

SOUTHERN CALIFORNIA MARINE ENVIRONMENT  
NATURAL RESOURCE DAMAGE ASSESSMENT  
U.S. and CALIFORNIA v. MONTROSE CHEMICAL et al.

FIRST MODIFICATION TO THE  
1990 MEMORANDUM OF AGREEMENT AMONG THE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
THE STATE OF CALIFORNIA  
THE U.S. FISH & WILDLIFE SERVICE  
AND  
THE NATIONAL PARK SERVICE

The following parties (collectively, the Trustees) hereby enter into this Memorandum of Agreement (Modified Agreement): the National Oceanic and Atmospheric Administration (NOAA); the State of California (State), on behalf of the Resources Agency, the State Lands Commission, the Department of Parks & Recreation and the Department of Fish & Game; and the Department of the Interior (Interior), as delegated to the U.S. Fish & Wildlife Service and the National Park Service. The parties to this Modified Agreement are natural resource trustees pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9601 et seq.; and other Federal and State laws.

I. PURPOSE

In 1990, the Trustees entered into a Memorandum of Agreement (Original MOA) (attached) to cooperate and coordinate their actions in carrying out their respective trustee responsibilities in the Southern California Marine Environment. The Trustees anticipate the receipt of natural resource damages, response and damage assessment costs, including enforcement fees, costs and expenses (recoveries) from different responsible parties after judgment and/or in settlement of liability alleged in the case United States and California v. Montrose Chemical Corporation of California, et al., CV-90-3122-AAH-Jrx (C.D. Cal. June 19, 1990) (the case). Anticipating such receipt, the Trustees enter into this Modified Agreement to establish procedures for the deposit, disbursement and the common use of such recoveries and to refine the duties and responsibilities of the Trustee Council. This Modified Agreement supplements the terms of the original MOA between these parties. The terms of that Original MOA are incorporated by reference. If any provision of this Modified Agreement conflicts with the terms of the Original MOA, the Modified Agreement is controlling.

## II. NATURAL RESOURCE DAMAGES TRUST ACCOUNT

### A. STRUCTURE OF ACCOUNT

To the extent permitted by applicable law, all recoveries received by the Trustees in this case shall be deposited either (1) in an interest bearing joint account in the registry of the Court or (2) a joint commercial escrow account on behalf of all of the Trustees to be disbursed according to the procedures and for the purposes described in this Modified Agreement. That account shall be called the "Montrose Natural Resource Damages Trust Account (Account)."

### B. USES OF ACCOUNT

The Trustees intend to complete a natural resource damage assessment in this case and to restore, replace or acquire equivalent of the injured or destroyed resources (hereinafter referred to as restore or restoration) by carrying out damage assessment and restoration plans that are jointly developed and approved by all Trustees. In conducting such assessment and restoration, the Trustees have and will continue to incur costs and expenditures necessary for the design, review and implementation of damage assessment and restoration plans.

The Trustees may recover such costs and expenses from the Account including, but not limited to: (1) past costs and expenditures for damage assessment and enforcement undertaken in this case; (2) costs and expenditures for damage assessment and restoration actions and procedures identified in the Department of the Interior's "Natural Resource Damage Assessments" regulations, 43 C.F.R. Part 11, as modified by Ohio v. Department of the Interior, 880 F.2d 432 (D.C. Cir. 1989); (3) enforcement actions; (4) compliance with Federal, State and local laws including permitting requirements that may be applicable to the Trustees' activities; (5) general monitoring of impacted sites(s) as well as monitoring of all restoration projects; and (6) any other actions that the Trustees deem necessary or appropriate to carry out their natural resource trustee responsibilities with regard to this case. The cost of establishing, maintaining and administering the Account will be paid from the interest accrued in that Account.

### C. ADMINISTRATION OF THE ACCOUNT

NOAA, as lead Trustee, will be responsible for the routine administrative duties related to the Account. The Trustee Council (formerly the Co-Trustee Advisory Panel, see Section III below) will make all decisions concerning the disbursement of

funds from the Account in accordance with the provisions set forth below.

