

1 (Counsel listed on page ii)

2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

3

4 PEOPLE OF THE STATE OF)
5 CALIFORNIA ex rel. DOUGLAS)
6 WHEELER, Secretary of The)
7 Resources Agency; DEPARTMENT)
8 OF FISH & GAME; REGIONAL WATER)
9 QUALITY CONTROL BOARD, CENTRAL)
10 VALLEY REGION; CALIFORNIA AIR)
11 RESOURCES BOARD; DEPARTMENT)
12 TOXIC SUBSTANCES CONTROL;)
13 DEPARTMENT OF HEALTH SERVICES;)
14 DANIEL E. LUNGREN, Attorney)
15 General; and the UNITED)
16 STATES OF AMERICA,)

11

Plaintiffs,

12

CALIFORNIA SPORTFISHING)
PROTECTION ALLIANCE; UNITED)
13 ANGLERS OF CALIFORNIA; FRIENDS)
14 OF THE RIVER; SACRAMENTO RIVER)
15 COUNCIL; SACRAMENTO RIVER)
PRESERVATION TRUST; AND SIERRA)
CLUB,

16

Intervenors,

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v.

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SOUTHERN PACIFIC)
TRANSPORTATION COMPANY, a)
19 Delaware Corporation, et al.,)

20

Defendants.

21

AND CONSOLIDATED ACTION)
No. CIV-S-92-2090-WBS-GGH)

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No.: CIV S-92-1117 LKK GHH

CONSENT DECREE

(with Amvac Chemical
Corporation, American
Vanguard Corporation)

LODGED

MAR 14 1994

U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA

1 DANIEL E. LUNGREN, Attorney General
of the State of California
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Amvac Corporation and
27 American Vanguard Corporation
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1.

1 Reclamation and the U.S. Fish and Wildlife Service; and at the
2 request of and on behalf of the Secretary of Agriculture (for the
3 U.S. Forest Service); has filed suit against American Vanguard
4 and Amvac for damages to natural resources and for response and
5 restoration costs pursuant to 33 U.S.C. § 1311 et seq., and 42
6 U.S.C. § 9601 et seq., and for common law ultra-hazardous
7 activities.

8 WHEREAS, plaintiffs assert that Amvac produced the
9 chemical metam sodium that was released with its breakdown
10 products in the Spill and operated the derailed tank car GATX
11 "19764" from which the metam sodium and its breakdown products
12 were released.

13 WHEREAS, American Vanguard with its principal executive
14 offices in Los Angeles, California, wholly owns Amvac.

15 WHEREAS, American Vanguard and Amvac have paid 2
16 million dollars in settlement of class action claims in the
17 Coordination Proceeding Special Title (Rule 1550(b)) "In Re
18 Sacramento River Spill, Case I and II", Judicial Council
19 Coordination Proceeding Nos. 2617 and 2620, coordinated in the
20 San Francisco Superior Court, and whereas on August 28, 1992 an
21 order was entered in that proceeding finding that the settlement
22 was fair and reasonable and further finding that the settlement
23 satisfied the "good faith standard" of California Code of Civil
24 Procedure Section 877.6.

25 WHEREAS, the People of the State of California and the
26 United States have considered the class action settlement and
27 certain financial information concerning American Vanguard's and
28 Amvac's business operations and have determined, based upon this

1 information, that the resulting settlement contributions made by
2 American Vanguard and Amvac constitute a limited fund to which
3 Plaintiffs should look to for compensation.

4 WHEREAS, the parties to this Consent Decree agree that
5 settlement of the claims in this case against defendants American
6 Vanguard and Amvac is in the public interest and is made in good
7 faith and after arms-length negotiations, and that entry of this
8 Consent Decree is the most appropriate means to resolve the
9 matters covered herein.

10 WHEREAS, Amvac and American Vanguard have denied and
11 continue to deny each and all of the claims and contentions
12 alleged by the United States and the People of the State of
13 California. Amvac and American Vanguard have expressly denied
14 any wrongdoing or legal liability relating to the Spill but have
15 entered into this decree for the purpose of avoiding the burden,
16 expense and uncertainty of continuing litigation thereof, and for
17 the purpose of putting to rest the controversies engendered
18 thereby.

19 WHEREAS, the parties agree that neither this Consent
20 Decree, nor any document referred to herein, nor any action taken
21 to carry out the Consent Decree is, or may be construed as, or
22 may be used as, an admission by or against Amvac and American
23 Vanguard of any fault, wrongdoing or liability whatsoever in
24 connection with the Spill or otherwise.

25 WHEREAS, the United States and the People of the State
26 of California stipulate to the making and entry of this Consent
27 Decree without any admission of law, fact, liability, or
28 responsibility for any purpose other than for purposes of

1 enforcement of the terms of this Consent Decree as to any
2 allegation or matter arising out of the pleadings or otherwise.

3 IT IS THEREFORE AGREED BY AND BETWEEN THE UNITED
4 STATES, THE PEOPLE OF THE STATE OF CALIFORNIA, AMERICAN VANGUARD,
5 AND AMVAC, AND IS HEREBY ORDERED, ADJUDGED AND DECREED AS
6 FOLLOWS:

7 I.

8 DEFINITIONS

9 The following definitions shall apply to this Consent
10 Decree:

11 A. "Spill" refers to the July 14, 1991 derailment of
12 a Southern Pacific Transportation Company freight train near
13 Dunsmuir, California and the ensuing spill of metam sodium and
14 its breakdown products.

15 B. "CERCLA" refers to the Comprehensive Environmental
16 Response, Compensation, and Liability Act of 1980, 42 U.S.C.
17 § 9601 et seq., as amended by the Superfund Amendments and
18 Reauthorization Act of 1986, Public Law 99-499.

19 C. "Parties" means the signatories to this Consent
20 Decree.

21 D. The "Effective Date" shall be the date when this
22 Consent Decree is signed by the Court.

23 E. The term "days" shall mean calendar days.

24 F. Terms not otherwise defined herein shall have
25 their ordinary meaning unless defined in Section 101 of CERCLA,
26 42 U.S.C. § 9601, or the National Contingency Plan ("NCP"), 40
27 C.F.R. Part 300, in which case the definition in CERCLA or the
28 NCP shall control.

1 II.

2 JURISDICTION

3 The complaint states a claim upon which relief may be
4 granted. This Court has jurisdiction over the subject matter of
5 this action and over the parties to this Consent Decree, pursuant
6 to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), 28 U.S.C.
7 §§ 1331 and 33 U.S.C. § 1321(n). Venue is proper in this court
8 pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) and 33
9 U.S.C. § 1391. The Court also has personal jurisdiction over
10 American Vanguard and Amvac, who, solely for purposes of this
11 Consent Decree, waive all objections and defenses they may have
12 to jurisdiction of this Court or to venue in this District and to
13 service of process.

14 III.

15 PUBLIC INTEREST

16 The Court finds that entry of this Consent Decree is
17 fair, reasonable, adequate, consistent with CERCLA and all other
18 applicable laws, and in the public interest.

19 IV.

20 PARTIES BOUND

21 The provisions of this Consent Decree shall be binding
22 on and inure to the benefit of the United States of America and
23 the People of the State of California ex rel. Douglas Wheeler,
24 Secretary of Resources, Department of Fish and Game, Regional
25 Water Quality Control Board, Central Valley Region, California
26 Air Resources Board, Department of Toxic Substances Control,
27 Department of Health Services, and Daniel E. Lungren, Attorney
28 General. It shall also be binding on and inure to the benefit of

1 Amvac and American Vanguard and on their officers, directors,
2 agents, trustees, servants, employees, successors, assigns,
3 attorneys, and all persons, firms, and corporations acting under
4 the control or direction of the parties.

5 V.

6 PAYMENT AND OTHER CONSIDERATION

7 American Vanguard and Amvac shall be obligated to pay
8 the sum of two million dollars (\$2,000,000) payable as follows:

9 A. \$2.0 million within thirty (30) days of the
10 Effective Date of this Consent Decree, in payment for the matters
11 addressed in this Consent Decree. The amount paid under this
12 Paragraph and any interest accrued thereon shall be disbursed to
13 the Federal and State Plaintiffs in the following manner; \$20,000
14 to the United States and \$1,980,000 to the State of California.
15 Upon disbursement to the United States, the Federal trustee shall
16 pay its share into the Registry of the Court, United States
17 District Court for the Eastern District of California, to be
18 administered by the Registry of the Court for the Federal trustee
19 until all claims alleged against Amvac and American Vanguard in
20 this action are dismissed and all appeals relative to Amvac and
21 American Vanguard are dismissed. The State shall deposit all
22 monies disbursed to it pursuant to this Consent Decree in a
23 special deposit account where such funds shall remain for 30
24 days. Thereafter, such funds shall be transferred to the Fish
25 and Game Preservation Fund. All interest accumulated by such
26 funds while deposited in the special deposit account shall accrue
27 to the benefit of that account and shall also be transferred to
28 the Fish and Game Preservation Fund.

1 Should it be determined by a court of competent
2 jurisdiction that this Consent Decree is not lawful and should
3 not be entered, or is declared void pursuant to Part VI B of this
4 Consent Decree, then 60 days after such determination or
5 declaration of voidness becomes final, the State of California
6 shall return the sum paid to it and all interest accrued thereon
7 from the date of payment. Should such a determination be made,
8 the Federal trustee shall request that the Court return to Amvac
9 and American Vanguard the funds paid into the Registry of the
10 Court by the Federal trustee and all interest accrued thereon
11 from the date of deposit into the Registry.

12 B. Interest on the amount to be paid by Amvac and
13 American Vanguard or the State of California hereunder, shall be
14 payable at the rate established by the Department of the Treasury
15 under 31 U.S.C. § 3717 and 4 C.F.R. § 102.13, plus 5%, if the
16 payment is made more than fifteen (15) days after its due date.

17 C. 1. The payment to be made to the State of
18 California pursuant to this Section shall be made by certified or
19 bank check payable to the State of California, Department of Fish
20 and Game. The check shall include on its face a statement that
21 it is a payment in Civil Action No. S-92117 LKK GHH (Consolidated
22 Actions), (E.D. Cal.), and shall be sent to the Director,
23 Department of Fish and Game, 1416 9th Street, Sacramento,
24 California 95814.

25 2. The payment to be made to the United States
26 pursuant to this Section shall be made by certified or bank check
27 payable to the Clerk of the Court, Registry Account, United
28 States District Court for the Eastern District of California.

1 The check shall include on its face a statement that it is a
2 payment in Civil Action No. S-921117 LKK GHH (Consolidated
3 Actions), (E.D. Cal.), made for the benefit of the United States
4 of America.

