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FILED
 CLERK, U.S. DISTRICT COURT
 MAR 27 1996
 FILED
 CLERK, U.S. DISTRICT COURT
 OF CALIFORNIA
 DEPUTY
 MAR 25 1996
 U.S. DISTRICT COURT

LODGED
 CLERK, U.S. DISTRICT COURT
 MAR 21 1996
 CENTRAL DISTRICT OF CALIFORNIA
 DEPUTY

11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,)
 15)
 Plaintiff,)
 16)
 v.)
 17)
 UNION OIL COMPANY OF CALIFORNIA,)
 18)
 Defendant.)
 19)

No. CV 96-1997-RAP(RNBx)

CONSENT DECREE

20 This Consent Decree ("Decree") is entered into by the
 21 United States of America ("United States"), and Union Oil Company
 22 of California ("Unocal").

23 INTRODUCTION

24 This action arose out of the rupture of a Unocal
 25 pipeline on August 3, 1992, in Avila Beach, California, which
 26 caused the discharge of San Joaquin Valley crude oil onto nearby
 27 lands and water.

U.S. DEPARTMENT OF JUSTICE
 APR 17 1996
 LANDS DIVISION
 DEED RECORD 42

28

1 Plaintiff has alleged that approximately 600 barrels of
2 crude oil were spilled. The spilled oil flowed from the pipeline
3 rupture along a gully, down a cliff face and into a small cove
4 and then reached marine waters.

5 The discharge resulted in injury to terrestrial
6 vegetation, intertidal and subtidal sediments and biota,
7 fisheries, birds, marine mammals, and other valuable resources in
8 and about Avila Beach, Olde Port Beach, and Pirates Cove Beach.

9 The United States and the State of California are co-
10 equal joint trustees over some or all of the resources affected
11 by the oil spill.

12 The State of California has filed a separate action
13 against Unocal in Superior Court. That action is resolved by a
14 Settlement Agreement (copy attached hereto as Attachment 1). The
15 Settlement Agreement largely parallels this Decree and provides
16 for resolution of the State's claims, and sets forth the
17 structure for payment of natural resource damages, as well as
18 other payments, to the State. The Settlement Agreement provides
19 for performance of the same Restoration projects as set forth in
20 this Decree.

21 The United States and California (collectively, the
22 "Governments") have proposed certain Restoration Projects to
23 Restore Natural Resources injured as a direct result of the oil
24 spill. The Governments deem the proposed projects reasonable and
25 necessary measures to Restore these Natural Resources.

1 The Parties desire to avoid the costs and risks of
2 litigation and believe that resolution of this dispute without
3 litigation to be in the best interests of the public.

4 The Parties recognize that this Decree is a settlement
5 of a contested matter and that neither the payment nor the
6 acceptance of any consideration represents an admission of
7 liability or responsibility by any Party.

8 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and
9 DECREED as follows:

10 JURISDICTION

11 1. This Court has jurisdiction over the subject
12 matter and over the parties to this action pursuant to 28 U.S.C.
13 §§ 1331, 1345, 33 U.S.C. § 2717, and 16 U.S.C. § 1540. Venue is
14 proper in this Court pursuant to 28 U.S.C. § 1391(b). The
15 Complaint states claims upon which relief may be granted.

16 PARTIES BOUND

17 2. This Consent Decree shall apply to and be binding
18 upon and inure to the benefit of the United States and Unocal,
19 and as applicable, their present and former officers, directors,
20 employees, and agents.

21 DEFINITIONS

22 3. Whenever the following terms are used in this
23 Decree, they shall have the following meanings:

24 (a) "Natural Resource" and "Natural Resources"
25 mean land, fish, wildlife, biota, air, water, ground water,
26 drinking water supplies, and other such resources belonging
27 to, managed by, held in trust by, appertaining to, or

1 otherwise controlled by the United States or the State of
2 California and its agencies.

