

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF  
AMERICA,

Plaintiff,

v.

COUNTY OF SAN DIEGO,  
CALIFORNIA,

Defendant.

Civil No. 3:22-cv-01753-JO-NLS

**CONSENT DECREE**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. BACKGROUND..... 1

II. JURISDICTION AND VENUE..... 3

III. PARTIES BOUND..... 3

IV. DEFINITIONS..... 4

V. OBJECTIVES ..... 7

VI. PERFORMANCE OF THE WORK..... 7

VII. INDEMNIFICATION AND INSURANCE..... 8

VIII. PAYMENTS FOR RESPONSE COSTS ..... 10

IX. FORCE MAJEURE..... 12

X. DISPUTE RESOLUTION ..... 13

XI. STIPULATED PENALTIES ..... 16

XII. COVENANTS BY PLAINTIFF ..... 18

XIII. COVENANTS BY SETTLING DEFENDANT..... 19

XIV. EFFECT OF SETTLEMENT; CONTRIBUTION..... 20

XV. RECORDS..... 21

XVI. NOTICES AND SUBMISSIONS ..... 24

XVII. APPENDIXES ..... 25

XVIII. MODIFICATIONS TO DECREE..... 25

XIX. SIGNATORIES ..... 26

XX. PRE-ENTRY PROVISIONS ..... 26

XXI. INTEGRATION ..... 26

XXII. FINAL JUDGMENT ..... 26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I. BACKGROUND**

1. The United States of America (“United States”), on behalf of the United States Department of Agriculture, Forest Service (“USDA/FS”), filed a complaint in this matter under sections 106, 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”).

2. The United States in its complaint seeks, *inter alia*:  
(1) reimbursement of costs incurred by USDA/FS for response actions at the Ramona Burn Dump Site, Cleveland National Forest, County of San Diego, California (“Site”), together with accrued interest; and (2) performance by Defendant, the County of San Diego, of a response action at the Site consistent with the National Contingency Plan, 40 C.F.R. part 300 (“NCP”).

3. In accordance with the NCP and section 121(f)(1)(F) of CERCLA, USDA/FS notified the State of California (“State”) on November 2, 2021, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the response action for the Site, and USDA/FS has provided the State with an opportunity to participate in such negotiations and to be a party to this Consent Decree (“Decree”).

4. The Defendant that has entered into this Decree (“Settling Defendant”) does not admit any liability arising out of the transactions or occurrences alleged in the complaint nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

5. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, USDA/FS completed a Preliminary Assessment/Site Inspection for the Site in May 2010, and an Engineering

1 Evaluation/Cost Analysis (“EE/CA”) in January 2014, in accordance with  
2 40 C.F.R. § 300.430.

3 6. In accordance with section 117 of CERCLA and 40 C.F.R.  
4 § 300.430(f), USDA/FS published notice of the completion of the EE/CA on  
5 January 13, 2014, in a major local newspaper of general circulation. USDA/FS  
6 provided an opportunity for written and oral comments from the public on the  
7 proposed plan for response action. The only comments received were from the  
8 County of San Diego, Solid Waste Local Enforcement Agency, which supported  
9 the selected remedy. A copy of these comments and the EE/CA is available to the  
10 public as part of the Administrative Record, upon which the USDA/FS based the  
11 selection of the response action.

12 7. USDA/FS selected a response action to be implemented at the Site,  
13 which is embodied in a Removal Action Memorandum (“Action Memorandum”),  
14 executed on August 17, 2017.

15 8. On March 8, 2022, USDA/FS issued a unilateral administrative order  
16 requiring the County of San Diego (“County”) to perform the response action  
17 authorized under the Action Memorandum, which was effective on March 15,  
18 2022.

19 9. Based on the information currently available, USDA/FS has  
20 determined that the Work (as defined in Section IV herein) will be properly and  
21 promptly conducted by Settling Defendant if conducted in accordance with this  
22 Decree.

23 10. The Parties recognize, and the Court by entering this Decree finds,  
24 that this Decree has been negotiated by the Parties in good faith, that  
25 implementation of this Decree will expedite the cleanup of the Site and will avoid  
26 prolonged and complicated litigation between the Parties, and that this Decree is  
27 fair, reasonable, in the public interest, and consistent with CERCLA.

28

1 NOW, THEREFORE, it is hereby **ORDERED** and **DECREED** as follows:

2 **II. JURISDICTION AND VENUE**

3 11. This Court has jurisdiction over the subject matter of this action under  
4 28 U.S.C. §§ 1331 and 1345, and sections 106, 107 and 113(b) of CERCLA, and  
5 personal jurisdiction over the Parties. Venue lies in this District under  
6 section 113(b) of CERCLA and 28 U.S.C. §§ 1391(b), and 1395(a), because the  
7 Site is located in this judicial district. This Court retains jurisdiction over the  
8 subject matter of this action and over the Parties for the purpose of resolving  
9 disputes arising under this Decree, entering orders modifying this Decree, or  
10 effectuating or enforcing compliance with this Decree. Settling Defendant may not  
11 challenge the terms of this Decree or this Court’s jurisdiction to enter and enforce  
12 this Decree.

13 **III. PARTIES BOUND**

14 12. This Decree is binding upon the United States and upon Settling  
15 Defendant and its successors. Unless the United States otherwise consents, (a) any  
16 change in legal status of Settling Defendant, including any transfer of assets, or  
17 (b) any Transfer of the Site or any portion thereof, does not alter any of Settling  
18 Defendant’s obligations under this Decree. Settling Defendant’s responsibilities  
19 under this Decree cannot be assigned except under a modification executed in  
20 accordance with ¶ 61.

