

MEMORANDUM OF AGREEMENT

I. Introduction

This Memorandum of Agreement ("MOA") is executed as part of the final resolution of the consolidated actions entitled People of the State of California, ex. rel. Douglas Wheeler, Secretary of The Resources Agency et al. v. Southern Pacific Transportation Company Inc. et al., Case No. CIV. NO. S-92-1117-LKK-GGH and United States of America v. Southern Pacific Transportation Company, Inc., Case No. CIV. NO. S-92-2090-WBS-GGH. This MOA is designed as a means of allocating funds received in settlement of the claims of the State of California and the United States in those consolidated actions against American Vanguard Corporation, AMVAC Chemical Corporation, (hereafter jointly referred to as "AMVAC"), Southern Pacific Transportation Company, Southern Pacific Rail Corporation, Rio Grande Holding, Incorporated, J.M. Huber Corporation, GATX Corporation, and General American Transportation Company. Further, this MOA describes how certain settlement funds are to be utilized for the assessment, restoration, replacement, or acquisition of equivalent natural resources damaged by the spill of metam sodium in the upper Sacramento River on or about July 14, 1991.

II. Parties

A. This MOA is executed by the following parties:

California Resources Agency (hereinafter singularly referred to as "Resources Agency");
California Department of Fish and Game (hereinafter singularly referred to as "CDFG");
California Regional Water Quality Control Board, Central Valley Region (hereinafter singularly referred to as "CRWQCB, CVR");
California Department of Health Services (hereinafter singularly referred to as "CDHS");
California Department of Justice (hereinafter singularly referred to as "CDOJ");
Department of Toxic Substances Control (hereinafter singularly referred to as "DTSC");
California Air Resources Board (hereinafter singularly referred to as "CARB");
United States Department of Interior (hereinafter singularly referred to as "USDOI");
United States Department of Agriculture (hereinafter singularly referred to as "USDA");
United States Environmental Protection Agency (hereinafter singularly referred to as "USEPA");
and,
United States Department of Justice (hereinafter singularly referred to as "USDOJ").

Hereinafter, these agencies and/or departments will be collectively referred to as "Parties". Also, hereinafter, the Federal departments or agencies may be referred to as "Federal Department or Agency Parties" and the State departments or agencies may be referred to as "State Department or Agency Parties."

B. A subset of this group of agencies and/or departments make up what will hereinafter be referred to as "Trustee Agencies". The Trustee Agencies are:

Resources Agency
CDFG
CRWQCB,CVR
USDOI

III. Definitions

The following definitions will apply to this MOA.

- A. "AMVAC Funds" means the total amount identified in the AMVAC Consent Decree.
- B. "Cantara Trustee Council" or "Council" means the Cantara Trustee Council described in Section IV., Subsection G. of this MOA.
- C. "Cantara Restoration and Monitoring Account" means a newly created dedicated account for the purposes of Section IV, Subsection F.
- D. "Case" means the consolidated actions referenced in Section I, above.
- E. "Consent Decree" means the final Consent Decree or Consent Decrees executed by the parties and lodged with the Court in this action. When necessary, for the purposes of this MOA, the Consent Decrees can be designated by the primary party with whom they have been executed. The two Consent Decrees will be known as the "AMVAC Consent Decree" and the "Southern Pacific Consent Decree."
- F. "Emergency Response Phase" means activities that were conducted immediately after the Spill and were carried out to protect the public health and welfare, including the protection of fish and wildlife resources injured by the Spill. In no case did Emergency Response Phase activities extend beyond September 1, 1991.
- G. "Fish and Game Preservation Fund" or "FGPF" means the fund described at California Fish and Game Code section 13000 et seq.
- H. "Fish and Wildlife Pollution, Cleanup and Abatement Account" or "FWPCAA" means the account described at California Fish and Game Code section 12017(a) through (d).
- I. "Initial Installment of Settlement Funds" means the initial payment of seventeen million dollars (\$17,000,000) as set forth in the Southern Pacific Consent Decree.
- J. "In-kind" shall mean montane riparian terrestrial habitats and cold-water lotic aquatic habitats and the species closely associated with these ecosystem types.
- K. "Memorandum of Agreement" or "MOA" means this document in its entirety as executed.
- L. "Off-site" means locations which do not lie within the watershed described under the definition of "On-site".

