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13 Listing of Attorneys continues on the Following Page

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA, and)
 THE PEOPLE OF THE STATE OF)
 17 CALIFORNIA, the STATE OF)
 CALIFORNIA, Acting by and)
 18 through the Department of)
 Fish and Game, Department of)
 19 Parks and Recreation, State)
 Lands Commission, California)
 20 Regional Water Quality Control)
 Board, Los Angeles Region,)

Civil Action No.

21 Plaintiffs,)
 22)

23 v.)

CONSENT DECREE

24 BERRY PETROLEUM COMPANY, a)
 Delaware Corporation, dba)
 25 BUSH OIL COMPANY)

26 Defendant.)
 27)
 28)

1 DANIEL E. LUNGREN
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Assistant Attorney General
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the State of California Acting by and Through Department of Fish
7 and Game, Department of Parks and Recreation, California Regional
Water Quality Control Board, Los Angeles Area, and State
8 Lands Commission

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Post Office Box 93031-9100
12 (805) 485-1000

13 Attorneys for Defendant, Berry Petroleum Company
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1 This Consent Decree ("Decree") is entered into by the
2 United States of America on behalf of the United States
3 Department of the Interior, acting through the United States Fish
4 & Wildlife Service, the United States Department of Commerce,
5 acting through the National Oceanic and Atmospheric
6 Administration, the United States Department of Transportation,
7 acting through the United States Coast Guard, and the United
8 States Environmental Protection Agency (collectively "United
9 States"), the People of the State of California, the State of
10 California acting by and through the California Department of
11 Fish and Game/Office of Oil Spill Prevention and Response
12 ("CDFG/OSPR"), the California Department of Parks and Recreation
13 ("Parks & Recreation"), the California Regional Water Quality
14 Control Board-Los Angeles Region ("Regional Board"), the
15 California State Lands Commission ("State Lands Commission")
16 (collectively "State Agencies") and Berry Petroleum Company, a
17 Delaware corporation ("Berry"). (The United States and the State
18 Agencies shall be, collectively "the Governments").

19 INTRODUCTION

20 This consent decree is intended to encompass claims for
21 response costs, clean-up costs, restoration costs, damages and
22 natural resource damages and civil penalties resulting from
23 rupture of an oil pipeline occurring in Berry's West Montalvo Oil
24 Field Facilities ("Montalvo facilities") in December 1993,
25 creating contamination that resulted in the release and migration
26 of crude oil into the soil and surface waters (collectively
27 "December 1993 Oil Discharge ") in and around McGrath Lake,

1 McGrath State Beach, the Santa Clara River Estuary and the
2 Pacific Ocean at McGrath State Beach, in the County of Ventura,
3 State of California ("McGrath Lake Area").

4 Clean-up actions were undertaken by the United States
5 and the State Agencies and by Berry to remove the oil that was
6 discharged as a result of the December 1993 Oil Discharge.
7 Clean-up actions for oil discharged as a result of the December
8 1993 Oil Discharge have been concluded.

9 The Governments have alleged that approximately 2,075
10 barrels of crude oil were discharged and that the discharged oil
11 resulted in petroleum contamination along a pathway that extended
12 from the pipeline rupture, along a riparian corridor and adjacent
13 wood areas, into McGrath Lake, through a diversion pipeline into
14 the slough that traverses a portion of the dunes and beach, and
15 finally into the ocean and onto approximately seven (7) miles of
16 sandy beach.

17 The Governments have alleged that the discharge
18 resulted in injury to lake vegetation, riparian vegetation, dune
19 vegetation, sediments, fish, birds and invertebrates, and other
20 valuable resources, including the federally endangered Brown
21 Pelican, in and about the McGrath Lake Area.

22 The Governments, through their respective Natural
23 Resources Trustees (collectively "the Trustees") have proposed
24 certain Restoration Projects to address Natural Resources Damages
25 that occurred as a direct result of the December 1993 Oil
26 Discharge. The Trustees deem the proposed projects reasonable
27 and necessary measures to restore these Natural Resources.

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

4 The Parties recognize that this Decree is a settlement
5 of a contested matter. The Decree, the payment, and the
6 acceptance of consideration provided herein do not represent an
7 admission of liability or responsibility by any Party.

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

10 JURISDICTION

11 1. This Court has jurisdiction over the subject
12 matter and over the parties to this action pursuant to 28 U.S.C.
13 §§ 1331, 1345, and 33 U.S.C. §§ 1321, 2717. Venue is proper in
14 this Court pursuant to 28 U.S.C. §§ 1391 and 1395(a); 33 U.S.C.
15 § 1321(b) (7) (E); 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b).
16 The Complaint states claims upon which relief may be granted.
17 The Court has supplemental jurisdiction over claims stated in the
18 Complaint pursuant to state law.

19 PARTIES BOUND

20 2. This Decree shall apply to and be binding upon and
21 inure to the benefit of the Parties and as applicable, their
22 present and former and future officers, directors, employees,
23 agents, representatives and successors.