5 D. Amvac and American Vanguard shall mail copies of
6 the checks representing payment of the amount required pursuant
7 to this Section to: Chief, Environmental Enforcement Section,
8 United States Department of Justice, P.O. Box 7611, Ben Franklin
9 Station, Washington, D.C. 20044; the United States Attorney for
10 the Eastern District of California; Regional Solicitor for the
11 Department of the Interior; Regional Solicitor for the Department
12 of Agriculture; and, the Assistant Attorney General for the
13 Natural Resources Section, Office of the Attorney General, State
14 of California, Sacramento, California.

15 E. The Registry of the Court shall administer the
16 amount paid under this Section to the Federal trustee in an
17 interest-bearing account ("Sacramento River Account") as provided
18 in the Order Directing the Deposit of Damages Into the Registry
19 of the Court ("Deposit Order") issued by this Court pursuant to
20 Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C.
21 § 2041, and Local Rule 150. The Deposit Order shall be attached
22 to this Decree.

23 F. All funds and all interest accrued thereon in the
24 Sacramento River Account shall be held in the name of the "Clerk,
25 United States District Court," for the benefit of the United
26 States. As provided for in paragraph V.A. above, upon
27 application by the United States, monies in the registry account
28 shall be disbursed for use by the federal trustee. All

1 disbursements from the Sacramento River Account shall be made by
2 order of the Court in accordance with the provisions of 28 U.S.C.
3 § 2042 and Local Rule 150 for the Eastern District of California.

4 Upon release from the registry of the Court, the
5 principal, plus all accrued interest, shall be paid to the United
6 States and shall be sent to the U.S. Attorney for the Eastern
7 District of California.

8 G. As additional consideration, American Vanguard and
9 Amvac shall comply with the equitable relief set forth in
10 Paragraph 9 of the Order and Judgment dated August 28, 1992
11 attached hereto as Exhibit A, so long as it is in force.

VI.

CERTIFICATION BY AMERICAN VANGUARD AND AMVAC

A. American Vanguard and Amvac have provided to the United States and the People of the State of California their consolidated audited financial statements for the fiscal years ending December 31, 1990, 1991, and 1992, and their consolidated unaudited quarterly financial statements for the first, second and third quarters of fiscal year 1993, and copies of all of Amvac's and American Vanguard's commercial liability insurance policies that were in effect as of July 14, 1991. Amvac and American Vanguard further certify that they are aware of no material information that is inconsistent with the foregoing financial statements. Amvac and American Vanguard further certify that they are not presently under and have no current intent to file for protection from creditors under the U.S. Bankruptcy Code or any other law respecting bankruptcy or insolvency. Until payment of the total amount due under Section

1 V. above, is remitted, American Vanguard and Amvac shall continue
2 to make available to the United States and the People of the
3 State of California, upon reasonable request, any additional
4 financial statements and records of American Vanguard or Amvac
5 not already furnished to the United States or the People of the
6 State of California, including, but not limited to, federal,
7 state and local tax filings until close of the public comment
8 period referred to in Section XII of this Consent Decree. The
9 United States and the People of the State of California expressly
10 condition their consent to this Consent Decree on the accuracy of
11 the foregoing representations.

12 B. Should the United States and the State of
13 California determine that either American Vanguard or Amvac have
14 failed to comply with the certifications and requirements
15 provided for above, the United States and the State of California
16 may seek, upon written notice to American Vanguard and Amvac,
17 pursuant to Federal Rule of Civil Procedure 60 to have a court of
18 competent jurisdiction declare this Consent Decree void.

19 VII.

20 COVENANTS NOT TO SUE

21 A. Subject to the reservation of rights under Section
22 VIII of this Consent Decree, upon payment by American Vanguard
23 and Amvac of all amounts, including interest, required by this
24 Consent Decree in Section V, the United States releases Amvac and
25 American Vanguard and covenants not to sue or take any civil or
26 administrative action against Amvac and American Vanguard for any
27 and all past, present or future civil liability, except for
28 breaches of the certifications in Section VI, arising from or

1 with regard to the Spill for reimbursement of response costs,
2 health study costs, damages for injury to, destruction of, or
3 loss of natural resources, including but not limited to the
4 reasonable costs of assessing such injury, destruction, or loss
5 resulting from the Spill, assessment of civil penalties, civil
6 damages or other legal or equitable relief pursuant to CERCLA,
7 the Clean Water Act, 33 U.S.C. § 1311 et seq., the Resource
8 Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the
9 Rivers and Harbors Act, 33 U.S.C. § 401 et seq., the Federal
10 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et
11 seq., common law, and ultra-hazardous activities claims.

12 B. Subject to the reservation of rights under Section
13 VIII of this Consent Decree, upon payment by American Vanguard
14 and Amvac of the amounts, including interest, required by this
15 Consent Decree in Section V, the People of the State of
16 California release Amvac and American Vanguard and covenant not
17 to sue or take any other civil, criminal or administrative action
18 against Amvac and American Vanguard for any and all past,
19 present, and future claims, demands, rights, causes of action,
20 penalties, fines, response costs, health study costs, natural
21 resource damages or any other criminal, civil or other legal or
22 equitable relief arising from or relating to the Spill.

23 The State acknowledges that it is aware that it
24 may hereafter discover facts in addition to or different from
25 those which it now knows or believes to be true with respect to
26 the Spill, its causes and effects, but nonetheless intends to
27 fully, finally and forever settle all claims arising out of the
28 Spill without regard to the subsequent discovery or existence of

1 such different or additional facts. The State relinquishes, to
2 the fullest extent permitted by law, the provisions, rights and
3 benefits of Section 1542 of the California Civil Code, which
4 provides:

5 A general release does not extend to claims which the
6 creditor does not know or suspect to exist in his
7 favor at the time of executing the release, which if
known by him must have materially affected his
settlement with the debtor.

8 C. In consideration of the foregoing covenants not to
9 sue and the other agreements contained in this Consent Decree,
10 American Vanguard and Amvac covenant not to sue or commence any
11 proceeding or exercise any off-set right against the United
12 States or the People of the State of California or any agency,
13 administrator, representative or employee thereof for any claim,
14 counter-claim, cross-claim, cause of action or demand arising
15 from or relating to the Spill respecting any liability of the
16 United States and the State of California prior to the entry of
17 the Consent Decree.

18 D. These releases and covenants not to sue shall
19 extend to only the Parties, any subsidiary company, officers,
20 directors, parents, principals, employees, agents, successors,
21 and assigns.

22 VIII.

23 RESERVATION OF RIGHTS

24 A. Nothing in this Consent Decree is intended to be
25 nor shall it be construed as a release or a covenant not to sue
26 for (1) any claim or cause of action, administrative or judicial,
27 at law or in equity, which the United States or the State of
28 California may have against American Vanguard or Amvac for any

1 liability as a result of failure to comply with the terms of this
2 Consent Decree, or (2) any and all criminal liability of American
3 Vanguard or Amvac to the United States.

4 B. Nothing in this Consent Decree shall constitute or
5 be construed as a release or a covenant not to sue regarding any
6 claim or cause of action against any person, firm, trust, joint
7 venture, partnership, corporation, or other entity other than
8 those enumerated in Section VII D above for any liability it may
9 have arising out of or relating to the Spill. American Vanguard
10 and Amvac and the United States and the People of the State of
11 California expressly reserve the right to sue or take any other
12 action against any other person or entity.

13 IX.

14 EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

15 A. Plaintiffs acknowledge and agree and the Court
16 hereby finds that the payments to be made and the injunctive
17 relief to be undertaken pursuant to paragraph 9 of Exhibit A of
18 this Consent Decree represent a good faith settlement and
19 compromise of disputed claims and that the settlement represents
20 a fair, reasonable and equitable discharge of liability for the
21 matters addressed in this Consent Decree.

22 B. The purpose of this Consent Decree is to settle and
23 resolve any and all state criminal and state and federal civil
24 and administrative claims, rights, demands, causes of action
25 against, or liability of American Vanguard or Amvac arising from,
26 based upon, or relating to the Spill, identified in Section VII,
27 except as explicitly reserved in Section VIII. All such claims,
28 demands, causes of action and liability, are addressed and

1 covered by the settlement set forth in this Consent Decree.

2 C. Amvac and American Vanguard are entitled to the
3 protection from contribution actions or claims provided by CERCLA
4 Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for response costs,
5 health study costs, and natural resource damages as addressed in
6 this Consent Decree.

7 X.

8 NO ADMISSION OF LIABILITY

9 Except as expressly admitted herein in Section II, this
10 Consent Decree shall not be considered an admission of law, fact,
11 liability or responsibility by American Vanguard or Amvac for any
12 purpose other than the enforcement of this Consent Decree nor
13 shall a payment of any sum of money pursuant to this Consent
14 Decree constitute an admission of liability.

15 XI.

16 MODIFICATIONS

17 There shall be no modification of this Consent Decree,
18 including modifications deemed necessary to the United States or
19 the People of the State of California as a result of public
20 notice and comment, without written agreement of all parties to
21 the Consent Decree and the Court.

22 XII.

23 PUBLIC COMMENT

24 The parties agree that final approval by the United
25 States and the People of the State of California and entry of
26 this Consent Decree will be subject to an opportunity for public
27 comment and consideration of any comments received pursuant to 28
28 C.F.R. § 50.7. Having executed this Consent Decree, American

1 Vanguard and Amvac are bound by this Consent Decree unless and
2 until final approval is denied by the United States and the
3 People of the State of California or the Court.

4 XIII.

5 CONTINUING JURISDICTION OF THIS COURT

6 The Court shall retain jurisdiction to enforce the
7 terms and conditions of the Consent Decree and to resolve
8 disputes arising hereunder as may be necessary or appropriate for
9 the construction or execution of this Consent Decree.

10 XIV.

11 AUTHORIZED REPRESENTATIVE

12 Each undersigned representative of the State of
13 California, American Vanguard, Amvac, and the Acting Assistant
14 Attorney General for the United States Department of Justice
15 certifies that he or she is fully authorized to enter into the
16 terms and conditions of the Consent Decree and to legally execute
17 and bind that party to this Consent Decree.

18 XV.

19 TERMINATION

20 After American Vanguard and Amvac have remitted payment
21 in full satisfaction of the obligations imposed by the provisions
22 of Section V of this Consent Decree, this action and all claims
23 asserted against American Vanguard and Amvac by the United States
24 or the People of the State of California with respect to the
25 Spill shall be dismissed with prejudice except for the continuing
26 obligation imposed pursuant to Section V. G. and except for the
27 ability of the United States and the State of California to void
28 this Consent Decree pursuant to Section VI. B. Each party shall

1 be required to bear the costs incurred by it in connection with
2 this action.