M. "On-site" means the Sacramento River from the mouth of Campbell Creek upstream to Box Canyon Dam, tributaries which have their confluence within this reach, and watersheds of the tributaries that have their confluence within this reach. Lake Siskiyou, its tributaries, and their watersheds, are specifically excluded from this definition.

N. "Other Agencies" means State and local agencies and/or departments that are neither Parties nor Trustee Agencies but are public agencies that have or may have claims which they believe entitle them to reimbursement from the funds described in this MOA.

O. "Out-of-kind" means ecosystems other than montane riparian terrestrial and cold-water lotic aquatic ecosystems.

P. "Spill" means the July 14, 1991 derailment of a Southern Pacific Transportation Company freight train near Dunsmuir, California, and the ensuing release of metam sodium and its breakdown products.

Q. "Trustee Agencies" are the agencies listed in Section II., Subsection B., above that have been designated by statute or regulation and that possess the nondelegable duty to hold in trust certain natural resources for the benefit of the People of the State of California or the United States.

R. "Upper Sacramento River Account" is a special deposit account established pursuant to California Government Code section 16370.

S. "Yearly Installment(s) of Settlement Funds" means the annual payments over a five year period of three million eight hundred thousand dollars (\$3,800,000) per year as set forth in the Southern Pacific Consent Decree.

IV. Distribution of Settlement Funds

A. Reimbursement of Costs - The Parties and Other Agencies have incurred significant costs for activities that include, but are not limited to, responding to the Spill, conducting scientific studies, and prosecuting the Case. In addition, the USDA has incurred damages. To reimburse the Parties and the Other Agencies, the total amount of eleven million nine hundred and eighty thousand dollars (\$11,980,000) from the Initial Installment of Settlement Funds, twenty thousand dollars (\$20,000) from the AMVAC Funds, and one million (\$1,000,000) from the first Yearly Installment of Settlement Funds will be disbursed in accordance with this subsection.

1. Reimbursement of State costs - Of the total amount described in above in this Subsection A., eleven million, five hundred thousand dollars (\$11,500,000) from the Initial Installment of Settlement Funds and one million dollars (\$1,000,000) from the first Yearly Installment of Settlement Funds shall be deposited in CDFG's Fish and Wildlife Pollution, Cleanup and Abatement Account ("FWPCAA"). This amount may be expended only for the purposes described in Section IV., Subsections A. and B. of this MOA. Claims for reimbursement of costs, other than costs that were incurred as part of the Emergency Response Phase of the Spill, shall be made using the procedures described in Section IV., Subsection A., Paragraph 1 (a) (i) through (vi) below. Claims for reimbursement of costs incurred as part of the Emergency Response Phase of the Spill shall be made using the procedures described in Section IV., Subsection A., Paragraph 1 (b) (i) through (v) below.

(a) Claims procedure for non-Emergency Response Phase costs.

(i) Within 60 days after deposit of the amount of the Initial Installment of Settlement Funds described in Section IV., Subsection A., Paragraph 1. into the FWPCAA, State Department or Agency Parties and Other Agencies that have claims for reimbursement shall submit such claims to: California Department of Fish and Game, Deputy Director for Administration, 1416 9th Street, 12th Floor, Sacramento, California, 95814.

(ii) The claims for reimbursement shall include an invoice clearly showing the total claim and be clearly designated as reimbursement for costs incurred as part of the Spill.

(iii) The claims shall include sufficient backup information so that the CDFG can verify the claim. This backup information must include, but not be limited to, identification of the type of work done or cost incurred, the person completing the work, and/or the type of equipment purchased.

(iv) The CDFG reserves the right to return invoices and backup information because they are not sufficient to allow CDFG to verify the claim. If CDFG determines that the invoice and/or backup information is insufficient, the invoice and/or backup information shall be returned within

30 days of receipt by CDFG with a statement as to why the claim is insufficient. The State Department or Agency Parties and/or Other Agencies shall remedy the insufficiency and return the invoice, backup information and other information requested within 30 days of its return.

(v) If a claim is returned to CDFG and it continues to be insufficient or if CDFG determines that a claim for reimbursement is improper, the Director of CDFG shall consult with CDOJ. After such consultation, the Director of CDFG shall notify the California Secretary for Resources and the California Secretary for Environmental Protection (Secretaries). The final decision regarding repayment of such claims shall be made jointly by the Secretaries.

