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CLERK, U.S. DISTRICT COURT
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CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE COUNTY OF SAN BERNARDINO, CALIFORNIA, Defendant.	EDCV07-1454 SGL (OPx) UNITED STATES' REQUEST TO ENTER CONSENT DECREE AND [~~PROPOSED~~] ORDER

The United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint against the County of San Bernardino, California ("County") relating to the Newmark Groundwater Contamination Superfund Site (the "Site") alleging that the County is liable as the current owner and as the former owner and operator of the Cajon Landfill, which contributed to Site contamination, pursuant to Sections 107(a)(1) and (2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a)(1) and (2). Simultaneously, on November 2, 2007, the United States lodged a proposed Consent Decree with the Court that would require the County to pay $11 million to settle the United States' claims for past and future response costs under CERCLA.

Pursuant to Paragraph 40 of the Consent Decree, the United States published notice of the lodging of the proposed Consent Decree in the Federal Register on November 23, 2007. 72 Fed. Reg. 65769. The proposed Consent Decree was subject to a thirty-day comment period, which expired on December 26, 2007. The Court inadvertently, but prematurely, entered the Consent Decree on December 21, 2007.

No public comments were received during the public comment period, and the United States believes that the Consent Decree is fair, reasonable, and in the public interest. Pursuant to Paragraph 40 of the Consent Decree, the County has consented to entry of the Consent Decree without further notice. Accordingly, the United States requests the Court to grant its request to sign and enter the attached Order, which will re-approve entry of the Consent Decree and designate the effective date of the Consent Decree as the date that the Court enters the proposed Order.

Dated: December 27, 2007

Respectfully submitted,

RONALD J. TENPAS
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Washington, DC

By: _____
ANN C. HURLEY
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OF COUNSEL:

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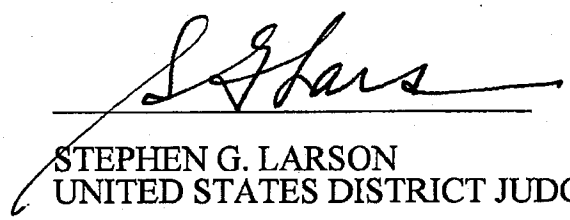
ORDER

IT IS ORDERED that the Consent Decree in United States v. County of San Bernardino, California, Case No. EDCV07-1454 SGL (OPx), lodged with this court on November 2, 2007, is re-approved. After considering the United States' Request to Enter Consent Decree, the Court finds that the Consent Decree is fair, reasonable, and in the public interest. Therefore, the Court enters the following Order.

1. The United States' Request to Enter Consent Decree is granted. The Court previously entered the Consent Decree on December 21, 2007.

2. The effective date of the Consent Decree shall be the date that this Order is entered by the Court.

Dated: 12-28-07



STEPHEN G. LARSON
UNITED STATES DISTRICT JUDGE

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U.S. DISTRICT COURT
CENTRAL DIST. OF CAL.
LOS ANGELES
BY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE COUNTY OF SAN BERNARDINO, CALIFORNIA, Defendant.	EDCV07-1454 SGL (OPx) Civil Action No. CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter against the County of San Bernardino pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Newmark, Muscoy and Source Control Operable Units ("OUs") of the Newmark Groundwater Contamination Superfund Site located in San Bernardino County, California.

B. The County of San Bernardino, including its departments, agencies and instrumentalities (collectively, "Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. In its complaint, the United States alleges that the County of San Bernardino's Cajon Landfill operated for approximately seventeen years between 1963 and 1980 and caused or contributed to the groundwater contamination at the Site. The groundwater at the Site is principally contaminated with tetrachloroethylene (also known as perchloroethylene or "PCE"), trichloroethylene ("TCE"), and Freon 11 and 12.

D. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate, governmental or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Cajon Landfill" shall mean the Cajon Sanitary Landfill, also known as the Verdemont Landfill, a disposal facility owned by the Settling Defendant and located in San Bernardino County, California, approximately five miles northwest of the City of San Bernardino, northwest of the intersection of Cajon Drive and Institution Road, and west of Interstate 215.

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

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto, if any. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next day that is not a Saturday, Sunday or federal holiday.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States to DOJ.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States to EPA.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Explanation of Significant Differences" or "ESD" shall mean the Explanation of Significant Differences to the Newmark and Muscoy Records of Decision, which was signed by the Regional Administrator, EPA Region 9, or his/her delegatee, on August 9, 2004, and all attachments thereto.

i. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA, the U.S. Army, DOJ on behalf of EPA and/or the U.S. Army, and/or the United States on behalf of the EPA and/or the U.S. Army, incurs and pays at or in connection with the Site after the date of entry of this Consent Decree, and also includes any such costs which the U.S. Army would otherwise be entitled to pursue against Settling Defendant under Sections 107(a) and/or 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, for cost recovery and/or contribution in connection with the Site.