24 DEFINITIONS

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

27 (a) "Natural Resource" and "Natural Resources"

1 mean land, fish, wildlife, biota, air, water, ground water,
2 drinking water supplies, and other such resources belonging to,
3 managed by, held in trust by, appertaining to, or otherwise
4 controlled by the United States and the State Agencies and their
5 respective agencies, departments and subdivisions.

6 (b) "Natural Resource Trustees" or "Trustees"
7 means those federal and state agencies designated or authorized
8 pursuant to the Oil Pollution Act of 1990 and state law to act on
9 behalf of the public as Trustees for the Natural Resources
10 belonging to, managed by, controlled by or appertaining to the
11 United States or State of California. Specifically, as used in
12 this Decree the Trustees are the United States Department of the
13 Interior, acting through the U.S. Fish and Wildlife Service, the
14 California Department of Parks and Recreation and the California
15 Department of Fish and Game, Office of Oil Spill Prevention and
16 Response. Collectively the Trustees herein are the trustees of
17 all of the Natural Resources damaged by the December 1993 Oil
18 Discharge.

19 (c) "Party" or "Parties" mean Berry including its
20 officers, directors, employees, agents, representatives and
21 attorneys; the United States, including its Departments,
22 Agencies, and subdivisions; and the State Agencies, including
23 their Departments, Agencies and subdivisions.

24 (d) "Restore" or "Restoration" mean any action to
25 restore to its pre-spill condition any Natural Resource injured,
26 lost, or destroyed as a result of the December 1993 Oil Discharge
27 and the services provided by that Natural Resource, or any action
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1 | which restores, replaces, rehabilitates, or acquires the
2 | equivalent of, the injured, lost, or destroyed Natural Resource
3 | and affected services.

4 | (e) "Natural Resources Damages" means all civil
5 | compensatory and remedial relief recoverable by the Governments
6 | in their capacities as Trustees on behalf of the public for
7 | injury to, destruction of, or loss of any or all Natural
8 | Resources resulting from the December 1993 Oil Discharge,
9 | including but not limited to (1) costs of damage assessment, (2)
10 | compensation for loss, injury, impairment, damage or destruction
11 | of Natural Resources, whether temporary or permanent, or for loss
12 | of use value (active and passive), non-use value, option value,
13 | amenity value, bequest value, existence value, consumer surplus,
14 | economic rent, or any other similar value of Natural Resources,
15 | and (3) costs of restoration, rehabilitation, or replacement of
16 | injured Natural Resources or the acquisition of equivalent
17 | resources.

18 | (f) "December 1993 Oil Discharge" means rupture
19 | of an oil pipeline occurring in Berry's Montalvo facilities in
20 | December 1993, creating contamination as a result of the release
21 | and migration of crude oil into the soil and surface waters in
22 | and around McGrath Lake, McGrath State Beach, the Santa Clara
23 | River Estuary and the Pacific Ocean at McGrath State Beach, in
24 | the County of Ventura, State of California.

25 | (g) "Response Costs" mean response, removal
26 | and/or clean-up costs incurred by the Governments in responding
27 | to the December 1993 Oil Discharge, including but not limited to
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1 actions taken to remove and clean up the spilled oil.

2 (h) The phrase "entry of this Decree" shall mean
3 the date on which the Court has approved and signed this Decree
4 and the Decree has been entered on the docket by the Clerk of the
5 Court.

6 SETTLEMENT PAYMENTS BY BERRY

7 4. Berry shall pay to the Governments the sum of
8 Three Million One Hundred Seventy Thousand One Hundred Dollars
9 Fifty-two Cents (\$3,170,100.52) (the "Settlement Amount") in the
10 manner set forth in paragraphs 5, 6, 8 and 11, inclusive, of this
11 Decree. The Parties acknowledge that Berry has already paid the
12 Governments a portion of the Settlement Amount, that is, the sum
13 of Six Hundred Twenty Thousand One Hundred Dollars Fifty-two
14 Cents (\$620,100.52), representing the verified invoices for
15 response costs as set forth in Paragraphs 11(d), (e), (f), (g)
16 (h) and (i).

17 5. Not later than fifteen (15) days following the
18 date of notice to Berry that all parties have executed this
19 Decree, Berry shall pay the Settlement Amount less the amount
20 previously paid for response costs as referenced in Paragraph 4,
21 into the Berry Settlement Escrow Account as described in
22 Paragraph 6 of this Decree.

23 6. Berry shall establish or cause to be established
24 an escrow account at a federally-chartered bank (the "Berry
25 Settlement Escrow Account") to receive and hold the Settlement
26 Amount and all interest accumulated on the Settlement Amount
27 pending entry of this Decree. The Berry Settlement Escrow

1 Account shall earn a rate of interest not less than the then
2 current rate on 90-day Treasury Bills, and all interest earned
3 thereon shall be for the benefit of and paid to the Governments,
4 except that if the Settlement Amount is returned to Berry as a
5 result of termination of this Decree, all interest thereon shall
6 be for the benefit of and paid to Berry. Any and all escrow fees
7 or service fees or other charges levied by such federally-
8 chartered bank handling the Berry Settlement Escrow Account and
9 disbursements therefrom in accordance with this Decree shall be
10 charged against the interest earned on such Account and shall not
11 be directly chargeable to Berry in any manner. To the extent,
12 however, there are any charges in excess of the interest earned,
13 such charges shall be borne by Berry.