21 13. In any action to enforce this Decree, Settling Defendant may not raise  
22 as a defense the failure of any of its officers, employees, agents, contractors,  
23 subcontractors, or any person representing Settling Defendant to take any action  
24 necessary to comply with this Decree. Settling Defendant shall provide notice of  
25 this Decree to each person representing Settling Defendant with respect to the Site  
26 or the Work. Settling Defendant shall provide notice of this Decree to each

27  
28

1 contractor performing any Work and shall ensure that notice of the Decree is  
2 provided to each subcontractor performing any Work.

#### 3 IV. DEFINITIONS

4 14. Subject to the next sentence, terms used in this Decree that are defined  
5 in CERCLA or the regulations promulgated under CERCLA have the meanings  
6 assigned to them in CERCLA and the regulations promulgated under CERCLA.  
7 Whenever the terms set forth below are used in this Decree, the following  
8 definitions apply:

9 “Action Memorandum” means the USDA/FS decision document  
10 memorializing the selection of the response action for the Site. The  
11 Action Memorandum is attached as Appendix A.

12 “CERCLA” means the Comprehensive Environmental Response,  
13 Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

14 “Consent Decree” or “Decree” means this consent decree and all  
15 appendixes attached hereto (listed in Section XVII). If there is a  
16 conflict between a provision in Sections I through XXII and a  
17 provision in any appendix or deliverable, the provision in Sections I  
18 through XXII controls.

19 “Day” or “day” means a calendar day. In computing any period  
20 under this Decree, the day of the event that triggers the period is not  
21 counted and, where the last day is not a working day, the period runs  
22 until the close of business of the next working day. “Working day”  
23 means any day other than a Saturday, Sunday, or federal or State  
24 holiday.

25 “DOJ” means the United States Department of Justice.

26 “Effective Date” means the date upon which the Court’s approval of  
27 this Decree is recorded on its docket.

28 “Forest Service” means the United States Forest Service, an agency of  
the U.S. Department of Agriculture, and its successor departments,  
agencies, or instrumentalities.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays between December 15, 2022, and the Effective Date; and (b) pays after the Effective Date in implementing, overseeing, or enforcing this Decree, including: (i) in developing, reviewing and approving deliverables generated under this Decree; (ii) in overseeing Settling Defendant’s performance of the Work; and (iii) in enforcing this Decree, including all costs paid under Section X (Dispute Resolution) and all litigation costs. Future Response Costs also includes all Interest accrued after December 15, 2022, on USDA/FS’s unreimbursed costs (including Past Response Costs) under section 107(a) of CERCLA.

“Including” or “including” means “including but not limited to.”

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest will be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date of lodging of this Decree, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Paragraph” or “¶” means a portion of this Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States and Settling Defendant.

“Past Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States paid in connection with the Site through December 15, 2022, plus all

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

interest on such costs accrued under section 107(a) of CERCLA through such date.

“Plaintiff” means the United States.

“RCRA” means the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, (also known as the Resource Conservation and Recovery Act).

“Response Action” means the response action selected in the Action Memorandum.

“Section” means a portion of this Decree identified by a Roman numeral.

“Settling Defendant” means the County of San Diego, California.

“Site” means the Ramona Burn Dump Site, which is located north of the city of Ramona, California, within the Palomar Ranger District of the Cleveland National Forest, in the southeast quarter of the northeast quarter of Section 34 of Township 12 South, Range 1 East (San Bernardino Base Meridian) in San Diego County. The Site covers an area of approximately 3.5 acres. The Site also includes all real property to which hazardous substances have migrated.

“State” means the State of California.

“Statement of Work” or “SOW” means the document attached as Appendix B, which describes the activities Settling Defendant must perform to implement and maintain the effectiveness of the Response Action. The SOW is incorporated into this Decree and is an enforceable part of this Decree.

“Transfer” means to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” means the United States of America and each department, agency, and instrumentality of the United States, including USDA.



1 “Waste Material” means (a) any “hazardous substance” under  
2 Section 101(14) of CERCLA; (b) any pollutant or contaminant under  
3 section 101(33) of CERCLA; and (c) any “solid waste” under  
4 section 1004(27) of RCRA.

5 “Work” means all obligations of Settling Defendant under Sections VI  
6 (Performance of the Work) through VII (Indemnification and  
7 Insurance).

## 8 **V. OBJECTIVES**

9 15. The objectives of the Parties in entering into this Decree are to protect  
10 public health and welfare and the environment through the design, implementation,  
11 and maintenance of a response action at the Site by Settling Defendant, to pay  
12 response costs of Plaintiff, and to resolve and settle the claims of Plaintiff against  
13 Settling Defendant as provided in this Decree.

## 14 **VI. PERFORMANCE OF THE WORK**

15 16. Settling Defendant shall finance, develop, implement, operate,  
16 maintain, and monitor the effectiveness of the Response Action all in accordance  
17 with this Decree, and the SOW, any USDA/FS-approved, conditionally approved,  
18 or modified deliverables as required by this Decree and the SOW. Settling  
19 Defendant shall complete all actions required by Section 4.2 of the SOW no later  
20 than three years after the Effective Date or September 30 of the year following the  
21 calendar year when USDA/FS approves the Removal Action Work Plan required  
22 by Section 4.1 of the SOW, whichever is later.