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "Interim Remedial Actions" shall mean those activities, except for Operation and Maintenance, to be undertaken to implement the Newmark and Muscoy OUs.

l. "Newmark Groundwater Contamination Superfund Site" shall mean the site listed by EPA on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13296, 13301.

m. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

n. "Parties" shall mean the United States and the Settling Defendant.

o. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA, the U.S. Army, DOJ on behalf of EPA and/or the U.S. Army, and/or the United States on behalf of the EPA and/or the U.S. Army, has incurred or paid at or in connection with the Site through the date of entry of this Consent Decree, plus accrued Interest on all such costs through such date, and also includes any such costs and accrued Interest which the U.S. Army would otherwise be entitled to pursue against Settling Defendant under Sections 107(a) and/or 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, for cost recovery and/or contribution in connection with the Site.

p. "Plaintiff" shall mean the United States.

q. "Records of Decision" or "RODs" shall mean the EPA Records

of Decision relating, respectively, to the Newmark OU, signed on August 4, 1993, and relating to the Muscoy OU, signed on March 24, 1995 by the Regional Administrator, EPA Region 9, or his/her delegatee, and all attachments thereto.

r. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

s. "Settling Defendant" shall mean the County of San Bernardino, California, including its departments, agencies and instrumentalities.

t. "Site" shall mean the Newmark, Muscoy and Source Control OUs of the Newmark Groundwater Contamination Superfund Site, located in the County of San Bernardino, California. The Site includes the Cajon Landfill. The Site does not include any other OUs in the Newmark Groundwater Contamination Superfund Site or any areas outside of the Newmark Groundwater Contamination Superfund Site. There are no other OUs in the Site at this time.

u. "Source Control Operable Unit" or "Source Control OU" shall mean the operable unit for the investigation and remediation of sources of contamination in the Newmark Groundwater Contamination Superfund Site.

v. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is to resolve the claims of the parties against each other with respect to the Site and for Settling Defendant to make a cash payment, which includes a premium, to address the Settling Defendant's alleged liability for Past Response Costs, Future Response Costs, and the Site as provided in the Covenant Not to Sue by Plaintiff in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. No later than ten (10) business days after Settling Defendant receives

notice from the United States that this Consent Decree has been lodged, Settling Defendant shall deposit $11,000,000.00 (eleven million dollars) into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the "Escrow Account"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendant. If the Consent Decree is entered by the Court, Settling Defendant shall, within thirty (30) days thereof, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraphs 6 and 7 below.

6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Central District of California following lodging of the Consent Decree, and in accordance with the requirements of Paragraph 5.

7. Within five (5) business days of the deposit into the Escrow Account, pursuant to Paragraph 5, the Settling Defendant shall send notice that the Escrow Account has been opened and funded to EPA and DOJ in accordance with Section XV (Notices and Submissions). At the time of payment, Settling Defendant shall also send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions). Notices pursuant to this Paragraph shall reference the EPA Region and Site-Spill ID Number 09J5, DOJ Case Number 90-11-3-06902/2, and the Civil Action Number.

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the Newmark Groundwater Contamination Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Newmark Groundwater Contamination Superfund Site, or to be transferred by EPA to the

EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

9. Interest on Late Payments. If Settling Defendant fails to make any payment under Paragraph 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalties.

a. If any amounts due under Paragraph 5 are not paid by the required due date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 9, $5,000.00 (five thousand dollars) per violation per day that such payment is late for days 1-30, and $10,000.00 (ten thousand dollars) per day for each day thereafter.

b. If Settling Defendant does not comply with any requirement in Sections XII (Access and Institutional Controls), XIII (Access to Information) and/or XIV (Retention of Records) of this Consent Decree, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, $1,000.00 (one thousand dollars) per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 09J5, DOJ Case Number 90-11-3-06902/2, and the Civil Action Number. Settling Defendant shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency
Region 9 Superfund Receivable
P.O. Box 371099M
Pittsburgh, PA 15251

d. At the time of each payment pursuant to this Paragraph, Settling Defendant shall also send notice that such payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 09J5, DOJ Case Number 90-11-3-06902/2, and the Civil Action Number.

e. Stipulated penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

14. Covenant Not to Sue by United States. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, for Past Response Costs, Future Response Costs and/or the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI (Reimbursement of Response Costs) and any amount due under Section VII (Failure to Comply with Requirements of Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY UNITED STATES

15. General Reservations of Rights by United States. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

a. liability for failure of Settling Defendant to meet a requirement of this Decree;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, for response actions that are not within the definition of the Site;

e. liability for costs incurred or to be incurred that are not within the definition of Past Response Costs or Future Response Costs;

f. liability, based upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, occurring after signature of this Consent Decree by Settling Defendant; and

g. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

16. United States Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the either the Newmark and Muscoy Operable Unit Interim Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that either Newmark or Muscoy Operable Unit Interim Remedial Action is not protective of human health or the environment.

17. United States Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this

action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of either the Newmark or Muscoy Operable Unit Interim Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that either the Newmark or Muscoy Operable Unit Interim Remedial Action is not protective of human health or the environment.

