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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

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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

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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.

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“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

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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.

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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
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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
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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.

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IX. FORCE MAJEURE

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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
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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
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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.
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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
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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 31st 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
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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
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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,
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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 48. Settling Defendant shall, with respect to any suit or claim brought by
2 it for matters related to this Decree, notify DOJ and USDA/FS no later than
3 60 days prior to the initiation of such suit or claim. Settling Defendant shall, with
4 respect to any suit or claim brought against it for matters related to this Decree,
5 notify DOJ and USDA/FS within 10 days after service of the complaint on Settling
6 Defendant. In addition, Settling Defendant shall notify DOJ and USDA/FS within
7 10 days after service or receipt of any Motion for Summary Judgment and within
8 10 days after receipt of any order from a court setting a case for trial.

9 49. **Res Judicata and Other Defenses.** In any subsequent administrative
10 or judicial proceeding initiated against Settling Defendant by Plaintiff for
11 injunctive relief, recovery of response costs, or other appropriate relief relating to
12 the Site, Settling Defendant shall not assert, and may not maintain, any defense or
13 claim based upon the principles of waiver, claim preclusion (*res judicata*), issue
14 preclusion (*collateral estoppel*), claim-splitting, or other defenses based upon any
15 contention that the claims raised by the United States in the subsequent proceeding
16 were or should have been brought in the instant case.

17 50. Nothing in this Decree diminishes the right of the United States under
18 section 113(f)(2) and (3) of CERCLA to pursue any person not a party to this
19 Decree to obtain additional response costs or response action and to enter into
20 settlements that give rise to contribution protection pursuant to section 113(f)(2).

21 51. This Consent Decree does not limit or affect the rights of Settling
22 Defendant against any third parties not party to this Consent Decree.

23 XV. RECORDS

24 52. **Settling Defendant Certification.** Settling Defendant certifies that:
25 (a) it has implemented a litigation hold on documents and electronically stored
26 information relating to the Site, including information relating to its potential
27 liability under CERCLA regarding the Site, since the earlier of notification of
28

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
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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
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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
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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
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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.

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1 **SO ORDERED** this ____ day of _____, 20__.

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United States District Judge

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

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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

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

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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

United States v. County of San Diego - Case 3:22-cv-01753-JO-NLS

Consent Decree Appendix A

August 17, 2017 Forest Service Action Memo

REMOVAL ACTION MEMORANDUM
NON-TIME-CRITICAL REMOVAL ACTION
RAMONA BURN DUMP SITE
CLEVELAND NATIONAL FOREST

I. PURPOSE

The Ramona Burn Dump Site (“Site”) is a 3.5 acre former solid waste disposal site located on National Forest System lands under the jurisdiction, custody, and control of the U.S. Department of Agriculture, Forest Service (“Forest Service”). The Site is located within the Cleveland National Forest, Palomar Ranger District, San Diego County, California, Assessor Parcel Number (APN) 244-100-17. [Figure No 1](#) shows the general vicinity of the Site and [Figure No. 2](#) shows the site features.

The purpose of this Removal Action Memorandum (AM) is to document the selection of a non-time-critical removal action to address presence of and continued release of heavy metals (antimony, arsenic, barium, cadmium, chromium, cobalt, copper, lead, nickel, selenium, and zinc), dioxins, and furans in soils at the Site. The situation at the Ramona Burn Dump Site (Site) meets the criteria for a non-time-critical removal action under Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

This decision document (Removal Action Memorandum) presents the Forest Service’s selected removal response action for the Site, chosen in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, and, to the extent practicable, the NCP. The AM is based upon the administrative record for the Site.

This non-time-critical removal action involves no nationally significant or precedent setting issues. This removal action will not establish any precedent for how future response actions will be taken and will not commit the Forest Service to a course of action that could have a significant impact on future responses or resources.