23 17. Modifications to the Response Action and Further Response Actions.  
24 Nothing in this Decree limits USDA/FS’s authority to modify the Response Action  
25 or to select further response actions for the Site in accordance with the  
26 requirements of CERCLA and the NCP. Nothing in this Decree limits Settling  
27 Defendant’s rights, under sections 113(k)(2) or 117 of CERCLA, to comment on  
28 any modified or further response actions proposed by USDA/FS.

1           18.    **Compliance with Applicable Law.** Nothing in this Decree affects  
2 Settling Defendant’s obligations to comply with all applicable federal and state  
3 laws and regulations. Settling Defendant must also comply with all applicable or  
4 relevant and appropriate requirements of all federal and state environmental laws  
5 as set forth in the Action Memorandum and the SOW. The activities conducted in  
6 accordance with this Decree, if approved by USDA/FS, will be deemed to be  
7 consistent with the NCP as provided under section 300.700(c)(3)(ii).

8                                   **VII. INDEMNIFICATION AND INSURANCE**

9           19.    **Indemnification**

10           a.    Plaintiff does not assume any liability by entering into this  
11 Decree or by virtue of any designation of Settling Defendant as USDA/FS’s  
12 authorized representative under section 104(e)(1) of CERCLA. Settling Defendant  
13 shall indemnify and save and hold harmless Plaintiff and its officials, agents,  
14 employees, contractors, subcontractors, and representatives for or from any claims  
15 or causes of action arising from, or on account of, negligent or other wrongful acts  
16 or omissions of Settling Defendant, its officers, employees, agents, contractors,  
17 subcontractors, and any persons acting on Settling Defendant’s behalf or under its  
18 control, in carrying out activities under this Decree, including any claims arising  
19 from any designation of Settling Defendant as USDA/FS’s authorized  
20 representative under section 104(e)(1) of CERCLA. Further, Settling Defendant  
21 agrees to pay Plaintiff all costs it incurs including attorneys’ fees and other  
22 expenses of litigation and settlement arising from, or on account of, claims made  
23 against Plaintiff based on negligent or other wrongful acts or omissions of Settling  
24 Defendant, its officers, employees, agents, contractors, subcontractors, and any  
25 persons acting on its behalf or under its control in carrying out activities under this  
26 Decree. Plaintiff may not be held out as a party to any contract entered into by or  
27 on behalf of Settling Defendant in carrying out activities under this Decree.

28

1 Settling Defendant and any such contractor may not be considered an agent of  
2 Plaintiff.

3           b. Plaintiff shall give Settling Defendant notice of any claim for  
4 which Plaintiff plans to seek indemnification in accordance with this Paragraph,  
5 and shall consult with Settling Defendant prior to settling such claim.

6           20. Settling Defendant covenants not to sue and shall not assert any claim  
7 or cause of action against Plaintiff for damages or reimbursement or for set-off of  
8 any payments made or to be made to Plaintiff, arising from or on account of any  
9 contract, agreement, or arrangement between Settling Defendant and any person  
10 for performance of Work or other activities on or relating to the Site, including  
11 claims on account of construction delays. In addition, Settling Defendant shall  
12 indemnify and save and hold Plaintiff harmless with respect to any claims for  
13 damages or reimbursement arising from or on account of any contract, agreement,  
14 or arrangement between Settling Defendant and any person for performance of  
15 work at or relating to the Site, including claims on account of construction delays.

16           21. **Insurance.** Settling Defendant shall secure, by no later than 15 days  
17 before commencing any on-site Work, the following insurance: (a) commercial  
18 general liability insurance with limits of liability of \$1 million per occurrence;  
19 (b) automobile liability insurance with limits of liability of \$1 million per accident;  
20 and (c) umbrella liability insurance with limits of liability of \$5 million in excess  
21 of the required commercial general liability and automobile liability limits. In  
22 place of obtaining the foregoing commercially available insurance coverage,  
23 Settling Defendant may provide proof of its program of self-insurance with at least  
24 the same coverage as required by a commercially obtained insurance policy. The  
25 insurance policy must name Plaintiff as an additional insured with respect to all  
26 liability arising out of the activities performed by or on behalf of Settling  
27 Defendant under this Decree. Settling Defendant shall maintain this insurance

28

1 until the first anniversary after issuance of USDA/FS’s Notice of Completion of  
2 Work under Section 4.3(c) of the SOW. In addition, for the duration of this  
3 Decree, Settling Defendant shall satisfy, or shall ensure that their contractors or  
4 subcontractors satisfy, all applicable laws and regulations regarding the provision  
5 of worker’s compensation insurance for all persons performing the Work on behalf  
6 of Settling Defendant in furtherance of this Decree. Prior to commencement of the  
7 Work, Settling Defendant shall provide to USDA/FS certificates of such insurance  
8 and a copy of each insurance policy or statement of coverage of self-insurance.  
9 Settling Defendant shall resubmit such certificates and copies of policies or  
10 statements each year on the anniversary of the Effective Date. If Settling  
11 Defendant demonstrates by evidence satisfactory to USDA/FS that any contractor  
12 or subcontractor maintains insurance equivalent to that described above, or  
13 insurance covering the same risks but in a lesser amount, then, with respect to that  
14 contractor or subcontractor, Settling Defendant need provide only that portion of  
15 the insurance described above that is not maintained by the contractor or  
16 subcontractor. Settling Defendant shall ensure that all submittals to USDA/FS  
17 under this Paragraph identify the Ramona Burn Dump Site and the civil action  
18 number of this case.