(vi) Only costs that fall within the provisions of 42 U.S.C. section 9607(a), Paragraphs (C) and (D), California Fish and Game Code section 12017(d), California Health and Safety Code sections 25189(d) and 25189.2(c), human health assessment costs, shall be reimbursed as non-Emergency Response Phase costs. Claims shall be paid in the order in which they are received. In no case will costs be reimbursed from the amount described in Section IV., Subsection A, if they were actually incurred after the Consent Decrees became final and all appeals, if any, have been completed.

(b) Claims for Emergency Response Phase costs.

(i) Within 30 days after deposit of the amount of the Initial Installment of Settlement Funds described in Section IV., Subsection A., Paragraph 1. into the FWPCAA, CDFG will determine whether it has sufficient information regarding invoices, backup information, and previous payment for costs incurred by State Department or Agency Parties and Other Agencies. If CDFG determines that it does not have adequate information to determine that the invoice should be paid, then CDFG shall return to the State Department or Agency Parties and Other Agencies from whom they were received, all invoices and backup documentation for costs incurred in the Emergency Response Phase of the Spill that had previously been gathered by CDFG. Along with this information, CDFG will provide whatever information it has, if any, regarding previous payments of these claims.

(ii) State Department or Agency Parties and Other Agencies receiving such information shall have the responsibility for sorting through the previous claim, determining what amount has been previously paid, and identifying the unpaid balance.

(iii) Within 60 days of the return of the information described in Paragraph 2. (b) (i) above, the State Department or Agency Parties and/or Other

Agencies shall submit claims for reimbursement to: California Department of Fish and Game, Deputy Director for Administration, 1416 9th Street, 12th Floor, Sacramento, California, 95814.

(iv) The procedures described in Section IV., Subsection A., Paragraph 1. (a) (ii) through (v) shall apply to these claims.

(v) Only costs that fall within the provisions of 42 U.S.C. section 9607(a), Paragraphs (A) and (B), or California Fish and Game Code section 12017(d) shall be reimbursed as Emergency Response Phase costs. Claims shall be paid in the order in which they are received. In no case will costs be reimbursed from the amount described in Section IV., Subsection A. if they were submitted to the CDFG after December 31, 1993.

2. Reimbursement of Federal costs - Of the total amount described in Subsection A., four hundred and eighty thousand dollars (\$480,000) from the Initial Installment of Settlement Funds and twenty thousand dollars (\$20,000) from the AMVAC Funds shall be deposited into the accounts described in the Consent Decrees administered by the Registry of the Court. The money in those accounts shall be used by the Federal Department or Agency Parties for repayment of costs. Only costs that fall within the provisions of 42 U.S.C. section 9607(a) and damage claims of the USDOA shall be reimbursed.

B. Surplus or Deficit in Reimbursement of Costs - If claims of State Department or Agency Parties and/or Other Agencies approved by CDFG for reimbursement of costs or claims, or Federal Department or Agency Parties, exceed the thirteen million dollars (\$13,000,000) deposited for the purposes described in Section IV., Subsection A., CDFG shall advise the Trustee Council that such a deficit exists and the amount thereof. The Trustee Council shall consider and, if appropriate, approve reimbursement of such costs or claims. The amount administered by the Trustee Council, described in Section IV., Subsection G. of this MOA, shall be reduced to pay for such approved deficit. In no event shall the Trustee Council authorize costs or claims in addition to those identified in Section IV., Subsection A., for more than two million dollars (\$2,000,000). If a deficit exists, payment of claims will be made only after deposit of the Yearly Installment(s) of Settlement Funds. The procedure to be used by the Trustee Council for approval, reimbursement or rejection of these claims is the same procedure as that described in Section IV., Subsection A., excluding the time periods specified therein. If, after payment of all approved claims, CDFG determines that a surplus exists in the funds described in Section IV., Subsection A. in that the full amount deposited to pay claims for costs was not expended, or if the amount deposited into the accounts described in the Consent Decrees administered by the Registry of the Court described in Section IV., Subsection A., Paragraph 2. exceeds the claims for costs of the Federal Department or Agency Parties, such amount will be transferred to the funds administered by the Trustee Council described in Section IV., Subsection G. of this MOA.