II. SITE CONDITIONS AND BACKGROUND

A. Site Location

The Site is located in San Diego County, in the Palomar Ranger District of the Cleveland National Forest, California. It is in the southeast quarter of the northeast quarter of Section 34, Township 12 south, Range 1 east, San Bernardino Base Meridian, within Assessor Parcel Number 244-100-17. The Site is on National Forest System lands in Wildcat Canyon, Pamo Valley, approximately 4 miles north of the city of Ramona, California. Ramona’s population was 20,292 in 2010 ([U.S. Census Bureau, 2013](#)). The Site is accessible by two-wheel drive vehicles and is adjacent to Dump Road, a paved private road that provides access to the currently closed Ramona Landfill, which is managed by Ramona Landfill Inc., a subsidiary of Allied Waste Industries (Allied Waste).

B. Site Characteristics

The Site is located at an average elevation of 1,600 feet above mean sea level and covers an area of approximately 3.5 acres. The Site is separated from Dump Road by a 4-foot-tall wire fence, which limits public access. An unpaved access road allows vehicles and pedestrians to access the Site from Dump Road. A locked gate at the main entrance to the Ramona Landfill separates Dump Road from Pamo Road. The area immediately surrounding the Ramona Burn Dump Site is zoned as open space or agricultural under the County's Multiple Species Conservation Program. (County, 2010). Recreational hikers or Forest Service personnel walking the site are the likely potential future users of the Site (Forest Service, 2013).

The Site is located in coastal southern California with warm, dry summers and mild winters. Total average precipitation is about 16.5 inches. The Site is not located within a mapped floodplain (ERRG, 2010). The Site is located within the San Dieguito Watershed (Water Board Hydrogeologic Unit Basin Area 5.41) (Water Board, 2011) in close proximity to and upstream of Santa Ysabel Creek and Lake Hodges and downstream of Sutherland Reservoir. The Site is flanked by two natural drainages that merge east of the Site. Downstream of the Site the drainage becomes an unnamed ephemeral creek that joins Santa Ysabel Creek within 0.5 miles of the Site.

Suitable habitat for the California Gnatcatcher (federally listed species) occurs at the Site pursuant to previous consultations between the Cleveland National Forest and the Carlsbad Office of the U.S. Fish and Wildlife Service. Santa Ysabel Creek has been designated a critical habitat for the federally listed endangered arroyo toad. Within a 4-mile radius there is critical habitat for several other federally listed endangered, threatened, or sensitive species.

C. Operational History

The former Ramona Burn Dump was operated by the County of San Diego (County) for the disposal of trash and rubbish from the community of Ramona and surrounding County areas from approximately 1948 to 1969. The Site was operated under a series of special use permits issued by the Forest Service. The initial permit was issued in 1947 and the last permit was terminated in 1974. The County operated the Site as a part of its burn dump operation located on adjacent private lands. Under the terms of the special use permit, the county was to confine the dumping to constructed pits within the permit area and ashes were to be placed in a separate pit. When the special use permit was terminated on February 2, 1974, waste disposal at the site ceased and the Site was covered by layer of soil. Over the years, in many areas, the soil cover has eroded exposing burn ash and waste debris.

The Site was uncovered following the Witch Creek fire in November 2007, when vegetation in the area was burned off and revealed that the cover material had eroded and exposed burn ash and waste debris at the site. The exposed burn dump area included remnants of a fire pit located on adjacent lands that are now owned and operated as Ramona Landfill by Allied

Waste, as well as historic burn ash and waste debris in the area identified as the Ramona Burn Dump Site on National Forest System lands.

The PA/SI (ERRG, 2010) noted that exposed ash and waste was observed over the entire site area, approximately 2.47 acres. The EE/CA revised the size of the site to 3.5 acres after the site was mapped in 2013 using a global positioning system (GPS) to determine the lateral extent of waste and burn ash. The ash and waste varies from 1 foot to 11 foot deep, with the thickest portions corresponding to what appeared to be two large north-south trending trenches based on historical aerial photographs. Soil cover was less than 1 foot thick over most of the site and several erosional gullies were observed and debris was found in the aforementioned drainages.

D. Release or Threatened Release into the Environment of a Hazardous Substance, or Pollutant or Contaminant

The primary sources of contamination at the Site are waste debris and ash from the burn dump operated by San Diego County from July 1948 through September 30, 1969.

The contaminants of concern - antimony, arsenic, barium, cadmium, chromium, cobalt, copper, lead, nickel, selenium, and zinc (heavy metals) and dioxins and furans - are potential hazardous substances or pollutants or contaminants as defined by Sections 101(14) and 101(33) of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA) as amended, 42 U.S.C. Section 9601(14) and (33).

