control, and other
10 substantive requirements, criteria or limitations set forth in
11 the ROD, the First Consent Decree or this Consent Decree, the
12 Second Stage Statement of Work, Appendix 4 to this Consent
13 Decree, and any work plan established pursuant to the First
14 Consent Decree or this Consent Decree. In the event of any
15 conflict between the First Consent Decree and this Consent
16 Decree, or between any work plan established pursuant to the
17 First Consent Decree or this Consent Decree as to the Performance
18 Standards that apply to the O&M Activities, this Consent Decree
19 or the work plan established pursuant to this Consent Decree
20 shall control.

21 "Plaintiffs" shall mean the United States and the State of
22 California DTSC.

23 "Plant Facilities" shall mean all parts of the
24 infrastructure necessary to carry out the Burbank Operable Unit
25 interim remedy, as constructed pursuant to the First Consent
26 Decree and UAO 92-12, including without limitation the extraction
27 wellfield, treatment plant, disinfection facility, booster
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1 station, blending water interconnection and pipeline, connecting
2 pipelines for extraction wells to treatment plant, and Blending
3 Facility.

4 "Regional Water Quality Control Board" or "RWQCB" shall mean
5 the California pollution control agency and any successor
6 agencies or departments of the State of California, which
7 performs ongoing source investigation and source control work in
8 the San Fernando Valley Basin pursuant to a cooperative agreement
9 between EPA and the State Water Resources Control Board.

10 "RCRA" shall mean the Solid Waste Disposal Act, as amended,
11 42 U.S.C. §§ 6901 et seq., (also known as the Resource
12 Conservation and Recovery Act).

13 "Record of Decision" or "ROD" shall mean the EPA Record of
14 Decision relating to the Burbank Operable Unit, signed on June
15 30, 1989, by the Regional Administrator, EPA Region IX, and all
16 attachments thereto, as modified by the First Consent Decree,
17 ESD1 and ESD2.

18 "Related Settling Defendants" shall mean entities related to
19 Settling Cash Defendants and identified as such in Appendix 1.

20 "Released Parties" shall mean Settling Defendants and their
21 officers, directors, employees and agents; where the Settling
22 Defendant or other Released Party is a trust, Released Party also
23 shall mean its trustees and successor trustees appointed to carry
24 out the purposes of said trust; where the Settling Defendant or
25 other Released Party is a corporate entity, Released Party also
26 shall mean its corporate successors to potential liability for
27 the Site; and where the Settling Defendant or other Released
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1 Party is a partnership, Released Party also shall mean its
2 partners. "Released Parties" also shall mean the named entities
3 described in Appendix 1 as Released Parties related to one or
4 more of the Settling Defendants.

5 "Remedial Action" or "Remedial Action Work" shall mean those
6 activities, except for Operation and Maintenance, to be
7 undertaken or which have been undertaken by any of the Settling
8 Defendants to implement the final plans and specifications
9 submitted by certain of the Settling Defendants pursuant to the
10 Remedial Design Work Plan under the First Consent Decree or the
11 UAO Remedial Design Work Plan under UAO 92-12 and approved by
12 EPA.

13 "Remedial Action Work Plan" shall mean the documents
14 submitted by Lockheed Martin and/or the City of Burbank pursuant
15 to the Statement of Work, Appendix D to the First Consent Decree.

16 "Remedial Design" shall mean those activities which were
17 undertaken by Lockheed Martin and/or the City of Burbank pursuant
18 to the Statement of Work ("SOW"), Appendix D to the First Consent
19 Decree, to develop the final plans and specifications for the
20 Remedial Action pursuant to the Remedial Design Statement of
21 Work, or by the UAO Parties pursuant to the Work Schedule,
22 Appendix A to UAO 92-12, to develop the final plans and
23 specifications for the Blending Facility.

24 "Remedial Design Statement of Work" or "SOW" shall mean the
25 document appended as Appendix D to the First Consent Decree.

26 "Remedial Design Work Plan" shall mean the work plans
27 prepared by Lockheed Martin and/or the City of Burbank pursuant
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1 to the SOW, Appendix D to the First Consent Decree, to describe
2 the final plans and specifications for the Remedial Action.

3 "Second Consent Decree Trust Account" pertains to the trust
4 account which Lockheed Martin shall be required to establish
5 pursuant to Section XIV (Funding of Response Activities),
6 Paragraph C of this Consent Decree.

