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14 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
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18 STATE OF CALIFORNIA Acting by )  
and through the Department of )  
19 Fish and Game, and the California )  
Regional Water Quality Control )  
20 Control Board, Los Angeles )  
Region and THE PEOPLE OF )  
21 THE STATE OF CALIFORNIA in and )  
for the County of Los Angeles, )  
22 Plaintiffs, )

23 v. )

24 ARCO PIPE LINE COMPANY, )  
25 Defendant. )  
26

Civil Action No.

AGREEMENT AND  
CONSENT DECREE

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28 ///

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20 Attorneys for Defendant, ARCO Pipe Line Company  
21

22 This Agreement and Consent Decree (the "Decree"), is entered into by the United States  
23 of America, by and through the United States Department of Justice, on behalf of the United  
24 States Department of the Interior, United States Fish and Wildlife Service ("United States");  
25 the State of California, by and through the California Department of Fish and Game, Office of  
26 Oil Spill Prevention and Response (hereinafter the "CDFG/OSPR") and the Regional Water  
27 Quality Control Board ("RWQCB"), Los Angeles Region (the CDFG/OSPR and the RWQCB  
28 are sometimes hereinafter collectively referred to as "State Agencies"); the People of the State

1 of California by and through the Honorable Gilbert Garcetti, District Attorney for the County  
2 of Los Angeles (the "People"); ARCO Pipe Line Company ("APL" or "Defendant"), a  
3 Delaware corporation (formerly known as Four Corners Pipe Line Company); and Atlantic  
4 Richfield Company ("ARCO"), a Delaware corporation. The United States, the State Agencies  
5 and the People are sometimes hereinafter referred to as "Plaintiffs."

## 6 INTRODUCTION

7 1. On January 17, 1994, an oil pipeline owned by ARCO Pipe Line  
8 Company ("Line #1") running through Los Angeles County ruptured in at least eight (8)  
9 separate locations during and following a magnitude 6.8 earthquake in the Los Angeles area  
10 (the "Northridge Earthquake"). The pipeline ruptures resulted in the discharge of crude oil  
11 onto nearby lands and in some cases, water. Plaintiffs have alleged the following:

12 (i) The largest oil spill occurred at APL's Newhall Pump Station near the  
13 city of Santa Clarita, Los Angeles. Approximately 190,000 gallons of crude oil were  
14 spilled. A portion of the spilled oil flowed from the pipeline break along a roadway,  
15 where it entered a storm drain and then an open drainage ditch. The drainage ditch  
16 empties into the Santa Clara River, and the oil flowed from the drainage ditch into the  
17 river. The oil flowed downstream approximately 16 miles, where a dam was  
18 constructed to halt further spread of the oil. Cleanup crews removed oiled vegetation  
19 along the riparian corridor. Approximately 100 acres of woody and herbaceous  
20 vegetation were impacted by the oil and cleanup operations as well as approximately  
21 150 acres of river sediments.

22 The discharge and subsequent cleanup operations resulted in injury to fish,  
23 including the arroyo chub and the federally endangered unarmored three-spine  
24 stickleback, injury to a number of bird and other wildlife species, and injury to riparian  
25 vegetation including critical habitat for the federally endangered least Bell's vireo.

26 (ii) A second spill site was located at Wolfskill Street near Amboy Road, in  
27 the city of San Fernando. A portion of crude oil from the Wolfskill Street site entered a  
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1 storm drain and reached the Los Angeles River. This resulted in staining of  
2 approximately 15 miles of concrete and unpaved channel.

3 (iii) A third spill site was located at O'Melvany Street near San Fernando  
4 Mission Road, city of San Fernando. The Line #1 ruptures at Wolfskill Street and  
5 O'Melvany Street resulted in the release of approximately 24,000 gallons of crude oil.

6 (iv) A fourth spill site was located at the Department of Water and Power  
7 Training Facility. Approximately 126 gallons of crude oil were released.

8 (v) A fifth spill site was located west of Sierra Highway at S12 T3n R16W.  
9 The Line #1 rupture resulted in the release of approximately 1,260 gallons of crude oil.  
10 Because of the danger posed by gas in the area from a natural gas pipeline rupture,  
11 response to the crude oil spill and repair of the oil pipeline was delayed until the gas line  
12 was repaired.

13 (vi) A sixth spill site was located at Christmas Tree Farm in the city of Santa  
14 Clarita, Los Angeles County, off of McBean Parkway. The Line #1 rupture resulted in  
15 a release of approximately 1,470 gallons of crude oil. None of the oil entered the nearby  
16 Santa Clara River.

17 (vii) A seventh spill site was located at the Valencia Golf Course, west of  
18 McBean Parkway, north of Valencia Boulevard, south of Magic Mountain Parkway, and  
19 east of I-5. The Line #1 rupture resulted in a release of approximately 210 gallons of  
20 crude oil.

21 (viii) An eighth spill site was located at Posey Canyon in Los Angeles County.  
22 The Line #1 rupture resulted in a release of approximately 21,000 gallons of crude.  
23 The crude oil traveled one quarter to one half mile along a stream to an earthen dam. In  
24 addition, permanent and absorbent booms were deployed to stop further flow of the oil  
25 downstream.

26 2. On January 22, 1994, another earthquake-related oil spill occurred when another  
27 pipeline owned by APL ("Line #63") ruptured at Grasshopper Canyon, west of Castaic Lake.  
28 Plaintiffs have alleged that approximately 67,200 gallons of crude oil were spilled covering

1 nearly an acre of coastal sage scrub and scattered patches of non-native grassland such as wild  
2 oat and brome grass.

3 3. On April 6, 1993, APL's Line 63 ruptured. The United States and State  
4 Agencies have alleged that approximately 260,000 gallons of crude oil were released into  
5 Grapevine Creek; on April 7, 1993, an undetermined amount of cleaner containing sodium  
6 hydroxide was allowed to reach Grapevine Creek; and on April 19, 1993, a quantity of the  
7 released crude oil, which had been impounded behind an emergency dam, overflowed into  
8 Grapevine Creek (collectively the "Grapevine Incident").

9 With respect to each spill, the response and cleanup of the crude oil included excavating  
10 soil, repairing the pipeline, back-filling and, where appropriate, grading the spill site.

11 The United States by and through its designated Trustee, the U.S. Department of  
12 Interior, the U.S. Fish and Wildlife Service ("Federal Trustee") and the State of California by  
13 and through its designated Trustee, CDFG/OSPR ("State Trustee"), represent that they are the  
14 sole co-equal joint Trustees over some or all of the Natural Resources affected by the oil spills.  
15 The United States through its Federal Trustee and the State Trustee (collectively, the "Natural  
16 Resource Trustees") propose to restore Natural Resources injured as a result of the spills  
17 identified in paragraphs 1 and 2 above, the Earthquake-Related Oil Spills. The Natural  
18 Resource Trustees deem the payment of natural resource damages to be an amount reasonable  
19 and necessary to restore these natural resources.

20 The Parties desire to avoid the costs and risks of litigation and believe that resolution of  
21 this dispute without litigation to be in the best interests of the public. The Parties recognize  
22 that this Decree is a settlement of a contested matter.

23 **NOW, THEREFORE**, it is hereby ORDERED, ADJUDGED, and DECREED as  
24 follows:

#### 25 JURISDICTION

26 4. This Court has jurisdiction over the subject matter and over the Parties to this  
27 action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, 33 U.S.C. § 2717, and 16 U.S.C.  
28 § 1540. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). The Court has

1 supplemental jurisdiction over claims stated in the Complaint pursuant to State law. The  
2 Complaint states claims upon which relief may be granted.

### 3 **SETTLING PARTIES**

4 5. This Decree shall apply to and be binding upon and inure to the benefit of the  
5 United States, the State Agencies, the People, APL, and ARCO, and as applicable, their  
6 present and former officers, directors, employees, agents, representatives and their successors.

### 7 **DEFINITIONS**

8 6. Whenever the following terms are used in this Decree, they shall have the  
9 following meanings:

10 (a) "Designee" means any entity approved by the Administrator of the Office  
11 of Oil Spill Prevention and Response or the U.S. Fish and Wildlife Service that is  
12 authorized to engage in the restoration, monitoring, and oversight activities required to  
13 implement this agreement.

14 (b) "Earthquake-Related Oil Spills" means the discharges of crude oil from  
15 the ruptures in APL's pipeline (Line #1) in at least eight separate locations in and  
16 around Los Angeles County on January 17, 1994 during the Northridge Earthquake, as  
17 well as the earthquake related January 22, 1994 discharge of crude oil from a separate  
18 APL pipeline (Line #63) in Grasshopper Canyon, California.