C. Future Response Pool - In payment for the liability and/or damages sought pursuant to California's State law claims including but not limited to common law claims, a portion of the

Initial Installment of Settlement Funds will be paid so that these funds will be available for activities described below in the event that future emergencies arise impacting California's natural resources. Two million dollars (\$2,000,000) from the Initial Installment of Settlement Funds and one million dollars (\$1,000,000) from the second Yearly Installment of Settlement Funds shall be deposited into CDFG's Fish and Wildlife Pollution, Cleanup and Abatement Account. These funds may be expended only as provided in Paragraphs 1 through 3 below.

1. The funds deposited pursuant to this Subsection C. may be expended only for the purposes set forth in California Fish and Game Code section 12017(d)(1), (d)(2) with the exception of "program management," (d)(3) through (6). Funds may not be expended pursuant to Fish and Game Code section 12017(e).
2. The funds deposited pursuant to this Subsection C may be used to fund positions or personnel years for the purposes described in Paragraph 1, above, of this subsection. However, such positions or personnel years may not be funded from these funds for longer than a 12-month period. Long-term funding for such positions must come from some other source.
3. To the maximum extent possible, the funds expended pursuant to this Subsection C. shall be reimbursed or replaced from recovery proceeds or judgments by the State in future cases or legal actions so that the Fish and Wildlife Pollution, Cleanup and Abatement Account shall always include these funds for emergency response activities. Replacement of any draw-down or depletion of this account shall be the State's first priority following any recovery or judgment in future cases or legal actions that may be brought.

D. Recovery for State Law Claims - The Parties agree that one million nine hundred and eighty thousand dollars (\$1,980,000) from the AMVAC Funds and \$20,000 from the Initial Installment of Settlement Funds shall be paid to CDFG's Fish and Game Preservation Fund to be administered by CDFG for payment of liability and damages recovered pursuant to California's State law claims, including, but not limited to, California's State law claims including but not limited to common law claims .

These funds, once deposited in the FGPF, shall be distributed by the appropriation of the California Legislature and shall be used to pay for CDFG program costs, including environmental services, wildlife protection and management, fishery resource protection and administration.

E. Penalties - The Parties agree to the following distribution of funds from the Initial Installment of Settlement Funds for the payment of penalties. . One million dollars (\$1,000,000) of the Initial Installment of Settlement Funds shall be designated as penalties and shall be deposited into the accounts described below. This amount will be distributed as follows:

1. In satisfaction of USEPA's penalty claims pursuant to the Clean Water Act, 33 U.S.C. section 1321, five hundred thousand dollars (\$500,000) shall be provided to the United States Attorney in the Eastern District of California, Sacramento Division, Attention Financial Litigation Unit, referencing the Civil Action Numbers of these

consolidated actions, Oil Pollution Account Locator Code ("ALC") 69-02-5102, and U.S. Department of Justice case number 90-5-1-1-3820. This payment shall be made by electronic funds transfer in accordance with instructions provided by the Office of the United States Attorney for the Eastern District of California to the Clerk of the Court upon resolution of the claims of the Intervenor. Once the funds transfer has been made, the United States Attorney shall advise its online accounting office to initiate an Online Payment and Collection ("OPAC") transaction to ALC 69-02-5102, which is the United States Coast Guard Finance Center. The United States Treasury shall then deposit the full amount in the Oil Spill Liability Trust Fund Account 20X8185.3, as required by 33 U.S.C. § 1321.

2. Five hundred thousand dollars (\$500,000) shall be provided to CRWQCB, CVR, by a check made payable to the State Water Pollution Cleanup and Abatement Account and sent to the State Water Resources Control Board, 901 P Street, Sacramento, California, 95814, Attention: Elizabeth Jennings.

F. Direct Restoration and Monitoring - The parties agree that two million dollars (\$2,000,000) of the Initial Installment of Settlement Funds will be paid to CDFG and shall be deposited into a newly-established dedicated account within the Fish and Game Preservation Fund, called the Cantara Restoration and Monitoring Account. In addition, a portion of each of the five Yearly Installments of the Settlement Fund described in Paragraph 1 below will be paid to CDFG and shall be deposited into this account. Funds in this account may be expended by CDFG only as set forth in Paragraph 2 below. Attachment A to this MOA, which is incorporated herein by reference, sets forth a framework within which the selection of appropriate restoration projects will take place.