The USFS completed a Preliminary Assessment/Site Inspection (PA/SI) in 2010 and an Engineering Evaluation/Cost Analysis (EE/CA) in 2014, which characterized the burn site related impacts. Figure 3 shows the location of surface debris and ash found during the site investigations. The data collected from the soils at the Site for the Chemicals of Potential Concern (COPC), heavy metal and dioxin and furan concentrations, compared against the soil cleanup levels the Forest Service developed for the Site are presented in Table 1 below.

**TABLE 1: SUMMARY OF COPC CONCENTRATIONS IN SOILS
COMPARED TO CLEANUP LEVELS**

COPC	Soil Clean- up Level (mg/kg)		Soil Concentration (mg/kg)	
	Eco-SSL	Human Health RSL	Min	Max
Antimony	0.27	41	ND	7.8
Arsenic*	18	2.4	ND	59.5
Barium**	390	190,000	85	580
Cadmium	0.36	800	ND	8.3
Chromium**	42	1,500,000	7.6	110
Cobalt**	22.8	30	6.6	39
Copper**	111	41,000	27	870
Lead	11	800	ND	2300
Nickel	38	10,000	2.4	130
Selenium	0.52	5,100	ND	352
Zinc**	51	310,000	23	6400
TCDD TEQ**	0.199	18	0.29	1904

Notes:

Bold - Soil Clean-up Levels are the values that will be used to meet the objectives of this removal action.

* Arsenic - The cleanup level is based on the more stringent human health screening criteria for arsenic (EPA Industrial Screening Levels). All of the other heavy metal COPC's have ecological screening levels (Eco-SSLs) as the more stringent cleanup level (Eco-SSLs in the table are the most stringent value of plants, soil invertebrates, and avian and mammalian wildlife values).

**Background concentration was used as cleanup levels when 3 times the lowest background concentration was a higher concentration than the most stringent of the Eco-SSL or the Human Health RSL.

***TCDD TEQ - Dioxin and furans are expressed as the 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) toxic equivalent quotient (TEQ). (Eco-SSL for mammals was most stringent).

An approximate area of 3.5 acres and an approximate volume of 28,967 cubic yards of contaminated soil above regulatory clean-up levels were estimated to be present at the Site. Figure 4 shows the approximate extent of waste and estimated depths of waste used for the volume estimate.

E. NPL Status

The Ramona Burn Site is not listed on the National Priorities List nor has the Site been proposed for the NPL.

F. Maps, Pictures, and Other Graphic Representations

Figure 1: Site Location Map

Figure 2: Site Features Map

Figure 3: Sample Locations and Screening Results

Figure 4: Waste Extent and Volumes

G. Other Actions to Date

Pursuant to the authority found at 42 U.S.C. Section 9604(a) and in Executive Order 12580, the Forest Service has initiated actions to respond to the above-mentioned release of hazardous substances. The Forest Service has implemented a response in accordance with the NCP non-time-critical removal process, which has included the following:

- *Preliminary Assessment/Site Investigation for Ramona Burn Dump Site, Cleveland National Forest San Diego County, California*, completed in May, 2010 by Engineering/Remediation Resources Group, Inc.
- *Engineering Evaluation/Cost Analysis for the Non-Time-Critical Removal Action Ramona Burn Dump Site, Cleveland National Forest, California*, completed in January, 2014 by Engineering/Remediation Resources Group, Inc.

H. State and Local Authorities Role

This AM will be provided as formal notification to State and Local authorities who otherwise do not, at this time, have an active role in the response actions for the Site. Appropriate County Officials have been kept apprised of Forest plans for the Site through Status Memos and official correspondence.