14 7. All cleanup actions which were undertaken by the
15 Governments and by Berry as a result of the December 1993 Oil
16 Discharge have been concluded and, upon the payment of all money
17 from the Berry Settlement Escrow Account to the Governments in
18 accordance with this Decree, all Natural Resource Restoration
19 work will be the sole responsibility of the Trustees.

20 8. (a) Within fifteen (15) days after receiving
21 written notice of the entry of this Decree, Berry shall establish
22 a trust account with the National Fish and Wildlife Foundation in
23 the form of the McGrath Lake Trust Agreement (for the benefit of
24 the State Natural Resources Trustees, the California Department
25 of Fish and Game and the California Department of Parks and
26 Recreation), attached hereto as Exhibit 1, and instruct the
27 escrow holder to distribute \$1,315,000, plus the interest thereon

1 from the Berry Settlement Escrow Account into the McGrath Lake
2 Trust for Restoration of Natural Resources. Berry shall not
3 have, nor be held responsible for, any duties or liabilities
4 arising from or associated with the existence, establishment,
5 funding, or management of the McGrath Lake Trust beyond those
6 duties stated in this paragraph. Upon transfer of funds to the
7 Trustee of the McGrath Lake Trust as provided in this paragraph,
8 Berry shall have no further obligations, fiduciary, financial or
9 otherwise, with respect to the Trust.

10 The McGrath Lake Trust shall be used to implement
11 Restoration projects relating to Natural Resources Damages in the
12 McGrath Lake Area arising from the December 1993 Oil Discharge.
13 The Trustees shall bear sole responsibility for the undertaking
14 of such Restoration projects (and any programs, activities or
15 studies in connection therewith) and sole discretion concerning
16 the expenditure of sums from the McGrath Lake Trust.

17 (b) It is the intent of this Decree, upon satisfaction
18 by Berry of all the conditions of the Decree for which it is
19 responsible, to fully relieve Berry of all responsibility for and
20 obligation for Restoration of Natural Resources for which the
21 Trustees are Natural Resources Trustees.

22 The California Coastal Commission, the County of
23 Ventura, and the City of Oxnard, as a result of emergency Coastal
24 Development Permits issued by each of those agencies with respect
25 to the December 1993 Oil Discharge, have each required Berry to
26 apply for and obtain issuance of "regular" Coastal Development
27 Permits. Each of the permits has or is expected to contain a

1 condition that requires Berry to implement the natural resources
2 restoration plan adopted by the state and federal Natural
3 Resources Trustees. It is the intent of this Decree that the
4 Trustees will implement the natural resources restoration plan
5 that they adopt and that such implementation will fully satisfy
6 the condition of the regular permits relating to the Restoration
7 of Natural Resources. Notwithstanding the intent to satisfy the
8 condition of the several regular permits pertaining to
9 Restoration of Natural Resources, this Decree shall not be
10 construed to create any right or power in the permitting agencies
11 to seek to enforce the Restoration of Natural Resources
12 conditions against the state or federal Trustees. It is the
13 intent of the parties that Berry's payment of the required amount
14 to the McGrath Lake Trust shall fully satisfy Berry's obligation
15 arising pursuant to the condition.

16 If documents are required to be executed by any of the
17 parties to effectuate the provisions of this Paragraph 8, each
18 party whose assistance is needed agrees to cooperate by executing
19 and delivering such documents to the party(ies) needing
20 assistance.

21 9. Berry shall have no further responsibility under
22 the most recent Action Plan (the Bush Oil/Berry Petroleum Action
23 Plan for February 14, 1994 and Beyond) pertaining to the December
24 1993 Oil Discharge. Such Action Plan is cancelled and of no
25 further force or effect, and no further Action Plan(s) relating
26 to the December 1993 Oil Discharge will be imposed upon Berry.

27 10. As part of the process of approving Berry's
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1 general permit application, the Coastal Commission issued an
2 Interim Site Stabilization Plan that may require Berry to expend
3 money to plant willow trees in the riparian corridor near where
4 the rupture in the pipeline occurred. In the event Berry expends
5 money to comply with the Coastal Commission's Interim Site
6 Stabilization Plan involving planting of willow trees in the
7 riparian corridor near where rupture of the pipeline occurred,
8 Berry shall submit detailed cost documentation to the Trustees
9 with a request that it be reimbursed for those costs. The
10 Trustees will reimburse the reasonable costs from the McGrath
11 Lake Trust to the extent that the Trustees are not required to
12 incur duplicate costs due to discovery of persistent oil in the
13 soil where those willows may be planted. If oil is found in the
14 soil and the Trustees find it necessary during the removal of
15 that oil to dig up one or more of the trees, the Trustees will
16 incur a duplicate cost of replacing the tree(s). The duplicated
17 costs will not be reimbursed to Berry. The remaining reasonable
18 costs incurred by Berry in planting trees to comply with the
19 interim plan will be reimbursed.