3 APPROVED AS TO FORM BY:

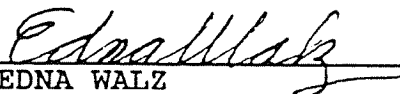
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11 Attorneys for Defendants Amvac
12 Chemical Corporation and American
13 Vanguard Corporation
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Douglas Wheeler, Secretary of
Resources, Department of Fish and
Game, Regional Water Quality
Control Board, Central Valley
Region, Air Resources Board,
Department of Toxic Substances
Control, Department of Health
Services, Daniel E. Lungren,
Attorney General

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3/11/94

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CHARLES J. STEVENS
United States Attorney
for the Eastern District of
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3/11/94

Ed Brennan
EDMUND BRENNAN
Assistant United States Attorney

Attorneys for the United States of
America*

*For the initial submission, the signatures of attorneys for the United States do not bind the United States and merely represent that they will recommend approval of this Consent Decree to the Acting Assistant Attorney General.

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SIGNATURES OF PARTIES:

FOR THE UNITED STATES

Dated: _____

SCOTT FULTON
Assistant Administrator
for Office of Enforcement
United States Environmental
Protection Agency

Dated: _____

FELICIA MARCUS
Regional Administrator
U.S. EPA Region IX

Dated: _____

Regional Solicitor
Department of the Interior

Dated: _____

Regional Solicitor
Department of Agriculture

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Dated: _____

LOIS J. SCHIFFER
Acting Assistant Attorney General
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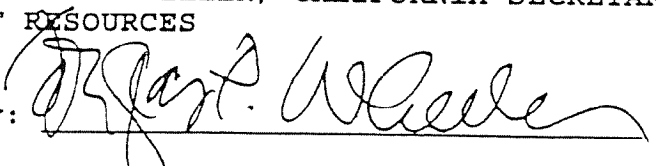
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Attorneys for the United States of
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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

By: 

CALIFORNIA DEPARTMENT OF FISH & GAME

By: _____

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

By: _____

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: _____

CALIFORNIA AIR RESOURCES BOARD

By: _____

CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: _____

UNITED STATES DEPARTMENT OF INTERIOR

By: _____

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____

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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

By: _____

CALIFORNIA DEPARTMENT OF FISH & GAME

By: _____

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

By: _____

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By:  _____

CALIFORNIA AIR RESOURCES BOARD

By: _____

CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: _____

UNITED STATES DEPARTMENT OF INTERIOR

By: _____

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____

DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

By: _____

CALIFORNIA DEPARTMENT OF FISH & GAME

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CONTROL BOARD
CENTRAL VALLEY REGION

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SUBSTANCES CONTROL

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SERVICES

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DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: _____

UNITED STATES DEPARTMENT OF INTERIOR

By: _____

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____

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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

By: _____

CALIFORNIA DEPARTMENT OF FISH & GAME

By: _____

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

By: William B. Crouse

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: _____

CALIFORNIA AIR RESOURCES BOARD

By: _____

CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: _____

UNITED STATES DEPARTMENT OF INTERIOR

By: _____

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____

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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

By: _____

CALIFORNIA DEPARTMENT OF FISH & GAME

By: _____

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

By: _____

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: _____

CALIFORNIA AIR RESOURCES BOARD

By: _____

CALIFORNIA DEPARTMENT OF HEALTH
SERVICES


By: Deputy Director and Chief Counsel

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: _____

UNITED STATES DEPARTMENT OF INTERIOR

By: _____

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____

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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

By: _____

CALIFORNIA DEPARTMENT OF FISH & GAME

By: _____

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

By: _____

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: William F. Smith

CALIFORNIA AIR RESOURCES BOARD

By: _____

CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: _____

UNITED STATES DEPARTMENT OF INTERIOR

By: _____

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____

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FOR THE STATE OF CALIFORNIA:

DOUGLAS WHEELER, CALIFORNIA
SECRETARY OF RESOURCES

By: _____

CALIFORNIA DEPARTMENT OF FISH & GAME

By: _____

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD, CENTRAL VALLEY REGION

By: _____

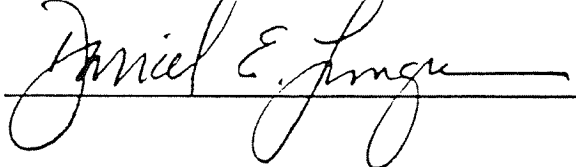
CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: _____

CALIFORNIA DEPARTMENT OF HEALTH SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By:  _____

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AMERICAN VANGUARD AND AMVAC:

By: Herbert A. Knight

By: Herbert A. Knight

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ORDER

The foregoing Consent Decree among Plaintiffs and Settling Defendants is hereby APPROVED and constitutes the order of this Court.

The Court finds that entry of this Consent Decree is in the public interest and consistent with law, including CERCLA. The Court further finds that the settlement embodied in this Consent Decree was made in good faith and is fair and reasonable, and pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), federal common law and California Code of Civil Procedure Sections 877 and 877.6, bars contribution claims against Amvac Chemical Corporation and American Vanguard Corporation to the extent provided by law.

There being no just reason for delay, this Court directs, pursuant to Federal Rule of Civil Procedure 54(b), ENTRY OF FINAL JUDGMENT by this Consent Decree this ____ day of _____, 1994.

LAWRENCE K. KARLTON
United States District Judge

EXHIBIT A

AUG 28 1992

MICHAEL K. TAMONY, Clerk
BY: CYNTHIA H. HERBERT
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

Coordination Proceeding Special	)	Judicial Council
Title (Rule 1550(b))	)	Coordination Proceeding
	)	Nos. 2617 and 2620
IN RE SACRAMENTO RIVER SPILL	)	
	)	[JOINT-PROPOSED] ORDER AND
CASES I AND II	)	JUDGMENT OF FINAL APPROVAL
	)	OF PLAINTIFF CLASS/AMVAC
	)	DEFENDANTS SETTLEMENT
	)	<u>AGREEMENT</u>
THIS ORDER RELATES TO:	)	
	)	Hearing
	)	Date: August 28, 1992
ALL ACTIONS.	)	Time: 2:00 p.m.
	)	Judge: The Honorable
	)	Stuart R. Pollak
	)	Trial
	)	Date: N/A

On June 26, 1992, this Court issued its Order of Preliminary Settlement Approval, granting preliminary approval to a proposed settlement by and among a Plaintiff Settlement Class, as defined in paragraph 1.C of the Settlement Agreement, and Settling Defendants American Vanguard Corporation and AMVAC Chemical Corporation. This Court found this settlement to be within the range of possible approval as potentially fair, adequate and reasonable and in "good faith". This Court

1 provisionally defined and certified, on a mandatory basis, a
2 settlement class; appointed Settlement Class Representatives and
3 Settlement Class Counsel; and delineated the nature and scope of
4 the Class Action Settlement Notice to be mailed, published and
5 broadcast to class members.

6 The Court-approved forms of published and individual
7 mailed Class Action Settlement Notice were directed to be
8 published and mailed by Class Counsel, in order to apprise class
9 members of the final settlement approval hearing, which was duly
10 held on August 28, 1992, at 2:00 p.m., before the undersigned.

11 The Class Action Settlement Notices having been
12 disseminated in substantial compliance with this Court's Order,
13 the Court having held, as duly noticed, a final settlement
14 fairness hearing, and having read, heard and considered the
15 pleadings and papers, the arguments and evidence, and the
16 statements and submissions directed to the issues and matters
17 discussed herein, and good cause therefor appearing to the
18 satisfaction of this Court, the following findings, orders and
19 judgments are made.

20 1. MANDATORY CLASS CERTIFICATION

21 This Court's June 26, 1992 Order of Preliminary
22 Settlement Approval included the provisional certification of a
23 plaintiff class for purposes of implementing and enforcing the
24 proposed settlement agreement with the Settling Defendants on a
25 "mandatory" basis.

26 This Court has read, heard and considered the
27 pleadings, papers and arguments submitted on the mandatory class
28 certification issue. The Court finds that mandatory

1 certification is appropriate. The Court has taken into
2 consideration the available assets and insurance of the Settling
3 Defendants. This Court finds that, with respect to the Settling
4 Defendants and their available assets and insurance, the
5 resulting settlement contributions made on their behalf
6 constitute a "limited fund" to which all settlement class members
7 should be required to look for compensation via court-approved
8 settlement.

9 Accordingly, IT IS HEREBY ORDERED:

10 1. That the below-defined settlement class is hereby
11 certified, on a permanent basis, for purposes of implementing and
12 enforcing the proposed settlement agreement, on a mandatory
13 basis, as against the Settling Defendants:

14 (a) all persons in any occupation, business
15 or activity which suffered, or claim to have
16 suffered, economic or business loss, directly
17 or indirectly, as a result of the Spill;
18 (b) all persons who were owners, lessees or
19 users of or who have rights in, real or
20 personal property, tangible or intangible,
21 who suffered, or claim to have suffered,
22 property damage or loss of use and enjoyment
23 of such property, directly or indirectly, as
24 a result of the Spill; (c) all persons who
25 suffered, or claim to have suffered, personal
26 injuries and/or emotional distress as a
27 result of exposure (whether through the air,
28 dermally or by ingestion) to metam sodium,
any of its breakdown products, or the spread
of fumes released in the Spill; and (d) all
persons who were present in and around the
upper Sacramento River or Lake Shasta who
were forced to evacuate, or claim to have
been forced to evacuate, from their location
as a result of the Spill and/or the
subsequent spread of fumes.

26 All defendants in the Coordinated Actions,
27 their officers, directors, subsidiaries and
28 any entities related to, or affiliated with
Defendants are excluded from the Plaintiff
Settlement Class. Employees of Defendants

1 who are not controlling persons of Defendants
2 (within the meaning of the federal securities
3 laws) who may have personal claims are not
4 excluded from the Settlement Class.

5 The claims for relief which have been brought by the
6 California Sportfishing Protection Alliance, United Anglers of
7 California, Friends of the River, Sacramento River Council, and
8 Sacramento River Preservation Trust and their members in Judicial
9 Council Coordination Proceeding No. 2617 are reserved insofar as
10 they seek relief not duplicative of the private damage claims
11 being settled herein.