3 (b) "Natural Resource Trustees" or "Trustees"
4 means those federal and state agencies designated or
5 authorized pursuant to the Oil Pollution Act of 1990, and
6 state law to act on behalf of the public as Trustees for the
7 natural resources belonging to, managed by, controlled by or
8 appertaining to the United States or State of California.
9 Specifically, as used in this Decree the Trustees are the
10 United States Department of the Interior, acting through the
11 U.S. Fish and Wildlife Service, the California Department of
12 Fish and Game, and the State Lands Commission.

13 (c) "Party" or "Parties" mean Unocal and the
14 United States, including its Departments, Agencies, and
15 subdivisions.

16 (d) "Restore" or "Restoration" mean any action to
17 restore to its pre-spill condition any Natural Resource
18 injured, lost, or destroyed as a result of the Oil Spill and
19 the services provided by that Natural Resource, or any
20 action which restores, replaces, rehabilitates, or acquires
21 the equivalent of, the injured, lost, or destroyed Natural
22 Resource and affected services.

23 (e) "Natural Resources Damages" means civil
24 compensatory and remedial relief recoverable by the
25 Governments in their capacities as Trustees on behalf of the
26 public for injury to, destruction of, or loss of any or all
27 Natural Resources resulting from the Oil Spill, including

1 (1) costs of damage assessment, (2) compensation for loss,
2 injury, impairment, damage or destruction of Natural
3 Resources, whether temporary or permanent, or for loss of
4 use value (active and passive), consumer surplus, economic
5 rent, or any other similar value of Natural Resources, and
6 (3) costs of restoration, rehabilitation, or replacement of
7 injured Natural Resources or the acquisition of equivalent
8 resources.

9 (f) "Oil Spill" means the discharge of San
10 Joaquin Valley crude oil through a ruptured Unocal pipeline
11 on August 3, 1992 at the Unocal Avila Beach Tank Farm in
12 Avila Beach and the resulting oil spill onto lands and
13 marine waters.

14 (g) "Response Costs" mean response and/or cleanup
15 costs incurred by the Trustees in responding to the Oil
16 Spill, including but not limited to actions taken to remove
17 and clean up the spilled oil.

18 SETTLEMENT PAYMENT BY UNOCAL

19 4. Unocal shall pay to the Governments the sum of
20 \$1,619,919.90 in the manner set forth in paragraphs 5, 6, 7, and
21 8 of this Decree.

22 5. Within fifteen (15) days of the date of notice to
23 Unocal that all signatories have executed this Consent Decree and
24 the Superior Court Settlement Agreement, Unocal shall pay \$1.6
25 million into the Unocal Settlement Escrow Account as described in
26 paragraph 6 of this Decree.

1 6. Unocal shall establish or cause to be established
2 an escrow account at a federally-chartered bank (the "Unocal
3 Settlement Escrow Account") to receive and hold the \$1.6 million
4 and all interest accumulated on that amount pending entry of this
5 Decree and the entry of Judgment in the Superior Court for the
6 County of San Luis Obispo on the complaint for damages arising
7 out of the Oil Spill. The Unocal Settlement Escrow Account shall
8 earn a rate of interest not less than the rate on 90-day Treasury
9 Bills, and all interest earned thereon shall be for the benefit
10 of and paid to the Governments, except that if the \$1.6 million
11 is returned to Unocal as a result of termination of this Decree,
12 all interest thereon shall be for the benefit of and paid to
13 Unocal.

