

1 B. If a dispute arises with respect to the meaning or ap-
2 plication of this Decree, other than one regarding the amount of
3 stipulated penalties due per type of violation, the dispute shall
4 in the first instance be the subject of informal good-faith nego-
5 tiations between EPA and the appropriate Settling Defendant(s)
6 pursuant to Subpart C of this Section. In the event that the
7 parties cannot resolve the dispute, the interpretation advanced
8 by EPA shall be considered binding unless a Settling Defendant
9 invokes the dispute resolution provisions of Subpart F of this
10 Section. The decision to invoke dispute resolution shall not in
11 and of itself constitute a force majeure. Settling Defendants
12 reserve the right to dispute a determination by EPA that a force
13 majeure has not occurred.

14 C. If a Settling Defendant has a good-faith objection to a
15 decision by EPA with respect to Covered Matters or if a Settling
16 Defendant believes that it has otherwise reached an impasse with
17 EPA with regard to the requirements or interpretation of this
18 Consent Decree, that Settling Defendant shall notify EPA's
19 Project Coordinator and EPA's Office of Regional Counsel in writ-
20 ing of its position, within fourteen (14) days of receipt of
21 EPA's decision or of determining that an impasse has been
22 reached. EPA and the Settling Defendant shall then have fourteen
23 (14) days from EPA's receipt of the written notice to resolve the
24 matter. If possible, the dispute shall be resolved by informal
25 telephone conferences. Either EPA or the Settling Defendant may
26 also request that the parties meet and confer to try to resolve
27 the dispute within the fourteen (14) day period. By the end of

1 the foregoing fourteen (14) day period or within seven (7) days
2 after the parties meet and confer, whichever is later, EPA shall
3 issue a written decision regarding the dispute.

4 D. Invocation of the Dispute Resolution procedure, by it-
5 self, will not postpone the Work schedule with respect to any
6 disputed issue or stay the accrual of stipulated penalties. EPA
7 agrees not to demand payment of penalties and interest accrued
8 until completion of the Dispute Resolution process.

9 E. If a Settling Defendant chooses not to follow EPA's
10 decision regarding the dispute, that Settling Defendant may file
11 with the Court a petition briefly describing the nature of the
12 dispute and its suggested resolution. Such a petition shall not
13 be filed before EPA has issued its written determination pursuant
14 to Subpart C of this Section and shall not be filed more than
15 thirty (30) days after EPA has issued such determination. EPA
16 shall have thirty (30) days to respond to the petition.

17 F. In any dispute resolution proceeding regarding selec-
18 tion of the remedial action, the Court shall uphold EPA's deci-
19 sion unless the Settling Defendant can demonstrate on the basis
20 of the Administrative Record that EPA's decision was arbitrary
21 and capricious or not otherwise in accordance with the law, as
22 set forth in CERCLA Section 113(j)(2), 42 U.S.C. § 9613(j)(2).
23 In any dispute involving a claim of force majeure, the Settling
24 Defendant shall have the burden of proving by a preponderance of
25 the evidence that any delay was, is or will be caused by events
26 beyond its control and that the duration of any delay requested
27 by a Settling Defendant is necessitated by the force majeure. In

1 all other disputes, the standard of review shall be determined by
2 the Court in accordance with general principles of administrative
3 law. In all disputes, the Settling Defendant shall have the bur-
4 den of proof. Upon this Court's resolution of the dispute,
5 stipulated penalties shall be paid or set aside in accordance
6 with Subpart H of Section XIX (Stipulated Penalties). A finding
7 that a Settling Defendant has prevailed shall not excuse stipu-
8 lated penalties for failure to perform requirements not in dis-
9 pute, except to the extent a Settling Defendant can show that it
10 was impracticable to perform those requirements pending resolu-
11 tion of the dispute. If the Settling Defendant prevails, the
12 deadlines for any requirements which Settling Defendants could
13 not practicably meet during the dispute resolution proceedings
14 shall be extended to account for any delays attributable to such
15 proceedings.

16 **XXI. FORCE MAJEURE**

17 A. The Settling Parties agree that time is of the essence
18 in the implementation of this Consent Decree. Settling Defen-
19 dants shall perform all the requirements of this Consent Decree
20 according to the schedules set forth herein or established
21 hereunder or any approved modifications thereto unless their per-
22 formance is prevented or delayed by events which constitute a
23 force majeure.