The Forest Service is conducting response actions at the Site pursuant to its lead agency authority under CERCLA and Executive Order 12580. Pursuant to 42 U.S.C. Section 9621(e) and 40 C.F.R. Section 300.400(e), no Federal, State or local permits are required for the on-site portion of this removal action.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

A. Threats to Public Health, or Welfare or the Environment

The release of hazardous substances from erosional features and drainage emanating from the Site supports the determination that it poses threats to public health, welfare and the environment and that it is appropriate to implement the response actions described in this AM. In accordance with Title 40 Code of Federal Regulations, Part 300, Section 415 (40 C.F.R. Section 300.415), the following conditions indicate that removal action is warranted for the Site:

i. Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby human populations, animals, or the food chain;

1. Public Health and Welfare: The concentration levels of arsenic, cobalt, lead, and dioxins and furans above human health clean-up levels in near surface soils found at the Site indicate that the air and soil (inhalation and ingestion) human exposure pathways are complete. The Site is easily accessible by 2 wheel drive vehicles and has the potential to be used by recreational users visiting the Forest and by Forest Service staff and the adjacent landfill employees. Studies have identified the following health effects of exposure to arsenic, cobalt, lead, and dioxin and furans:
 - a. Arsenic: Gastrointestinal irritation, neuropathy, skin lesions, vascular disease, and death due to cardiopulmonary collapse (acute dose).
 - b. Cobalt: Asthma, pneumonia, skin rashes, nausea, and death due to cardiopulmonary collapse (acute dose).
 - c. Lead: Neurological and central nervous system effects and hematological and kidney effects (with higher susceptibility in children).
 - d. Dioxins and Furans: Highly toxic and can cause cancer, reproductive and developmental problems, damage to the immune system, and can interfere with hormones.
2. Threats to the Environment: Ecological receptors could become exposed to site contaminants through direct contact with waste debris and burn ash contaminated soils; ingestion of waste debris and burn ash- contaminated soils; and ingestion of contaminated food (e.g., soil-dwelling insects, vegetation).

ii. Actual or potential contamination of drinking water supplies or sensitive ecosystems;

Waste debris have been identified in the two natural drainages flanking the Site and extending down the drainage beyond the Forest Boundary. The two natural drainages merge east of the Site. Downstream of the Site the drainage becomes an unnamed ephemeral creek that joins Santa Ysabel Creek within 0.5 miles of the Site. Surface waters within the Santa Ysabel Creek area have been designated for municipal and domestic water supply beneficial use. Santa Ysabel Creek has been designated as critical habitat for the federally listed endangered arroyo toad. Thus there is the

potential for contamination of drinking water supplies or sensitive ecosystems if the contamination continues to migrate to Santa Ysabel Creek.

iii. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate;

1. Human Health and Welfare: Elevated concentrations of arsenic, cobalt, lead, and dioxins and furans in near surface soils in waste debris and burn ash-contaminated soils that exceed human health screening level thresholds are present in exposed un-vegetated soils at the Site. These contaminated soils are susceptible to migration because of water- and wind-borne influences. Evidence of migration of these waste debris into adjacent drainage areas downstream of the Forest boundary has been documented based on visual inspections.

2. Threats to the Environment: Elevated concentrations of antimony, arsenic, barium, cadmium, chromium, cobalt, copper, lead, nickel, selenium, zinc, dioxin and furans in the waste debris and burn ash-contaminated soils that exceed ecological soil screening levels are present in exposed un-vegetated soils at the Site. These contaminated soils are susceptible to migration because of water- and wind-borne influences. Evidence of migration of these waste debris into adjacent drainage areas downstream of the Forest boundary has been documented based on visual inspections.

iv. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

Waste debris and burn ash contaminants are present in un-vegetated soils at the Site and exposed to the elements. The Site drains to a tributary of Santa Ysabel Creek. Rainfall or other forms of run-off inducing events will tend to spread the contaminated materials further from the site.

B. Availability of Other Appropriate Federal or State Response Mechanisms to Respond to the Release

The Site is located on National Forest System lands under the jurisdiction, custody and control of the U.S. Forest Service, within the boundaries of the Cleveland National Forest. No other federal or state response mechanisms are available to respond to the release.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances, pollutants and contaminants from the Site, if not addressed by implementing the response actions selected in this AM, may continue to present an imminent and substantial endangerment to public health, welfare, or the environment.