### 1. Deposit

When a defendant or any other potentially responsible party (PRP) in this case agrees to pay recoveries in settlement of liability alleged in the complaint of this case, any consent decree executed by the Trustees for approval by the Court shall provide, at a minimum, provisions:

a. establishing, if not previously established, an interest bearing joint trust account, to be known as the Montrose Natural Resource Damages Trust Account, in the registry of the Court or in a commercial financial institution to be used specifically for the deposit and disbursement of recoveries associated with this case;

b. requiring each settling party to deposit an agreed upon amount into the Montrose Natural Resource Damages Trust Account; and

c. authorizing the Trustee Council or its authorized representative(s) to disburse sums of money from the Montrose Natural Resource Damages Trust Account as are deemed necessary or appropriate by the Trustee Council for the purposes set forth in Section II.B. above.

### 2. Disbursement

a. Reimbursement of Costs and Expenditures: Any Trustee seeking reimbursement of costs and expenditures will apply to NOAA for a disbursement from the Account. Any application for reimbursement will provide documentation supporting the claim and a determination that the claim falls within one of the categories of recoverable expenses outlined in section II.B. above. Within ten (10) working days of receipt of the application, NOAA will review the application and request any additional information, if necessary. If no additional information is necessary, NOAA will distribute a copy of the application to the members of the Trustee Council. Within thirty (30) working days of receipt of the original application (if no additional information is necessary) or of the additional information, NOAA will convene a meeting or telephone conference call of the Trustee Council to discuss the application. If the Trustee Council approves the request for reimbursement, NOAA will submit a request within ten (10) working days after such approval either to the commercial financial institution, or for funds held in a court registry account,

to the United States Department of Justice to file the appropriate documents with the Court for disbursement of the funds to the requesting Trustee.

Within thirty (30) days after the effective date of this Modified Agreement, NOAA will provide to the State and Interior the name, address and telephone number of the person to whom an application for reimbursement should be made.

b. Advance Payments: A Trustee undertaking a project that is consistent with the uses of the Account may apply to NOAA for a disbursement of advance funding. The applicant shall provide a detailed statement of the proposed work, an estimated budget, a schedule for completion and a statement of the proposed project's consistency with the purposes of the Account. Within ten (10) working days of receipt of the proposal, NOAA shall distribute the proposal to the Trustee Council. Within thirty (30) working days of receipt of the proposal, NOAA will convene a meeting or telephone conference call of the Trustee Council to discuss the proposal. If the Trustee Council approves the proposal, NOAA will submit a request within ten (10) working days after such approval either to the commercial financial institution, or for funds held in a court registry account, to the United States Department of Justice to file the appropriate documents with the Court for disbursement of the funds to the requesting Trustee.

Upon receipt of funds for the proposed project, the Trustee will submit quarterly reports to the Trustee Council. Those reports will include a progress report, an accounting of the funds and a schedule for completion (if different from the original schedule).

In the event that the estimated cost exceeds actual costs of the project, the Trustee shall return the excess money to the Trustee Council for deposit into the Account.

Within thirty (30) days after the effective date of this Modified Agreement, NOAA will provide to the State and Interior the name, address and telephone number of the person to whom an application for advance payment should be made.

### 3. Accounting

NOAA shall provide the Trustee Council with a quarterly Statement of Account Activity including a listing of all deposits, disbursements and interest earned. More frequent statements

shall be available upon the request of a Trustee. This provision is not intended to be duplicative of any documents provided by the commercial financial institution or the Clerk of the Court for the Registry Account. Distribution by NOAA of such documents may satisfy its responsibilities under this provision.

### III. TRUSTEE COUNCIL

The Trustees revise Section 3 of the Original MOA to change the name of the Co-Trustee Advisory Panel to the Southern California Marine Environment Trustee Council (Trustee Council) and to modify the duties and responsibilities of the Trustees. Section 3 is revised as follows:

#### A. COMPOSITION

The following Trustee agencies shall designate one primary delegate and one alternate delegate to the Trustee Council:

- National Oceanic and Atmospheric Administration
- U.S. Fish & Wildlife Service
- National Park Service
- California Department of Fish & Game
- California State Lands Commission
- California Department of Parks & Recreation.

In addition, the U.S. Department of Justice, the Office of Attorney General for the State of California, NOAA, Interior and such other Federal and State agencies as the Trustee Council deems appropriate, may each provide representatives in a legal/consultative role, who shall not be members of the Trustee Council. All representatives of the parties to this Modified Agreement not designated as members of the Trustee Council may serve as ex-officio members of the Trustee Council.