19 **VIII. PAYMENTS FOR RESPONSE COSTS**

20 22. **Payment for Past Response Costs.** Within 30 days after the  
21 Effective Date, Settling Defendant shall pay USDA/FS, in reimbursement of Past  
22 Response Costs in connection with the Site, \$398,091.92. The Financial Litigation  
23 Unit (“FLU”) of the United States Attorney’s Office for the Southern District of  
24 California shall send Settling Defendant instructions for making the payment of  
25 Past Response Costs, including a Consolidated Debt Collection System (“CDCS”)  
26 reference number. Settling Defendant shall make such payment at  
27 <https://www.pay.gov> in accordance with the FLU’s instructions, including  
28

1 references to the CDCS Number. Settling Defendant shall send notices of this  
2 payment to DOJ and USDA/FS. If the payment required under this Paragraph is  
3 late, Settling Defendant shall pay, in addition to any stipulated penalties owed  
4 under Section XI, an additional amount for Interest accrued from the Effective  
5 Date until the date of payment.

6 **23. Payments by Settling Defendant for Future Response Costs**

7 **a. Periodic Bills.** On a periodic basis, USDA/FS will send Settling  
8 Defendant a bill for Future Response Costs, including a standard cost summary  
9 listing direct and indirect costs paid by USDA/FS, its contractors, subcontractors,  
10 and DOJ. Settling Defendant may initiate a dispute under Section X regarding a  
11 Future Response Cost billing, but only if the dispute relates to one or more of the  
12 following issues: (i) whether USDA/FS has made an arithmetical error;  
13 (ii) whether USDA/FS has included a cost item that is not within the definition of  
14 Future Response Costs; or (iii) whether USDA/FS has paid excess costs as a direct  
15 result of an USDA/FS action that was inconsistent with a specific provision or  
16 provisions of the NCP. Settling Defendant must specify in the Notice of Dispute  
17 the contested costs and the basis for the objection.

18 **b. Payment of Bill.** Settling Defendant shall pay the bill, or if it  
19 initiates dispute resolution, the uncontested portion of the bill, if any, within  
20 30 days after receipt of the bill. Settling Defendant shall pay the contested portion  
21 of the bill determined to be owed, if any, within 30 days after the determination  
22 regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill,  
23 if late, and; (ii) the contested portion of the bill determined to be owed, if any, must  
24 include an additional amount for Interest accrued from the date of receipt of the  
25 bill through the date of payment. Settling Defendant shall make payment in  
26 accordance with the Bill for Collection issued by USDA/FS. Settling Defendant  
27 shall send notices of this payment to DOJ and USDA/FS.

28

**IX. FORCE MAJEURE**

1  
2 24. “Force majeure,” for purposes of this Decree, means any event arising  
3 from causes beyond the control of Settling Defendant, of any entity controlled by  
4 Settling Defendant, or of Settling Defendant’s contractors that delays or prevents  
5 the performance of any obligation under this Decree despite Settling Defendant’s  
6 best efforts to fulfill the obligation. Given the need to protect public health and  
7 welfare and the environment, the requirement that Settling Defendant exercises  
8 “best efforts to fulfill the obligation” includes using best efforts to anticipate any  
9 potential force majeure and best efforts to address the effects of any potential force  
10 majeure (a) as it is occurring and (b) following the potential force majeure such  
11 that the delay and any adverse effects of the delay are minimized to the greatest  
12 extent possible. “Force majeure” does not include financial inability to complete  
13 the Work.

14 25. If any event occurs for which Settling Defendant will or may claim a  
15 force majeure, Settling Defendant shall notify USDA/FS’s Project Coordinator by  
16 email. The deadline for the initial notice is three (3) days after the date Settling  
17 Defendant first knew or should have known that the event would likely delay  
18 performance. Settling Defendant shall be deemed to know of any circumstance of  
19 which any contractor of, subcontractor of, or entity controlled by Settling  
20 Defendant knew or should have known. Within seven (7) days thereafter, Settling  
21 Defendant shall send a further notice to USDA/FS that includes: (i) a description  
22 of the event and its effect on Settling Defendant’s completion of the requirements  
23 of the Decree; (ii) a description of all actions taken or to be taken to prevent or  
24 minimize the adverse effects or delay; (iii) the proposed extension of time for  
25 Settling Defendant to complete the requirements of the Decree; (iv) a statement as  
26 to whether, in the opinion of Settling Defendant, such event may cause or  
27 contribute to an endangerment to public health or welfare, or the environment; and  
28

1 (v) all available proof supporting their claim of force majeure. Failure to comply  
2 with the notice requirements herein regarding an event precludes Settling  
3 Defendant from asserting any claim of force majeure regarding that event,  
4 provided, however, that if USDA/FS, despite late or incomplete notice, is able to  
5 assess to its satisfaction whether the event is a force majeure under ¶ 24 and  
6 whether Settling Defendant has exercised its best efforts under ¶ 24, USDA/FS  
7 may, in its unreviewable discretion, excuse in writing Settling Defendant's failure  
8 to submit timely or complete notices under this Paragraph.

9       26. USDA/FS will notify Settling Defendant of its determination whether  
10 Settling Defendant is entitled to relief under ¶ 24, and, if so, the duration of the  
11 extension of time for performance of the obligations affected by the force majeure.  
12 An extension of the time for performance of the obligations affected by the force  
13 majeure shall not, of itself, extend the time for performance of any other  
14 obligation. Settling Defendant may initiate dispute resolution under Section X  
15 regarding USDA/FS's determination within 15 days after receipt of the  
16 determination. In any such proceeding, Settling Defendant has the burden of  
17 proving that it is entitled to relief under ¶ 24 and that their proposed extension was  
18 or will be warranted under the circumstances.