12 The following individual and representative plaintiffs
13 and law firms are confirmed as Settlement Class Representatives
14 and Settlement Class Counsel:

15 SETTLEMENT CLASS COUNSEL

16 Elizabeth Joan Cabraser
17 William Bernstein
18 LIEFF, CABRASER & HEIMANN
275 Battery Street, 30th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000
Telecopier: (415) 956-1008

19 William A. Kershaw
20 Robert Miller
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
21 770 "L" Street, Suite 1200
Sacramento, CA 95814-3363
22 Telephone: (916) 444-8920
23 Telecopier: (916) 444-5615

24 Robert G. Simpson
SIMPSON & MAIRE
25 P.O. Drawer 4607
Redding, CA 96099
26 Telephone: (916) 223-5715
27 Telecopier: (916) 223-0979
28

SETTLEMENT CLASS
REPRESENTATIVES

Robert Medley, Marilyn Medley,
Egon Guenther d/b/a Antlers
Resort and Marina, Deborah
Ganulin, Stewart Ganulin,
Edith S. Wade, Scott Wade,
Robert W. Morris, Robin Kinne,
Laura Susan Leach,
individually and as Guardian
ad Litem of Willis Leach, a
minor, Jerry Cantrell,
individually and as Guardian
ad Litem of Marie Cantrell, a
minor, Pam Kuhnert, Tammy
Leavitt, Mark Ellington, JDM
Design Associates, Inc.,
Deborah Castro, Tamora Miller,
individually and as Guardian
ad Litem of William Miller a
minor and Autumn Miller, a
minor, Eden Springwater, Inc.,
Verle Melvin, William "Bill"
Berry, Jr., individually and
as Trustee for Hazel D. Berry
Revocable Trust, Gerda Perry
and Darryl G. Rogers on behalf
of themselves and all others
similarly situated.

1 Merrill G. Davidoff
2 Alan Sandals
3 BERGER & MONTAGUE
4 1622 Locust Street
5 Philadelphia, PA 19103
6 Telephone: (215) 875-3000
7 Telecopier: (215) 875-4604
8
9 R. Bruce McNew
10 Melanie Piech
11 GREENFIELD & CHIMICLES
12 First Interstate World Center
13 633 West Fifth St., Suite 2200
14 Los Angeles, CA 90071-2010
15 Telephone: (213) 623-8100
16 Telecopier: (213) 626-7814
17
18 Morton L. Friedman
19 FRIEDMAN, COLLARD & POSWALL
20 7750 College Town Dr, Ste. 300
21 Sacramento, CA 95826
22 Telephone: (916) 381-9011
23 Telecopier: (916) 381-7048
24
25 Richard Brown
26 Steven A. Fabbro
27 BELLI, BELLI, BROWN, MONZIO,NE,
28 FABBRO & ZAKARIA
574 Pacific Ave.
San Francisco, CA 94133
Telephone: (415) 981-1849
Telecopier: (415) 989-0250
Arnold David Breyer
LAW OFFICES OF
ARNOLD DAVID BREYER
112 Siskiyou Avenue
Mt. Shasta, CA 96067
Telephone: (916) 929-3134
Telecopier: (916) 926-8067
Lawrence M. Mann
ALPER & MANN
400 North Capitol St., N.W.
Suite 851
Washington, D.C. 20001
Telephone: (202) 298-9191
Telecopier: (202) 783-3107
Richard Alexander
THE ALEXANDER LAW FIRM
55 S. Market Street, Ste. 1080
San Jose, CA 95113
Telephone: (408) 289-1776
Telecopier: (408) 287-1776

1 2. The Settlement Agreement [AMVAC] ("the Settlement
2 Agreement") is hereby granted final approval as being fair,
3 adequate, and reasonable, and in the best interests of the
4 Settlement Class as a whole. Class interests are better served
5 by the approval of this settlement than by continued pursuit of
6 claims against the Settling Defendants in light of the delay,
7 expense, and uncertainty of continued litigation at the pretrial,
8 trial, and appellate levels. The aggregate amount offered in
9 settlement by the Settling Defendants, \$2.0 million to the
10 Settlement Class, is considered by this Court to be an adequate
11 and reasonable settlement contribution.

12 3. This Court directs the entry of final judgment of
13 dismissal with prejudice in favor of the Settling Defendants on
14 all claims of the plaintiffs against the Settling Defendants and
15 each of them, reserving continuing jurisdiction over the parties
16 to effectuate the terms of the Settlement Agreement [AMVAC],
17 including without limitation over the administration and
18 distribution of the Settlement Fund and to absolutely extinguish
19 all claims for environmental restoration and rehabilitation
20 including without limitation claims for fines, penalties,
21 damages, punitive damages and equitable relief which have been
22 asserted or which may be asserted against the Settling Defendants
23 in these Coordination Proceedings upon the finality of an order
24 approving a settlement which releases Settling Defendants from
25 such claims.

26 4. The Settlement Agreement entered into by and
27 between the Plaintiff Class and the Settling Defendants contain
28 specific release language. These provisions are hereby

1 APPROVED, and made effective, upon satisfaction of each of the
2 terms and conditions for finality set forth in the Settlement
3 Agreement.

4 5. Nothing in this Order and Judgment shall be
5 construed to dismiss or release any actions or claims beyond the
6 scope of the specific release provisions of the Settlement
7 Agreement, or to preclude plaintiffs from continuing to assert,
8 in the In re Sacramento River Spill Cases, or elsewhere, any non-
9 released claims against non-settling defendants or third parties,
10 or to preclude such non-settling defendants or third parties from
11 asserting contribution for reserved claims. This Court hereby
12 reserves continuing jurisdiction over the Plaintiff Settlement
13 Class and the Settling Defendants, in order to construe,
14 interpret, and enforce the rights and obligations of the parties
15 arising thereunder.

16 6. Upon the satisfaction of the terms and conditions
17 of the Settlement Agreement, IT IS HEREBY ORDERED, ADJUDGED, and
18 DECREED that the claims by members of the Settlement Class
19 against the Settling Defendants be, and hereby are, released and
20 dismissed with prejudice as set forth in said Settlement
21 Agreement.

22 7. This Court had previously determined that the
23 Settlement Agreement constitutes a "good faith" settlement within
24 the meaning of California Code of Civil Procedure Section 877.6.
25 Accordingly, claims by any other purported joint tortfeasor or
26 co-obligor against the Settling Defendants, or any of them, for
27 equitable comparative contribution, or partial or comparative
28

1 indemnity, based on comparative negligence or fault, are
2 dismissed and barred.

3 8. In accord with Code of Civil Procedure § 877,
4 should any part of the case involving Non-settling Defendants be
5 tried, the jury will assess the relative culpability of both the
6 Settling and these Non-settling Defendants. The Non-settling
7 Defendants as a whole will be required to pay the percentage of
8 the total amount for which they are responsible, and will be
9 jointly and severally liable for that percentage and will
10 continue to have rights of contribution against one another.
11 Non-Settling Defendants will, however, be entitled to an offset
12 from the total liability according to the proportional liability
13 of Settling Defendants or the sum of \$2,000,000, whichever is
14 greater.

15 9. AMVAC is hereby ORDERED to obey the following
16 provisions in connection with the shipment of metam sodium by
17 rail:

18 a. A copy of the material safety data sheet
19 ("MSDS") for metam sodium placed in a plastic envelope which
20 shall be attached to both sides of each rail tank car loaded with
21 metam sodium;

22 b. The words "metam sodium" shall be stencilled
23 in four-inch letters on each side of each rail tank car carrying
24 metam sodium;

25 c. The CHEMTREC emergency response label shall
26 be attached to both sides of each rail tank car loaded with metam
27 sodium;

1 d. A serialized metal seal shall be attached on
2 any bottom outlet valve, manway cover or air unloading cover on
3 each rail tank car carrying metam sodium; and

4 e. This paragraph shall be governed by
5 applicable state and federal law; in the event Congress or the
6 United States Department of Transportation adopts specific
7 requirements for the transport of metam sodium by rail, those
8 requirements shall supersede this paragraph, and AMVAC shall
9 adhere to such requirements. The Class Representative, through
10 Settlement Class Counsel, and the State of California shall be
11 entitled to enforce this paragraph and shall be entitled to
12 enforce any consent decree which may be obtained by any
13 governmental entity in connection with the use of tank cars
14 meeting certain minimum specifications for the shipment of metam
15 sodium.

16
17 DATED: AUG 28 1992

STUART R. POLLAK
HONORABLE STUART R. POLLAK
Coordination Trial Judge

United States District Court
for the
Eastern District of California
March 14, 1994

dav

* * CERTIFICATE OF SERVICE * *

2:92-cv-01117

People of California

v.

Southern Pacific

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on March 14, 1994, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Edna Walz
California State Attorney General
P O Box 944255
1515 K Street
Sacramento, CA 94244-2550

SJ/LKK

VC/GGH

Michael L Dillard
Weintraub Genshlea and Sproul
P O Box 15208
400 Capitol Mall
Eleventh Floor
Sacramento, CA 95851-0208

William K Swank
Brobeck Phleger and Harrison
550 S Hope Street
Suite 2300
Los Angeles, CA 90071-2604

Edward J McGrath
Holme Roberts and Owen
1700 Lincoln Street
Suite 4100
Denver, CO 80203

John Earl Carlson
Brobeck Phleger and Harrison

Spear Street Tower
One Market Street
23rd Floor
San Francisco, CA 94105

George H Link
Broveck Phleger and Harrison
550 South Hope Street
Los Angeles, CA 90017

Ronie M Schmelz
Sidley and Austin
2049 Century Park East
Suite 3500
Los Angeles, CA 90067

James A Berry
American Vanguard Corp
4100 East Washington Blvd
Los Angeles, Ca 90023

Jeffrey A Norton
Law Offices of Jeffrey A Norton
4100 East Washington
Los Angeles, CA 90023-4406

Brian Sean Currey
O Melveny and Myers
400 S Hope Street
Los Angeles, CA 90071-2899

Warren E George Jr
McCutchen Doyle Brown and Enersen
Three Embarcadero Center
Suite 1800
San Francisco, CA 94111

Christopher Harris
McCutchen Doyle Brown & Enersen
1101 Pennsylvania Ave NW
Suite 800
Washington, DC 20004

Michael Bruce Jackson
P O Drawer 207
446 W Main Street
Qunicy, CA 95971

Jack P Hug
Cotchett and Illston
San Francisco Office Airport Center
840 Malcom Road
Suite 200
Burlingame, CA 94010

William Henry Russell
Law Offices of William Henry Russell
400 South El Camino Real
Suite 800
San Mateo, CA 94402

Stephan Coles Volker
Sierra Club Legal Defense Fund
180 Montgomery Street
Suite 1400
San Francisco, CA 94104-4230

Alan Farnell
Huff and Gaines
10 South La Salle Street
Suite 3500
Chicago, IL 60603

Steven Scott Owen
Halkides and Morgan
P O Box 492170
833 Mistletoe Lane
Redding, CA 96049-2170

Michael A Ralston
Shasta County Counsel
1815 Yuba Street
Suite 3
Redding, CA 96001

Jon A Mueller
United States Department of Justice
Environment and Natural Resources Div
P O Box 7611
Ben Franklin Station
Washington, DC 20044

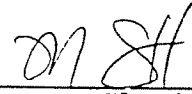
Edmund F Brennan
United States Attorney
650 Capitol Mall
Sacramento, CA 95814

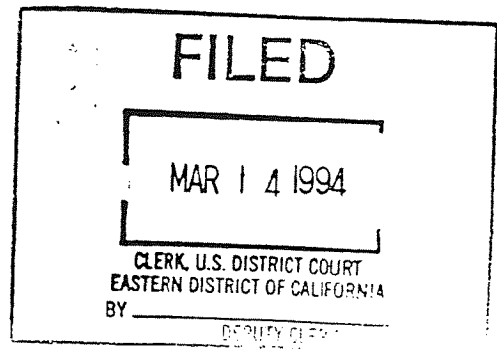
David A Dana
US Department of Justice
Environmental Defense Section
P O Box 23986
Washington, DC 20026-3986

James R Wheaton
1736 Franklin Street
8th Floor
Oakland, Ca 94612

Jack L. Wagner, Clerk

BY:


Deputy Clerk



7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 PEOPLE OF THE STATE OF
10 CALIFORNIA ex. rel. DOUGLAS
11 WHEELER, Secretary of THE
12 RESOURCES AGENCY, et al.,

13 Plaintiffs and

No. CIV S-92-1117 LKK GGH

14 CALIFORNIA SPORTFISHING
15 PROTECTION ALLIANCE, et al.,

16 Intervenorors,

ORDER

17 vs.