1. The portion of the each of the five Yearly Installment of Settlement Funds to be paid to the dedicated account described above is as follows:

- 1st installment: One million dollars (\$1,000,000)
- 2nd installment: One million dollars (\$1,000,000)
- 3rd installment: Five hundred thousand dollars (\$500,000)
- 4th installment: Two hundred fifty thousand dollars (\$250,000)
- 5th installment: Two hundred fifty thousand dollars (\$250,000)

2. Funds described in the opening paragraph and Paragraph 1 of this Subsection F shall be expended for direct restoration and/or rehabilitation of the upper Sacramento River and its surrounding environment; long-term recovery monitoring of the resources injured by the Spill; and/or CDFG program costs. These program costs will be primarily associated with direct restoration, rehabilitation and monitoring of the upper Sacramento River and its surrounding environment, and for staff and administrative support provided to the Cantara Trustee Council.

3. In determining what direct restoration and/or rehabilitation measures may be taken, within the framework set forth in Attachment A to this MOA, CDFG agrees to consult with the Trustee Agencies prior to instituting any such activities.

4. Because these funds shall, upon deposit, become part of the State Treasury, these funds shall be subject to reporting requirements and audit provisions contained in State law. Further, documents evidencing the expenditure of these funds and, in any way relating to these funds, shall be public records to the same extent as other documents of public agencies.

5. If any portion of the amount deposited in the dedicated account described in the opening paragraph and Paragraph 1 of this Subsection F remains unexpended or unencumbered for the purposes described in Paragraph 2 above two years after the date of the deposit of the fifth Yearly Installment of Settlement Funds into the dedicated account, that amount shall be transferred to the account described in Subsection G. below for administration by the Cantara Trustee Council.

G. Cantara Trustee Council/Administration of Upper Sacramento River Account - The Parties agree that there will be deposited in an interest bearing, special deposit account entitled the "Upper Sacramento River Account" the amounts identified below from each of the five Yearly Installments of the Settlement Funds and pursuant to the Deposit Orders. The following amounts will be deposited into this account:

- 1st installment: One million, eight hundred thousand dollars (\$1,800,000)
- 2nd installment: One million, eight hundred thousand dollars (\$1,800,000)
- 3rd installment: Three million, three hundred thousand dollars (\$3,300,000)
- 4th installment: Three million, five hundred and fifty thousand dollars (\$3,550,000)
- 5th installment: Three million, five hundred and fifty thousand dollars (\$3,550,000)

In addition, all interest accumulating in the Upper Sacramento River Account and all interest whether accumulated as a result of the deposit of the Initial Installment of Settlement Funds or the Yearly Installment of Settlement Funds into the Registry Account described in the Consent Decrees shall be deposited into the Upper Sacramento River Account. Any and all funds in this account shall be administered as described in Paragraphs 1 through 3 below by the Cantara Trustee Council. The Council shall act as the sole administrator for these funds and shall make all decisions regarding their expenditure. The CDFG agrees to provide administrative support, including but not limited to, accounting services for processing payments from the account, real estate acquisition services, and meeting rooms, to the Council. Requests for services shall be made by the Chair of the Council to the Director of CDFG. All title or ownership interests in real and/or personal property acquired by the Council shall be in the name of the State of California, CDFG.

1. Cantara Trustee Council Membership

- (a) Voting members - The Cantara Trustee Council is made up, in part, of representatives of the Trustee Agencies. Specifically, the voting members of the Cantara Trustee Council are:

(i) Three employees of CDFG selected by the Director of CDFG, each representing one of the three resource types injured by the Spill (fish, wildlife, and vegetation);

(ii) One representative selected by the CRWQCB, CVR; and

(iii) One representative selected by the Director of the United States Fish and Wildlife Service.

(b) Non-voting members - The Cantara Trustee Council will also include two non-voting members. The non-voting members are:

(i) One representative from an environmental group, recommended by the Director of CDFG and approved by the voting members of the Cantara Trustee Council.

(ii) One representative from a resource-user group, recommended by the Director of CDFG and approved by the voting members of the Cantara Trustee Council.

(c) Cantara Trustee Council Chair - The voting members of the Cantara Trustee Council shall select a Chair of the Council from among the voting members. The Chair shall be responsible for conducting Council meetings and all other Council business and may delegate responsibilities to other Council voting members.

(d) All Cantara Trustee Council members shall pay their own costs for participation on the Council. This includes travel, per diem, and other expenses associated with attendance at meetings.