V. PROPOSED ACTIONS AND ESTIMATED COST

A. Proposed Actions

The proposed actions are integral to a comprehensive effort to address waste debris and burn ash-related human health and environmental impacts in the San Dieguito Watershed. The following objectives, which correspond to Section 300.415(b)(2) of the NCP, have been developed for the site:

- Reduce exposure of humans and wildlife to metals and dioxins and furans in soil and burn ash to acceptable levels.
- Reduce the risk of erosion of contaminated soil and burn ash.

Based on an analysis of the nature and extent of waste debris and burn ash impacted soils and the response objectives listed in the preceding paragraph, the following three alternative actions were evaluated for the Ramona Burn Dump Site:

Alternative 1 - No Action

Alternative 2 - Cap Contaminated Soil and Burn Ash in Place involves capping contaminated soil and burn ash in situ (approximately 3.5 acres), with minimal consolidation and relocation of the waste at the site the cap would cover an area of approximately 3.3 acres. Only Area 10 (shown on [Figure 4](#)) would be excavated to a depth of 0.5 foot bgs and placed on top of the main body of the waste. Area 10 is estimated to contain approximately 429 cubic yards of waste material that would require consolidation. A soil cap consisting of at least 2 feet of clean soil, a demarcation layer, and an impermeable 40-mil high-density polyethylene (HDPE) liner with appropriate drainage features¹ would be constructed on top of the entire waste footprint ([Figure 4](#)).

Alternative 3 - Consolidate and Cap Contaminated Soil and Burn Ash in Place (Proposed) similar to Alternative 2 in construction and implementation but differs in that contaminated soil and burn ash would be consolidated into a single, and smaller, waste disposal unit prior to being capped in place. Under Alternative 3, approximately 1,536 cubic yards of waste material and contaminated soil would be consolidated into a single waste repository and placed under an approximate 2.6 acre RCRA-compliant cover system. The cover system will be similar to that in Alternative 2 and will consist of a soil cap of at least 2 feet of clean soil, a demarcation layer, and an impermeable 40-mil high-density polyethylene (HDPE) liner with appropriate drainage features constructed on top of the entire waste footprint ([Figure 4](#)).

Alternative 4 - Excavation and Offsite Disposal of Contaminated Soil and Burn Ash, all contaminated soil and burn ash would be removed from the site for transportation to an offsite disposal facility. In total, approximately 28,967 bank cubic yards of contaminated soil and burn ash would be disposed of off-site. The contaminated soil and burn ash

¹ The liner system design allows for drainage along the micro spikes in the geotextile.

would be hauled on Pamo Road and then to an appropriately-licensed disposal facility such as South Yuma County Landfill in Yuma, Arizona. Excavated areas would be backfilled with clean soil, and the site would be restored to its original grade.

Alternative 1 was not selected because it would not address the actual or potential imminent and substantial human health and ecological threats posed by the exposed waste debris, burn ash, and burn ash-contaminated soils. Alternatives 2 and 4 were not selected even though they meet all of the removal action objectives and complied with all of the Applicable or Relevant and Appropriate Requirements (ARARs) but are not as cost effective as Alternative 3.

i. Description of Proposed Alternative

Alternative 3 – Consolidate and Cap Contaminated Soil and Burn Ash in Place (Proposed)

The proposed Alternative will consolidate approximately 1,536 cubic yards of waste and contaminated soils from Areas 1 through 10, placed on top of Areas 1 through 5 and 7 through 9, and placed under a compliant solid waste disposal site cover system (Figure 4). The reduced size of the cover system is anticipated to cover approximately 2.6 acres.

This alternative would require an engineering study and design to establish site requirements for the cap, confirm the depth to groundwater beneath the site, and to ensure that all appropriate requirements are met. Engineering controls such as grading, drainage ditches, and culverts would be used where needed to divert water away from the cap and ensure that the repository is not impacted by drainage across the site.

Measures would be implemented to minimize the short-term impacts to unnamed ephemeral creeks on site. Construction activities would be conducted during the dry season, and BMPs would be implemented such that short-term impacts to humans (including site construction workers) and the environment would be minimized.