20 11. Within fifteen (15) days after entry of this
21 Decree, Berry shall instruct the escrow holder holding the Berry
22 Settlement Escrow Account to irrevocably transfer the following
23 sums to the specified designees:

24 (a) The sum of \$175,000.00 plus the interest
25 thereon for remediation of environmental
26 injury through sediment contamination
27 characterization to the Regional Water

1 Quality Control Board-Los Angeles Region by
2 certified check or money order made payable
3 to "Los Angeles Regional Water Quality
4 Control Board Sediment Contamination
5 Characterization Discretionary Fund, Account
6 Number 34-1509-8888," and sent by certified
7 mail to:

8 San Jose State University Foundation
9 L.A. Regional Water Quality Control Board
10 Contamination Characterization
11 Discretionary Fund
12 Account Number 34-1509-8888
13 Contracts and Grants Office
14 P.O. Box 720130
15 San Jose, CA 96172-0190
16 ATTN: Erin Romer

17 (b) The sum of \$25,000.00 plus the interest
18 thereon to the Regional Water Quality Control
19 Board-Los Angeles Region as civil penalties
20 to the Cleanup and Abatement Account by
21 certified check or money order made payable
22 to "State Water Resources Control Board-
23 Cleanup and Abatement Account," and sent by
24 certified mail to:

25 State Water Resources Control Board
26 Accounting Office
27 901 P Street
28 Sacramento, CA 95812
ATTN: Kelly Bartlett

(c) The sum of \$25,000.00 plus the interest
thereon for civil penalties pursuant to
Section 11 of the Endangered Species Act, 16
U.S.C. § 1540, by certified check or money

1 order made payable to "U.S. Fish and Wildlife
2 Service," and sent by certified mail to:

3 The U.S. Fish and Wildlife Service
4 c/o Office of the Solicitor
5 600 Harrison Street, Suite 545
6 San Francisco, California 94107-1373

7 (d) The sum of \$51,758.29 plus the interest
8 thereon for losses (i.e., lost income
9 attributable to the December 1993 Oil
10 Discharge) to the State Department of Parks
11 and Recreation. The State Department of
12 Parks and Recreation warrants that promptly
13 upon receipt of the funds, it shall pay
14 \$5,882.99 of said funds that are owing to
15 Water Conservation Services Incorporated, a
16 vendor that was operating on park lands, and
17 was damaged by the December 1993 Oil
18 Discharge. Neither Berry nor the Oil Spill
19 Liability Trust Fund shall bear any
20 obligation to Water Conservation Services
21 Incorporated. The State Department of Parks
22 and Recreation will indemnify, defend and
23 hold Berry and the Oil Spill Liability Trust
24 Fund harmless from any claims or liabilities
25 alleged by Water Conservation Services
26 Incorporated arising from the December 1993
27 Oil Discharge. Payment shall be made by
28 certified check made payable to the

1 "California Department of Parks and
2 Recreation" and sent to:

3 Steven Treanor
4 California Department of Parks and
5 Recreation
6 District Superintendent
7 Channel Coast District
8 1933 Cliff Drive, Suite 27
9 Santa Barbara, CA 93109

- 10 (e) The sum of \$351,040.58 plus the interest
11 thereon for response and damage assessment
12 costs to the Department of Fish and Game-
13 Office of Oil Spill Prevention and Response.
14 Payment shall be made by certified check made
15 payable to the "Oil Spill Response Trust
16 Fund" and sent to:

17 Oil Spill Response Trust Fund
18 Department of Fish and Game
19 P. O. Box 944209
20 Sacramento, CA 94244-2090

- 21 (f) The sum of \$40,702.85 plus the interest
22 thereon for response and damage assessment
23 costs to the Department of Parks and
24 Recreation. Payment shall be made by
25 certified check made payable to the
26 "California Department of Parks and
27 Recreation" and delivered to:

28 Steven Treanor
California Department of Parks and
Recreation
District Superintendent
Channel Coast District
1933 Cliff Drive, Suite 27
Santa Barbara, CA 93109

1 (g) The sum of \$43,225.73 plus the interest
2 thereon for response costs in investigating
3 the December 1993 Oil Discharge to the State
4 Lands Commission. Payment shall be made by
5 certified check made payable to the "State
6 Lands Commission" and delivered to:

7 Mark Meier
8 State Lands Commission
9 100 Howe Avenue, Suite 100
10 Sacramento, CA 95825-8202

11 (h) The sum of \$2,400.00 plus the interest
12 thereon for damage assessment costs of the
13 United States Department of the Interior,
14 Office of the Solicitor. Payment shall be
15 made by certified check made payable to the
16 "Secretary of the Interior." That check
17 shall reflect that it is a payment to the
18 Natural Resources Damage Assessment and
19 Restoration Fund, Account No. 14x5198--
20 Assessment Cost Reimbursement" and shall
21 reference the "McGrath Lake Oil Discharge."
22 It shall be delivered to:

23 Chief, Division of Finance
24 U.S. Fish and Wildlife Service
25 4401 North Fairfax Drive, Room 380,
26 Arlington, VA 22203.