18 SOUTHERN PACIFIC
19 TRANSPORTATION COMPANY, et al.,

20 Defendants.

21
22 AND RELATED ACTIONS.

23 By agreement of all parties to the Consent Decrees and
24 the Intervenor parties^{1/}, and with the approval of the court, the
25 lodging of the Consent Decrees referenced in this court's March 3,
26 1994, order was postponed to Monday, March 14, 1994.

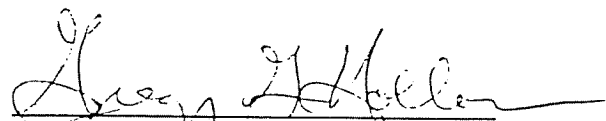
1/ Agreement was telephonically obtained by Deputy Attorney General Walz.

1 By this Order, the attached Consent Decrees in CIV-S-92-
2 1117 LKK GGH (known as the Southern Pacific, et. al. and Amvac
3 Consent Decrees) are ordered lodged, and the Clerk shall serve a
4 copy of this order with the attached Consent Decrees on all
5 parties. As previously ordered by this court, the State of
6 California has tendered the Consent Decrees to the court to which
7 all parties have agreed. Because of the diverse geographic
8 locations of the signatory parties, the court has permitted the
9 signatures on the Consent Decrees to be made on separate pages.

10 The settlement confidentiality strictures previously
11 ordered by this court are vacated insofar as these Consent Decrees
12 are concerned.

13 IT IS SO ORDERED.

14 Dated: March 14th, 1994.


GREGORY G. HOLLOWS
U.S. Magistrate Judge

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17 SPLODGE
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LOGGED

MAR 14 1994

JACK L. WAGNER, CLERK U.S. DISTRICT COURT

(Counsel listed on pages ii and iii)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA ex. rel., DOUGLAS
WHEELER, Secretary of
Resources; DEPARTMENT OF FISH
& GAME; REGIONAL WATER QUALITY
CONTROL BOARD, CENTRAL VALLEY
REGION, CALIFORNIA AIR
RESOURCES BOARD; DEPARTMENT OF
TOXIC SUBSTANCES CONTROL;
DEPARTMENT OF HEALTH SERVICES;
DANIEL E. LUNGREN, Attorney
General of the State of
California,

Plaintiffs,

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE; UNITED
ANGLERS OF CALIFORNIA; FRIENDS
OF THE RIVER; SACRAMENTO RIVER
COUNCIL; SACRAMENTO RIVER
PRESERVATION TRUST; and SIERRA
CLUB,

Intervenors,

v.

SOUTHERN PACIFIC
TRANSPORTATION COMPANY, et
al.,

Defendants.

AND CONSOLIDATED ACTION
No. CIV-S-92-2090-WBS-GGH

No. CIV S-92-1117 LKK GGH

CONSENT DECREE

(with Settling Defendants
Southern Pacific
Transportation Company,
Southern Pacific Rail
Corporation, Rio Grande
Holding, Inc., General
American Transportation
Corporation, GATX
Corporation, J.M. Huber
Corporation and Third Party
Defendants Trinity Chemical
Industries, Inc., and
Transmatrix, Inc.)

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1 resources. Plaintiffs' specific allegations are set forth in
2 their respective Complaints in this matter, filed on July 13,
3 1992 (Case No. CIV-S-92-1117-LKK-GGH), and December 17, 1992
4 (Case No. CIV-S-92-2090-WBS-GGH). These lawsuits were
5 consolidated under Case No. S-92-1117-LKK-GGH. By order dated
6 February 16, 1993, the California Sportfishing Protection
7 Alliance and others ("Intervenors") were allowed to intervene as
8 a matter of permission.

9 The Plaintiffs have conducted response actions, health
10 studies and activities to assess the damages to natural resources
11 (including non-use or passive use values). The California
12 Resources Agency, the Department of Fish and Game, Department of
13 the Interior, Fish and Wildlife Service, and Regional Water
14 Quality Control Board are trustee agencies under state and
15 federal law for the natural resources injured by the Spill.

16 The Plaintiffs assert that, as owners and/or operators
17 of a facility from which a hazardous substance was released, the
18 Southern Pacific Defendants, GATX and Huber are each liable for
19 response costs, costs of health studies, and damages, including
20 natural resources damages and costs of assessing natural resource
21 damages, and that the Southern Pacific Defendants are liable for
22 civil penalties under federal and state laws. The Settling
23 Defendants have denied liability and asserted various defenses,
24 third-party claims, cross-claims and counterclaims.

25 The Parties now agree to settle this case as set forth
26 herein. Entry of this Consent Decree is the most appropriate
27 means to resolve the matters covered herein.

28 / / /

1 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
2 DECREED AS FOLLOWS:

3 DEFINITIONS

4 1. The following definitions shall apply to this
5 Consent Decree:

6 a. "Spill" refers to the July 14, 1991 derailment
7 of a Southern Pacific freight train near Dunsmuir, California,
8 that resulted in the presence of metam sodium and its breakdown
9 products in the environment.

10 b. "CERCLA" refers to the Comprehensive
11 Environmental Response, Compensation, and Liability Act of 1980,
12 42 U.S.C. §§ 9601 et seq.

13 c. The term "days" shall mean calendar days.

14 d. Terms not otherwise defined herein shall have
15 their ordinary meaning unless defined in Section 101 of CERCLA,
16 42 U.S.C. § 9601, or the National Contingency Plan ("NCP"), 40
17 C.F.R. Part 300, in which case the definition in CERCLA or the
18 NCP shall control.

19 JURISDICTION AND VENUE

20 2. This Court has jurisdiction over the subject matter
21 of this action and over the parties to this Consent Decree
22 pursuant to 42 U.S.C. § 9613(b), 28 U.S.C. §§ 1331 and 1367 and
23 33 U.S.C. § 1321(n). Venue is proper in this Court under 42
24 U.S.C. § 9613(b) and 33 U.S.C. § 1391.

25 EFFECT OF CONSENT DECREE/ENTRY OF JUDGMENT

26 3. This Consent Decree was negotiated and executed in
27 good faith and at arms' length to avoid the continuation of
28 expensive and protracted litigation, and is a fair and equitable

1 resolution of claims that were vigorously contested. The
2 execution of this Consent Decree is not, and shall not,
3 constitute or be construed as an admission of liability by any
4 party, an admission or denial of any of the factual allegations
5 set out herein or in the complaints, counterclaims, or cross-
6 claims, or an admission of violation of any law, rule,
7 regulation, standard or policy by any of the parties.

8 4. Upon the Court's approval and entry of the Order
9 that appears at the end of this Consent Decree, and subject only
10 to the provisions set forth in Paragraph 11, this Consent Decree
11 shall constitute a final judgment between and among Plaintiffs
12 and Settling Defendants.

13 5. The provisions of this Consent Decree shall be
14 binding on and inure to the benefit of the parties and their
15 parents, subsidiaries, successors and assigns. Any change in the
16 ownership or organizational form or status of any party shall not
17 affect any rights or obligations under this Consent Decree. This
18 Consent Decree shall act as res judicata for those bound and
19 their privies.

20 PAYMENT TERMS

21 6. The Settling Defendants shall make the following
22 payments:

23 a. Southern Pacific shall pay Plaintiffs thirty
24 million dollars (\$30,000,000), in accordance with Paragraphs 7
25 and 8 below. Seven hundred and fifty thousand dollars (\$750,000)
26 of this amount shall constitute penalties for claims pursuant to
27 the California Water Code §§ 13376 and 13385(a)(1),(5); the
28 California Health and Safety Code §§ 25189(d), 25189.2(c), and

1 41700; and the Federal Water Pollution Control Act (Clean Water
2 Act), 33 U.S.C. § 1321. This thirty million dollar payment is in
3 addition to any amounts that Southern Pacific has already paid
4 for certain response costs.

5 b. GATX shall pay Plaintiffs five million dollars
6 (\$5,000,000) in accordance with Paragraph 7 below.

7 c. Huber shall pay Plaintiffs one million dollars
8 (\$1,000,000) in accordance with Paragraph 7 below.

9 7. Within ninety (90) days of entry of this Consent
10 Decree, except as otherwise provided in Paragraph 11 below,
11 Southern Pacific shall pay eleven million dollars (\$11,000,000),
12 GATX shall pay five million dollars (\$5,000,000), and Huber shall
13 pay one million dollars (\$1,000,000) by certified or bank check
14 payable to the "Clerk, United States District Court." Each check
15 shall include on its face a statement that it is a payment in
16 Civil Action CIV-S-92-1117-LKK GGH (E.D. Cal.), and shall be
17 delivered to the Office of the Clerk, United States District
18 Court for the Eastern District of California. The Settling
19 Defendants shall send copies of each check and of any transmittal
20 letter accompanying the check to each of the following:

21 a. Chief, Environmental Enforcement Section,
22 United States Department of Justice, P.O. Box 7611, Ben Franklin
23 Station, Washington, D.C. 20044;

24 b. United States Attorney for the Eastern
25 District of California;

26 c. Regional Solicitor for the Department of the
27 Interior, care of the San Francisco Field Solicitor;

28 / / /

1 d. Regional Solicitor for the Department of
2 Agriculture; and

3 e. Assistant Attorney General for the Natural
4 Resources Section, Office of the Attorney General, State of
5 California, Sacramento, California.