24 B. For the purposes of this Decree, a force majeure is
25 defined as any event arising from causes beyond the control of a
26 Settling Defendant or its contractors, subcontractors or consult-
27 ants, which delays or prevents that Settling Defendant's perfor-

1 mance notwithstanding that Settling Defendant's best efforts to
2 avoid the delay. This requirement that a Settling Defendant ex-
3 ercise "best efforts to avoid the delay" includes using best ef-
4 forts to anticipate any potential force majeure event and to ad-
5 dress the effects of any force majeure event (1) as it is occur-
6 ring and (2) following the force majeure event, such that any
7 delay is minimized to the greatest extent practicable. Neither
8 economic hardship nor increased costs shall be considered a force
9 majeure. A force majeure may include, but is not limited to, ex-
10 traordinary weather events, natural disasters, national emer-
11 gencies, failure by the other Settling Work Defendant to perform
12 Work that is necessary for the Settling Work Defendant asserting
13 a force majeure to perform its obligations, delays in obtaining
14 access to property not owned or controlled by the Settling Defen-
15 dant, despite timely, best reasonable efforts to obtain such ac-
16 cess, and delays in obtaining any required approval or permit
17 from EPA or other governmental entities that result despite the
18 Settling Defendant's submission of all information and documenta-
19 tion reasonably required for approval or applications for permits
20 (and any supplemental information and documentation that may
21 reasonably be requested) within a time frame that would permit
22 the Work to proceed in accordance with the schedule contained in
23 or established pursuant to this Decree.

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1 C. If a Settling Defendant invokes force majeure, it shall
2 have the burden of proving by a preponderance of the evidence
3 that any delay was, is or will be caused by events beyond its
4 control and that the duration of any extension requested is
5 necessitated by the force majeure.

6 D. In the event of a force majeure, the time for perfor-
7 mance of the activity delayed by the force majeure shall be ex-
8 tended for the minimum time necessary to allow completion of the
9 delayed activity. The time for performance of any activity by
10 any Settling Defendant dependent on the delayed activity shall be
11 similarly extended. An extension of the time for performance of
12 an obligation directly affected by the force majeure event shall
13 not, of itself, extend the time for performance of any subsequent
14 obligation unless the subsequent obligation is dependent upon the
15 obligation directly affected. EPA shall determine whether re-
16 quirements are to be delayed and the time period granted for any
17 delay. Settling Defendants shall exercise best efforts to avoid
18 or minimize any delay and any effects of a delay caused by a
19 force majeure.

20 E. In the event of a force majeure, any Settling
21 Defendant(s) asserting force majeure shall orally notify EPA's
22 Project Coordinator or, in his or her absence, the Director of
23 the Hazardous Waste Management Division, EPA, Region IX, im-
24 mediately (no later than 48 hours after that Settling Defendant
25 becomes aware of the force majeure) and shall notify EPA in writ-
26 ing within ten (10) calendar days after discovery of the force
27 majeure. The written notification shall describe the force

1 majeure, the anticipated length of any delay, any measures which
2 that Settling Defendant is taking or plans to take to mitigate
3 the event or the delay and a schedule for implementation of such
4 measures, and a statement as to whether, in the opinion of that
5 Settling Defendant, such event may cause or contribute to an en-
6 dangerment to public health, welfare, or the environment.

7 F. Failure of a Settling Defendant to comply with the
8 notification requirements of this Section shall result in forfei-
9 ture of its right to claim a force majeure delay.

10 XXII. CONTRIBUTION PROTECTION

11 With regard to claims for contribution against Settling
12 Defendants for matters addressed in this Consent Decree, the Set-
13 tling Parties agree that Settling Defendants are entitled, as of
14 the effective date of this Decree, to such protection from con-
15 tribution actions or claims as provided in CERCLA Section
16 113(f)(2), 42 U.S.C. § 9613(f)(2); provided, however, that each
17 Settling Defendant expressly waives the provisions of CERCLA Sec-
18 tion 113(f)(2), 42 U.S.C. § 9613(f)(2), as against any other Set-
19 tling Defendant, and reserves its right to pursue any other Set-
20 tling Defendant(s) for the cost of response activities related to
21 the Site and the City reserves its rights (if any) to pursue any
22 other Settling Defendant for any damages to natural resources.