27 Additionally, the sum of \$10,661.90 for
28 damage assessment costs of the U.S. Fish and
Wildlife Service shall be paid by certified
check made payable to the "U.S. Fish and

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OPA
reimbursement

1 Wildlife Service." That check shall reflect
2 that it is reimbursement for OPA fund costs
3 expended and shall reference the "McGrath
4 Lake Oil Discharge." It shall be delivered
5 to:

6 Marge Feysa
7 Branch of Budget
8 U.S. Fish and Wildlife Service
9 Region One
10 911 N.E. 11th Avenue
11 Portland, Oregon, 97232-4181.

- 12 (i) The sum of \$120,311.17 plus the interest
13 thereon for response costs to the United
14 States Coast Guard. Said sum includes
15 payment of response costs incurred by the
16 United States Fish and Wildlife Service and
17 the United States National Oceanic and
18 Atmospheric Administration. Payment shall be
19 made by certified check made payable to the
20 "Oil Spill Liability Trust Fund." It shall
21 be delivered to:

22 U. S. Coast Guard
23 4200 Wilson Boulevard
24 Suite 1000
25 Arlington, VA 22203-1804

- 26 (j) The sum of \$10,000.00 plus the interest
27 thereon for future costs of the United States
28 Department of the Interior, U.S. Fish and
Wildlife Service to develop a plan for
restoration and for future oversight and
monitoring of the restoration plan

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1 implementation. Payment shall be made by
2 certified check made payable to the
3 "Secretary of the Interior." That check
4 shall reflect that it is a payment to the
5 Natural Resources Damage Assessment and
6 Restoration Fund, Account No. 14x5198--
7 Assessment Cost Reimbursement" and shall
8 reference the "McGrath Lake Oil Discharge."
9 It shall be delivered to:

10 Chief, Division of Finance
11 U.S. Fish and Wildlife Service
12 4401 North Fairfax Drive, Room 380,
Arlington, VA 22203.

13 (k) The sum of \$100,000 plus the interest thereon
14 to the Department of Fish and Game - Office
15 of Oil Spill Prevention and Response to
16 develop a plan for restoration and for future
17 oversight and monitoring of the restoration
18 plan implementation. Payment shall be made
19 by tendering a certified check payable to the
20 Department of Fish and Game - Office of Oil
21 Spill and Prevention and Response or its
22 designee. It shall be delivered to:

23 The Department of Fish and Game
24 Office of Oil Spill Prevention and Response
25 Attn: Katherine Verrue-Slater, staff counsel
1700 K Street, Suite 250
Sacramento, California 95814

26 As used in this subparagraph, "designee"
27 shall mean any entity approved by the
28

1 Administrator of the Office of Oil Spill
2 Prevention and Response that is authorized to
3 engage in the restoration, monitoring, and
4 oversight activities required to implement
5 this agreement.

- 6 (1) The sum of \$100,000 plus interest thereon to
7 the Department of Parks and Recreation to
8 develop a plan for restoration and for future
9 oversight and monitoring of the restoration
10 plan implementation. Payment shall be made
11 by tendering a certified check payable to the
12 Department of Parks and Recreation. It shall
13 be delivered to:

14 Steven Treanor
15 California Department of Parks
16 and Recreation
17 District Superintendent
18 Channel Coast District
19 1933 Cliff Drive, Suite 27
20 Santa Barbara, CA 93109

- 21 (m) The sum of Eight Hundred Thousand Dollars
22 (\$800,000.00) plus the interest thereon for
23 civil penalties pursuant to Section 311 of
24 the Federal Water Pollution Control Act, 33
25 U.S.C. §1321. Payment shall be made by
26 tendering a certified or cashier's check made
27 payable to the "Oil Spill Liability Trust
28 Fund." It shall be delivered to:

29 U. S. Coast Guard
30 4200 Wilson Boulevard
31 Suite 1000

Arlington, VA 22203-1804

12. Verified invoices have been submitted by the named agencies to Berry for the response costs described in paragraphs 11(d), (e), (f), (g), (h) and (i). Response costs not included in the verified invoices for 11(d), (e), (f), (g), (h) and (i) shall not be chargeable or payable by Berry. As referenced in Paragraphs 4 and 5, Berry has previously paid to the Governments the sum of \$620,100.52 representing payment in full of the verified invoices for response costs referenced in paragraphs 11(d), (e), (f), (g), (h) and (i). No costs (including response and damage assessment costs) incurred by the Governments after October 18, 1994 shall be charged to or payable by Berry, except as provided in paragraph 18 with respect to claims presented to and paid by the Oil Spill Liability Trust Fund or the California Oil Spill Response Trust Fund.

13. The Trustees commit to the expenditure of the funds set forth in paragraph 8 above, for the design, implementation, permitting, and monitoring of Restoration projects pursuant to the natural resources restoration plan adopted by the Trustees. While acknowledging the need to satisfy the County of Ventura and the Coastal Commission, the Trustees retain the ultimate authority and responsibility to determine the use of funds received for Natural Resource Damages in accordance with relevant federal or state law, and the regulations governing use of recoveries for Natural Resource Damages.