19 (c) "Final Judgment" means: (i) if no appeal is filed, the expiration date of  
20 the time for the filing or noticing of any appeal from the Decree, i.e., thirty (30) days  
21 after entry of the Decree; or (ii) the date of final affirmance on any appeal of the  
22 Decree, or the expiration of the time for a petition for a writ of certiorari to review the  
23 Decree and, if certiorari be granted, the date of final affirmance of the Decree following  
24 review pursuant to that grant; or (iii) the date of final dismissal of any appeal of the  
25 Decree or the final dismissal of any proceeding on certiorari to review the Decree.

26 (d) "Natural Resource Damages" means civil compensatory and remedial  
27 relief recoverable by the Natural Resource Trustees, for injury to, destruction of, or loss  
28 of any or all Natural Resources resulting from the oil spills, including: (i) costs of

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

6 (e) "Natural Resource" and "Natural Resources" mean land, fish, wildlife,  
7 biota, air, water, ground water, drinking water supplies, and other such resources  
8 belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by  
9 the United States and/or the State of California and its agencies.

10 (f) "Natural Resource Trustees" or "Trustees" means those federal and state  
11 agencies designated or authorized pursuant to the Oil Pollution Act of 1990, and/or state  
12 law to act on behalf of the public as Trustees for the natural resources belonging to,  
13 managed by, controlled by or appertaining to the United States or State of California.  
14 Specifically, as used in this Decree the Trustees are the United States Department of the  
15 Interior, acting through the U.S. Fish and Wildlife Service, and the California  
16 Department of Fish and Game.

17 (g) "Response Costs" mean response and/or cleanup costs incurred by the  
18 Trustees or other government agencies in responding to the oil spills, including but not  
19 limited to actions taken to remove and cleanup the spilled oil.

20 (h) "Restore" or "Restoration" mean any action to restore to its pre-spill  
21 condition any Natural Resource injured, lost, or destroyed as a result of the oil spills  
22 and the services provided by that Natural Resource, or any action which restores,  
23 replaces, rehabilitates, or acquires the equivalent of, the injured, lost, or destroyed  
24 Natural Resource and affected services.

25 (i) "Party" or "Parties" mean APL, ARCO, the United States, including its  
26 departments, agencies, and subdivisions, the State Agencies and the People.

27 (j) "Settlors" mean APL and ARCO.

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## SETTLEMENT PAYMENTS BY SETTLORS

7. Settlers shall make settlement payments to Plaintiffs as specified in subparts (a) and (b) of this paragraph [7].

(a) Settlers shall pay the following amounts in the following manner to the United States and the State Agencies:

(i) the amount of \$8,425,000 (the "Settlement Amount"), of which \$8,125,000 relates to the Earthquake-Related Oil Spills and \$300,000 relates to the Grapevine Incident, shall be deposited in the APL Settlement Escrow Account as provided in paragraph [8] and disbursed as provided in paragraph [9]; and

(ii) response and damage assessment costs (substantiated by verified invoices), as provided in paragraph [10].

(b) APL shall pay the amount of \$500,000 to the People as provided in paragraph [11] below.

8. Within 15 days following lodging with the Court of this Decree executed by all Parties, Settlers shall deposit the amount of \$8,425,000 into an escrow account established or caused to be established by Settlers at a federally-chartered bank (the "APL Settlement Escrow Account"). The United States and the State Agencies shall assist Settlers and execute documents as are reasonably requested by Settlers to facilitate the establishment of the APL Settlement Escrow Account, and the disbursement of funds. The APL Settlement Escrow Account shall earn a rate of interest not less than the then current rate on 90-day Treasury Bills, and all interest thereon shall accrue for the benefit of the United States and State Agencies, except that if the \$8,425,000 is returned to Settlers as a result of termination of this Decree, all interest thereon shall be for the benefit of and shall be paid to Settlers, except as otherwise expressly provided herein. Any and all escrow fees or service fees or other charges levied by such federally-chartered bank handling the APL Settlement Escrow Account shall, if reasonable, be charged against the interest earned on such Account and shall not be directly

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1 chargeable to Settlers in any manner. To the extent, however, there are any charges in excess  
2 of the interest earned, such charges shall borne by Settlers.

3 9. Within fifteen (15) days after Final Judgment, Settlers shall instruct the Escrow  
4 Holder to distribute payment to each of the entities identified in subparts (a) through (f) of this  
5 paragraph [9] in the amount and manner specified. All payments under this paragraph shall be  
6 accompanied by correspondence referencing this Decree. Notice of each payment shall be  
7 given to the United States and the State Agencies in accordance with paragraph [19] (Notices)  
8 by sending a copy of the correspondence that accompanies each tendered payment.

9 (a) \$7,100,000 (plus a prorata share of accrued interest, less escrow fees,  
10 service fees or other charges levied pursuant to paragraph [8] above), by certified check  
11 to the Department of the Interior, Fish and Wildlife Service, for Natural Resource  
12 Damages related to the Earthquake-Related Oil Spills, including oversight and  
13 monitoring costs incurred by the United States Fish and Wildlife Service or its  
14 Designee. The check shall be made payable to Secretary of the Interior and be  
15 delivered to:

16 Chief, Division of Finance  
17 United States Fish and Wildlife Service  
18 4401 North Fairfax Drive, Room 380  
Arlington, VA 22203

19 The check shall reflect that it is a payment to the "Natural Resource Damage  
20 Assessment and Restoration Fund, Account No. 14X5198 -- Santa Clara River Oil  
21 Spill." The Department of the Interior will assign these funds a special project number  
22 to allow the funds to be maintained as a segregated account within the Department of  
23 the Interior Natural Resource Damage Assessment and Restoration Fund, Account No.  
24 14X5198 (the "Santa Clara Account").

25 The Department of the Interior shall, in accordance with law, manage and invest  
26 funds in the Santa Clara Account, and segregate in the Santa Clara Account any return  
27 on investments or interest accrued for use by the Natural Resource Trustees in  
28 connection with Restoration of Natural Resources and/or services impacted by the oil

1 spills. The Department of the Interior shall not make any charge against the Santa Clara  
2 Account for any investment or management services provided.

3 The Department of the Interior shall hold all funds in the Santa Clara Account,  
4 including return on investments or accrued interest, subject to the provisions of this  
5 Decree and the Memorandum of Understanding to be entered into between the Natural  
6 Resource Trustees to ensure coordination and cooperation in developing and  
7 implementing a plan for Restoration of Natural Resources.

8 The Natural Resource Trustees, as co-equal joint trustees, commit to the  
9 expenditure of the funds set forth in this paragraph, for the design, implementation,  
10 permitting, as necessary, and monitoring and oversight of Restoration projects in and  
11 along the Santa Clara River. The Natural Resource Trustees plan to use said funds for  
12 habitat rehabilitation, revegetation, and/or protection of areas within the Santa Clara  
13 River watershed, and wildlife projects which will benefit the least Bell's vireo and other  
14 threatened or endangered species or species of special concern in and along the Santa  
15 Clara River.

16 The details for specific projects will be contained in a Restoration plan proposal  
17 to be developed by the Natural Resource Trustees; the final Restoration plan will be  
18 developed and implemented after providing public notice, opportunity for a hearing, and  
19 consideration of all public comment. The co-equal joint Trustees retain the ultimate  
20 authority and responsibility to determine the use of funds received for Natural Resource  
21 Damages in accordance with the provisions of the Oil Pollution Act, 33 U.S.C. § 2701  
22 et seq., other relevant federal or state law, and the regulations governing use of  
23 recoveries for Natural Resource Damages.

24 (b) **\$250,000** (plus a prorata share of accrued interest, less escrow fees,  
25 service fees or other charges levied pursuant to paragraph [8] above), by trust check,  
26 certified check, or money order payable to the Department of Fish and Game, Office of  
27 Oil Spill Prevention and Response or its designee for monitoring and oversight of  
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1 Restoration related to the Earthquake-Related Oil Spills. The check or money order  
2 shall be sent by certified mail to:

3 The Department of Fish and Game  
4 Office of Oil Spill Prevention and Response  
5 1700 K Street, Suite 250  
6 Sacramento, CA 95814  
7 Attn: Katherine Verrue-Slater, Staff Counsel

8 (c) \$400,000 (plus a prorata share of accrued interest, less escrow fees,  
9 service fees or other charges levied pursuant to paragraph [8] above) (\$200,000 relates  
10 to the Earthquake-Related Oil Spills and \$200,000 relates to the Grapevine Incident), by  
11 trust check, certified check, or money order payable to the Department of Fish and  
12 Game, to be deposited into the Oil Pollution Administration Subaccount of the Fish and  
13 Wildlife Pollution Account as specified in Fish and Game Code Section 13010. The  
14 check or money order shall be mailed as specified in paragraph [9(b)] above.

15 (d) \$100,000 (plus a prorata share of accrued interest, less escrow fees,  
16 service fees or other charges levied pursuant to paragraph [8] above) (\$50,000 relates to  
17 the Earthquake-Related Oil Spills and \$50,000 relates to the Grapevine Incident), by  
18 trust check, certified check, or money order payable to the Department of Fish and  
19 Game, to be deposited into the Oil Pollution Response and Restoration Subaccount of  
20 the Fish and Wildlife Pollution Account as specified in Fish and Game Code Section  
21 13010. The check or money order shall be mailed as specified in paragraph [9(b)]  
22 above.