23 XXIII. FORM OF NOTICE

24 A. Except insofar as oral notification is specifically
25 provided for in this Decree, when notification to or communica-
26 tion with the United States Department of Justice, EPA, Lockheed,
27

1 Weber or the City is required by the terms of this Consent
2 Decree, it shall be in writing, postage prepaid, and addressed as
3 follows:

4 As to EPA:

5 EPA Project Coordinator - Burbank Operable Unit
6 San Fernando Valley Basin Superfund Site
7 Hazardous Waste Management Division
8 Superfund Program, Region IX
9 United States Environmental Protection Agency
10 75 Hawthorne Street
11 San Francisco, CA 94105

12 and

13 Assistant Regional Counsel - Burbank Operable Unit
14 San Fernando Valley Basin Superfund Site
15 Office of Regional Counsel, Regional IX
16 United States Environmental Protection Agency
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 As to the United States Department of Justice:

20 Chief
21 Environmental Enforcement Section
22 Environment and Natural Resources Division
23 United States Department of Justice
24 Ben Franklin Station, P.O. Box 7611
25 Washington, D.C. 20044-7611

26 As to Lockheed:

27 Ron Helgerson
Lockheed Engineering and Sciences Company
1903 West Empire, Unit 33
Burbank, California 91504

As to City:

General Manager
City of Burbank
Public Service Department
164 West Magnolia Blvd.
Burbank, California 91503-0631

and

1 Carolyn Barnes, Esquire
2 Office of the City Attorney
3 275 East Olive
4 Burbank, California 91510-6459

5 As to Weber:

6 George H. Hempstead
7 Weber Aircraft, Inc.
8 100 Wood Avenue, South
9 Iselin, New Jersey 08830

10 B. A Settling Party may change its address for purposes of
11 this Decree by mailing notice of a change of address to the other
12 Settling Parties.

13 C. In the case of written notices or submittals, a notice
14 or submittal shall be deemed to have occurred on the date the
15 notice or submittal is received by the party to whom notice must
16 be given or a document must be submitted pursuant to this Decree.

17 XXIV. MODIFICATION

18 A. Except as provided in Subpart B of this Section and in
19 Subpart B of Section XXIII (Form of Notice), there shall be no
20 modification of this Consent Decree without written approval of
21 the Settling Parties and entry by the Court.

22 B. The United States and the appropriate Settling Work
23 Defendant(s) may agree to modify the Statement of Work and any
24 documents or deliverables approved by EPA pursuant to this
25 Decree. Any such modification must be in writing and must be
26 signed by EPA and the Settling Work Defendant(s) affected by the
27 modification, and shall be sent to all Settling Defendants within
ten days of execution. No such modifications shall change (1)
any of the requirements of the body of the Consent Decree (i.e.,

1 the Consent Decree exclusive of those attachments which have been
2 incorporated into the Decree by reference), (2) the ROD or (3)
3 the ESD.

4 **XXV. ADMISSIBILITY OF DATA**

5 In the event that the Court is called upon to resolve a dis-
6 pute concerning implementation of this Consent Decree, the Set-
7 tling Parties waive any evidentiary objections to the admis-
8 sibility into evidence of data gathered, generated, or evaluated
9 pursuant to this Decree that has been verified using the quality
10 assurance and quality control procedures specified in the Quality
11 Assurance Project Plan(s) approved pursuant to this Decree.

12 **XXVI. EFFECTIVE DATE**

13 This Consent Decree is effective upon the date of its entry
14 by the Court.

15 **XXVII. COMMUNITY RELATIONS**

16 The Settling Work Defendants shall cooperate with EPA and
17 the State in providing information to the public.

18 **XXVIII. PUBLIC PARTICIPATION**

19 A. The United States will publish notice of the
20 availability for review and comment of this Consent Decree upon
21 its lodging with the United States District Court as a proposed
22 settlement in this matter in accordance with CERCLA Section
23 122(d)(2)(i), 42 U.S.C. § 9622(d)(2)(i).

24 B. The United States will provide persons who are not
25 parties to the proposed settlement with the opportunity to file
26 written comments during at least a thirty (30) day period follow-
27 ing such notice. In addition, EPA intends to hold an informal

1 public meeting in Burbank, California during this period to
2 receive either written or oral comments. The United States will
3 file with the Court a copy of any comments received and its
4 responses to such comments.