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2 14. Subject to the provision of Paragraph 18,
3 effective upon entry of this Decree and Barry's payment of the
4 Settlement Amount in the manner prescribed in paragraphs 5, 6, 8
5 and 11 inclusive, of this Decree, the Governments release Barry
6 from, and covenant not to sue or take any other civil or
7 administrative action against Barry for, any and all civil claims
8 alleged in the Complaint in this action and all claims for
9 damages and civil penalties including, but not limited to, injury
10 to, loss of, or destruction of Natural Resources arising out of
11 the December 1993 Oil Discharge alleged in the Complaint.

12 15. Effective upon entry of this Decree, Barry
13 releases the Governments from, and covenants not to sue or to
14 take any other civil or administrative action against the
15 Governments, including the Oil Spill Liability Trust Fund, for
16 any and all civil claims that arise from, or are based on, the
17 December 1993 Oil Discharge. Barry further releases all
18 agencies, entities and employees of the State of California,
19 including but not limited to the California Highway Patrol.
20 Barry further waives the requirements of 50 C.F.R. Part 11,
21 pertaining to the issuance of an administrative Notice of
22 Violation, with regard to the civil penalty pursuant to the
23 Endangered Species Act.

24 RESERVATION OF RIGHTS

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

17. The covenants not to sue in paragraphs 14 and 15 shall apply only to matters expressly set forth in said paragraphs. Nothing in this consent decree is intended to nor shall be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, in law or in equity, which any party may have against the other for failure to satisfy the requirements of this Decree, or which the Governments may have against Berry for:

(a) Claims for criminal liability brought by the United States;

(b) Claims based on any release or threatened release at any location not in the McGrath Lake Area not attributable to the December 1993 Oil Discharge; and

(c) Claims based on any future release or threatened release at the McGrath Lake Area not attributable to the December 1993 Oil Discharge.

RE-OPENER FOR CERTAIN CLAIMS ARISING FROM ORIGINAL DISCHARGE

18. Notwithstanding the payments specified in Paragraph 11(i) to the United States Coast Guard, and Paragraph 11(e) to the Department of Fish and Game-Office of Oil Spill Prevention, the Oil Spill Liability Trust Fund, and the California Oil Spill Response Trust Fund retain their respective rights, including rights to subrogation vested in said Funds by 33 U.S.C. § 2715 and California Government Code Section 8670.51 and 51.1, respectively, for any removal costs or damages paid and any costs incurred by the Oil Spill Liability Trust Fund or

1 the California Oil Spill Response Trust Fund by reason of any
2 Third Party Claims presented to the Oil Spill Liability Trust
3 Fund or the California Oil Spill Response Trust Fund within the
4 applicable statute of limitations. Barry reserves the right to
5 defend and contest any Third Party Claim as may be provided under
6 federal and state statutes and regulations.

7 NOTICES AND SUBMITTALS

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

14 Notice to the United States:

15 Chief, Environmental Enforcement Section
16 Environment and Natural Resources Division
17 U.S. Department of Justice
18 P.O. Box 7611
19 Ben Franklin Station
20 Washington, D.C. 20044

21 Notice to the State Agencies:

22 Jennifer Rosenfeld
23 Deputy Attorney General
24 Office of the California
25 Attorney General
26 300 South Spring Street
27 Los Angeles, CA 90013

28 Administrator
Department of Fish and Game
Office of Oil Spill Prevention and Response
1700 K Street
Sacramento, CA 94244-2090

29 Notice to Barry:

30 Jerry V. Hoffman

1 President, Berry Petroleum Company
2 Post Office Bin X
3 Taft, California 93268

4 with copy to:

5 Laura K. McAvoy
6 Nordman, Cormany, Hair & Compton
7 1000 Town Center Drive, 6th Floor
8 Post Office Box 9100
9 Oxnard, California 93031-9100

10 TERMINATION

11 20. In the event this Decree is not approved in
12 accordance with Paragraph 3(h), Berry shall have the right to
13 terminate this Decree and obtain release of the Escrow Funds,
14 together with the interest thereon, to its own account.

15 REPRESENTATIVES

16 21. Each of the undersigned representatives of Berry,
17 each representative of the Departments and Agencies of the State
18 of California and the Assistant Attorney General certifies that
19 he or she is fully authorized to enter into the terms and
20 conditions of this Decree and to execute and legally bind the
21 parties to this Decree.

22 INTEGRATION CLAUSE

23 22. This document (including its exhibits) encompasses
24 the entire Decree of the Parties with respect to the subject
25 matter hereof and totally supersedes all prior decrees or
26 understandings, whether oral or in writing.

27 MODIFICATION

28 23. Minor modifications not materially altering this
Decree may be effected by the written agreement of the Parties.
No other modifications of this Decree may be made unless the

1 Parties agree in writing to the modification and the Court
2 approves of the requested modification. Nothing in this
3 paragraph shall be deemed to limit the Court's power to supervise
4 or modify this Decree.

5 CONFIDENTIALITY

6 24. As between the State Agencies and Berry, the
7 parties acknowledge that as a "reporting company" under the
8 Securities Exchange Act of 1934 (the "Exchange Act") and a
9 company listed on the New York Stock Exchange, Berry is required
10 to disclose the existence of this Decree within mandated time
11 frames. In order to allow Berry to comply with such disclosure
12 responsibilities in a responsible manner, the State Agencies
13 agree that neither they nor their representatives shall issue any
14 news or press release or otherwise publicize in any manner this
15 Decree or its terms, prior to the lodging of this executed Decree
16 with the Court.

