

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“**EPA**”), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendant, Pacific Energy South West Pacific, Ltd. (“**Pacific Energy**”), violated Sections 301(a) and 309 of the federal Clean Water Act, 33 U.S.C. §§ 1311(a) and 1319.

The Complaint alleges that Pacific Energy discharged pollutants in industrial wastewater from the American Samoa Terminal in Pago Pago (the “**Terminal**”) to American Samoa’s coastal waters in violation of Pacific Energy’s National Pollutant Discharge Elimination System permit (“**NPDES Permit**”), violated other provisions of its NPDES Permit, discharged pollutants without authorization after its NPDES Permit expired, and violated the terms of a 2016 administrative compliance order issued by EPA.

Pacific Energy represents that it operates the Terminal pursuant to a written agreement (the “**Permit & Agreement**”) with the American Samoa Government, which owns the Terminal. The Permit & Agreement is currently set to expire July 31, 2020, and Pacific Energy will lose its rights to operate the Terminal at that time unless an extension or a new Permit & Agreement is negotiated. By its terms, Pacific Energy cannot transfer or assign its rights under the Permit & Agreement without the American Samoa Government’s consent, unless that transfer or assignment is to a wholly-owned subsidiary of Pacific Energy or a corporation

organized by Pacific Energy under American Samoa law (though in either case, Pacific Energy would remain responsible for performance of its duties under the Permit & Agreement).

On September 4, 2019, EPA reissued Pacific Energy's NPDES Permit covering discharges from the Terminal with an effective date of November 1, 2019.

Pacific Energy now intends to modify its wastewater capture and treatment practices at the Terminal to eliminate co-mingling of industrial wastewater and storm water. This Consent Decree sets forth a timeline on which Pacific Energy will change its wastewater handling practices, and seek modification of its current NPDES Permit to address those changes.

Pacific Energy does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355(a). For purposes of this Consent Decree, Pacific Energy stipulates that this Court has personal jurisdiction over it pursuant to Federal Rule of Civil Procedure 4(k)(2). Venue lies in this District pursuant to 28 U.S.C. § 1391(b)(3). For purposes of this Consent Decree, or any action brought to enforce this Consent Decree, Pacific Energy consents to (i) the Court's jurisdiction over this Consent Decree and any such enforcement action; (ii) the Court's jurisdiction over Pacific Energy, and (iii) venue in this judicial district.

2. For purposes of this Consent Decree, Pacific Energy agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301(a) and 309 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1319.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Pacific Energy and any successors, assigns, or other entities or persons otherwise bound by law.

4. So long as Pacific Energy retains rights to operate the Terminal, no transfer of ownership of the Terminal by the American Samoa Government shall

relieve Pacific Energy of its obligation to ensure that the terms of the Consent Decree are implemented.

5. If Pacific Energy assigns or transfers its rights to operate the Terminal, Pacific Energy shall nevertheless retain its obligation to ensure that the terms of the Consent Decree are implemented, unless (1) the transferee agrees to be substituted for Pacific Energy as a Party under the Consent Decree and thus to be bound by its terms, (2) the United States consents to relieve Pacific Energy of its obligations under the Consent Decree, and (3) the Court approves all necessary modifications to the Consent Decree. The United States' decision to consent to substitution of a transferee for Pacific Energy is in its sole discretion and shall not be subject to dispute resolution or judicial review. At least 30 Days prior to any such assignment or transfer, Pacific Energy shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States in accordance with Section XIII (Notices). Any attempt by Pacific Energy to assign or transfer operation of the Terminal without complying with this Paragraph constitutes a violation of this Consent Decree.

6. If the Permit & Agreement is not extended or renewed, Pacific Energy shall provide the United States with written notice certifying the effective date when it will no longer have legal right to operate the Terminal, signed by an officer

of Pacific Energy and including the certification language set forth in Paragraph 34. After Pacific Energy has submitted the notice required by this Paragraph, all of its operations at the Terminal have ended, and it has paid the civil penalty and any accrued stipulated penalties as required by the Consent Decree, Pacific Energy may submit a Request for Termination of the Consent Decree to the United States pursuant to Section XVII (Termination), and the United States will join Pacific Energy in a joint motion to terminate the Consent Decree.

7. Pacific Energy shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Pacific Energy shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

8. In any action to enforce this Consent Decree, Pacific Energy shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the Clean Water Act or in regulations promulgated pursuant to the Clean Water Act shall have the meanings assigned to them in the Clean Water Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Complaint” means the complaint filed by the United States in this action;

“Consent Decree” means this Consent Decree.