5 C. After the close of the public comment period, the United
6 States will review all comments and determine whether the com-
7 ments disclose facts or considerations which indicate that the
8 proposed Decree is inappropriate, improper or inadequate and that
9 it therefore should be modified. No Settling Party shall be
10 bound by modifications to this Decree without its prior written
11 consent, and consent to this Decree is not consent to such
12 modifications.

13 XXIX. NOTICE TO THE STATE

14 EPA has notified the State of California pursuant to Section
15 106(a) of CERCLA, 42 U.S.C. § 9606(a) prior to entry of this
16 Decree.

17 XXX. CONSISTENCY WITH THE NATIONAL CONTINGENCY PLAN

18 The Settling Parties agree, and the Court finds, that the
19 Work, if performed in accordance with the requirements of this
20 Consent Decree, is consistent with the provisions of the NCP,
21 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

22 XXXI. INDEMNIFICATION OF THE UNITED STATES

23 A.1. Notwithstanding any approvals which may be granted by
24 the United States or other governmental entities, Lockheed shall
25 indemnify the United States and any of its divisions, depart-
26 ments, agents or employees and save and hold the United States,
27 any of its divisions, departments, agents or employees harmless

1 from any claims or causes of action (except to the extent that
2 such indemnification or holding harmless would conflict with
3 rights or obligations of the United States or Lockheed pursuant
4 to any contract between Lockheed and the United States or between
5 Lockheed and any government contractor(s)), arising from any in-
6 juries or damages to persons or property resulting from any acts
7 or omissions of Lockheed, its contractors, subcontractors or any
8 other person acting on its behalf in carrying out any activities
9 pursuant to the terms of this Decree.

10 2. Notwithstanding any approvals which may be granted by
11 the United States or other governmental entities, the City shall
12 indemnify the United States and any of its divisions, depart-
13 ments, agents or employees and save and hold the United States,
14 any of its divisions, departments, agents or employees harmless
15 from any claims or causes of action, arising from any injuries or
16 damages to persons or property resulting from any acts or omis-
17 sions of the City, its contractors, subcontractors or any other
18 person acting on its behalf in carrying out any activities pur-
19 suant to the terms of this Decree.

20 B. The indemnifications provided in Subpart A of this Sec-
21 tion do not include an obligation to defend the United States or
22 persons acting on its behalf in any action relating to this Con-
23 sent Decree or the Work and do not extend to that portion of any
24 claim or cause of action attributable to the negligent, wanton or
25 willful acts or omissions of the United States, its contractors,
26 subcontractors or any other person or entity acting on its behalf
27 in carrying out activities at or related to the Site.

1 C.1. The United States shall use its best efforts to notify
2 Lockheed of any claims or causes of action described in Subpart
3 A.1 of this Section within sixty (60) days of receiving notice
4 that such a claim or cause of action has been filed and shall use
5 its best efforts to provide Lockheed with a reasonable oppor-
6 tunity to confer with the United States before the United States
7 settles or resolves such a claim or cause of action; provided,
8 however, that failure on the part of the United States to provide
9 such notice and/or such opportunity to confer shall not preclude
10 the United States from obtaining indemnification from Lockheed
11 pursuant to this Section.

12 2. The United States shall use its best efforts to notify
13 the City of any claims or causes of action described in Subpart
14 A.2 of this Section within sixty (60) days of receiving notice
15 that such a claim or cause of action has been filed and shall use
16 its best efforts to provide the City with a reasonable oppor-
17 tunity to confer with the United States before the United States
18 settles or resolves such a claim or cause of action; provided,
19 however, that failure on the part of the United States to provide
20 such notice and/or such opportunity to confer shall not preclude
21 the United States from obtaining indemnification from the City
22 pursuant to this Section.

23 3. Settling Defendants retain the right to intervene in any
24 court action against the United States pursuant to Section 113(i)
25 of CERCLA, 42 U.S.C. § 9613(i), if appropriate, and to seek in-
26 tervention under the provisions of F.R.Civ.P. 24 and California
27 Code of Civil Procedure Section 387.