The soil is classified as California hazardous waste but not RCRA hazardous waste in accordance with Title 22 CCR § 66261 and Title 40 Code of Federal Regulations (CFR) §261.24. Other federal or state requirements for appropriate siting, construction, and long-term inspection and maintenance may apply, however [e.g., regulations for corrective action management units at Title 40 C.F.R. Part 264, Subpart S, and Part 264.552(c)].

ii. Contribution to Long Term Performance

The proposed Alternative would minimize the potential for exposure to metals and dioxins and furans present at the site and would prevent exposure or continued

erosion of waste materials from the site, thereby minimizing the potential for future or continued downstream releases. Appropriately designed and maintained surface water drainage and vegetative maintenance would limit future erosion of the cover materials and reduce the potential for future releases. The HDPE liner would prevent surface water infiltration through waste materials and minimize the potential for leachate development. Future institutional controls, such as placing fences or signs around the cap to reduce the potential for erosion of the cap by site visitors and ensure that permanent vegetation is established, may be required in the engineering design. This alternative would require long-term operation and maintenance (O&M) of the cover to ensure that no release of contaminants occur in the future. An impermeable cap is considered effective at addressing the risks posed to human health and the environment by contaminated soil and burn ash. Contaminated materials would be encapsulated such that exposure of humans or wildlife to waste would be reduced. This alternative would comply with all chemical-, location-, and action-specific ARARs.

iii. Engineering Evaluation/Cost Analysis (EE/CA)

In 2010, the Forest Service completed a site investigation to characterize the waste debris and burn ash impacted soils located within the Ramona Burn Dump located on National Forest System lands. The results of the investigation are presented in the report titled *Final Preliminary Assessment/Site Inspection Report for the Ramona Burn Dump Site Cleveland National Forest, San Diego County, California, May, 2010*. Based on this assessment, the Forest Service conducted an EE/CA.

The analytical data found in the 2010 PA/SI and additional data and components of the identification and analysis of the removal action alternatives found in the report titled *Engineering Evaluation/Cost Analysis for the Non-Time-Critical Removal Action Ramona Burn Dump Site Cleveland National Forest, California January, 2014*, were used to support preparation of this action memorandum.

The EE/CA and administrative record were made available for the required 30-day public comment period per the NCP.

iv. Applicable or Relevant and Appropriate Requirements (ARARs)

ARARs include "applicable" or "relevant and appropriate" requirements.

Applicable Requirements: Applicable requirements are those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under Federal or State environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site. "Applicability" implies that the remedial action or the circumstances at the site satisfy all of the jurisdictional prerequisites of a requirement.

Relevant and Appropriate Requirements: Relevant and appropriate requirements are those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal environmental or State environmental or facility siting laws that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site.

The proposed action may attain ARARs under federal or state environmental or facility siting laws. Other federal and state advisories, criteria or guidance may, as appropriate, be considered in formulating the removal action. The recommended non-time-critical removal action will comply with the following ARARs to the extent practicable, considering the exigencies of the situation:

Action-Specific ARARs for this response action are:

- **Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901-6991.** This requirement defines RCRA hazardous waste, requirements for on-site generation of waste.
- **Clean Water Act Section 404, 40 C.F.R. Part 230, 33 C.F.R. Parts 320-330, 40 C.F.R. Part 6, Appendix J.** Regulations to protect waters of the U.S. and wetlands, as defined by EPA and the U.S. Army Corps of Engineers regulations, by prohibiting the discharge of dredged or fill material without a permit, and taking actions to avoid adverse effects, minimize potential harm and preserve and enhance wetlands to the extent practicable.
- **Federal Noxious Weed Act, 7 U.S.C. Section 2801 *et seq.*** Requires efforts to avoid the introduction and spread of identified noxious weeds.
- **California Hazardous Waste Control Law and Hazardous Waste Disposal Regulations; Title 22, CCR 66262.1 to 66263.32 *et seq.*** Requirements for determination of non-RCRA hazardous wastes, non-hazardous waste, and hazardous waste management, including manifesting, record keeping, storage, and packaging procedures for hazardous waste.
- **California Environmental Protection; Title 27, CCR 21090, 20310, 20320, 21142, 21145, and 21150 *et seq.*** Requirements for construction and containment of onsite encapsulation of waste material.
- **Air District Regulations (nuisance and fugitive dust control)**

Rule 402 - Nuisance

Rule 403 - Fugitive Dust

Potential Chemical-Specific ARARs for this response action are:

- **EPA Regional Screening Levels.** Provides non-regulatory screening criteria for the protection of human health.
- **EPA Ecological Soil Screening Levels.** Provides non-regulatory screening criteria for the protection of ecological receptors.