19       27. The failure by USDA/FS to timely complete any activity under the  
20 Decree or the SOW is not a violation of the Decree, provided, however, that if such  
21 failure prevents Settling Defendant from timely completing a requirement of the  
22 Decree, Settling Defendant may seek relief under this Section.

### 23                   **X. DISPUTE RESOLUTION**

24       28. Unless otherwise provided in this Decree, Settling Defendant must use  
25 the dispute resolution procedures of this Section to resolve any dispute arising  
26 under this Decree. Settling Defendant shall not initiate a dispute challenging the  
27  
28



1 Action Memorandum. The United States may enforce any requirement of the  
2 Decree that is not the subject of a pending dispute under this Section.

3 29. A dispute will be considered to have arisen when one or both of the  
4 parties sends a written notice of dispute (“Notice of Dispute”). Disputes arising  
5 under this Decree must in the first instance be the subject of informal negotiations  
6 between the Parties to the dispute. The period for informal negotiations may not  
7 exceed 20 days after the dispute arises, unless the Parties to the dispute otherwise  
8 agree. If the Parties cannot resolve the dispute by informal negotiations, the  
9 position advanced by USDA/FS is binding unless Settling Defendant initiates  
10 formal dispute resolution under ¶ 30. By agreement of the Parties, mediation may  
11 be used during this informal negotiation period to assist the Parties in reaching a  
12 voluntary resolution or narrowing of the matters in dispute.

13 **30. Formal Dispute Resolution**

14 a. **Statements of Position.** Settling Defendant may initiate formal  
15 dispute resolution by serving on the Plaintiff, within 20 days after the conclusion  
16 of informal dispute resolution under ¶ 29, an initial Statement of Position regarding  
17 the matter in dispute. The Plaintiff’s responsive Statement of Position is due  
18 within 20 days after receipt of the initial Statement of Position. All Statements of  
19 Position must include supporting factual data, analysis, opinion, and other  
20 documentation. A reply, if any, is due within 10 days after receipt of the response.  
21 If appropriate, USDA/FS may extend the deadlines for filing statements of position  
22 for up to 45 days and may allow the submission of supplemental statements of  
23 position.

24 b. **Formal Decision.** The Regional Forester, USDA/FS Region 5,  
25 will issue a formal decision resolving the dispute (“Formal Decision”) based on the  
26 statements of position and any replies and supplemental statements of position.  
27  
28



1 The Formal Decision is binding on Settling Defendant unless it timely seeks  
2 judicial review under ¶ 31.

3           **c. Compilation of Administrative Record.** USDA/FS shall compile  
4 an administrative record regarding the dispute, which must include all statements  
5 of position, replies, supplemental statements of position, and the Formal Decision.

6           **31. Judicial Review**

7           **a.** Settling Defendant may obtain judicial review of the Formal  
8 Decision by filing, within 20 days after receiving it, a motion with the Court and  
9 serving the motion on all Parties. The motion must describe the matter in dispute  
10 and the relief requested. The Parties to the dispute shall brief the matter in  
11 accordance with local court rules.

12           **b. Review on the Administrative Record.** Judicial review of  
13 disputes regarding the following issues must be on the administrative record:

14 (i) the adequacy or appropriateness of deliverables required under the Decree;  
15 (ii) the adequacy of the performance of the Response Action; (iii) USDA/FS's  
16 selection of modified or further response actions; (iv) any other items requiring  
17 USDA/FS approval under the Decree; and (v) any other disputes that the Court  
18 determines should be reviewed on the administrative record. For all of these  
19 disputes, Settling Defendant bears the burden of demonstrating that the Formal  
20 Decision was arbitrary and capricious or otherwise not in accordance with law.

21           **c.** Judicial review of any dispute not governed by ¶ 31.b shall be  
22 governed by applicable principles of law.

23           **32. Escrow Account.** For disputes regarding a Future Response Cost  
24 billing, Settling Defendant shall: (a) establish, in a duly chartered bank or trust  
25 company, an interest-bearing escrow account that is insured by the Federal Deposit  
26 Insurance Corporation (FDIC); (b) remit to that escrow account funds equal to the  
27 amount of the contested Future Response Costs; and (c) send to USDA/FS copies  
28

1 of the correspondence and of the payment documentation (*e.g.*, the check) that  
 2 established and funded the escrow account, including the name of the bank, the  
 3 bank account number, and a bank statement showing the initial balance in the  
 4 account. USDA/FS may, in its unreviewable discretion, waive the requirement to  
 5 establish the escrow account. Settling Defendant shall cause the escrow agent to  
 6 pay the amounts due to USDA/FS under ¶ 23, if any, by the deadline for such  
 7 payment in ¶ 23. Settling Defendant is responsible for any balance due under ¶ 23  
 8 after the payment by the escrow agent.

9 33. The initiation of dispute resolution procedures under this Section does  
 10 not extend, postpone, or affect in any way any requirement of this Decree, except  
 11 as USDA/FS agrees, or as determined by the Court. Stipulated penalties with  
 12 respect to the disputed matter will continue to accrue, but payment is stayed  
 13 pending resolution of the dispute, as provided in ¶ 35.