2. Cantara Trustee Council Responsibilities

(a) The voting members of the Cantara Trustee Council shall determine the appropriate expenditures of the funds described in the opening paragraph of this Subsection G. Expenditures can be for the following purposes: resource protection; restoration; rehabilitation; enhancement; acquisition; study and/or research; and program and administrative support for these activities.

(b) The priority for expenditures of funds by the Cantara Trustee Council shall be as follows (with (i) being the highest priority and (v) being the lowest):

(i) on-site, in-kind;

(ii) off-site, in-kind;

(iii) on-site, out-of-kind;

(iv) off-site, out-of-kind; and,

(v) study and research projects shall be the Council's lowest priority for funding, unless special circumstances exist in relation to such study or research projects.

(c) Off-site projects shall be categorized geographically and prioritized as follows (with (i) being the highest priority and (iii) being the lowest). Counties within a category shall be considered equal.

(i) Shasta and Siskiyou counties;

(ii) Lassen, Modoc, Tehama, Trinity, Del Norte, and Humboldt counties; and,

(iii) the remainder of California.

(d) Out-of-kind projects shall be prioritized by the following categories (with (i) being the highest priority and (iii) being the lowest):

(i) riparian;

(ii) wetland; and,

(iii) upland.

(e) Whenever the Council determines it to be appropriate, proposals for the expenditure of the funds shall be competitively bid to ensure that the lowest cost for services is obtained.

(f) Because, upon deposit, these funds become part of the State Treasury, they shall be subject to the same reporting requirements and audit provisions provided in State law. Further, the documents evidencing expenditure of these funds and, in any way related to these funds, shall be treated as public documents to the same extent as other documents of public agencies.

(g) No later than the first anniversary of the date of the first meeting of the Trustee Council, the Council shall set forth a plan for the expenditure of the funds that it administers or will administer. This plan may be amended or supplemented by a vote of the Council. The plan shall be made available for public review and comment prior to being made final by the Trustee Council. The plan shall consider the projects identified in Attachment A, in the section entitled "2. Trustee Council".

3. Cantara Trustee Council Procedures

(a) The five voting members of the Trustee Council shall have equal authority in all decision making under this MOA, and all decisions shall be by unanimous agreement.

(b) The Council shall meet at least once annually and shall adopt guidelines or procedures by which the meetings of the Council shall be conducted. Once annually on the anniversary date of the first meeting of the Trustee Council, the Council shall publish a report summarizing its activities and the expenditure of the funds that it administers.

V. Enforcement

This MOA is not intended to construe benefits upon, or be subject to, enforcement by third-parties.

VI. Effective Period, Amendment, Termination

This MOA shall be effective upon execution by all trustees and for a period of three years. At the conclusion of the three year period, the trustees may agree to extend this MOA for an additional period of time as necessary to accomplish the goals of this MOA. If the trustees decide not to extend this MOA, it shall remain in effect until the effective date of a subsequent MOA.

This MOA may only be amended in writing and upon execution by all parties hereto or their successors.

This MOA may be terminated by order of the Court in which the Consent Decrees were lodged.

VII. Dispute Resolution

In the event of a dispute involving any decisions under this MOA which the Trustee Council is unable to resolve through good faith discussions among its members, the matter shall be elevated within the Trustee agencies for resolution or further instructions. If necessary the Trustees may establish other mechanisms to resolve disputes.

VIII. Severability

If any part of this MOA is determined by the Court in which the Consent Decrees were lodged to be invalid or in violation of law, all other parts not so determined will remain in full force and effect.

DANIEL E. LUNGREN
Attorney General
WALTER E. WUNDERLICH
Acting Assistant Attorney General

Dated: _____

EDNA WALZ
CARL A. BAIER
Deputies Attorney General

Attorneys for the People of the State of
California

Dated: _____

LOIS J. SCHIFFER
Acting Assistant Attorney General
Environmental and Natural Resources
Division
United States Department of Justice

Dated: _____

JON A. MUELLER
Trial Attorney
Environmental Enforcement Section
United States Department of Justice