6 8. In addition to the payment required by Paragraph
7 7 of the Decree, and except as otherwise provided in Paragraph 11
8 below, Southern Pacific shall pay an aggregate amount of nineteen
9 million dollars (\$19,000,000) in five annual payments of 3.8
10 million dollars (\$3,800,000) each for the succeeding five (5)
11 years on or before the anniversary date of the date of entry of
12 this Consent Decree. Payments under the terms of this paragraph
13 shall be made in the manner specified in Paragraph 7 of this
14 Consent Decree.

15 9. In the event any Settling Defendant fails to make
16 any payment due and owing in compliance with Paragraphs 7, 8 or
17 11 of this Consent Decree on a timely basis, it shall be liable
18 for (1) interest on the amount of said payment until the entire
19 amount plus interest is collected and (2) all reasonable costs
20 and attorney fees incurred in collecting such payments. The rate
21 of interest shall be the rate established by the Department of
22 the Treasury under 31 U.S.C. § 3717 and 4 C.F.R. § 102.13., plus
23 seven (7) percent.

24 10. The Registry of the Court shall deposit and
25 administer all amounts paid in an interest bearing account
26 ("Registry Account") as provided in the Order Directing the
27 Deposit of Consent Decree Amount into the Registry of the Court
28 ("Deposit Order") issued by this Court pursuant to Rule 67 of the

1 Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local
2 Rule 150(e) of the Local Rules for the Eastern District of
3 California. Except as otherwise provided in Paragraph 11 below,
4 all funds and all interest accrued thereon in the Registry
5 Account shall be paid to the Plaintiffs by order of the Court in
6 accordance with the provisions of the Deposit Order, which is
7 attached as Exhibit A to this Consent Decree and which shall be
8 entered by the Court at the time of entry of the Decree.

9 CONDITIONS

10 11. Nothing in this Consent Decree, including, but not
11 limited to, the obligation of the Settling Defendants to pay
12 money into the Registry, shall be effective until the claims of
13 the Intervenor in this case and in the coordinated proceedings
14 pending in the Superior Court of the State of California in and
15 for the City and County of San Francisco styled In re Sacramento
16 River Spill Cases I and II, Nos. 2617 and 2620, are dismissed
17 with prejudice. In the event of any appeal by the Intervenor of
18 any dismissal of their claims or any appeal by any person
19 relating to this Consent Decree, the amounts required by
20 Paragraphs 7 through 9 of the Consent Decree shall be paid into
21 the Registry of the Court, but shall not be disbursed to
22 Plaintiffs until such appeal is dismissed or denied in its
23 entirety and is no longer subject to further appeal, unless
24 Plaintiffs and Settling Defendants agree otherwise. Disbursement
25 to Plaintiffs of amounts deposited in the registry shall include
26 all interest or income accrued thereon. In the event any such
27 appeal is successful, and is no longer subject to further appeal,
28 and as a result, the successful appellant has any claim remaining

1 against any Settling Defendant or against any Plaintiff, this
2 Consent Decree shall be voidable by that Settling Defendant or
3 that Plaintiff by filing and service of notice. If the Consent
4 Decree is so voided, all amounts deposited in the Registry of the
5 Court, together with all interest or income accrued thereon,
6 shall be returned to the Settling Defendants by Order made upon
7 noticed motion to the Magistrate (or if the Magistrate is
8 unavailable, to the Court). The amounts shall be repaid to the
9 Settling Defendants in the proportion in which they contributed
10 the original amounts.

11 EXPENDITURE

12 12. The funds received under this decree shall be
13 expended in accordance with law.

14 RELEASES AND COVENANTS NOT TO SUE

15 13. Subject to the reservation of rights set forth in
16 Paragraphs 17, 18 and 23 below, upon payment by the Settling
17 Defendants of the amounts required by Paragraph 7, including any
18 interest and attorney fees required by this Consent Decree, the
19 State releases the Settling Defendants and their officers,
20 directors, employees, parents, subsidiaries, successors and
21 assigns, and covenants not to sue or take any civil, criminal, or
22 administrative action against any of them for any and all past,
23 present, and future claims, demands, rights, causes of action,
24 penalties, fines, response costs, lost revenue, health study
25 costs, natural resource damages, costs of assessing natural
26 resource damages, enforcement or litigation costs (including
27 attorney fees), interest, or any other criminal, civil, legal or
28 equitable relief arising from the Spill, whether known or

1 unknown. The State acknowledges that it is aware that it may
2 hereafter discover facts in addition to or different from those
3 which it now knows or believes to be true with respect to the
4 Spill, its causes and effects, but nonetheless intends to fully,
5 finally and forever settle all claims arising out of the Spill
6 without regard to the subsequent discovery or existence of such
7 different or additional facts. The State relinquishes, to the
8 fullest extent permitted by law, the provisions, rights and
9 benefits of Section 1542 of the California Civil Code, which
10 provides:

11 A general release does not extend to claims which the
12 creditor does not know or suspect to exist in his
13 favor at the time of executing the release, which if
 known by him must have materially affected his
 settlement with the debtor.

14 14. Subject to the reservation of rights set forth in
15 Paragraphs 15 through 21 below, upon payment by Settling
16 Defendants of the amounts required by Paragraph 7, including any
17 interest and attorney fees required by this Consent Decree, the
18 United States releases the Settling Defendants and their
19 officers, directors, employees, parents and subsidiaries,
20 successors and assigns, and covenants not to sue or take any
21 other civil or administrative action against any of them for any
22 and all past, present or future civil liability, except as set
23 forth in Paragraph 18, arising from or with regard to the Spill
24 for reimbursement of response costs, lost revenue, health study
25 costs, natural resource damages, costs of assessing natural
26 resource damages, enforcement or litigation costs (including
27 attorney fees), interest, civil penalties, civil damages or other
28 legal or equitable relief pursuant to CERCLA, the Clean Water

1 contained in Franklin v. Kaypro, 884 F.2d 1222 (9th Cir. 1989),
2 and Sections 877 and 877.6 of the California Code of Civil
3 Procedure, this Consent Decree is entered into and made in good
4 faith, and all claims belonging to any party which is not a party
5 to this Consent Decree, seeking contribution or indemnification,
6 however denominated, against the Settling Defendants under state
7 or federal law, arising out of the Spill, are barred to the
8 extent provided by law. This Consent Decree does not discharge
9 the liability of any other person who is not a party to this
10 Consent Decree.

11 RESERVATION OF RIGHTS

12 17. Nothing in this Consent Decree is intended to
13 be, nor shall it be construed as, a release or a covenant not to
14 sue for any claim or cause of action, administrative or judicial,
15 at law or in equity, which the United States or the State may
16 have against any Defendant as a result of failure to comply
17 with the terms of this Consent Decree or as a release by the
18 United States of any and all criminal liability. Upon payment by
19 Southern Pacific of the amount required by Paragraph 7, including
20 any interest and attorneys fees required by this Consent Decree,
21 the Plaintiffs' remedies against the Settling Defendants shall be
22 limited to recovery of the payment or payments due under this
23 Consent Decree, plus interest, costs and attorney fees as
24 provided in Paragraph 9 above.

25 18. Nothing in this Consent Decree shall constitute
26 or be construed as a release or a covenant not to sue regarding
27 any claim or cause of action against any person, firm, trust,
28 joint venture, partnership, corporation or other entity, other

1 than the parties described or identified in Paragraphs 13 through
2 15 for any liability arising out of or relating to the Spill.
3 Plaintiffs and the Settling Defendants expressly reserve the
4 right to sue or take any other action against any other person or
5 entity.

6 19. Notwithstanding any other provision of this
7 Consent Decree, the United States reserves, and this Consent
8 Decree is without prejudice to, the right of the United States to
9 issue an administrative order seeking to compel additional
10 response actions or institute proceedings in this action or in a
11 new action, seeking recovery of additional costs of response
12 and/or natural resource damages if information previously unknown
13 to both the United States and the State at the date of lodging of
14 this Consent Decree, including information regarding site
15 conditions, indicates to the United States that either (a) the
16 response activities undertaken prior to lodging of this Consent
17 Decree are not protective of human health or the environment or
18 (b) there is injury to, destruction of, or loss of natural
19 resources of a different type than was known to the United States
20 or the State at the date of lodging of this Consent Decree.

21 20. For purposes of Paragraph 19, the information and
22 the conditions known to the United States and the State at the
23 time of lodging shall include only: (a) any information or those
24 conditions described in the Pre-Assessment Screen, the Draft or
25 Final Natural Resource Damage Assessment Plan for the Upper
26 Sacramento River; (b) the results, findings, opinions
27 conclusions, data, analyses, studies, or observations of the
28 United States, the State or their contractors concerning the

1 Spill or its effects; (c) the administrative record compiled by
2 EPA concerning the Spill or its effects; and (d) any document or
3 other information in the possession or control of the United
4 States, the State or their contractors.

5 21. In no event may any claim for additional natural
6 resources damages pursuant to Paragraph 19 be made for (a)
7 passive or non-use values or (b) injuries that are of a greater
8 magnitude (as distinct from injuries of a different type) than
9 are known at the time of lodging of this Consent Decree.

10 22. The reservation in Paragraph 19 shall expire on or
11 after December 31, 1997, provided that (i) a Settling Defendant
12 notifies (a) the United States Department of the Interior,
13 Regional Director, Region I, Fish and Wildlife Service, Eastside
14 Federal Complex, 911, N.E. 11th Avenue, Portland, Oregon, and (b)
15 the Department of Justice, Chief, Environmental Enforcement
16 Section, P.O. Box 7611, Ben Franklin Station, Washington, D.C.
17 20044, by certified mail on or after August 30, 1997, that the
18 reservation will expire one hundred and twenty (120) days after
19 the date of such notice and (ii) the United States does not give
20 the Settling Defendants notice within one hundred twenty (120)
21 days of the date of the Settling Defendants' notice that the
22 United States has become aware of previously unknown information,
23 including information about site conditions, indicating that the
24 conditions described in subpart (a) or (b) of Paragraph 19 exist.
25 If the United States provides such notice, it then shall have one
26 hundred and eighty (180) days from the date of its notice to
27 initiate administrative or judicial proceedings consistent with
28 this reservation. If the United States fails to initiate such an

1 administrative or judicial proceeding within one hundred and
2 eighty (180) days of its notice, this reservation shall expire.