14 **XI. STIPULATED PENALTIES**

15 34. Unless the noncompliance is excused under Section IX (Force  
 16 Majeure), Settling Defendant is liable to the United States for the following  
 17 stipulated penalties:

18 a. for any failure: (i) to pay any amount due under Section VIII;  
 19 (ii) to submit timely or adequate deliverables under the SOW; (iii) to complete the  
 20 Removal Action as required by Paragraph 16 of this Consent Decree and Section  
 21 4.2 of the SOW; and (iv) any other timely or adequate deliverables required by this  
 22 Decree:

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$250
15th through 30th day	\$750
31st day and beyond	\$1250

1           **35. Accrual of Penalties.** Stipulated penalties accrue from the date  
2 performance is due, or the day a noncompliance occurs, whichever is applicable,  
3 until the date the requirement is completed or the final day of the correction of the  
4 noncompliance. Nothing in this Decree prevents the simultaneous accrual of  
5 separate penalties for separate noncompliances with this Decree. Stipulated  
6 penalties accrue regardless of whether Settling Defendant has been notified of its  
7 noncompliance, and regardless of whether Settling Defendant has initiated dispute  
8 resolution under Section X, provided, however, that no penalties will accrue as  
9 follows:

10                   a. with respect to a submission that USDA/FS subsequently  
11 determines is deficient under the SOW, during the period, if any, beginning on the  
12 31<sup>st</sup> day after USDA/FS's receipt of such submission until the date that USDA/FS  
13 notifies Settling Defendant of any deficiency;

14                   b. with respect to a matter that is the subject of dispute resolution  
15 under Section X, during the period, if any, beginning on the 21st day after the later  
16 of the date that USDA/FS's Statement of Position is received or the date that  
17 Settling Defendant's reply thereto (if any) is received until the date of the Formal  
18 Decision under ¶ 30.b; or

19                   c. with respect to a matter that is the subject of judicial review by the  
20 Court under ¶ 31, during the period, if any, beginning on the 31st day after the  
21 Court's receipt of the final submission regarding the dispute until the date that the  
22 Court issues a final decision regarding such dispute.

23           **36. Demand and Payment of Stipulated Penalties.** USDA/FS may send  
24 Settling Defendant a demand for stipulated penalties. The demand will include a  
25 description of the noncompliance and will specify the amount of the stipulated  
26 penalties owed. Settling Defendant may initiate dispute resolution under Section X  
27 within 30 days after receipt of the demand. Settling Defendant shall pay the  
28

1 amount demanded or, if it initiates dispute resolution, the uncontested portion of  
2 the amount demanded, within 30 days after receipt of the demand. Settling  
3 Defendant shall pay the contested portion of the penalties determined to be owed,  
4 if any, within 30 days after the resolution of the dispute. Each payment for: (a) the  
5 uncontested penalty demand or uncontested portion, if late; and (b) the contested  
6 portion of the penalty demand determined to be owed, if any, must include an  
7 additional amount for Interest accrued from the date of receipt of the demand  
8 through the date of payment. Settling Defendant shall make payment in  
9 accordance with the Bill for Collection issued by USDA/FS.

10 37. Settling Defendant shall send a notice of this payment to DOJ and  
11 USDA/FS. The payment of stipulated penalties and Interest, if any, does not alter  
12 any obligation by Settling Defendant under the Decree.

13 38. Nothing in this Decree limits the authority of the United States: (a) to  
14 seek any remedy otherwise provided by law for Settling Defendant's failure to pay  
15 stipulated penalties or interest; or (b) to seek any other remedies or sanctions  
16 available by virtue of Settling Defendant's noncompliances with this Decree or of  
17 the statutes and regulations upon which it is based, including penalties under  
18 section 122(l) of CERCLA, provided, however, that the United States may not seek  
19 civil penalties under section 122(l) of CERCLA for any noncompliance for which  
20 a stipulated penalty is provided for in this Decree, except in the case of a willful  
21 noncompliance with this Decree.

22 39. Notwithstanding any other provision of this Section, the United States  
23 may, in its unreviewable discretion, waive any portion of stipulated penalties that  
24 have accrued under this Decree.

## 25 XII. COVENANTS BY PLAINTIFF

26 40. **Covenants for Settling Defendant.** Subject to ¶¶ 42 and 43, the  
27 United States covenants not to sue or to take administrative action against Settling  
28

1 Defendant under sections 106 and 107(a) of CERCLA regarding the Work, Past  
2 Response Costs, and Future Response Costs.

3 41. The covenants under ¶ 40: (a) take effect upon the Effective Date;  
4 (b) are conditioned on the satisfactory performance by Settling Defendant of the  
5 requirements of this Decree; (c) extend to the successors of Settling Defendant but  
6 only to the extent that the alleged liability of the successor of Settling Defendant is  
7 based solely on its status as a successor of Settling Defendant; and (d) do not  
8 extend to any other person.

9 42. **General Reservations.** Notwithstanding any other provision of this  
10 Decree, the United States reserves, and this Decree is without prejudice to, all  
11 rights against Settling Defendant regarding the following:

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

14 b. liability for performance of response action other than the Work;

15 c. liability arising from the past, present, or future disposal, release,  
16 or threat of release of Waste Material outside of the Site; and

17 d. criminal liability.

18 43. Subject to ¶ 40 nothing in this Decree limits any authority of Plaintiff  
19 to take, direct, or order all appropriate action to protect human health and the  
20 environment or to prevent, abate, respond to, or minimize an actual or threatened  
21 release of Waste Material on, at, or from the Site, or to request a Court to order  
22 such action.