Location-Specific ARARs for this response action are:

- **Archeological and Historic Preservation Act, 16 U.S.C. Section 469, 40 C.F.R. 6.301.** Establishes procedures to preserve historical and archeological data that might be destroyed through alteration of terrain as a result of a federal undertaking.
- **Archeological Resources Protection Act of 1979, as amended, 16 U.S.C. Sections 470aa-470mm.** Prohibits unauthorized excavation, removal, damage, alteration or defacement of archeological resources located on public lands.
- **Endangered Species Act, 16 U.S.C. Section 1531 et seq.** Defines and provides a means for conserving various species of fish, wildlife, and plants that may be threatened with extinction, and provides for the designation of critical habitats essential to the conservation of a threatened or endangered species. Requires Federal agencies, in consultation with DOI and the National Marine Fisheries Service, to ensure that actions that they authorize, fund or carry out are not likely to jeopardize the continued existence of threatened or endangered species or adversely modify or destroy their critical habitat.

B. Project Schedule

The proposed actions are expected to begin in March 2018 and be completed by November 1, 2018.

C. Estimated Costs

The estimated costs represent an order-of-magnitude estimate with an intended accuracy of +50 to -30 percent accuracy. A summary of cost from the January 2014 EE/CA is listed below:

Capital Cost: Estimated cost for design and implementation:	\$1,662,276
Recurring O&M cost for years 1-30 present value:	\$ 643,991
Periodic Cost for repairs years 1-30 present value:	\$ 359,365
Forest Service Oversight for design and implementation:	<u>\$ 14,821</u>
Total in January 2014 dollars	\$2,680,453
Total in 2017 dollars (i=0.25%, n=3.5 years)	\$2,703,980

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If the response action should be delayed or not taken:

- Hazardous substances will remain as potential human health and ecological threats based on inhalation, ingestion, and dermal contact exposure pathways; and
- Hazardous substances will remain a continuing source of soil contamination.

VII. OUTSTANDING POLICY ISSUES

None have been identified at this time.

VIII. ENFORCEMENT

The Forest Service’s research and follow-up research by the Office of the General Counsel (OGC) resulted in the determination of a viable Potential Responsible Party (PRP). An Administrative Settlement Agreement and Order on Consent will be sent to the viable PRP.

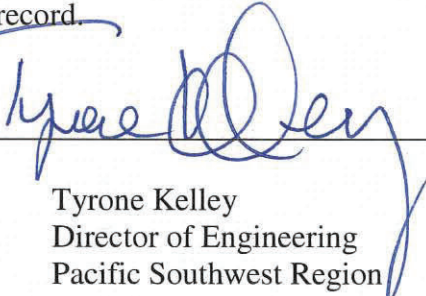
IX. DECISION

The Forest Service has CERCLA authority and is the “lead agency” for National Forest System (NFS) lands at non-National Priorities List sites. No other appropriate response mechanisms or authorities are currently available to address this Site.

In compliance with the Forest Service’s role in protecting the public health and welfare and the environment, and because the release or threatened releases are on NFS lands under the administration of the Cleveland National Forest, and pursuant to the authority found at 42 U.S.C. Section 5604 (a), Executive Order 12580, and 7 C.F.R. 2.60, the Forest Service undertakes this response action. The response action will be not inconsistent with the NCP.

Approval is hereby given by the Forest Service to conduct a non-time-critical removal action to consolidate and cap in place contaminated soil and burn ash from the Ramona Burn Dump Site on the Cleveland National Forest.

The removal action for the Site was developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. Conditions at the site meet the NCP 40 C.F.R. § 300.415(b) criteria for a removal action. This decision is based upon information contained within the Site’s administrative record.