3 23. Notwithstanding any other provision of this
4 Consent Decree, the Settling Defendants reserve the right to
5 assert any defense to any order or claim brought by the United
6 States pursuant to the reservation in Paragraph 19 of this
7 Decree, and to assert cross-claims, counterclaims, or third-
8 party claims against any party; provided, however, that any third
9 party claim by the Settling Defendants against the State and any
10 Third party counterclaim by the State against any Settling
11 Defendant, shall be limited to the amount and type of any damages
12 or relief that the United States seeks. Any statute of
13 limitations on any cross-claim or counterclaim of any Settling
14 Defendant or the State is tolled from the effective date of this
15 Consent Decree until such time as the United States brings a
16 claim pursuant to Paragraph 19.

17 INDEMNIFICATION

18 24. The California Department of Fish and Game shall
19 defend, indemnify and hold the Settling Defendants harmless from
20 any and all claims that have arisen or may arise for repayment of
21 response costs that would, however denominated, be recoverable
22 under Section 107 of CERCLA (42 U.S.C. § 9607) incurred as a
23 result of the Spill by any agency, department, or entity of the
24 State of California and the United States of America, as well as
25 for such claims that have been submitted by January 1, 1994, to
26 the Department of Fish and Game for cost recovery by local
27 agencies (excluding the County of Shasta). This indemnification
28 and defense provision does not extend to claims, parties, or

1 entities that are not specifically described in this paragraph,
2 or to any claim for response costs that the United States may
3 bring pursuant to Paragraph 19 of this Consent Decree.

4 MODIFICATION

5 25. There shall be no modification of this Consent
6 Decree, including any modification deemed necessary by the United
7 States or the State as a result of public notice and comment,
8 without written agreement of all parties to this Consent Decree
9 and approval of the Court.

10 PUBLIC COMMENT

11 26. Plaintiffs and Settling Defendants agree that
12 final approval by the United States and the State and entry of
13 this Consent Decree will be subject to an opportunity for public
14 comment and consideration of any comments received pursuant to 28
15 C.F.R. § 50.7. Plaintiffs reserve the right to withdraw their
16 consent to the Consent Decree if comments received disclose facts
17 or considerations which show that the Consent Decree is
18 inappropriate, improper or inadequate. The Settling Defendants
19 consent to the entry of this Decree by the Court without further
20 notice.

21 CONTINUING JURISDICTION OF THIS COURT

22 27. The Court shall retain jurisdiction to enforce the
23 terms and conditions of the Consent Decree and to resolve
24 disputes arising hereunder, including jurisdiction and authority
25 to issue an injunction or order requiring payments due under this
26 Consent Decree.

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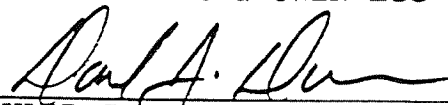
1 indemnification provisions contained in Paragraph 24 shall
2 survive the termination of this Consent Decree.

3 SEVERABILITY

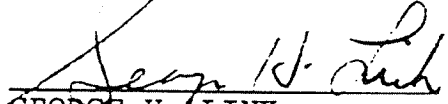
4 32. The provisions of this Consent Decree are
5 severable. The invalidation of any provision shall not
6 invalidate any other provision.

7 APPROVED AS TO FORM BY:

8 HOLME ROBERTS & OWEN LCC

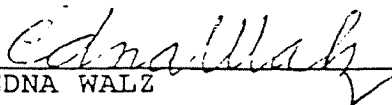
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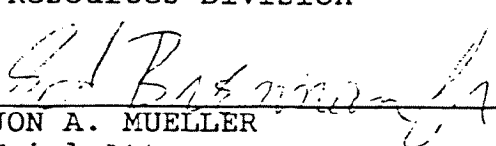
17 Attorneys for Defendants
18 Southern Pacific Transportation
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Attorney General
WALTER E. WUNDERLICH
Assistant Attorney General

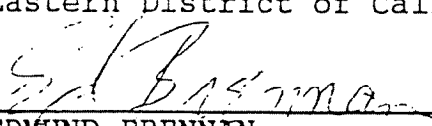

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Environmental And Natural
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3/8/94

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United States Department of
Justice
Environmental Enforcement Section

CHARLES STEVENS
United States Attorney for the
Eastern District of California


EDMUND BRENNAN
Assistant United States Attorney

Attorneys for the United States*

* For the initial lodging, the signatures of attorneys for the United States do not bind the United States and merely represent that they will recommend approval of this Consent Decree to the Acting Assistant Attorney General.

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O'MELVENY & MYERS

BRIAN S. CURREY

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J.M. Huber Corporation

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MCCUTCHEN, DOYLE, BROWN &
ENERSEN

WARREN E. GEORGE

Attorneys for Defendant
J.M. Huber Corporation

SIGNATURES OF PARTIES:

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____

Vice Chairman

SOUTHERN PACIFIC RAIL CORPORATION
(formerly Rio Grande Industries, Inc.
and successor by merger to SPTC
Holding, Inc.

By: _____

Vice Chairman

RIO GRANDE HOLDING, INC.

By: _____

Vice President

GENERAL AMERICAN TRANSPORTATION
COMPANY

By: _____

GATX CORPORATION

By: _____

J.M. HUBER CORPORATION

By: _____

TRINITY CHEMICAL INDUSTRIES, INC.

By: _____

TRANSMATRIX, INC.

By: _____

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SIGNATURES OF PARTIES:

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____

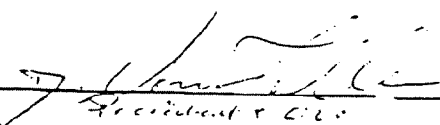
SOUTHERN PACIFIC RAIL CORPORATION
(formerly Rio Grande Industries,
Inc. and successor by merger to
SPTC Holding, Inc.)

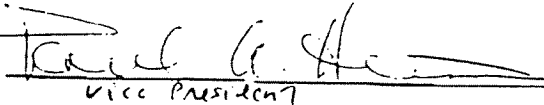
By: _____

RIO GRANDE HOLDING, INC.

By: _____

GENERAL AMERICAN TRANSPORTATION
COMPANY

By: 
GATX CORPORATION

By: 
J.M. HUBER CORPORATION

By: _____

TRINITY CHEMICAL INDUSTRIES, INC.

By: _____

TRANSMATRIX, INC.

By: _____

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SIGNATURES OF PARTIES:

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____

SOUTHERN PACIFIC RAIL CORPORATION
(formerly Rio Grande Industries,
Inc. and successor by merger to
SPTC Holding, Inc.)

By: _____

RIO GRANDE HOLDING, INC.

By: _____

GENERAL AMERICAN TRANSPORTATION
COMPANY

By: _____

GATX CORPORATION

By: _____

J.M. HUBER CORPORATION

By: _____

TRINITY CHEMICAL INDUSTRIES, INC.

By: _____

TRANSMATRIX, INC.

By: Te S. W. _____

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TRINITY CHEMICAL INDUSTRIES, INC.

By: _____

TRANSMATRIX, INC.

By: _____

DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

By: _____

CALIFORNIA DEPARTMENT OF FISH & GAME

By: *Boyd Libbons*

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

By: _____

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: _____

CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: _____

UNITED STATES DEPARTMENT OF INTERIOR

By: _____

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SIGNATURES OF PARTIES:

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____

SOUTHERN PACIFIC RAIL CORPORATION

By: _____

RIO GRANDE INDUSTRIES, INC.

By: _____

RIO GRANDE HOLDING COMPANY

By: _____

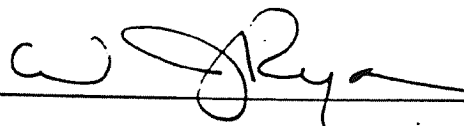
GENERAL AMERICAN TRANSPORTATION
COMPANY

By: _____

GATX CORPORATION

By: _____

J.M. HUBER CORPORATION

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TRINITY CHEMICAL INDUSTRIES, INC.

By: _____

TRANSMATRIX, INC.

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SIGNATURES OF PARTIES:

SOUTHERN PACIFIC TRANSPORTATION
COMPANY

By: _____

SOUTHERN PACIFIC RAIL CORPORATION
(formerly Rio Grande Industries,
Inc. and successor by merger to
SPTC Holding, Inc.)

By: _____

RIO GRANDE HOLDING, INC.

By: _____

GENERAL AMERICAN TRANSPORTATION
COMPANY

By: _____

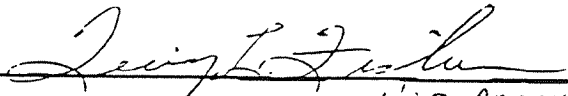
GATX CORPORATION

By: _____

J.M. HUBER CORPORATION

By: _____

TRINITY CHEMICAL INDUSTRIES, INC.

By: 
VICE-PRESIDENT
TRANSMATRIX, INC.

By: _____

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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

By: 

CALIFORNIA DEPARTMENT OF FISH & GAME

By: _____

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

By: _____

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: _____

CALIFORNIA AIR RESOURCES BOARD

By: _____

CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: _____

UNITED STATES DEPARTMENT OF INTERIOR

By: _____

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: _____

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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

By: _____

CALIFORNIA DEPARTMENT OF FISH & GAME

By: _____

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

By: William H. Paul

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: _____

CALIFORNIA AIR RESOURCES BOARD

By: _____

CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: _____

UNITED STATES DEPARTMENT OF INTERIOR

By: _____

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

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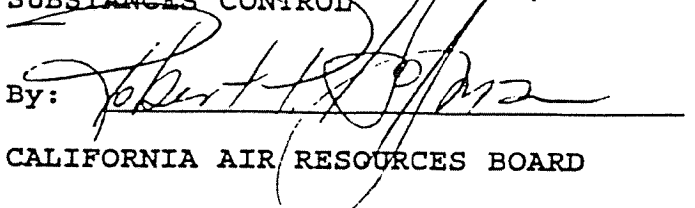
CALIFORNIA DEPARTMENT OF FISH & GAME

By: _____

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CONTROL BOARD
CENTRAL VALLEY REGION

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SUBSTANCES CONTROL

By:  _____

CALIFORNIA AIR RESOURCES BOARD

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CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

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PROTECTION AGENCY

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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

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CALIFORNIA DEPARTMENT OF FISH & GAME

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CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

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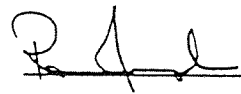
CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

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CALIFORNIA AIR RESOURCES BOARD

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CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By:  _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

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UNITED STATES DEPARTMENT OF INTERIOR

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UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

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DOUGLAS WHEELER, CALIFORNIA SECRETARY
OF RESOURCES

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CALIFORNIA DEPARTMENT OF FISH & GAME

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CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD
CENTRAL VALLEY REGION

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CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

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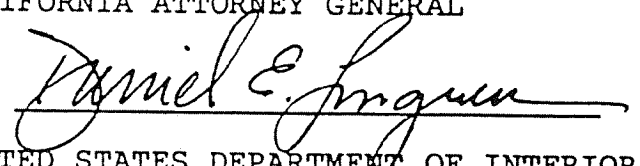
CALIFORNIA AIR RESOURCES BOARD

By: _____

CALIFORNIA DEPARTMENT OF HEALTH
SERVICES

By: _____

DANIEL E. LUNGREN,
CALIFORNIA ATTORNEY GENERAL

By: 
UNITED STATES DEPARTMENT OF INTERIOR

By: _____

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY

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UNITED STATES DEPARTMENT OF
AGRICULTURE

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ORDER

The foregoing Consent Decree among Plaintiffs and Settling Defendants is hereby APPROVED and constitutes the order of this Court.