23 (e) \$500,000 (plus a prorata share of accrued interest, less escrow fees,  
24 service fees or other charges levied pursuant to paragraph [8] above), to the California  
25 Regional Water Quality Control Board-Los Angeles for the Earthquake-Related Oil  
26 Spills, as follows:

- 27 1. The sum of \$100,000 (plus a prorata share of accrued interest,  
28 less escrow fees, service fees or other charges levied pursuant to  
paragraph [8] above) to the California Regional Water Quality  
Control Board-Los Angeles for the Cleanup and Abatement

1 Account. Said amount to be paid by trust check, certified check,  
2 or money order made payable to the "State Water Resources  
3 Control Board, Cleanup and Abatement Account," and sent by  
4 certified mail to:

5 State Water Resources Control Board  
6 Accounting Office  
7 901 P Street  
8 Sacramento, California 95812  
9 Attn: Kelly Bartlett

- 10 2. The sum of \$200,000 (plus a prorata share of accrued interest,  
11 less escrow fees, service fees or other charges levied pursuant to  
12 paragraph [8] above) to the California Regional Water Quality  
13 Control Board-Los Angeles for Watershed Management planning  
14 Activities by trust check, certified check or money order made  
15 payable to "The Los Angeles Regional Water Quality Control  
16 Board Watershed Management Discretionary Fund, Account  
17 Number 34-1509-8888" and sent by certified mail to:

18 San Jose State University Foundation  
19 Los Angeles Regional Water Control Board  
20 Watershed Management Fund  
21 Contracts and Grants Office  
22 P.O. Box 720130  
23 San Jose, California 96172-0190  
24 Attn: Erin Romer

- 25 3. The sum of \$100,000 (plus a prorata share of accrued interest,  
26 less escrow fees, service fees or other charges levied pursuant to  
27 paragraph [8] above) to the California Regional Water Quality  
28 Control Board-Los Angeles for the Regional Board's  
Comprehensive Electronic Database, Phase II (monitoring data  
and effluent and receiving water data) by trust check, certified  
check, or money order made payable to "Southern California  
Edison, RWQCB Database Account" and sent by certified mail to:

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1 Southern California Edison Company  
2 Los Angeles Regional Water Quality Control Board  
3 Database Fund  
4 SCE Environmental Affairs Project  
5 Account Number 4340-094-585  
6 P.O. Box 800  
7 Rosemead, California 91770  
8 Attn: David Kay  
9

- 10 4. The sum of \$100,000 (plus a prorata share of accrued interest,  
11 less escrow fees, service fees or other charges levied pursuant to  
12 paragraph [8] above) to the California Regional Water Quality  
13 Control Board for Mussel Watch and Toxic Substances  
14 Monitoring by trust check, certified check or money order made  
15 payable to the "Los Angeles Regional Water Quality Control  
16 Board Sediment Contamination Characterization Discretionary  
17 Fund, Account Number 34-1509-8888," and sent by certified mail  
18 to:

19 San Jose State University Foundation  
20 Los Angeles Regional Water Quality Control Board  
21 Sediment Contamination Characterization Fund  
22 Account Number 34-1509-8888  
23 P.O. Box 720130  
24 San Jose, California 96172-0190  
25 Attn: Erin Romer

- 26 (f) \$50,000 (plus a prorata share of accrued interest, less escrow fees,  
27 service fees or other charges levied pursuant to paragraph [8] above) to the California  
28 Regional Water Quality Control Board-Central Valley Region for the Cleanup and  
Abatement Account (for the Grapevine Incident). Said amount to be paid by trust  
check, certified check, or money order made payable to the "State Water Resources  
Control Board, Cleanup and Abatement Account," and sent by certified mail to:

29 State Water Resources Control Board  
30 Accounting Office  
31 901 P Street  
32 Sacramento, California 95812  
33 Attn: Kelly Bartlett

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1 (g) \$ 25,000 (plus a prorata share of accrued interest, less escrow fees,  
2 service fees or other charges levied pursuant to paragraph [8] above), for civil penalties  
3 relating to the Earthquake-Related Oil Spills pursuant to Section 11 of the Endangered  
4 Species Act, 16 U.S.C. § 1540, by certified check or money order made payable to  
5 "U.S. Fish and Wildlife Service", certified mail to:

6 The U.S. Fish and Wildlife Service  
7 c/o Office of the Solicitor  
8 600 Harrison Street, Suite 545  
9 San Francisco, California 94107-1373

10 10. Within fifteen (15) days after lodging of this Decree and, where applicable,  
11 receipt of payment instructions, Settlers shall make the following payments to each of the  
12 entities identified in subparts (a), (b) and (c) of this paragraph [10] in the amount and manner  
13 specified. All payments under this paragraph shall be accompanied by correspondence  
14 referencing this Decree, and notice of such payments shall be given to the United States, the  
15 State Agencies, and the People in accordance with paragraph [19] (Notices) by sending a copy  
16 of the correspondence that accompanies each tendered payment. The Parties acknowledge that  
17 APL has already paid the amount of \$220,744.65 to the United States Coast Guard. The  
18 Parties further acknowledge that APL has already paid, in connection with the Earthquake-  
19 Related Oil Spills, the amount of \$683,451.74, representing partial payment of the adjusted  
20 response costs and damage assessment costs of \$854,965.75 to the Department of Fish and  
21 Game, Office of Oil Spill Prevention and Response.

22 (a) \$90,247.28, to the Department of the Interior, Fish and Wildlife Service,  
23 Natural Resource Damage Assessment and Restoration Fund, Account No. 14x5198 --  
24 Santa Clara River Oil Spill, for reimbursement of Natural Resource Damage Assessment  
25 costs associated with the Earthquake-Related Oil Spills. Payment shall be made by  
26 FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of  
27 Justice account in accordance with current electronic funds transfer procedures,  
28 referencing Department of Justice case number 90-5-1-1-4347. Payment shall be made  
in accordance with instruction provided to Settlers by the Financial Litigation Unit of

1 the United States Attorney's Office for the Central District of Los Angeles following  
2 lodging of the Consent Decree. Any payment received by the Department of Justice  
3 after 4:00 p.m. (Eastern Time) will be credited on the next business day.

4 (b) \$171,514.01, by trust check, certified check, or money order, for  
5 reimbursement of outstanding Response costs and Natural Resource Damage Assessment  
6 costs associated with the Earthquake-Related Oil Spills payable to the Department of  
7 Fish and Game, Office of Oil Spill Prevention and Response for deposit into the Oil  
8 Spill Prevention and Response Fund created pursuant to Government Code Section  
9 8670.46. The check or money order shall be mailed as specified in paragraph [9(b)]  
10 above.

11 (c) \$15,795.80, to the Department of the Interior, Fish and Wildlife Service,  
12 Natural Resource Damage Assessment and Restoration Fund, Account No. 14x5198 --  
13 Santa Clara River Oil Spill, for reimbursement of Response costs and Natural Resource  
14 Damage Assessment costs associated with the Grapevine Incident shall be made by  
15 FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of  
16 Justice account in accordance with current electronic funds transfer procedures,  
17 referencing Department of Justice case number 90-5-1-1-4347. Payment shall be made  
18 in accordance with instruction provided to Settlers by the Financial Litigation Unit of  
19 the United States Attorney's Office for the Central District of Los Angeles following  
20 lodging of the Consent Decree. Any payment received by the Department of Justice  
21 after 4:00 p.m. (Eastern Time) will be credited on the next business day.

22 11. APL shall pay the People the sum of \$500,000.00 to be distributed as follows:

23 (a) A civil penalty in the amount of \$100,000.00 (the "Civil Penalty"). APL  
24 shall tender payment of the Civil Penalty to the office of the Los Angeles District  
25 Attorney (the "District Attorney").

26 (b) In satisfaction of any obligation to remediate, payments totaling \$400,000  
27 shall be paid by APL to the entities identified in subparts (b) 1 through 9 of this  
28 paragraph 11 in the amount and manner specified:

1. \$120,000 by check payable to the order of the Los Angeles District Attorney Crime Prevention Foundation - Environmental Fund.
2. \$80,000 by check payable to the order of the County Sanitation Districts of Los Angeles County laboratories.
3. \$25,000 by check payable to the order of the Santa Clarita Organization for Planning the Environment (SCOPE).
4. \$25,000 by check payable to the order of the Friends of the Santa Clara River.
5. \$33,333.34 by check payable to the order of the Los Angeles Conservation Corps.
6. \$33,333.33 by check payable to the order of the Conservation Corps of Long Beach.
7. \$33,333.33 by check payable to the order of the California Conservation Corps, Los Angeles District.
8. \$25,000 by check payable to the order of the Tree People.
9. \$25,000 by check payable to order of the Heal the Bay.