Signature:  Date: August 17, 2017

Tyrone Kelley
 Director of Engineering
 Pacific Southwest Region

References

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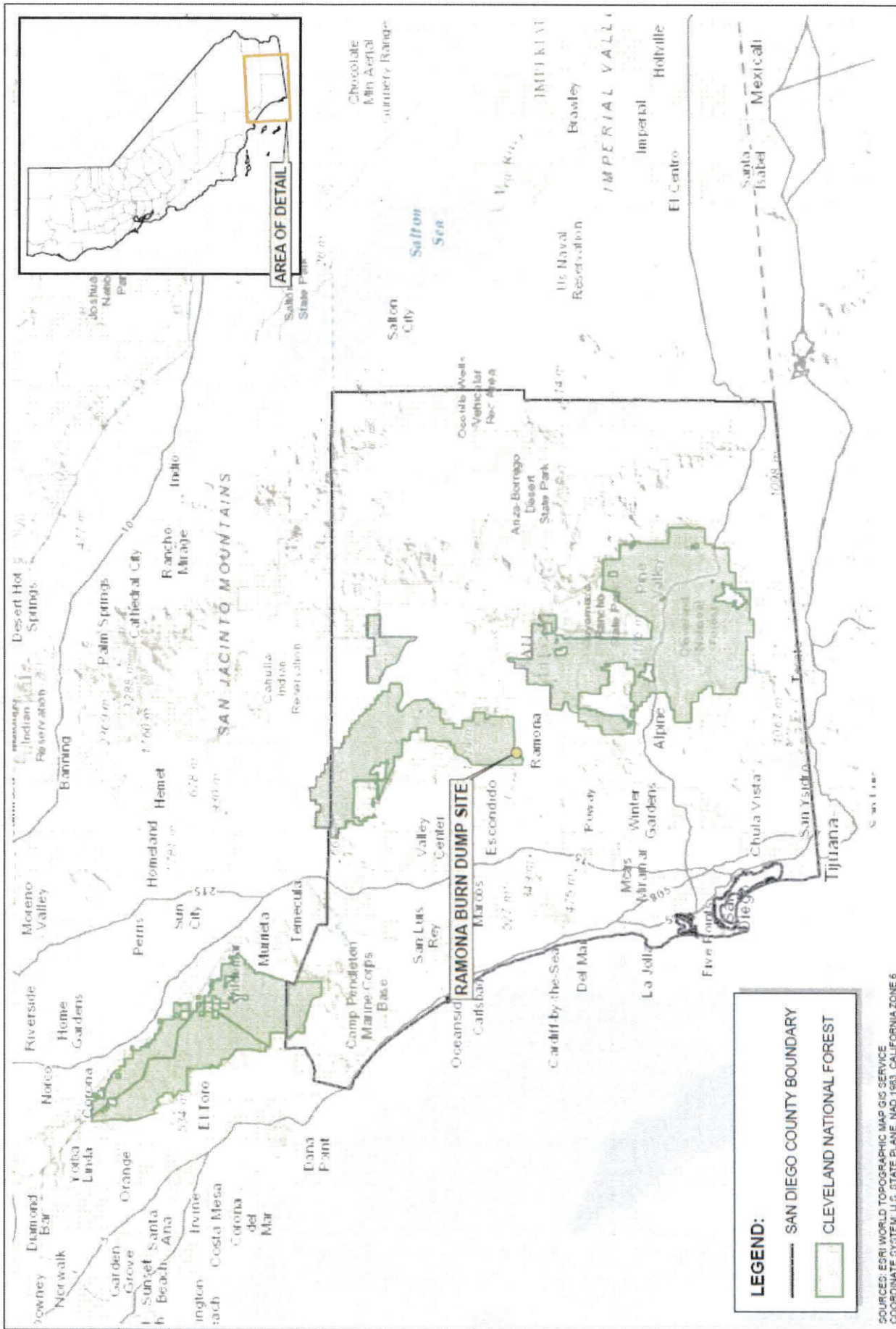
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Figures



CLIENT U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE LOCATION: RAMONA BURN DUMP SITE CLEVELAND NATIONAL FOREST RAMONA, CALIFORNIA	DRAWN BY: JJC 11/27/2013	CHECKED BY: AN 11/27/2013	PROJECT NO: 2013-064	FIG NO: 1
	SITE LOCATION MAP			
Engineering/Remediation Resources Group, Inc. 115 Sansome Street, Suite 200 San Francisco, California 94104 (415) 395-9974				