14 7. Within 15 days of receipt by Unocal of written
15 instructions from the United States following entry of this
16 Decree and entry of Judgment in the Superior Court on the
17 complaint for damages arising out of the Oil Spill, Unocal shall
18 instruct the escrow holder to transfer \$100,000, plus the
19 interest accrued thereon, from the Unocal Settlement Escrow
20 Account to the United States Department of the Interior's Natural
21 Resource Damage Assessment and Restoration Fund on the next
22 maturity date of the 90-day Treasury Bills in which the escrow
23 funds are currently invested. The Settlement Agreement provides
24 that in settlement of State natural resource damage claims,
25 Unocal shall transfer from the Unocal Settlement Escrow Account
26 into the Avila Beach Trust, which is to be established by Unocal
27 through the Settlement Agreement with The National Fish and
28

1 Wildlife Foundation, \$950,000 plus the interest accrued thereon.

2 The Avila Beach Trust will be used by the State to
3 implement the following Restoration projects, as further
4 described in Attachment 3 to this Decree:

5 (a) The sum of \$275,000, plus the interest
6 thereon, for estuarine habitat enhancement;

7 (b) The sum of \$425,000, plus the interest
8 thereon, for riparian corridor revegetation;
9 and

10 (c) The sum of \$250,000, plus the interest
11 thereon, for fish barrier removal along San
12 Luis Creek.

13 The \$100,000 payment, plus the interest thereon, to the
14 Natural Resource Damage Assessment and Restoration Fund shall be
15 used by the United States for sea otter enhancement, as further
16 described in Attachment 2 to this Decree. The performance of all
17 Restoration projects is governed by a Memorandum of Understanding
18 entered into between the State and Federal natural resource
19 trustees.

20 8. Within fifteen (15) days of the later of entry of this
21 Decree and entry of Judgment in the Superior Court on the
22 complaint for damages arising out of the Oil Spill, Unocal shall
23 instruct the escrow holder holding the Unocal Settlement Escrow
24 Account to irrevocably transfer the following sums to the
25 specified designees on the next maturity date of the 90-day
26 Treasury Bills in which the escrow funds are currently invested:

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(a) The sum of \$25,000 plus the interest thereon for civil penalties pursuant to Section 11 of the Endangered Species Act, 16 U.S.C. § 1540, by certified check or money order made payable to "U.S. Fish and Wildlife Service", certified mail to:

The U.S. Fish and Wildlife Service
c/o Office of the Solicitor
600 Harrison Street, Suite 545
San Francisco, California 94107-1373

(b) The sum of \$200,000, plus the interest thereon, to monitor and oversee performance on the Restoration projects and monitor residual oil in Boulder Cove, to the California Department of Fish and Game, as set forth in the Settlement Agreement;

(c) The sum of \$50,000, plus the interest thereon to F & G for civil penalties to the "Environmental Enhancement Fund" created pursuant to Government Code § 670.70, as set forth in the Settlement Agreement;

(d) The sum of \$125,000, plus the interest thereon, for restitution, to F & G's Administration Fund, as set forth in the Settlement Agreement; and

(e) The sum of \$150,000, plus the interest thereon, to the Port San Luis Harbor District, for Port Area/Beaches enhancement.

1 Unocal has previously reimbursed the State Lands Commission the
2 sum of \$19,919.90, for State Lands Commission response costs.

3 9. The Trustees commit to the expenditure of the funds set
4 forth in paragraph 7 above, for the design, implementation,
5 permitting, and monitoring of Restoration projects. The Trustees
6 retain the ultimate authority and responsibility to determine the
7 use of funds received for Natural Resource Damages in accordance
8 with the provisions of the Oil Pollution Act, 33 U.S.C. § 2701 et
9 seq., other relevant federal or state law, and the regulations
10 governing use of recoveries for Natural Resource Damages. If, in
11 applying the provisions of the Oil Pollution Act and other
12 applicable federal and state law, and examining the scientific
13 and engineering objectives of the planned Restoration projects,
14 and taking into account the available funds, the Trustees
15 determine to expend funds in a manner different from that
16 described in paragraph 7 or in Attachment 2, the Trustees will
17 proceed with other Restoration projects that the Trustees deem to
18 be reasonable and necessary to restore Natural Resources directly
19 impacted by the Oil Spill.