All payments under this paragraph shall be accompanied by correspondence referencing this Decree. All payments under subparts (b) 1 through 9 of this paragraph shall be tendered to the District Attorney for its distribution to the specified entities. All amounts as provided in this paragraph [11] shall be disbursed by APL to the District Attorney within 15 days after the earlier of entry of Final Judgment or termination as to the United States and State Agencies pursuant to paragraph [23].

#### **NO ADMISSIONS**

12. Neither by entering into this Decree nor by taking any action in accordance with it, do Settlers admit any liability for any purpose or admit any issues of law or fact or any responsibility for the Earthquake-Related Oil Spills or the Grapevine Incident. Under no circumstances shall the settlement of this matter, including but not limited to the payments



1 specified above, be deemed an admission by Settlor's liability as to any claim, fact  
2 or issue concerning, relating to or arising out of the Earthquake-Related Oil Spills or the  
3 Grapevine Incident. Neither the fact of the settlement of this matter nor the Decree shall be  
4 admissible in any proceeding or procedure for the purpose of imputing, implying, or otherwise  
5 raising an inference of wrongdoing by Settlor or any of the Parties released in paragraph [13]  
6 or [15] below (the "Released Parties").

#### 7 **RELEASES AND COVENANTS NOT TO SUE**

8 13. Effective upon entry of this Decree and receipt of payments specified in  
9 paragraphs [8] and [10], the State Agencies release Settlor and Settlor's subsidiary and  
10 affiliate corporations, and each of their past and present directors, officers, attorneys,  
11 employees, successors and assigns (collectively the "Released Parties") from, and covenant not  
12 to sue or take any action against any of them for: (i) any and all civil claims alleged in the  
13 Complaint in this action; (ii) all claims for damages for injury to, loss of, or destruction of  
14 Natural Resources whether known or unknown, suspected or unsuspected, arising out of the  
15 Earthquake-Related Oil Spills or the Grapevine Incident; and (iii) any and all claims, demands,  
16 liabilities, costs, expenses, fines, penalties, response costs, cost of assessing natural resource  
17 damages, enforcement or litigation costs (including attorneys fees) whether known or  
18 unknown, suspected or unsuspected, except such costs relating to the enforcement of this  
19 Decree, relating to or arising out of the Earthquake-Related Oil Spills or the Grapevine  
20 Incident, all of which are hereinafter called the "Released Claims." The Released Claims  
21 include, common law, statutory, civil, criminal (to the extent permitted by applicable law) and  
22 administrative claims arising out of, resulting from, or related to the Earthquake-Related Oil  
23 Spills or the Grapevine Incident.

24 14. Effective upon entry of this Decree and receipt of payments specified in  
25 paragraphs [8] and [10], the United States on behalf of its Natural Resource Trustees, releases  
26 and covenants not to sue or take action against Settlor and Settlor's successors and assigns,  
27 for: (i) any and all civil claims alleged in the Complaint in this action; (ii) all claims for  
28 damages for injury to, loss of, or destruction of Natural Resources whether known or unknown

1 arising out of the Earthquake-Related Oil Spills or the Grapevine Incident; and (iii) any and all  
2 response costs and costs of assessing Natural Resource Damages arising out of, resulting from,  
3 or related to the Earthquake-Related Oil Spills or the Grapevine Incident.

4 15. Effective upon entry of this Decree and receipt of payments specified in  
5 paragraph [11], the People release Settlers and Settlor's subsidiary and affiliate corporations,  
6 and each of their past and present directors, officers, attorneys, employees, successors and  
7 assigns (collectively the "Released Parties") from, and covenants not to sue or take any action  
8 against any of them for: (i) any and all civil claims alleged in the Complaint in this action; and  
9 (ii) all claims, demands, warranties, debts, obligations, liabilities, costs, expenses, fines,  
10 penalties, response costs, enforcement or litigation costs (including attorneys fees), interest, or  
11 any rights of action and causes of action, of any kind or character whatsoever, whether known  
12 or unknown, suspected or unsuspected, arising prior to the date first above written, or which  
13 may hereafter be claimed to arise out of any action, inaction, event or matter occurring prior  
14 to the date first above written, relating to or arising out of the Earthquake-Related Oil Spills,  
15 all of which are hereinafter called the "Released Claims." The Released Claims include,  
16 without limitation, common law, statutory, civil, criminal (to the extent permitted by  
17 applicable law) and administrative claims or any other claims arising out of, resulting from, or  
18 related to the Earthquake-Related Oil Spills.

19 16. Effective upon entry of this Decree, Settlers hereby release the United States and  
20 the State Agencies from, and covenant not to sue or to take any other civil or administrative  
21 action against, the United States or the State Agencies for any and all civil claims that arise  
22 from, or are based on, the Earthquake-Related Oil Spills and the Grapevine Incident. Settlers  
23 waive the requirements of 50 C.F.R. Part 11, with regard to the civil penalty pursuant to the  
24 Endangered Species Act.

#### 25 **RESERVATION OF RIGHTS**

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

28 ///

1 18. The covenants not to sue in paragraphs [13], [14] and [15] above shall not apply  
2 to: (i) any claim based on a failure of Settlers to satisfy the requirements of this Decree; or (ii)  
3 claims for criminal liability brought by the United States.

4 **NOTICES**

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

9 **Notice to the United States:**

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

13 Regional Director  
14 United States Fish and Wildlife Service  
911 N.E. - 11th Avenue  
Portland, Oregon 97232

15 **Notice to the State Agencies:**

16 Michael W. Neville  
17 Deputy Attorney General  
18 California Attorney General's Office  
50 Fremont Street, Suite 300  
San Francisco, CA 94105-2239

19 Administrator  
20 Department of Fish and Game  
21 Office of Oil Spill Prevention and Response  
1700 K Street, Suite 250  
Sacramento, CA 95814

22 Dr. Robert Ghirelli  
23 California Regional Water Quality Control Board  
24 Los Angeles Region  
101 Centre Plaza Drive  
Monterey Park, CA 91754

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1 Notice to the People

2 David Eng  
3 Deputy District Attorney  
4 Office of the Los Angeles  
5 District Attorney  
6 320 West Temple Street  
7 Room 340  
8 Los Angeles, California 90012

6 Notice to Settlers:

7 Herbert A. Birenbaum  
8 Room LAC-1597 / (310) 590-4421  
9 ARCO Pipe Line Company  
10 300 Oceangate  
11 Long Beach, California 90802

10 Ronald C. Peterson  
11 Steven R. Tekosky  
12 Heller, Ehrman, White & McAuliffe  
13 601 So. Figueroa Street, 40th Floor  
14 Los Angeles, California 90017

13 REPRESENTATIVES

14 20. Each person signing this Decree on behalf of APL, ARCO, the State Agencies,  
15 the Office of the Los Angeles District Attorney, and the Assistant Attorney General certifies  
16 that he or she is fully authorized to enter into the terms and conditions of this Decree and to  
17 execute and legally bind the Parties to this Decree.

18 MODIFICATION

19 21. Minor modifications not materially altering this Decree may be effected by the  
20 written agreement of the Parties. No other modifications of this Decree may be made unless  
21 the Parties agree in writing to the modification and the Court approves of the requested  
22 modification. Nothing in this paragraph shall be deemed to limit the Court's power to  
23 supervise or modify this Consent Decree.

24 LODGING, OPPORTUNITY FOR PUBLIC COMMENT, AND APPEALS

25 22. This Decree shall be lodged with the Court for a period of 30 days for public  
26 notice and comment. The United States and State Agencies reserve the right to withdraw or  
27 withhold its consent if the comments regarding the Decree disclose facts or considerations  
28 which indicate that this Decree is inappropriate, improper, or inadequate. Settlers consent to

1 the entry of this Decree without further notice. All Parties agree not to appeal entry of this  
2 Decree.

### 3 TERMINATION

4 23. (a) Except as provided in subpart (b) of this paragraph 23, this Decree shall  
5 terminate and be of no further force and effect, including the releases and covenants not  
6 to sue in paragraphs [13], [14] and [16], upon occurrence of any of the following:

- 7 1. The United States or any of the State Agencies withdraws or  
8 withholds its consent to entry of the Decree; or
- 9 2. The Court refuses to enter the Decree in its present form; or
- 10 3. The Decree is overturned on appeal with no possibility of being  
11 reinstated upon further appeal.

12 (b) Paragraph 23(c) shall in no event terminate and shall remain effective as  
13 to all Parties regardless of whether the Decree is entered by the Court. To the extent  
14 applicable to the People and Settlers, paragraphs [5], [6], [7], [11], [12], [15], [17],  
15 [18], [19], [20], [21], [23], [24], [26], [27], [28] and [29] shall in no event terminate  
16 and shall remain effective as between the People and Settlers regardless of whether the  
17 Decree is entered by the Court.