The Court finds that entry of this Consent Decree is in the public interest and consistent with law, including CERCLA. The Court further finds that the settlement embodied in this Consent Decree was made in good faith and is fair and reasonable, and pursuant to Section 113(f) of CERCLA (42 U.S.C. § 9613(f)), federal common law and California Code of Civil Procedure Sections 877 and 877.6, bars contribution claims against the Settling Defendants to the extent provided by law.

There being no just reason for delay, this Court directs, pursuant to Federal Rule of Civil Procedure 54(b), ENTRY OF FINAL JUDGMENT by this Consent Decree this ____ day of _____, 1994.

LAWRENCE K. KARLTON
United States District Court Judge

(Counsel listed on pages ii and iii)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF)
CALIFORNIA ex. rel. DOUGLAS)
WHEELER, Secretary of)
Resources; DEPARTMENT OF FISH)
& GAME; CALIFORNIA REGIONAL)
WATER QUALITY CONTROL BOARD,)
CENTRAL VALLEY REGION;)
CALIFORNIA AIR RESOURCES)
BOARD; DEPARTMENT OF TOXIC)
SUBSTANCES CONTROL; DEPARTMENT)
OF HEALTH SERVICES; DANIEL E.)
LUNGREN, Attorney General of)
the State of California,)

Plaintiffs,

CALIFORNIA SPORTFISHING)
PROTECTION ALLIANCE; UNITED)
ANGLERS OF CALIFORNIA; FRIENDS)
OF THE RIVER; SACRAMENTO RIVER)
COUNCIL; SACRAMENTO RIVER)
PRESERVATION TRUST; and SIERRA)
CLUB,)

Intervenors,

v.

SOUTHERN PACIFIC)
TRANSPORTATION COMPANY, et)
al.,)

Defendants.

AND CONSOLIDATED ACTION)
No. CIV-S-92-2090-WBS-GGH)

No. CIV S-92-1117 LKK GGH

ORDER DIRECTING THE DEPOSIT
OF SETTLEMENT MONIES WITH
THE CLERK OF THE COURT AND
DIRECTING THE CLERK TO
DEPOSIT ALL SETTLEMENT
MONIES WITH THE COURT
REGISTRY INVESTMENT SYSTEM

(for Consent Decree among
Plaintiffs and all
Defendants except for Amvac
and American Vanguard, and
Third-Party Defendants)

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 RODERICK E. WALSTON
Chief Assistant Attorney General
3 WALTER E. WUNDERLICH
THEODORA BERGER
4 Assistant Attorneys General
KEN ALEX
5 Supervising Deputy Attorney General
EDNA WALZ
6 CARL A. BAIER,
Deputy Attorneys General
7 1515 K Street, Suite 511
P.O. Box 944255
8 Sacramento, California 94244-2550
(916) 324-5366
9
Attorneys for State of California Plaintiffs
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LOIS J. SCHIFFER
11 Acting Assistant Attorney General
Environment and Natural Resources Division
12 JON MUELLER
Trial Attorney, Environmental Enforcement Section
13 U.S. Department of Justice
Ben Franklin Station, P.O. Box 7611
14 Washington, D.C. 20044
(202) 514-0056
15
CHARLES STEVENS
16 United States Attorney for the
Eastern District of California
17 EDMUND BRENNAN
Assistant United States Attorney
18 Room 3305 Federal Building
United States Courthouse
19 650 Capitol Mall
Sacramento, CA 95814
20 (916) 551-2766
21 Attorneys for the United States
22 EDWARD J. McGRATH
DANIEL J. DUNN
23 LINNEA BROWN
H. HAMILTON HACKNEY, III
24 HOLME ROBERTS & OWEN LLC
1700 Lincoln Street #4100
25 Denver, Colorado 80203
(303) 861-7000
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WILLIAM K. SWANK
2 BROBECK, PHLEGER & HARRISON
550 South Hope Street, 23rd Floor
3 Los Angeles, California 90071-2604
(213) 489-4060
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JOHN E. CARLSON
5 BROBECK, PHLEGER & HARRISON
One Market Plaza
6 Spear Street Tower
San Francisco, California 94105
7 (415) 442-0900
8 Attorneys for Defendants
Southern Pacific Transportation Company,
9 Southern Pacific Rail Corporation, Rio
Grande Holding Co., Trinity Chemical Industries,
10 Inc., and Transmatrix, Inc.
11 BRIAN S. CURREY
O'MELVENY & MYERS
12 400 South Hope Street
Los Angeles, CA 90071-2899
13 (213) 669-6000
14 Attorneys for Defendants
General American Transportation Corporation
15 and GATX Corporation
16 WARREN E. GEORGE
McCUTCHEN, DOYLE, BROWN &
17 ENERSEN
Three Embarcadero Center
18 Suite 2800
San Francisco, CA 94111
19 (415) 393-2000
20 Attorneys for Defendant
J.M. Huber Corporation
21
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1 Pursuant to Rule 67 of the Federal Rules of Civil
2 Procedure, 28 U.S.C. § 2041, and United States District Court for
3 the Eastern District of California Local Rule 150, and in
4 accordance with the terms of the Consent Decree in the above-
5 captioned matter between Plaintiffs, People of the State of
6 California etc. and the United States of America (collectively,
7 "Plaintiffs"), and Defendants Southern Pacific Transportation
8 Company, Southern Pacific Rail Corporation, Rio Grande Holding,
9 Inc., General American Transportation Corporation, GATX
10 Corporation, J.M. Huber Corporation and Third Party Defendants
11 Trinity Chemical Industries, Inc., and Transmatrix, Inc.,
12 ("Settling Defendants"), IT IS HEREBY ORDERED as follows:

13 1. Within ninety (90) days of the date of entry of the
14 Consent Decree among the above referenced parties ("Consent
15 Decree"), Settling Defendants shall pay to the Clerk of the Court
16 all sums specified in Paragraph 7 of the Consent Decree.

17 2. Settling Defendants shall make the payments
18 specified in Paragraphs 7 through 9 of the Consent Decree by
19 certified or cashier checks made payable to the "Clerk, United
20 States District Court" in accordance with the procedures
21 specified in Paragraph 7 of the Consent Decree.

22 3. Upon receipt of each payment, the Clerk of the
23 Court Shall deposit the payment with the Registry of the Court in
24 an interest-bearing account administered through the United
25 States District Court for the Eastern District of California.
26 The account shall be entitled Peo. v. Southern Pacific Registry
27 Account.

28 / / /

1 4. The Peo. v. Southern Pacific Registry Account shall
2 be established with the Registry of the Court specifically for,
3 and only for, settlement monies collected in accordance with the
4 Consent Decree.

5 5. All monies in the Peo. v. Southern Pacific Registry
6 shall be invested in money market accounts, certificates of
7 deposit and/or United States Treasury Bills with maturity dates
8 not to exceed ____.

9 6. All income earned on investment of monies deposited
10 into the Peo. v. Southern Pacific Registry Account shall be
11 credited to and deposited in that account.

12 7. All monies in the Peo. v. Southern Pacific Registry
13 Account shall be held in the name of the Clerk, United States
14 District Court as stakeholder for, and solely for the benefit of,
15 the Plaintiffs, except as otherwise provided by Paragraph 9,
16 below.

17 8. No money shall be disbursed from the Peo. v.
18 Southern Pacific Registry Account before any appeal by any person
19 relating to the Consent Decree, or any appeal by the Intervenor
20 of their claims against the Settling Defendants in federal or
21 state court is dismissed or denied in its entirety and is no
22 longer subject to further appeal, unless Plaintiffs and Settling
23 Defendants agree otherwise.

24 9. In the event any appeal referenced in Paragraph 8
25 is successful, and is no longer subject to further appeal, and as
26 a result, the successful appellant has any claim remaining
27 against any Settling Defendant or against a Plaintiff, and any
28 Plaintiff or Southern Pacific elects to void the Consent Decree,

1 amounts deposited in the Peo. v. Southern Pacific Registry
2 Account, including all interest or income accrued thereon, shall
3 be disbursed to the Settling Defendants who have made payments in
4 accordance with Paragraph 7 of the Consent Decree upon order of
5 the Magistrate (or the Court if the Magistrate is unavailable)
6 made upon noticed motion.

7 10. Upon expiration of the time to appeal, or at such
8 time as any appeal is dismissed and is no longer subject to
9 further appeal, or upon written agreement of the Settling
10 Defendants, monies in the Peo. v. Southern Pacific Registry
11 Account shall be distributed to the Plaintiffs upon order of the
12 Magistrate (or the Court if the Magistrate is unavailable) upon
13 joint application of the Plaintiffs. The order for the initial
14 distribution shall be made upon noticed motion. Orders for
15 subsequent distributions shall be made upon application without
16 hearing.

17 11. Monthly reports showing settlement monies
18 received, disbursements made, income earned, maturity dates of
19 securities held, and principal balance of the Peo. v. Southern
20 Pacific Registry Account shall be prepared and distributed by the
21 Clerk of the United States District Court for the Eastern
22 District of California to counsel for California, the United
23 States, Southern Pacific Transportation Company, GATX Corporation
24 and General American Transportation Company, and J.M. Huber
25 Company.

26 12. Settlement monies in the Peo. v. Southern Pacific
27 Registry Account, not otherwise distributed pursuant to Paragraph
28 9 or 10 above, shall remain on deposit with the Registry of the

1 Court until final order of distribution by the Court or the
2 Magistrate to the Plaintiffs or paying Settling Defendants in
3 accordance with the provisions of Paragraph 9 or 10 above, at
4 which time all of the funds or a portion of the funds, together
5 with any income earned thereon, shall be retrieved by the Clerk
6 of the Court and disbursed in accordance with the final order.

7 13. A certified copy of this order and a copy of the
8 Consent Decree referenced above shall be served upon the Clerk of
9 the Court for the Eastern District of California.

10 So Ordered this _____ day of _____, 1994.

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LAWRENCE K. KARLTON
Chief Judge Emeritus

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Approved as to form: _____
Clerk, U.S. District Court

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