Attorneys for the United States

CHARLES STEVENS
United States Attorney for the
Eastern District of California

Dated: _____

EDMUND BRENNAN
Assistant United States Attorney
Attorneys for the United States

UNITED STATES DEPARTMENT OF
INTERIOR

Dated: _____

7/28/94

By: _____



Michael J. Spear
Regional Director
United States Fish and Wildlife
Service

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Dated: _____

By: _____
STEVE HERMAN
Assistant Administrator, OECA

Dated: _____

By: _____
FELICIA MARCUS
Regional Administrator
Region IX

UNITED STATES DEPARTMENT OF
AGRICULTURE

Dated: _____

By: _____

DOUGLAS WHEELER, CALIFORNIA
SECRETARY OF RESOURCES

Dated: _____

By: _____

**CALIFORNIA DEPARTMENT OF FISH
AND GAME**

Dated: _____

By: _____

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD,
CENTRAL VALLEY REGION

Dated: _____

By: _____

CALIFORNIA AIR RESOURCES BOARD

Dated: _____

By: _____

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

Dated: _____

By: _____

CALIFORNIA DEPARTMENT OF
HEALTH SERVICES

Dated: _____

By: _____

DANIEL E. LUNGREN
Attorney General

Dated: _____

By: _____

ATTACHMENT A

In 1992, the Trustee Agencies began preliminary restoration planning for the resource injured by the Spill. The restoration alternatives developed are listed with a brief description in Chapter 6 ("Restoration") of the Final Natural Resources Damage Assessment Plan (NRDA Plan) for the Spill, issued October, 1993. Alternatives have now been further evaluated based upon the following factors: technical feasibility; degree to which the project would shorten recovery period; operational risk; health and safety risks; and potential adverse environmental impacts. The trustee restoration activities carried out under Paragraph IV, Subsections F and G, respectively, of this MOA shall be further guided as set forth below.

1. Direct Restoration and Monitoring.

These activities will be accomplished primarily by the existing CDFG staff assigned to evaluate the damages to natural resources from the Spill. It is anticipated that these activities will be completed within the next few years.

a. Monitoring and transplanting.

Some of the tasks developed in the NRDA Plan to quantify injury will be modified and re-scoped to track recovery of specific resources which have not yet substantially recovered. Resources to be monitored include fish, aquatic insects, aquatic molluscs, crayfish, birds, bats, aquatic amphibians and vegetation.

Where a species is relatively slow to recover, or where revegetation is necessary for bank or gravel bar restabilization, species will be transplanted. The following projects are currently contemplated:

- (1) transplant and establish molluscs;
- (2) transplant and establish aquatic amphibians;
- (3) transplant and establish sculpins;
- (4) transplant and establish crayfish; and
- (5) revegetate selected riparian areas.

Transplant activities will utilize the following procedures:

- (1) pilot studies to locate suitable donor population and test transplant methods;

- (2) small to moderate scale implementation;
- (3) large scale implementation as appropriate; and
- (4) continuous monitoring at each step to evaluate success and develop the next step.

b. Other restoration activities.

The following additional restoration activities are currently contemplated:

- (1) identify and enhance bat roosting habitat;
- (2) build osprey platforms;
- (3) advise the Fish and Game Commission on special fishing regulations;
- (4) additional timber harvest review within watershed;
- (5) additional warden to protect resource;
- (6) interpretative program for ecosystem recovery; and
- (7) off-site planting of domestic catchable trout.

2. Trustee council

The Trustee Council will fund projects to restore, rehabilitate, replace or acquire resources equivalent to those lost as a consequence of the Spill.

Based upon current evaluation of the restoration alternatives in Chapter 6 of the NRDA Plan, the Trustee Council will consider the following categories of projects:

- (1) Erosion control projects within the upper Sacramento River watershed to stabilize soils that have been disturbed by logging or road construction. These actions would be intended to reduce sediment loading into the river and tributaries.
- (2) Acquisition of stream environment zones (SEZs) along the river to provide long-term protection from land disturbing activities that could adversely affect the river ecosystem.

- (3) Improve access by trout into the upper reaches of the watershed for spawning purposes where doing so would not adulterate a genetically distinct trout population or adversely affect other components of the aquatic ecosystem.
- (4) Restore or enhance riparian and aquatic habitat in tributaries where it has been damaged by past land disturbing activity (e.g. road crossings, logging, mining).
- (5) Acquire SEZs on tributaries to provide long-term protection.
- (6) Acquire SEZs on other streams to protect equivalent habitat.
- (7) Acquire water rights on other streams to rehabilitate equivalent habitat by ensuring in-stream flows sufficient to support the aquatic and riparian ecosystem.