### 23 **XIII. COVENANTS BY SETTLING DEFENDANT**

#### 24 **44. Covenants by Settling Defendant**

25 a. Subject to ¶ 45, Settling Defendant covenants not to sue and shall  
26 not assert any claim or cause of action against the United States under CERCLA,  
27 section 7002(a) of RCRA, the United States Constitution, the Tucker Act,  
28

1 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State  
2 Constitution, State law, or at common law regarding the Site.

3 b. Subject to ¶ 45, Settling Defendant covenants not to seek  
4 reimbursement from the Fund through CERCLA or any other law for costs  
5 regarding the Site.

6 45. **Settling Defendant’s Reservation.** The covenants in ¶ 44 do not  
7 apply to any claim or cause of action brought, or order issued, after the Effective  
8 Date by the United States to the extent such claim, cause of action, or order is  
9 within the scope of a reservation under ¶¶ 42.a through 42.d.

10 46. Nothing in this Consent Decree is intended to limit Settling  
11 Defendant’s potential for insurance coverage.

12 **XIV. EFFECT OF SETTLEMENT; CONTRIBUTION**

13 47. The Parties agree and the Court finds that: (a) the complaint filed by  
14 the United States in this action is a civil action within the meaning of  
15 section 113(f)(1) of CERCLA; (b) this Decree constitutes a judicially approved  
16 settlement under which Settling Defendant has, as of the Effective Date, resolved  
17 its liability to the United States within the meaning of sections 113(f)(2) and  
18 113(f)(3)(B) of CERCLA; and (c) Settling Defendant is entitled, as of the Effective  
19 Date, to protection from contribution actions or claims as provided by  
20 section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the  
21 “matters addressed” in this Decree. The “matters addressed” in this Decree are the  
22 Work, and the Past Response Costs and Future Response Costs, provided,  
23 however, that if the United States exercises rights under the reservations in ¶¶ 42.a  
24 through 42.d, the “matters addressed” in this Decree will no longer include those  
25 response costs or response actions or natural resource damages that are within the  
26 scope of the exercised reservation.





1 potential liability by the United States or the State or the filing of suit against it  
2 regarding the Site; and (b) it has fully complied with any and all USDA/FS  
3 requests for information under sections 104(e) and 122(e) of CERCLA, and  
4 section 3007 of RCRA.

5 **53. Retention of Records and Information**

6 a. Settling Defendant shall retain, and instruct its contractors and  
7 agents to retain, the following documents and electronically stored data (Records)  
8 until 10 years after the Notice of Completion of the Work (the “Record Retention  
9 Period”):

10 (1) All records regarding Settling Defendant’s liability under  
11 CERCLA regarding the Site;

12 (2) All reports, plans, permits, and documents submitted to  
13 USDA/FS in accordance with this Decree, including all  
14 underlying research and data; and

15 (3) All data developed by, or on behalf of, Settling Defendant in  
16 the course of performing the Response Action.

17 b. Settling Defendant shall retain all Records regarding the  
18 liability of any person under CERCLA regarding the Site during the Record  
19 Retention Period.

20 c. At the end of the Record Retention Period, Settling Defendant  
21 shall notify USDA/FS that it has 90 days to request the Settling Defendant’s  
22 Records subject to this Section. Settling Defendant shall retain and preserve its  
23 Records subject to this Section until 90 days after USDA/FS’s receipt of the notice.  
24 These record retention requirements apply regardless of any corporate record  
25 retention policy.

26 54. Settling Defendant shall provide to USDA, upon request, copies of all  
27 Records and information required to be retained under this Section. Settling  
28



1 Defendant shall also make available to USDA, for purposes of investigation,  
2 information gathering, or testimony, its employees, agents, or representatives with  
3 knowledge of relevant facts concerning the performance of the Work.

4 **55. Privileged and Protected Claims**

5 a. Settling Defendant may assert that all or part of a record  
6 requested by Plaintiff is privileged or protected as provided under federal law, in  
7 lieu of providing the record, provided that Settling Defendant complies with ¶ 55.b,  
8 and except as provided in ¶ 55.c.

9 b. If Settling Defendant asserts a claim of privilege or protection,  
10 it shall provide Plaintiff with the following information regarding such record: its  
11 title; its date; the name, title, affiliation (*e.g.*, company or firm), and address of the  
12 author, of each addressee, and of each recipient; a description of the record's  
13 contents; and the privilege or protection asserted. If a claim of privilege or  
14 protection applies only to a portion of a record, Settling Defendant shall provide  
15 the record to Plaintiff in redacted form to mask the privileged or protected portion  
16 only. Settling Defendant shall retain all records that they claim to be privileged or  
17 protected until Plaintiff has had a reasonable opportunity to dispute the privilege or  
18 protection claim and any such dispute has been resolved in Settling Defendant's  
19 favor.

20 c. Settling Defendant shall not make any claim of privilege or  
21 protection regarding: 1) any data regarding the Site, including all sampling,  
22 analytical, monitoring, hydrogeologic, scientific, chemical, radiological or  
23 engineering data, or the portion of any other record that evidences conditions at or  
24 around the Site; or (2) the portion of any record that Settling Defendant is required  
25 to create or generate in accordance with this Decree.