18 (c) In the event this Decree terminates pursuant to subpart (a) of this  
19 paragraph 23, the funds deposited by Settlers into escrow pursuant to paragraph [8] of  
20 this Decree, plus any interest earned on those funds, shall be repaid to Settlers within  
21 fifteen (15) days after termination. Termination of this Decree pursuant to subpart (a)  
22 of this paragraph 23 shall be effective upon repayment to Settlers of this amount.

### 23 FACILITATION

24 24. The Plaintiffs and Settlers agree to perform in good faith such acts as are  
25 necessarily and reasonably required to perform the covenants and satisfy the conditions of this  
26 Decree.

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1 **CONTINUING JURISDICTION**

2 25. The Court retains jurisdiction to enforce the terms of this Decree and Settlement  
3 Agreement and to enforce the Memorandum of Understanding to be entered into by the  
4 Natural Resource Trustees as specified in paragraph [9(a)].

5 **ENTIRE AGREEMENT**

6 26. The Plaintiffs and Settlers agree that this Decree constitutes a single, integrated,  
7 written contract expressing their entire agreement. No other statements, representations, or  
8 promises, written or oral, expressed or implied, have been made by any  
9 party to any other party. All prior discussions and negotiations have been and are merged in,  
10 and integrated into, and are superseded by, this Decree.

11 **INTERPRETATION**

12 27. The captions contained in this Decree have been inserted for purposes of  
13 convenience and ease of reference only and shall not affect the construction or interpretation of  
14 this Decree or any of its provisions. The normal rule of contractual construction providing  
15 that ambiguities be resolved against the drafting party shall not be employed in the  
16 interpretation of this Decree.

17 **COUNTERPARTS**

18 28. This Consent Decree may be executed in any number of counterparts and each  
19 executed counterpart shall have the same force and effect as the original instrument.

20  
21 **IT IS SO ORDERED:**

22  
23 Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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1 WE HEREBY CONSENT to the entry of this Decree:

2 FOR THE UNITED STATES OF AMERICA:

3  
4  
5 By: \_\_\_\_\_  
6 LOIS J. SCHIFFER  
7 Assistant Attorney General  
8 Environment and Natural Resources Division  
9 United States Department of Justice

Date: \_\_\_\_\_

10 By: \_\_\_\_\_  
11 ROBERT D. BROOK  
12 Environmental Enforcement Section  
13 Environment and Natural Resources Division  
14 United States Department of Justice  
15 P.O. Box 7611  
16 Washington, D.C. 20044

Date: \_\_\_\_\_

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1 **FOR THE STATE AGENCIES:**

2 **CALIFORNIA DEPARTMENT OF FISH AND GAME**

3  
4  
5 By: \_\_\_\_\_ Date: \_\_\_\_\_  
6 PETE BONTADELLI  
7 Administrator  
8 Office of Oil Spill Prevention and Response

9 **REGIONAL WATER QUALITY CONTROL BOARD**  
10 **Los Angeles Region**

11  
12 By: \_\_\_\_\_ Date: \_\_\_\_\_  
13 DR. ROBERT GHIRELLI  
14 Executive Officer

15  
16  
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23  
24 **APPROVED AS TO FORM:**

25  
26  
27 By: \_\_\_\_\_ Date: \_\_\_\_\_  
28 MICHAEL W. NEVILLE  
Deputy Attorney General



1 **FOR THE LOS ANGELES DISTRICT ATTORNEY:**

2  
3  
4 By:

RICHARD F. SULLIVAN  
Head Deputy  
Environmental Crimes Division  
Office of the District Attorney  
County of Los Angeles

Date: \_\_\_\_\_

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1 **FOR ARCO PIPE LINE COMPANY:**

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3  
4 **By:**

**Date:**

\_\_\_\_\_

5 **Name (print)**  
**Title (print)**

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1 **FOR ATLANTIC RICHFIELD COMPANY:**

2  
3  
4 **By:** \_\_\_\_\_

Name (print)

5 Title (print)

Date: \_\_\_\_\_

806



# United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

IN REPLY REFER TO:

Privileged--Attorney Work Product--FOIA Exempt

Joel Gross, Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
1425 New York Avenue, N.W.  
Washington, D.C. 20005

JAN 16 1997

Re: Approval of Proposed Settlement with Defendants -  
ARCO Santa Clara River Oil Spill

Dear Mr. Gross:

Please be advised that it is the position of the Department of the Interior (the Department) that settlement with ARCO Pipe Line Company for natural resource damages and penalties in the amount of \$9,202,557.10 in the above-referenced case, as set forth in the proposed Consent Decree, meets the obligations of the Department as a federal natural resource trustee and is in the best interests of the United States. Accordingly, you are hereby authorized to enter into said settlement on behalf of the Department by signing the Complaint and the Consent Decree. Our authorization is expressly conditioned on the understanding that the U.S. Department of Justice's share of the settlement under the CJS Appropriations Act will be limited to \$3,181.79, or three percent of the \$106,861.79 in past Department of the Interior damage assessment costs.

We would appreciate it if your office would send us a copy of the final executed Complaint and Consent Decree. Should you have any questions or comments, please contact Ralph Mihan or Robin Kohn Glazer at (415) ~~244-4025~~. Thank you for your assistance in this matter.

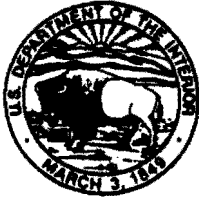
Sincerely,

Robert L. Baum  
Associate Solicitor  
Conservation and Wildlife

427-1460

Enclosure

cc: Regional Solicitor, PSW (w/out enclosure)  
Field Solicitor, San Francisco, (w/out enclosure)  
Bob Brook, DOJ, (w/out enclosure)  
Chief, Division of Environmental Contaminants, FWS  
~~Chief~~, Division of Budget, FWS  
Director, OEPC



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

**DRAFT**

TAKE  
PRIDE IN  
AMERICA

Privileged--Attorney Work Product--FOIA Exempt

Joel Gross, Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U. S. Department of Justice  
1425 New York Ave., N.W.  
Washington, D.C. 20005

Re: Approval of Proposed Settlement - United States v.  
ARCO Pipe Line Company, Santa Clara River Oil Spill

Dear Mr. Gross:

Please be advised that it is the position of the Department of the Interior (the Department) that settlement with ARCO Pipe Line Company for natural resource damages and penalties in the amount of \$9,202,557.10 in the above referenced case, as set forth in the enclosed Consent Decree, meets the obligations of the Department as a Federal natural resource trustee and is in the best interests of the United States. Accordingly, you are hereby authorized to enter into this settlement on behalf of the Department by signing the Complaint and the Consent Decree. So that our files may be complete on this matter, we would appreciate it if your office would send us a copy of the final executed consent decree.

Should you have any questions or comments, please contact Ralph Mihan or Robin Kohn Glazer at (415)744-4095. Thank you for your assistance in this matter.

Sincerely,

Robert L. Baum  
Associate Solicitor  
Conservation and Wildlife

Enclosure

cc: Regional Solicitor, PSW (w/out enclosure)  
Field Solicitor, San Francisco (w/out enclosure)  
Bob Brook, DOJ (w/o enclosure)  
Chief, Division of Environmental Contaminants, FWS

Chief, Division of Budget, FWS  
Director, OEPC



IN REPLY REFER TO:

## United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Southwest Region

2800 Cottage Way

Room W-2215

Sacramento, California 95825-1890

December 27, 1996

Memorandum

To: Associate Solicitor, Conservation and Wildlife

From: Regional Solicitor, Pacific Southwest Region

Subject: Approval of Proposed Settlement with Defendants - ARCO  
Santa Clara River Oil Spill

This memorandum requests your consideration and approval of a proposed Consent Decree with ARCO Pipe Line Company for a total of \$9,202,557.10 in natural resource damages and other costs and penalties relating to an oil spill on the Santa Clara River in Los Angeles County, California, and other earthquake related spills in the vicinity in January 1994, as well as the Grapevine Creek spill on April 6, 1993. Although the natural resource damage portion of this settlement should raise no unusual issues, you should be aware that the Department of Justice is setting a precedent by requiring an offset of 3% of the assessment costs pursuant to its Civil Debt Collection Statute.

Before signing the draft Complaint (Attachment A) and Consent Decree (Attachment B) and lodging them with the court, the Department of Justice needs approval from the Department of the Interior, the federal natural resource trustee in this case.<sup>1</sup> We request that you transmit a letter to Joel Gross, Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, in the form set out in the attached draft (Attachment C), expressing approval of the settlement terms and requesting that Justice sign the Complaint and Consent Decree on our behalf.