18. For purposes of Paragraph 16, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the RODs for the Newmark and Muscoy Operable Unit Interim Remedial Actions, respectively, were signed and set forth in those RODs and the administrative records supporting those RODs. For purposes of Paragraph 17, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Newmark and Muscoy Operable Unit Interim Remedial Actions, respectively, the administrative records supporting those RODs, and the post-ROD administrative records.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANT

19. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, Future Response Costs, the Site, or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the

Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Newmark, Muscoy or Source Control Operable Units, or out of the response actions for which the Past Response Costs or Future Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs and Future Response Costs, or the Site.

20. Except as provided in Paragraph 26 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 15(c) - (h), 16 and 17, but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

21. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

22. Except for any claims against its own insurers, Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to Past Response Costs, Future Response Costs, or the Site, including for cost recovery or contribution, against any person under Sections 107(a) and/or 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, with respect to the Site as of the date of entry of the Consent Decree. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling

Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against the Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

23. Except as provided in Paragraph 22, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 22, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

24. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs, Future Response Costs and the Site. The matters addressed in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant within the scope of such reservations.

25. Settling Defendant agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within ten (10) business days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within ten (10) business days of service or receipt of any Motion for Summary Judgment, and within ten (10) business days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

XII. ACCESS AND INSTITUTIONAL CONTROLS

27. If any property where access and/or land/water use restrictions are needed to implement response activities at the Site is owned or controlled by Settling Defendant, Settling Defendant shall:

a. commencing on the Effective Date of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to such property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

(1) Monitoring, investigation, removal, remedial or other activities at the Site;

(2) Verifying any data or information submitted to the United States or the State;

(3) Conducting investigations relating to contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Inspecting and copying records, operating logs,

contracts, or other documents maintained or generated by Settling Defendant or their agents, consistent with Section XIII (Access to Information); and

(7) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree, by federal, State or other applicable law, or by court order; and

b. commencing on the Effective Date of this Consent Decree, refrain from using such property in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented at the Site, including, but not limited to, institutional controls described in the ESD.

28. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA and any other applicable statute or regulations.

XIII. ACCESS TO INFORMATION

30. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

31. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing records, it shall provide Plaintiff with the following: (1) the title of the record; (2) the date of the record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

32. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing

conditions at or around the Site.

XIV. RETENTION OF RECORDS

33. Until ten (10) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions or response costs at or in connection with the Site, regardless of any corporate or governmental retention policy to the contrary, with the exception of those records provided to the United States prior to the lodging of this Decree and specifically listed in Appendix A.

34. After the conclusion of the ten-year document retention period in the preceding paragraph, Settling Defendant shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any records, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: (1) the title of the record; (2) the date of the record; (3) the name title, affiliation (e.g., company or firm), and address of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Defendant shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Parties' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

35. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XV. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-06902/2)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Marie Rongone, Esq.
United States Environmental Protection Agency
Region 9
75 Hawthorne St., ORC-3
San Francisco, CA 94105

Christopher Lichens
United States Environmental Protection Agency
Region 9
75 Hawthorne St., SFD-7-4
San Francisco, CA 94105

As to Settling Defendant:

Maxine Morisaki
Deputy County Counsel
County of San Bernardino
385 North Arrowhead Ave., Fourth Floor
San Bernardino, CA 92415-0140

Peter Wulfman
Division Manager
Solid Waste Management
County of San Bernardino
222 West Hospitality Lane, Second Floor
San Bernardino, CA 92415-0017

XVI. EFFECTIVE DATE

37. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XVII. RETENTION OF JURISDICTION

38. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION

39. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

40. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree as executed without further notice.

41. If for any reason this Court should decline to approve this Consent

Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

42. Each of the undersigned representatives of Settling Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

43. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

44. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. APPENDICES

45. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is a complete list of all records previously provided by the Settling Defendant to the United States prior to the date of lodging this Decree.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. County of San Bernardino relating to the Newmark Groundwater Contamination Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 14 October 2007

Ronald J. Tenpas
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 30 October, 2007

Ann C. Hurley
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. County of San Bernardino, relating to the Newmark Groundwater Contamination Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: October 29, 2007

Keith Takata
Superfund Division Director
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St., SFD
San Francisco, CA 94105

Date: October 30, 2007

Marie M. Rongone
Senior Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St., ORC-3
San Francisco, CA 94105

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. County of San Bernardino, relating to the Newmark Groundwater Contamination Superfund Site.

FOR DEFENDANT COUNTY OF SAN BERNARDINO

Date:

Paul Biane
Chairman of the Board of Supervisors
385 North Arrowhead Ave., Fourth Floor
San Bernardino, CA 92415-0110

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Dena M. Smith
Clerk of the Board of Supervisors
385 North Arrowhead Ave., Second Floor
San Bernardino, CA 92415-0130

Approved as to Legal Form:

Date:

Marc S. Maister
Irell & Manella LLP
840 Newport Center Drive, Suite 400
Newport Beach, CA 92660