20 RELEASES AND COVENANTS NOT TO SUE

21 10. In consideration of Unocal's payments to the State
22 of \$1.1 million and to the United States of \$100,000, for natural
23 resource damages, and its other payments pursuant to paragraph 8
24 and the Settlement Agreement, effective upon entry of the Decree
25 and Unocal's payment of the Settlement Amount in the manner
26 prescribed in paragraphs 5, 6, 7, and 8 of this Decree, the
27 United States releases Unocal from, and covenants not to sue or

1 take any other civil or administrative action against Unocal for,
2 any and all civil claims alleged in the Complaint in this action
3 and all claims for damages for injury to, loss of, or destruction
4 of Natural Resources arising out of the Oil Spill, regardless of
5 how the Trustees may determine to expend the funds designated for
6 the natural resource damage restoration projects set forth in
7 paragraph 7 and Attachment 2.

8 11. Effective upon entry of the Decree, Unocal
9 releases the United States from, and covenants not to sue or to
10 take any other civil or administrative action against the United
11 States for any and all civil claims that arise from, or are based
12 on, the Oil Spill. Unocal waives the requirements of 50 C.F.R.
13 Part 11, with regard to the civil penalty pursuant to the
14 Endangered Species Act.

15 RESERVATION OF RIGHTS

16 12. Nothing in this Decree creates, nor shall it be
17 construed as creating, any claim in favor of any person not a
18 party to this Decree.

19 13. The covenants not to sue in paragraph 10 above
20 shall apply only to matters expressly set forth in paragraph 10
21 and shall not apply to the following claims:

22 (a) Claims based on a failure of Unocal to
23 satisfy the requirements of this Decree, and

24 (b) Claims for criminal liability brought by the
25 United States.

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1 NOTICES AND SUBMITTALS

2 14. Whenever, under the terms of this Decree, written
3 notice is required to be given by one Party to another, it shall
4 be directed to the individuals and addresses specified below,
5 unless the individuals specified or their successors give notice,
6 in writing, to the other Parties that notice should be directed
7 to a different individual or address.

8
9 Notice to the United States:

10 Chief, Environmental Enforcement Section
11 Environment and Natural Resources Division
12 U.S. Department of Justice
13 P.O. Box 7611
14 Ben Franklin Station
15 Washington, D.C. 20044

16
17 Notice to Unocal:

18 Ellen A. Whelan
19 Assistant Counsel
20 Unocal Corporation
21 1201 West 5th Street, Rm. 502
22 Los Angeles, California 90051

23
24 TERMINATION

25 15. In the event this Consent Decree is not approved,
26 Unocal shall have right to terminate this Decree and obtain
27 release of the Escrow Funds, together with the interest thereon,
28 to its own account.

29 REPRESENTATIVES

30 16. Each undersigned representative of Unocal and the
31 Acting Assistant Attorney General certifies that he or she is
32 fully authorized to enter into the terms and conditions of this

1 Decree and to execute and legally bind the parties to this
2 Decree.

3 MODIFICATION

4 17. Minor modifications not materially altering this
5 Decree may be effected by the written agreement of the Parties.
6 No other modifications of this Decree may be made unless the
7 Parties agree in writing to the modification and the Court
8 approves of the requested modification. Nothing in this
9 paragraph shall be deemed to limit the Court's power to supervise
10 or modify this Consent Decree.


11 Dated and entered this _____ day of MAR 22 1996, 1996.


12 RICHARD A. PAEZ

13 UNITED STATES DISTRICT JUDGE

14
15 WE HEREBY CONSENT to the entry of this Decree:

16
17 FOR THE UNITED STATES OF AMERICA:

18
19 By:  Date: MAR 7 1996
20 LOIS J. SCHIFFER
21 Assistant Attorney General
22 Environment and Natural Resources Division
23 United States Department of Justice

24
25 BY:  Date: 3/14/96
26 ROBERT D. BROOK
27 Environmental Enforcement Section
28 Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

1 FOR UNION OIL COMPANY OF CALIFORNIA:

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By: 

Date: 1/27/96

President/Vice President