26 **56. Confidential Business Information ("CBI") Claims.** Settling  
27 Defendant may claim that all or part of a record provided to Plaintiff under this  
28

1 Section is CBI to the extent permitted by and in accordance with section 104(e)(7)  
2 of CERCLA and 40 C.F.R. § 2.203(b). Settling Defendant shall segregate and  
3 shall clearly identify all records or parts thereof submitted under this Decree for  
4 which they claim is CBI by labeling each page or each electronic file “claimed as  
5 confidential business information” or “claimed as CBI.” Records that Settling  
6 Defendant claims to be CBI will be afforded the protection specified in 40 C.F.R.  
7 part 2, subpart B. If no CBI claim accompanies records when they are submitted to  
8 USDA, or if USDA/FS notifies Settling Defendant that the records are not entitled  
9 to confidential treatment under the standards of section 104(e)(7) of CERCLA or  
10 40 C.F.R. part 2, subpart B, the public may be given access to such records without  
11 further notice to Settling Defendant.

12 57. In any proceeding under this Decree, validated sampling or  
13 monitoring data generated in accordance with the Decree and reviewed and  
14 approved by USDA/FS, if relevant to the proceeding, is admissible as evidence,  
15 without objection.

16 58. Notwithstanding any provision of this Decree, Plaintiff retains all of  
17 its information gathering and inspection authorities and rights, including  
18 enforcement actions related thereto, under CERCLA, RCRA, and any other  
19 applicable statutes or regulations.

## 20 XVI. NOTICES AND SUBMISSIONS

21 59. All agreements, approvals, consents, deliverables, modifications,  
22 notices, notifications, objections, proposals, reports, waivers, and requests  
23 specified in this Decree must be in writing unless otherwise specified. Whenever a  
24 notice is required to be given or a report or other document is required to be sent  
25 by one Party to another under this Decree, it must be sent as specified below. All  
26 notices under this Section are effective upon receipt, unless otherwise specified. In  
27 the case of emailed notices, there is a rebuttable presumption that such notices are  
28

1 received on the same day that they are sent. Any Party may change the method,  
2 person, or address applicable to it by providing notice of such change to all Parties.

3 As to DOJ: *via email to:*  
4 eescdcopy.enrd@usdoj.gov  
5 Re: DJ # 90-11-3-11691

6 As to USDA/FS *via email to:*  
7 *On-Scene* Noelle K. Graham-Wakoski  
8 *Coordinator:* noelle.graham@usda.gov  
9 Re: Ramona Burn Dump Site

10 As to Settling *via email to:*  
11 Defendant Derek Gade  
12 *Director of* derek.gade@sdcountry.ca.gov  
13 *Public Works:* Re: Ramona Burn Dump Site

14 With a Copy *via email to:*  
15 to County COSD.Claims@sdcountry.ca.gov  
16 Counsel Re: Ramona Burn Dump Site  
17 File No. 14-90389

18 **XVII. APPENDIXES**

19 60. The following appendixes are attached to and incorporated into this  
20 Decree:

21 “Appendix A” is the Action Memorandum.

22 “Appendix B” is the SOW.

23 **XVIII. MODIFICATIONS TO DECREE**

24 61. Except as provided in ¶ 17 and in Section 3.3 of the SOW,  
25 nonmaterial modifications to Sections I through XXII and the Appendixes must be  
26 in writing and are effective when signed (including electronically signed) by the  
27 Parties. Material modifications to Sections I through XXII and the Appendixes  
28

1 must be in writing, signed (which may include electronically signed) by the  
2 Parties, and are effective upon approval by the Court.

3 **XIX. SIGNATORIES**

4 62. The undersigned representative of the United States and the  
5 undersigned representative of Settling Defendant certifies that he or she is fully  
6 authorized to enter into the terms and conditions of this Decree and to execute and  
7 legally bind such Party to this document.

8 **XX. PRE-ENTRY PROVISIONS**

9 63. If for any reason the Court should decline to approve this Decree in  
10 the form presented, this agreement, except for ¶ 64 and ¶ 65, is voidable at the sole  
11 discretion of any Party and its terms may not be used as evidence in any litigation  
12 between the Parties.

13 64. This Decree will be lodged with the Court for at least 30 days for  
14 public notice and comment in accordance with section 122(d)(2) of CERCLA and  
15 28 C.F.R. § 50.7. The United States may withdraw or withhold its consent if the  
16 comments regarding the Decree disclose facts or considerations that indicate that  
17 the Decree is inappropriate, improper, or inadequate.

18 65. Settling Defendant agrees to not oppose or appeal the entry of this  
19 Decree.

20 **XXI. INTEGRATION**

21 66. This Decree constitutes the entire agreement among the Parties  
22 regarding the subject matter of the Decree and supersedes all prior representations,  
23 agreements, and understandings, whether oral or written, regarding the subject  
24 matter of the Decree.

25 **XXII. FINAL JUDGMENT**

26 67. Upon entry of this Decree by the Court, this Decree constitutes a final  
27 judgment under Fed. R. Civ. P. 54 and 58 between the Parties.

28

1 **SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

2

3

4

\_\_\_\_\_  
United States District Judge

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Signature Page for Consent Decree in *U.S. v. County of San Diego*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FOR THE UNITED STATES:**

April 7, 2023  
Dated

Todd Kim  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources  
Division

/s/ Andrew W. Ingersoll  
Andrew W. Ingersoll  
Trial Attorney  
Environmental Enforcement Section

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Signature Page for Consent Decree in *U.S. v. County of San Diego*

**FOR COUNTY OF SAN DIEGO:**

March 1, 2023  
Dated

/s/ Joshua M. Heinlein  
CLAUDIA G. SILVA, County  
Counsel  
By: JOSHUA M. HEINLEIN, Senior  
Deputy  
Attorneys for Defendant COUNTY  
OF SAN DIEGO