### Background

This case involves the rupture of an ARCO (formerly Four-Corners) Pipe Line Company pipeline on January 17, 1994, at ARCO's Newhall Pump Station in Santa Clarita, California, which caused the release of approximately 190,000 gallons of crude oil. The spilled oil from the pipeline leaks flowed along a roadway, where it entered a

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<sup>1</sup> The natural resource trustees are the Department of the Interior, as represented by the U.S. Fish and Wildlife Service, and the California Department of Fish and Game Office of Oil Spill Prevention and Response (OSPR).

storm drain, then into an open drainage ditch, and from there into the Santa Clara River. The oil flowed downstream approximately 16 miles before it was contained by a dam constructed to halt further spread of the oil. The rupture was caused in part by the Northridge earthquake (magnitude 6.8), and in part by structural defects in the pipeline. Approximately 100 acres of woody and herbaceous vegetation were impacted by the oil and cleanup operations, as well as approximately 150 acres of river sediments.

#### Impacts to Natural Resources

The discharge resulted in injury and/or death to fish, including the federally endangered unarmored three-spine stickleback, as well as carp, sculpin, non-endangered stickleback, sucker, mosquito fish, arroyo chub, and crayfish. Birds oiled or killed included mallard, loggerhead shrike, sora rail, American coot, Virginia rail, morning dove, green wing teal, Lincoln sparrow, and great egret. Other wildlife impacted included great-eared slider turtle, western pond turtle, western toad and California vole. Over 150 acres of river sediment habitat was impacted, and over 100 acres of riparian vegetation was oiled, including critical habitat for the federally endangered least Bell's vireo.

#### History of Settlement Negotiations

Shortly after the spill, ARCO expressed a willingness to work with the trustees and the other involved state agencies to develop a settlement package rather than to have the agencies initiate litigation. ARCO offered to fund a reasonable restoration plan, and initial discussions were held among biologists and other technical representatives of ARCO and the trustees. The purpose of the discussions was to determine the number of acres and type of habitat impacted by the spill, the cost per acre of restoration, and appropriate multipliers under a habitat equivalency model to adequately compensate for the losses. The range of figures generated was then used as a starting point for settlement negotiations with ARCO. The final settlement figure was based upon a number of factors including: additional costs beyond habitat restoration for wildlife projects and oversight and monitoring; the penalties assessed and the percentage of those penalties used for natural resource related projects; impacts from an earlier spill on this same stretch of river attributable to Mobil Oil Corp.; the fact that a full scale damage assessment plan was not completed and that ARCO opted for early settlement; and the fact that the number of endangered species killed was based upon calculations, since only a few bodies were found.

The federal statutes which are the basis of liability are the Oil Pollution Act, 33 U.S.C. § 2701 et seq. and the Endangered Species Act, 16 U.S.C. § 1538(a). The State of California has several claims under the California Fish and Game Code, Government Code, Water Code and Harbors and Navigation Code.



### Proposed Settlement

The total proposed settlement amount is \$9,202,557.10, which consists of: \$7,350,000 to the natural resource trustees for natural resource damages, oversight and monitoring; \$500,000 to the California Department of Fish and Game (CDFG) for fish and wildlife restoration projects in lieu of a penalty; \$550,000 to the California Regional Water Quality Control Boards for water-quality related restoration projects in lieu of a penalty; \$25,000 to the Fish and Wildlife Service for an Endangered Species Act civil penalty; \$500,000 to the Los Angeles County District Attorney's Office for penalties; \$106,043.08 for past Interior damage assessment costs<sup>2</sup>; and \$171,514.01 for outstanding past CDFG response and damage assessment costs. Of this total settlement, \$7,100,000 will be placed in the Interior Natural Resource Damage Assessment and Restoration Fund (NRDAR Fund) and will earn interest pending the publishing of a restoration plan and implementation of actual restoration, as is being done in the Apex Houston oil spill case.

A potentially significant issue is the distribution of past DOI damage assessment costs. Of the \$106,043.08 in past DOI damage assessment costs, \$102,861.79, will also be placed in the NRDAR account. The remaining \$3,181.29, or 3% of this total, will go to the U.S. Department of Justice pursuant to the Civil Debt Collection statute (CJS Appropriations Act), Pub. L. No. 103-121, 107 Stat. 1164, Section 108 (1994)<sup>3</sup>. The Attorney General has recently begun enforcing this statute for collection of natural resource damage assessment costs<sup>4</sup>. A copy of the statute is

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<sup>2</sup> The Coast Guard has already reimbursed FWS for past response costs relating to the Santa Clara River spill.

<sup>3</sup> The \$106,043.08 in past damage assessment costs reflects \$80,420.24 for FWS damage assessment costs and \$9,827.04 for past Solicitor's Office costs relating to the Santa Clara River spill, and \$15,795.80 for FWS damage assessment costs relating to the Grapevine Creek spill. As noted on the attached tracking form, with the 3% Department of Justice offset, \$93,329.56 will be earmarked for past FWS costs and \$9,532.23 will be earmarked for past Solicitor's Office costs.

<sup>4</sup> The Department of Justice informed us that based upon current DOJ policy, they would be collecting the 3% payment after past costs had been negotiated with ARCO. Lois Schiffer, Assistant Attorney General, Natural Resources Division, has taken the position that DOJ will not take 3% of the \$7.1 million in restoration money because this is a joint settlement with the State (and therefore the money is not all federal money) and because it is still an open question within DOJ as to whether natural resource damage recoveries are subject to the Debt Collection Act.

attached (Attachment D). The DOJ offset is reflected in the Consent Decree language on pages 14-15, which requires that the money be paid to the U.S. Department of Justice rather than directly to the DOI NRDAR fund. We are aware that Steve Lincheid of your Division has been tracking this issue, and can provide additional details on the internal discussions within the Department of Justice. The signed tracking form is also attached (Attachment E). Because the distribution in this case may have precedential implications, we are calling it to your particular attention.

The Consent Decree also settles liability for several small spills that occurred within a few days of the initial spill (likely as a result of breaches in the pipeline and another ARCO pipeline caused by the Northridge earthquake), where there were no significant natural resource damages. At the request of ARCO Pipeline Company, the Consent Decree also includes and settles claims for the Grapevine Creek spill, which occurred on April 6, 1993. The FWS determined that there were no remaining natural resource damages relating to this spill that had not been ameliorated either by on-site restoration activities by ARCO or by natural recovery. However, FWS incurred past damage assessment costs of \$15,795.80, which are included in the settlement. Of this amount, FWS will receive \$15,321.93, and the remainder will be credited to the 3% DOJ offset. FWS' position on inclusion of costs from this spill in the settlement is attached (Attachment F). In addition, \$300,000 of the money received by the State for penalties and placed in various State accounts is attributable to the Grapevine spill.

The trustees will sign a Memorandum of Understanding (MOU), which is currently in draft form (Attachment G), setting forth their goals and responsibilities. The settlement funds will be placed in the Department of the Interior NRDAR account and collect interest pending actual restoration.

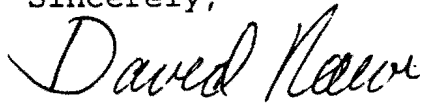
The Department of Justice will sign the Complaint and the Consent Decree once a letter is received from your office. The Department of Justice will require public review of the Consent Decree, and the trustees intend to conduct public review of the restoration plan before it is finalized.

Attached are letters from the Regional Environmental Officer, Region Nine (Attachment H) and the Regional Director, FWS, Region I (Attachment I), expressing their approval of the terms of the proposed Consent Decree. These bureaus concluded that this is a reasonable settlement and should be approved. The settlement was based upon a reasonable cost of restoration, which is the approach encouraged by the Oil Pollution Act regulations (15 C.F.R. Part 990).

We concur with our client bureaus' approval and recommend that a letter be sent to Joel Gross, Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington D.C., expressing approval of the Complaint and the Consent Decree on behalf of the Department of the Interior and requesting that they be signed by Justice. A draft letter to Justice is enclosed. We would appreciate if such a letter could be sent to Justice without delay since Justice must lodge the Consent Decree with the court before January 17, 1997.

Please contact me or Robin Kohn Glazer if you have any questions, at (415) 744-4095.

Sincerely,



David Nawi  
Regional Solicitor  
Pacific Southwest Region

Enclosures

cc:

Field Solicitor, San Francisco (w/o encl.)  
Regional Director, Region One, FWS (w/encl.)  
Environmental Officer, Region Nine, OEA (w/encl.)  
Pam Mathis, FWS, Arlington, (w/encl.)  
David Rosenberger, OEPC, WASO (w/encl.)