7 "Second Stage Operation and Maintenance Work Plan" or
8 "Second Stage O&M Work Plan" shall mean the document prepared
9 pursuant to Section VI of this Consent Decree (Performance of the
10 Work), which shall describe certain Settling Defendants'
11 obligations to operate and maintain, and to dismantle,
12 decommission or otherwise dispose of the Plant Facilities.

13 "Second Stage Statement of Work" or "Second Stage SOW" shall
14 mean the statement of work for implementation of the O&M
15 Activities, attached as Appendix 4 to this Consent Decree.

16 "Section" shall mean a portion of this Consent Decree or the
17 First Consent Decree identified by a Roman numeral.

18 "Settling Cash Defendants" shall mean those Settling
19 Defendants who have funded, in whole or in part, the Second
20 Consent Decree Trust Account described in Section XIV (Funding of
21 Response Activities), via a settlement with Lockheed Martin in
22 the action Lockheed Martin Corporation v. Crane Company et al.,
23 United States District Court, Central District of California,
24 Case No. CV 94 2717 MRP (Tx). This term includes each of the UAO
25 Parties.

26 "Settling Defendants" shall mean Lockheed Martin, Settling
27 Cash Defendants, Related Settling Defendants and Settling Work
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1 Defendant.

2 "Settling Work Defendant" shall mean the Settling Defendant
3 that is obligated to perform the Operation and Maintenance
4 Activities pursuant to this Consent Decree, except as to Design
5 Defects as provided in Section VI (Performance of the Work),
6 capital expenditures that are not integral to the Upstream
7 Facilities as provided in Section XIV (Funding Obligations),
8 Paragraph K (Capital Expenditures), and as provided for in
9 Section XIV (Funding Obligations), Paragraph M (Funding
10 Obligation for Design Defects). The City of Burbank is the sole
11 Settling Work Defendant pursuant to this Consent Decree.

12 "Site" shall mean the areal extent of hazardous substance
13 groundwater contamination that is presently located in the
14 vicinity of the Burbank well field and includes any areas to
15 which and from which such hazardous substance groundwater
16 contamination migrates.

17 "State" shall mean the Department of Toxic Substances
18 Control and any successor agencies or departments of the State.

19 "State Water Resources Control Board" or "SWRCB" shall mean
20 the California pollution control agency and any successor
21 agencies or departments of the State of California, with which
22 EPA has entered into a series of cooperative agreements for the
23 ongoing source identification and source control in the Basin
24 conducted by the RWQCB.

25 "Statement of Work" or "SOW" shall mean the statement of
26 work for implementation of the Remedial Action, and the first two
27 years of Operation and Maintenance at the Site, as set forth in
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1 Appendix D to the First Consent Decree and any modifications made
2 pursuant to the First Consent Decree.

3 "Supervising Contractor" shall mean the principal contractor
4 retained or otherwise selected by the Settling Work Defendant,
5 and approved by EPA, to (1) develop the Second Stage O&M Work
6 Plan; (2) prepare the Project Time Line and Staffing Plan
7 required by Section VI, Paragraph C.8 of this Consent Decree; (3)
8 prepare bid documents to select the O&M Contractor; and (4)
9 conduct periodic oversight, including engineering oversight of
10 the O&M Contractor, and submit reports on such periodic oversight
11 to EPA.

12 "UAO 92-12" shall mean the unilateral administrative order
13 executed by EPA on March 26, 1992 as amended by a letter of April
14 28, 1992, from Jeffrey Zelikson to the UAO Parties, appended as
15 Exhibit 2 to this Consent Decree.

16 "UAO Parties" shall mean the Respondents as defined in
17 Section VII.V of UAO 92-12: Aeroquip Corporation, Crane Company,
18 Inc., Janco Corporation, Sargent Industries, Incorporated,
19 Antonini Family Trust, and Ocean Technology, Incorporated.

20 "UAO Remedial Action Work Plan" shall mean the document
21 submitted by the UAO Parties pursuant to Attachment A to UAO 92-
22 12.

23 "UAO Remedial Design" shall mean those activities which were
24 undertaken by the recipients of UAO 92-12 to develop the final
25 plans and specifications for the Blending Facility pursuant to
26 Attachment A to UAO 92-12.

27 "UAO Remedial Design Statement of Work" or "UAO SOW" shall
28