17 SIGNING IN COUNTERPARTS

18 25. This Decree may be executed in several
19 counterparts, all of which when taken together, will constitute
20 one Decree.

21 Dated and entered this _____ day of _____, 1996.

22
23
24 UNITED STATES DISTRICT JUDGE
25
26
27
28

WE HEREBY CONSENT to the entry of this Decree:
FOR THE UNITED STATES OF AMERICA:

Lois J. Schiffer
LOIS J. SCHIFFER
Assistant Attorney General
Environmental and Natural Resources
Division
United States Department of Justice
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Date: 8/3/96

Richard L. Beal
RICHARD L. BEAL
Environmental Enforcement Section
Environmental and Natural Resources
Division
San Francisco, CA

Date: 10-22-96

WE HEREBY CONSENT to the entry of this Decree:

STEVEN A. HERMAN
Assistant Administrator for
Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C.

Date: 10/6/86

FELICIA MARCUS
Regional Administrator
U.S. Environmental Protection Agency,
Region 9
San Francisco, CA

Date: 6 August 1986

ATTACHMENT 2

McGRATH LAKE TRUST

This Trust is established with the National Fish and Wildlife Foundation (the "Foundation") by Berry Petroleum Company (the "Settlor"), for the benefit of the United States of America and the State of California (the "Governments").

I. DEFINITIONS

1. The "Consent Decree" means the Consent Decree in the Federal District Court for the Central District of California styled United States, et al. v. Berry Petroleum Company, resolving claims regarding the McGrath Lake oil spill.

2. The "Court" means the United States District Court for the Central District of California.

3. The "Foundation" means the National Fish and Wildlife Foundation.

4. "MOU" means the Memorandum of Understanding entered into in connection with the McGrath Lake oil spill by the California Department of Fish and Game, the California Department of Parks and Recreation, the California State Lands Commission, and the U.S. Fish and Wildlife Service.

5. "Natural Resource" and "Natural Resources" mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State of California.

6. The "Natural Resource Trustees" means the U.S. Department of the Interior (DOI), the California Department of

Fish and Game, the California Department of Parks and Recreation, and the California State Lands Commission.

7. The "Natural Resource Trustee Council" or "NRT Council" means the group of representatives of each of the Natural Resource Trustees selected pursuant to a Memorandum of Understanding entered into by the Natural Resource Trustees.

8. "Restoration Project" means any action to restore or rehabilitate any injured, lost, damaged, or destroyed Natural Resource (and the services provided by that Natural Resource), or any action that replaces or acquires the equivalent of, the injured, lost, or destroyed Natural Resource and affected services injured, lost, or destroyed as a result of the rupture of a Berry Petroleum Corporation pipeline on August 3, 1992, in Ventura County, California, which caused the discharge of crude oil onto nearby lands and water.

9. The "Segregated Account" means the account in which the Foundation holds funds subject to the McGrath Lake Trust.

10. "Settlement Funds" means the money paid into this Trust pursuant to a requirement in the Consent Decree.

11. The "State" means the State of California, its departments and agencies.

12. The "Trust" means the McGrath Trust established by this Agreement.

13. The "Trustee" means the trustee of the McGrath Lake Trust.

14. The "United States" means the United States of America, its departments and agencies.

II. PURPOSE

15. The purpose of this Agreement is to establish the Trust and to appoint the Foundation as its Trustee. This Agreement outlines the terms under which the Foundation shall exercise this function.

16. The purpose of the Trust is to receive, manage and disburse funds, in accordance with the direction of the NRT Council through their designated representative, for certain Restoration Projects to Restore Natural Resources injured as a result of an oil spill at McGrath Lake.

III. SETTLOR

17. The Settlor, Berry Petroleum Company, shall fund this Trust pursuant to a requirement in the Consent Decree. With the exception of the obligation to establish and fund this Trust, Settlor shall have no rights, duties, obligations, or fiduciary responsibilities of any kind in connection with this Trust. Without limiting the foregoing, Settlor shall have no rights, duties, obligations, or fiduciary responsibilities with respect to the management of this Trust, the use of funds held in this Trust, property acquired with Trust funds, or Natural Resource Restoration Projects funded by the Trust. This Trust is irrevocable and Settlor retains no interest whatsoever in the corpus or proceeds of this Trust.

IV. TRUSTEE

18. The Foundation shall be Trustee of the Trust.

19. The Court shall have the power to appoint a replacement Trustee if the office of the Trustee becomes vacant.

20. The Court shall have the power to remove the Trustee if at any time it determines that the Trustee is not performing its duties in a manner that is consistent with the purposes of the Trust. Either Government shall have the right to ask the Court to remove the Trustee or to terminate the Trust.

21. In addition to the powers expressly granted to the Trustee by this Agreement, the Trustee shall have all other powers granted to Trustees under the laws of the State of California, except as otherwise provided in this Agreement.