IN REPLY REFER TO:

# United States Department of the Interior

## OFFICE OF THE SOLICITOR

San Francisco Field Office  
600 Harrison Street, Suite 545  
San Francisco, California 94107-1373

November 25, 1996



RECEIVED

NOV 25 1996

Memorandum

US FISH & WILDLIFE SERVICE  
REGISTERED MAIL NO. 09

To: Regional Director, Region One, U.S. Fish and Wildlife Service  
Attention: Roger Helm

From: Field Solicitor, San Francisco

Subject: ARCO Santa Clara River Oil Spill Settlement

This memorandum requests your concurrence on a proposed Consent Decree with ARCO Pipe Line Company for natural resource damages and other costs and penalties relating to the oil spill on the Santa Clara River in Los Angeles County, California, and other earthquake related spills in the vicinity in January, 1994, as well as the Grapevine Creek spill on April 6, 1993. This memorandum is to inform you about the spill and the proposed settlement and to provide you with a copy of the proposed Consent Decree (Attachment A). We are also requesting that you initial the attached tracking form and return it with the concurrence (Attachment B).

The total proposed settlement amount is \$9,202,557.10, which consists of: \$7,350,000 to the natural resource trustees<sup>1</sup> for natural resource damages, oversight and monitoring; \$500,000 to the California Department of Fish and Game (CDFG) for fish and wildlife restoration projects in lieu of a penalty; \$550,000 to the California Regional Water Quality Control Boards for water-quality related restoration projects in lieu of a penalty; \$25,000 to the Fish and Wildlife Service for an Endangered Species Act civil penalty; \$500,000 to the Los Angeles County District Attorney's Office for penalties; \$106,043.08 for past Interior damage

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<sup>1</sup> The natural resource trustees are the California Department of Fish and Game Office of Oil Spill Prevention and Response (OSPR) and the Department of the Interior, as represented by the U.S. Fish and Wildlife Service.

assessment costs<sup>2</sup>; and \$171,514.01 for outstanding past CDFG response and damage assessment costs. Of this total settlement, \$7,100,000 will be placed in the Interior Natural Resource Damage Assessment and Restoration Fund (NRDAR Fund) and will earn interest pending the publishing of a restoration plan and implementation of actual restoration, as is being done in the Apex Houston oil spill case.

Of the \$106,043.08 in past DOI damage assessment costs, \$102,861.79, will also be placed in the NRDAR account. The remaining \$3,181.29, or 3% of this total, will go to the U.S. Department of Justice pursuant to the Civil Debt Collection statute (CJS Appropriations Act), Pub. L. No. 103-121, 107 Stat. 1164, Section 108 (1994)<sup>3</sup>. The Attorney General has recently begun enforcing this statute for collection of natural resource damage assessment costs<sup>4</sup>.

This case involves the rupture of an ARCO (formerly Four-Corners) Pipe Line Company pipeline on January 17, 1994, at ARCO's Newhall Pump Station in Santa Clarita, California, which caused the release of approximately 190,000 gallons of crude oil. The spilled oil flowed from the pipeline leaks along a roadway, where it entered a storm drain, into an open drainage ditch, and then into the Santa Clara River. The oil flowed downstream approximately 16 miles before it was contained by a dam constructed to halt further spread of the oil. The rupture was caused in part by the Northridge earthquake, and in part by structural defects in the pipeline. Approximately 100 acres of woody and herbaceous vegetation were impacted by the oil and cleanup operations, as well as

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<sup>2</sup> The Coast Guard has already reimbursed FWS for past response costs relating to the Santa Clara River spill.

<sup>3</sup> The \$106,043.08 in past damage assessment costs reflects \$80,420.24 for FWS damage assessment costs and \$9,827.04 for past Solicitor's Office costs relating to the Santa Clara River spill, and \$15,795.80 for FWS damage assessment costs relating to the Grapevine Creek spill. As noted on the attached tracking form, with the 3% Department of Justice offset, \$93,329.56 will be earmarked for past FWS costs and \$9,532.23 will be earmarked for past Solicitor's Office costs.

<sup>4</sup> The Department of Justice informed us that they would be collecting the 3% payment after past costs had been negotiated with ARCO. DOJ is not requiring payment of 3% of the \$7.1 million in restoration money because this is a joint settlement with the State (and therefore the money is not all federal money) and because it is still an open question within DOJ as to whether natural resource damage recoveries are subject to the Debt Collection Act.

approximately 150 acres of river sediments.

The discharge resulted in injury to fish, including the arroyo chub and the federally endangered unarmored three-spine stickleback, injury to a number of bird and other wildlife species, and injury to riparian vegetation including habitat for the federally endangered least Bell's vireo.

Working cooperatively with the California Department of Fish and Game Office of OSPR, we reached an agreement with ARCO Pipe Line Co. to fund a proposed restoration plan which includes riparian vegetation restoration and wildlife monitoring, as well as agency oversight and monitoring. The estimated cost of restoration was based upon a rough habitat equivalency model, whereby the cost of restoring the number of acres impacted was calculated using appropriate multipliers, and the cost of specific wildlife monitoring projects was added. In addition, some discounting occurred during negotiations to account for impacts from an earlier spill on this same stretch of river caused by Mobil Oil Corp. Roger Helm, Branch Chief, Damage Assessment and Spill Response, participated in the settlement discussions, and concluded that this was a fair settlement in light of the resources impacted and the proposed restoration.

The Consent Decree also settles liability for several small spills that occurred within a few days of the spill (likely as a result of breaches in the pipeline caused by the Northridge earthquake), where there were no significant natural resource damages. It also settles claims for the Grapevine Creek spill which occurred on April 6, 1993, at the request of ARCO Pipe Line Co. The FWS determined that there were no significant natural resource damages relating to this spill, however FWS will receive \$15,795.80 for past damage assessment costs incurred (\$15,321.93 after the 3% DOJ offset, which has been included in the calculation of past costs for this matter.

Please review the attached Consent Decree, and if you agree with its terms, please sign the concurrence line, below. I would appreciate your concurrence by December 15, 1996, so that the Solicitor's Office has time to request that Justice sign the document on our behalf. The tracking form is also attached for your initials. The figures for FWS damage assessment costs are based upon cost documentation provided by your office. We will forward this form to the Director, Fish and Wildlife Service. The trustees are finalizing a Memorandum of Understanding regarding coordination of restoration activities, which will be forwarded to you shortly for your signature. Under this MOU, FWS will be the lead trustee for restoration. The latest draft of the MOU is also enclosed for your review (Attachment D).

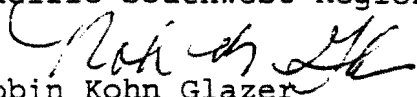
Thank you for your attention to this matter. If you have any questions, please call me at (415) 744-3980. Please note that this

is still a confidential document and should not be distributed outside of the agency.

Sincerely,

Ralph G. Mihan  
Field Solicitor  
Pacific Southwest Region


By:

  
Robin Kohn Glazer  
Assistant Field Solicitor

I Concur:

Date:

ACTING

  
Michael Spear, Regional Director  
U.S. Fish and Wildlife Service

12/9/96

Enclosures

cc: (w/encls.)  
Shelly Hall, SOL, WASO  
Regional Solicitor, PSW  
Diane Noda, FWS, Ventura  
Bob Brook, DOJ, WASO  
Pat Port, OEPC, San Francisco



IN REPLY REFER TO:

# United States Department of the Interior



## OFFICE OF THE SOLICITOR

San Francisco Field Office  
600 Harrison Street, Suite 545  
San Francisco, California 94107-1373  
November 25, 1996

### Memorandum

To: Regional Environmental Officer, Region Nine, Office of Environmental Policy and Compliance

From: Field Solicitor, San Francisco

Subject: ARCO Santa Clara River Oil Spill Settlement

Attached is a memorandum to the Regional Director, U.S. Fish and Wildlife Service, requesting concurrence on a proposed Consent Decree for settlement in the ARCO Santa Clara River oil spill case. Please review the memorandum and the Consent Decree, and if you concur, please sign below.

We will be forwarding the concurrences and the proposed Consent Decree to the Solicitor's Office in Washington, D.C. for their approval and will request that they ask Justice to sign the Consent Decree on behalf of the Department of the Interior.

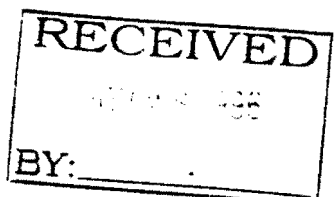
I would appreciate your response by December 15, 1996. If you have any questions, please call me at (415) 744-3980.