Within ten (10) working days after the final execution of this Modified Agreement, each Trustee shall notify NOAA of the names, addresses, telephone numbers, and facsimile numbers of the Trustee's primary (who shall receive correspondence and communications on behalf of the Trustee) and alternate delegates to the Trustee Council.

#### B. DECISION MAKING

The six (6) members of the Trustee Council, listed above, shall have equal authority in all decision making under this Modified Agreement, and all decisions shall be by unanimous agreement.

#### C. DISPUTE RESOLUTION

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

#### D. POWERS AND RESPONSIBILITIES

The Trustee Council shall coordinate and authorize all Trustee activities required to assess damages to natural resources and to restore the injured or lost natural resources in this case. The Trustee Council shall have final authority to disburse funds from the Account and to make all necessary decisions for the management and administration of projects for which recoveries may be used. The Trustee Council is responsible for developing and approving a budget(s) to guide its decisions on disbursements from the Account. The Trustee Council may assign duties to the Lead Trustee and the other Trustees as it deems necessary or appropriate.

#### E. LEAD TRUSTEE

As Lead Trustee, NOAA's responsibilities include: scheduling meetings; preparing agendas; acting as the central contact point for the Trustees; maintaining records and relevant documents; circulating documents among the Trustees; coordinating with other interested agencies; and conducting damage assessment activities. NOAA may delegate specific duties to individual Trustees as necessary or appropriate subject to the oversight of the Trustee Council.

#### IV. MISCELLANEOUS PROVISIONS

##### A. TERMINATION

The Trustees modify the Termination provision of the Original MOA, Section 9, to provide that the effective date of the Original MOA may be extended by written agreement of the Trustee Council after the initial five years for one or more additional periods, each of which may exceed two years. The effective period of this Modified Agreement is coextensive with that of the Original MOA as amended above.

B. EFFECTIVE DATE

This Modified Agreement, which may be signed in counterparts, shall be effective on the date on which the last Trustee executes this document.

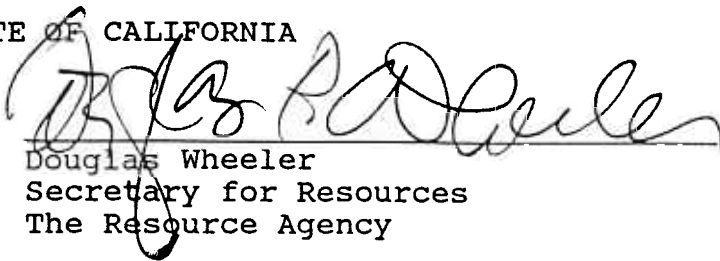
SIGNATURES

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: Charles N. Ehler 10/15/01  
Charles N. Ehler Date  
Director, Office of Ocean Resources  
Conservation & Assessment  
Authorized Official

STATE OF CALIFORNIA

BY:

  
\_\_\_\_\_  
Douglas Wheeler  
Secretary for Resources  
The Resource Agency

11-3-91  
Date



STATE OF CALIFORNIA

BY: Charles Warren  
Charles Warren  
Executive Officer  
State Lands Commission

11-6-91

STATE OF CALIFORNIA

BY: *Les McCargo*  
Les McCargo  
Chief Deputy Director  
Department of Parks & Recreation

*10/25/91*  
Date

STATE OF CALIFORNIA

BY: Pete Bontadelli  
Pete Bontadelli  
Director  
Department of Fish & Game

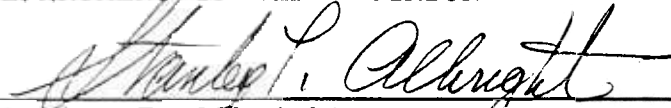
11-15-91  
Date

U.S. DEPARTMENT OF THE INTERIOR

BY: Marvin L. Plenert  
Marvin L. Plenert  
Regional Director  
U.S. Fish & Wildlife Service

October 22, 1991  
Date

DEPARTMENT OF THE INTERIOR

  
Stanley T. Albright  
Regional Director  
Western Region  
National Park Service

11/6/91  
Date