

Appendix E

Montrose Natural Resource Damage Assessment and Litigation Timeline

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1985	California issues interim consumption advisory for white croaker in Palos Verdes area.
1985–87	Preliminary Natural Resource Damage Assessment (NRDA) investigative reports by National Oceanic and Atmospheric Administration (NOAA).
1987	California expands consumption advisory.
1989	Study designs/injury determination series of reports for NOAA. Pre-assessment Screen Determination issued. Draft Damage Assessment Plan completed.
1/90	NOAA General Counsel (GC) sends 60-day notice of intent to file suit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
3/90	Governments meet with potentially responsible parties (PRPs) to discuss funding of cooperative damage assessment (PRPs decline to participate). 90-day tolling agreement signed. 60-day public comment period on draft Damage Assessment Plan begins.
5/90	Trustees meet with scientific panel to discuss injury determination. First meeting of co-trustee advisory panel. California adopts emergency regulation banning commercial take of white croaker in a portion of Palos Verdes Shelf.
6/90	Complaint for natural resource damages and response costs filed in federal district court in Los Angeles naming eight defendants. First amended complaint filed, which added Los Angeles County Sanitation Districts (LACSD).
8/90	Trustees meet to refine science and economic strategies.
2/91	Emergency ban on commercial take of white croaker becomes permanent.
3/91	Draft Injury Determination Plan issued. Public comment period on Draft Injury Determination Plan begins. First hearing in federal district court. Judge dismisses w/o prejudice claim for natural resource damages due to vagueness of complaint.
8/91	Second amended complaint filed (addresses vagueness issue and adds Rhone Poulenc as corporate successor).
9/91	California issues broader consumption advisory covering a number of fish species.

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1/92	Damage assessment case management plan completed, establishing structure and procedures, funding requirements, tasks, and schedules.
4/92	Trustee council approves assessment plan for 60 studies.
5/92	Potlatch/Simpson (PCBs) consent decree entered.
mid-1992–9/94	Trustees and their investigators work on studies. Trustees meet repeatedly to review progress and make adjustments to studies and budgets.
3/93	Judge establishes 6/94 deadline for Trustee injury expert reports; 8/94 for damages and restoration reports.
4/93	LACSD consent decree entered.
5/94	Judge revises deadline for Trustee expert reports to 10/94. Non-settling defendants appeal entry of LACSD consent decree to Ninth Circuit Court of Appeal.
10/94	Governments produce 28 expert reports and designate 84 expert witnesses.
3/95	Deposition of governments' experts begins. Ninth Circuit vacates and remands LACSD consent decree to district court. District court dismisses Trustees' claim on statute of limitation grounds. District court certifies appeal of dismissal to Ninth Circuit.
4/95	Plaintiffs' petition for interlocutory (interim) appeal filed.
5/95	Ninth Circuit accepts interlocutory appeal.
fall 1995	Trustees meet to discuss litigation strategy for biological injuries.
1/96	Oral argument before Ninth Circuit on dismissal.
7/96	U.S. Environmental Protection Agency (EPA) decision to initiate engineering evaluation and cost analysis (EE/CA) for the offshore contamination.
1996-1997	Trustees complete twelve supplemental expert reports.
1/97	Ninth Circuit reverses District Court's dismissal.
3/97	Defendants file petition for rehearing at Ninth Circuit.
4/97	Ninth Circuit denies rehearing.
5/97	District Court reinstates Trustees' claim.
8/97	Governments amend expert witness designations, reducing witnesses to 35.

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late summer 1997– April 2000	Depositions of governments' experts (most completed by 12/99).
10/97	Court permits depositions of governments concerning factual basis of LACSD amended consent decree.
12/97	Depositions concerning LACSD amended consent decree conducted.
8/99	LACSD amended consent decree entered. Potlatch/Simpson amended consent decree entered. CBS (formerly Westinghouse) consent decree entered.
10/99	Third amended complaint filed to include EPA's claim to include response activities related to the site. Defendants appeal entry of consent decrees.
11/99	New judge assigned to case.
2/00	Judge establishes trial date (10/3/00) and deadlines: all expert designations by 4/15/00, completion of expert and non-expert opinion discovery by 5/31/00, and other deadlines for filing motions.
4/00	Governments submit additional expert and other reports. Defendants submit expert reports and designate 27 experts. Court excludes governments' economic study.
6/00	Court rules fish have been injured pursuant to Department of Interior (DOI) regulations. Court denies defendants' motion to preclude reliance on California's fish advisories and ban as evidence of injury. Court grants governments' motion to limit direct testimony of expert and factual witnesses to written narrative statements.
7/00	Court orders exclusion of certain U.S. government expert witnesses.
8/00	Court orders exclusion of certain state government expert witnesses. Governments' and defendants' written witness testimony due.
9/00	Court strikes two government fact witnesses related to bird injury. Court orders that no further motions be filed. Court continues trial from October 3 to October 17.
10/00	Court denies defendants' motion to exclude evidence of ocean dumping and LACSD data from 1969–75. Court rules that peregrine falcons and bald eagles have been injured by DDE pursuant to DOI regulations. Court strikes a number of defendants' experts.

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Court denies defendants' motion to dismiss natural resource claim; excludes one government expert witness.

Court dismisses defendants' counterclaim to invalidate white croaker regulation.

10/17/00 Trial begins (and runs for 4 days).

10/20/00 Trial continued for one week.

10/27/00 Trial suspended until 2001 pending completion of settlement with remaining defendants.

3/01 DDT defendants' consent decree entered.