Sincerely,

Ralph G. Mihan  
Field Solicitor  
Pacific Southwest Region

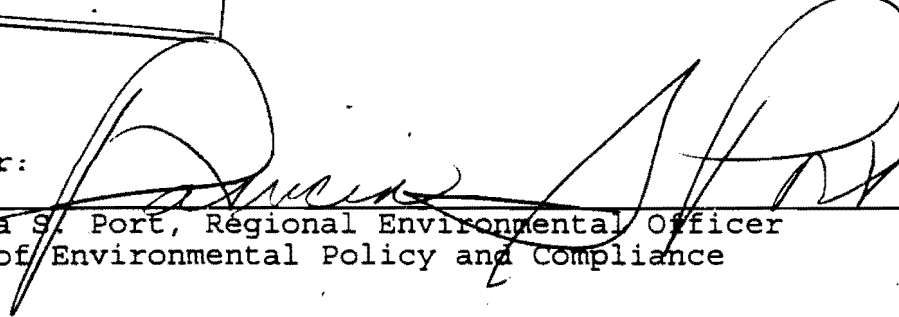
By:

  
Robin Kohn Glazer  
Assistant Field Solicitor



I Concur:

Date:

  
Patricia S. Port, Regional Environmental Officer  
Office of Environmental Policy and Compliance

12/20/96

Enclosures





IN REPLY REFER TO:

FWS/EC-97-024

## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ecological Services

Sacramento Field Office

3310 El Camino Avenue, Suite 130

Sacramento, California 95821-6340

December 16, 1996

## Memorandum

To: Assistant Regional Director Klamath and California Ecoregions  
Region 1, Portland, Oregon  
(Attention: Roger Helm)

From: Field Supervisor, Ecological Services, Sacramento Field Office  
Sacramento, California (ES)

Subject: Potential Settlement Over the April 1993 Crude Oil Spill in  
Grapevine Creek, Kern County, California

In response to your December 6 request for the Sacramento Field Office to review the draft consent decree settling the Santa Clara River and Grapevine Creek oil spills, we have reviewed our files on the Grapevine Creek spill (aka Tejon Incident) and agree that all significant natural resource injuries documented after the Grapevine Creek spill were addressed during cleanup and site restoration activities. We recommend that the Regional Director sign the consent decree and agree to a covenant not to sue for natural resource damages resulting from the Grapevine Creek spill. We defer comments on the portions of the consent decree dealing with the Santa Clara River spill to the Ventura Field Office, as that spill did not occur within the jurisdiction of the Sacramento Field Office. Background information on the Grapevine Creek spill and associated natural resource impacts is provided below.

History of the Grapevine Creek Spill

On April 6, 1993, a pipeline owned by ARCO Four Corners Pipe Line Company (ARCO) ruptured and spilled oil into Grapevine Creek, an intermittent stream located adjacent to Interstate 5 in the Tehachapi Mountains of Kern County, California. The spill oiled 7-1/2 miles of the stream and stream banks before being contained by a temporary dam.

Cleanup activities lasted into May 1993, and included removal of contaminated soil, sediment, and vegetation, as well as use of sorbent pads and booms to remove oil from the water and banks of the creek (Entrix 1993a, Kennedy/Jenks 1993). The history of the cleanup, including documentation of petroleum hydrocarbon monitoring in Grapevine Creek during and after cleanup, was described in the Site Mitigation Report (Kennedy/Jenks 1993).

Site Restoration Activities

Besides impacts from oil, several sites along the stream were physically altered during cleanup of the spill. The major physical impacts occurred at sites cleared for stream access, sites where contaminated soil was stored, and sites affected by off-road use of vehicles during spill response. Recommendations for restoration of physically impacted sites were evaluated by ARCO and submitted to the involved government agencies and private landowners for approval (Trihey and Associates 1994). Restoration and monitoring of affected sites proceeded in a cooperative manner and are now complete.

Biological Resource Impacts

Reports on potential injuries to benthic macroinvertebrates, plants, and birds were completed in 1993 (Entrix 1993b,c,d, e; Entrix 1994; PRBO 1993). Macroinvertebrate density and diversity several days after the spill were greater at an unaffected reference site along Grapevine Creek than at sites downstream of the spill; however, differences in microhabitat due to elevation, temperature, gradient, flow, substrate and riparian canopy may have been responsible for differences in species composition between the affected and unaffected sites (Entrix 1993c). A more quantitative, follow-up study completed in September 1993 indicated that macroinvertebrate populations had recovered from the spill (Entrix 1994). The September 1993 study also indicated that total extractable hydrocarbon concentrations in creek sediment did not differ between unoiled, reference sites and oiled sites that had been remediated (Entrix 1994).

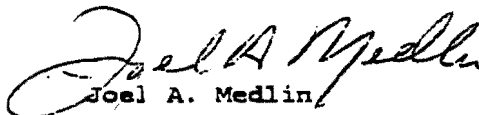
Three months after the spill, most riparian trees downstream of the spill site experienced some leaf drop relative to trees upstream of the spill site; however, this leaf drop was less extensive than in other spills where affected trees eventually recovered from the effects of the oil (Entrix 1993b,e). The bird surveys in riparian and grassland habitats indicated that impacts to bird populations as a result of the spill were minimal (PRBO 1993).

Local experts surveyed the affected area for species of special status (i.e., State or Federal endangered, threatened, candidate, or special concern species), and concluded that the area had the potential to support San Joaquin kit foxes (*Vulpes macrotis mutica*), bank swallows (*Ripera ripera*), blunt-nosed leopard lizards (*Gambelia sila*), San Joaquin antelope squirrels (*Ammospermophilus nelsoni*), and short-nosed kangaroo rats (*Dipodomys nitratoides brevinasus*) (Germano 1993, Spiegel 1993). Bank swallows were observed building nests under the aqueduct with mud taken directly from the contaminated creek bed, and kit fox tracks and potential den sites were observed along Grapevine Creek. The other special status species were not documented as present along the creek at the time of the spill. No injuries to special status species were documented.

Recommended Conditions for Settlement

The oil spill and cleanup activities injured biological resources in and along Grapevine Creek, and altered the morphology of the stream bed. The documented injuries have been ameliorated by cleanup and site restoration activities completed by ARCO or by natural recovery. Thus, the Sacramento Field Office recommends that the Service sign the draft consent decree and agree to a covenant not to sue for natural resource damages. Settlement of this case should include reimbursement of the Service for \$15,795.80 in costs incurred for spill response, damage assessment, and restoration planning.

If you have any questions about the Grapevine Creek spill please contact Dan Welsh of my Environmental Contaminants staff at (916) 979-2110.

  
Joel A. Medlin

Attachment

cc: Diane Noda, Ventura Field Office, Ventura, CA  
Robin Glazer, DOI-SOL, San Francisco

Attachment 1: Literature Cited

Entrix. May 6, 1993a. Four Corners Pipe Line Company, Grapevine, California Spill-Cleanup Photographs. Report Prepared for Four Corners Pipe Line Company by Entrix, Inc., Walnut Creek, CA.

Entrix. June 16, 1993b. Preliminary Survey of Plant Community and Wildlife Habitat in and Adjacent to the Sections of Grapevine Creek Affected by the Four Corners Pipeline Company Oil Spill. Grapevine, California. Report Prepared for Four Corners Pipe Line Company by Entrix, Inc., Walnut Creek, CA.

Entrix. July 30, 1993c. Benthic Macroinvertebrate Survey of Selected Sections of Grapevine Creek in the Vicinity of the Four Corners Pipe Line Company Crude Oil Spill. Report Prepared for Four Corners Pipeline Company by Entrix, Inc., Walnut Creek, CA.

Entrix. September 14, 1993d. Avian Surveys Along Sections of Grapevine Creek Affected by the Four Corners Pipe Line Company Oil Spill, Grapevine, California. Report Prepared for Four Corners Pipe Line Company by Entrix, Inc. Walnut Creek, CA.

Entrix. September 17, 1993e. Follow-Up Riparian Tree Survey in Sections of Grapevine Creek Affected by the Four Corners Pipe Line Company Oil Spill, Grapevine Creek, California. Report Prepared for Four Corners Pipe Line Company by Entrix, Inc. Walnut Creek, CA.

Entrix. March 18, 1994. Benthic Macroinvertebrates and Total Extractable Hydrocarbon Concentration in the Sediment of the Portions of Grapevine Creek Affected by the Four Corners Pipe Line Company Oil Spill. Report Prepared for Four Corners Pipe Line Company by Entrix, Inc. Walnut Creek, CA.

Germano, D.J. 1993. Potential Occurrence of Endangered Species Along Grapevine Creek on the Tejon Ranch, Kern County, California. Report Prepared for California Department of Fish and Game by David J. Germano, Bakersfield, CA.

Kennedy/Jenks Consultants. October 1993. Site Mitigation Report: Line 63 Oil Spill. Report Prepared for Four Corners Pipe Line Company by Kennedy/Jenks Consultants, Bakersfield, CA.

Point Reyes Bird Observatory. July 15, 1993. Terrestrial Bird Survey Along Grapevine Creek, April 18, 1993. Report Prepared for Entrix, Inc. by Point Reyes Bird Observatory.

Spiegel, L. April 19, 1993. Expert Evaluation of Potential for San Joaquin Kit Fox to Occur in the Vicinity of the Oil Spill at Grapevine Creek. Memorandum to California Department of Fish and Game from Linda Spiegel, California Energy Commission, Bakersfield, CA.

Trihey and Associates. January 10, 1994. Alterations in Streambed Morphology of Grapevine Creek Resulting from Oil Spill Cleanup Operations, Kern County, California. Report Prepared for Entrix, Inc. by Trihey and Associates, Concord, CA.