1 (Reimbursement of Future Response Costs), Settling Work Defen-
2 dants shall submit to EPA a written certification (Certificate of
3 Completion) that the Work has been completed in accordance and in
4 full compliance with this Decree. Within ninety (90) days of
5 receipt of a request for such certification, EPA shall approve or
6 disapprove the certification. If EPA fails to approve or disap-
7 prove the certification within ninety (90) days of receipt of a
8 request for such certification, Settling Work Defendants may in-
9 voke the dispute resolution procedures of Section XX (Dispute
10 Resolution). Upon EPA approval of the Certification of Comple-
11 tion, the covenants not to sue pursuant to Subpart A.1 of Section
12 XVIII (Covenant Not To Sue) shall take effect.

13 B. Upon EPA's approval of the Certification of Completion,
14 the requirements of this Decree, including Settling Work Defen-
15 dants' obligations for Covered Matters, other than Section XIV
16 (Retention of Records) and Subpart O of Section VII (Work To Be
17 Performed), shall be deemed satisfied; provided, however, that
18 such termination and satisfaction shall not alter the provisions
19 of Section XVII (Reservation and Waiver of Rights), Section XXII
20 (Contribution Protection), Section XVIII (Covenant Not To Sue) or
21 any other continuing rights or obligations of the Settling
22 Parties under this Decree.

23 C. If at any point EPA takes over the remainder of the
24 Work pursuant to Section VII (Work To Be Performed), then this
25 Decree shall terminate when EPA finishes the Work; provided,
26 however, that termination of this Decree shall not terminate
27 Lockheed's obligations under Section XVI (Reimbursement of Future

1 Response Costs) to pay Future Response Costs incurred before the
2 termination of this Decree, nor shall it alter the provisions of
3 Section XVII (Reservation and Waiver of Rights) or any other con-
4 tinuing rights or obligations of the Settling Parties under this
5 Decree.

6 **XXXV. SECTION HEADINGS**

7 The section heading set forth in this Decree and its
8 Table of Contents are included for convenience of reference only
9 and shall be disregarded in the construction and interpretation
10 of any of the provisions of this Decree.

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2 The undersigned Defendant hereby Consents to the foregoing Con-
3 sent Decree.
4

5 For Defendant: The City of Burbank

6 Dated: March 27, 1991
7 _____
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10
11 Name: Thomas Flavin
12 Signature: *Thomas Flavin*
13 Title: Mayor, City of Burbank

14 ATTEST:
15 *Mark L. Woodburn*
16 City Clerk

1 The undersigned Defendant hereby Consents to the foregoing Con-
2 sent Decree.

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For Defendant: Lockheed Corporation

6 Dated:

March 13, 1991

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Name:

E. A. Thompson

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Signature:

E. A. Thompson

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Title:

Vice President - Operations
Lockheed Corporation

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1 The undersigned Defendant hereby Consents to the foregoing Con-
sent Decree.

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5 For Defendant: Weber Aircraft, Inc.

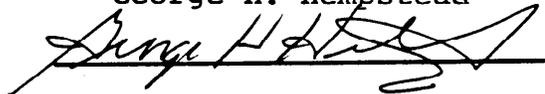
6 Dated: March 18, 1991

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10 Name: George H. Hempstead

11 Signature: 

12 Title: Vice President
Weber Aircraft, Inc.

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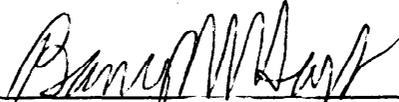
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FOR THE PLAINTIFF, UNITED STATES:



BARRY M. HARTMAN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044

DATE: 7/29/91

United States Attorney

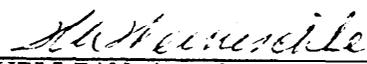
DATE: _____

Assistant United States Attorney



RAYMOND B. LUDWISZEWSKI
Acting Assistant Administrator for
Office of Enforcement
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

DATE: 5/6



WILLIAM A. WEINISCHKE
Trial Attorney
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

DATE: 7/1/91

Daniel W. McGovern

DATE: 3.28.91

DANIEL W. MCGOVERN
Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

000118

**CONSENT DECREE
LIST OF APPENDICES**

- Appendix A. Record of Decision, June 30, 1989**
- Appendix B. Explanation of Significant Differences, November 21,
1990**
- Appendix C. Map of Corrected Well Locations**
- Appendix D. Statement of Work**
- Appendix E. Schematics**
- Appendix F. Plot Map of Valley Forebay Facility**