22. The Foundation submits to the jurisdiction of the U.S. District Court for the Central District of California for purposes of enforcement, administration, and supervision of the Trust.

23. Unless otherwise agreed by the NRT Council, the Foundation shall not hold an interest in any real or personal property acquired with Settlement Funds nor shall it acquire, manage or dispose of such property.

24. Settlement Funds shall not be deemed federal funds within the meaning of 16 U.S.C. § 3703(e).

V. BENEFICIARIES

25. The United States and the State are the beneficiaries of the Trust.

VI. DUTIES OF TRUSTEE

26. The Trustee shall maintain funds subject to the Trust in a Segregated Account separate from all other Foundation accounts.

27. All funds held in the Segregated Account shall be invested as directed by the NRT Council and, in the absence of specific instructions, shall be invested in U.S. Treasury Bills and notes. Interest and earnings accruing to the Segregated Account shall be reinvested in the Segregated Account and used to carry out the purposes of the Trust.

28. The Trustee is authorized and obliged to make disbursements of funds from the Segregated Account pursuant to paragraphs 35 and 38 below.

29. The Foundation shall appoint an individual, the Foundation Representative, who will represent the Foundation in carrying out its obligations as Trustee under this Agreement. The Foundation shall identify to the NRT Council, in writing, the identity, mailing address, and phone number of the Foundation Representative. Any change in the Foundation Representative shall be communicated to the NRT Council within 10 business days of the change.

30. The Trustee shall fund, subject to paragraph 38 below, Restoration Projects as directed by the NRT Council.

31. The Trustee shall submit to the NRT Council an annual report, by December 15 of each year, which itemizes all funds

maintained, deposited, accrued, and disbursed from the Segregated Account.

VII. SELECTION OF AUTHORIZED PROJECTS

32. The NRT Council shall, pursuant to the MOU, select Restoration projects to be funded by the Trust.

33. The NRT Council shall appoint a representative ("NRT Council Representative") for purposes of communicating with the Foundation regarding management of the Trust and disbursements from the Trust to facilitate Restoration Projects selected by the NRT Council. The NRT Council shall give the Foundation Representative written notice of the name, address, and telephone number of the NRT Council Representative. Any action taken by the Trustee in strict accordance with this Trust Agreement and instructions from the NRT Council Representative shall be considered authorized by the Governments.

34. The Trustee shall make disbursements from the Trust only when the NRT Council Representative has submitted to the Trustee a written authorization for the disbursements approved by the Natural Resource Trustee Council.

VIII. PAYMENT OF TRUST EXPENSES AND DISBURSEMENT OF FUNDS

35. The Trustee shall receive, at the time funds are transferred to the Trust, an initial administrative overhead reimbursement equal to two percent (2%) of the total funds transferred to the Segregated Account. Such charges shall be made against the corpus of the Trust. There shall be no liability for payment by the Settlor beyond the \$1,525,000 for

natural resource damages required to be paid pursuant to the Consent Decree and Settlement Agreement. The Trustee shall make no charge against the Settlor for the establishment of this Trust, and except as provided in paragraph 37, no additional charges or deductions shall be made against the corpus of the Trust in connection with the administration of the Trust.

36. The Trustee will be reimbursed for all reasonable and actual expenses incurred in connection with the satisfaction of its obligations under this Agreement, provided however, that such expenses must be approved in writing as reasonable by the NRT Council.

37. Upon receipt of written approval by the NRT Council to fund Restoration Project(s) pursuant to paragraph 35 above, the Trustee is authorized and obliged to disburse funds in the Segregated Account as directed by the NRT Council Representative.

38. Nothing in this Agreement shall create any right or benefit, substantive or procedural, enforceable at law by a party against the Foundation, its officers, employees, or any other person.

IX. AMENDMENTS

39. This Agreement may be amended only by written agreement of the Foundation and all of the Natural Resource Trustees, and with approval of the Court that entered the Consent Decree.

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X. NOTICES

40. Notices under this Agreement shall be made in writing and may be given by delivery in person, by mail or by telecopy (fax).

41. Notices to the United States shall be sent to:

Field Solicitor
U. S. Department of the Interior
600 Harrison Street
Suite 545
San Francisco, CA 94107-1373

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

42. Notices to the State shall be sent to:

Administrator, California Office of
Oil Spill Prevention and Response
1700 K. Street
Suite 250
Sacramento, CA 95814

43. Notices to the Foundation shall be sent to:

Whitney C. Tilt
National Fish and Wildlife Foundation
1120 Connecticut Ave., NW
Washington, D.C. 20036
Phone: (202) 857-0166
Fax: (202) 857-0162

XI. EFFECTIVE DATE

44. The Trust shall become effective upon transfer of settlement proceeds to the Trustee pursuant to the Consent Decree.

/ / / / / /

/ / / / / /

XII. TERMINATION

45. The Trust shall terminate when all funds subject to the Trust have been disbursed and the parties agree to termination in writing.

FOR SETTLOR

Dated: _____

FOR THE UNITED STATES

Dated: _____

FOR THE STATE OF CALIFORNIA

Dated: _____

FOR THE NATIONAL FISH AND
WILDLIFE FOUNDATION

Dated: _____