“Day” means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

“Pacific Energy” means Pacific Energy South West Pacific, Ltd.;

“EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies;

“Effective Date” has the definition provided in Section XIV;

“NPDES Permit” means National Pollutant Discharge Elimination System permit number AS0020028, which was initially issued to Pacific Energy effective October 1, 2010, expired on October 1, 2015, and was reissued to Pacific Energy in its current form with an effective date of November 1, 2019;

“Paragraph” means a portion of this Decree identified by an Arabic numeral;

“Parties” means the United States and Pacific Energy;

“Section” means a portion of this Decree identified by a Roman numeral;

“Terminal” means the American Samoa Terminal located at 488 Tank Farm Road in Pago Pago, American Samoa that is operated by Pacific Energy under a permit and agreement with the Government of American Samoa;

“United States” means the United States of America, acting on behalf of EPA; and

“USD” means United States Dollars.

IV. CIVIL PENALTY

10. Within 30 Days after the Effective Date, Pacific Energy shall pay the sum of \$300,000 (three hundred thousand) USD as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

11. Pacific Energy shall pay the civil penalty due by FedWire Electronic Funds Transfer (“**EFT**”) to the U.S. Department of Justice account, in accordance with instructions provided to Pacific Energy by the Financial Litigation Unit (“**FLU**”) of the United States Attorney’s Office for the District of Hawaii after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“**CDCS**”) number, which Pacific Energy shall use to identify all payments required to be made in accordance with this

Consent Decree. The FLU will provide the payment instructions to the following individuals on behalf of Pacific Energy:

Ruta Fou
Administrative and Accounting Manager
Pacific Energy Southwest Pacific, Ltd.
P.O. Box 488
Pago Pago, Tutuila, American Samoa 96799
Phone: (684) 633-4101
Email: ruta.fou@p.energy

and

Taulapapa William Sword
Country Manager
Pacific Energy Southwest Pacific, Ltd.
P.O. Box 488
Pago Pago, Tutuila, American Samoa 96799
Phone: (684) 633-4101
Email: william.sword@p.energy

Pacific Energy may change the individual(s) to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIII (Notices).

12. At the time of payment, Pacific Energy shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail to EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Pacific*

Energy South West Pacific, Ltd., and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-12086.

13. Pacific Energy shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

14. Pacific Energy shall not discharge pollutants from the Terminal except in compliance with Section 301(a) of the Clean Water Act, 33 U.S.C. §§ 1311(a).

15. Pacific Energy is in the process of modifying its wastewater treatment practices, including changes to infrastructure, practices and procedures, and employee training, to eliminate co-mingling of industrial wastewater and storm water at the Terminal. Within 60 Days of the Effective Date, Pacific Energy shall have implemented all such modifications. Pacific Energy shall not co-mingle industrial wastewater with storm water at the Terminal after that date.

16. Within 90 Days of the Effective Date, Pacific Energy shall submit a complete application to EPA seeking a major modification to the NPDES Permit reflecting Pacific Energy's newly modified wastewater treatment practices. Pacific Energy shall promptly respond to any request for additional information from

EPA, and shall promptly make any revisions or resubmissions of the application as may be requested by EPA.

17. Pacific Energy shall operate any oil/water separator utilized in treatment of its industrial wastewater at the Terminal in accordance with all manufacturer specifications, including specifications for skimming accumulated material, sludge removal, and maximum design flow-rate.

18. Pacific Energy shall comply with all provisions of the NPDES Permit. This Paragraph applies regardless of whether Pacific Energy has submitted an application for modification of the NPDES Permit, and regardless of whether or how EPA has responded to that application. This includes, but is not limited to, the requirements that Pacific Energy:

- a. conduct effluent sampling in the manner and on the schedule set forth in the NPDES Permit;
- b. submit Discharge Monitoring Reports to EPA in the manner and on the schedule set forth in the NPDES Permit;
- c. comply with all effluent limits set forth in the NPDES Permit;
- d. submit an updated Quality Assurance Manual reflecting Pacific Energy's newly modified wastewater treatment practices, and

implement that Quality Assurance Manual, consistent with the terms of the NPDES Permit; and

- e. submit an updated Pollution Prevention Plan reflecting Pacific Energy's newly modified wastewater treatment practices, and implement that Pollution Prevention Plan, consistent with the terms of the NPDES Permit.

19. If Pacific Energy fails to comply with an effluent limit set forth in the NPDES Permit, it shall, within 30 Days of discovering that non-compliance, submit for EPA approval a corrective action plan detailing the suspected cause or causes of the non-compliance, and Pacific Energy's proposed course of action to avoid further non-compliance, including a schedule for implementation. Upon EPA approval of the corrective action plan, Pacific Energy shall implement it.

20. Pacific Energy shall retain complete copies of all laboratory reports and associated test results, including results for any quality assurance samples, reflecting the sampling required under the NPDES Permit. Pacific Energy shall, within 30 Days of receiving any such lab reports or test results, submit a copy to EPA. This requirement is in addition to any other reporting requirements of the NPDES Permit or of this Consent Decree.

21. Beginning on the Effective Date, Pacific Energy shall create and maintain a written record of the date and time of each discharge of industrial wastewater from the Terminal.

22. Within 60 Days of the Effective Date, Pacific Energy shall at all times have on its staff at least one full-time employee whose written job description includes responsibility for oversight of Pacific Energy's compliance with the NPDES Permit. This employee shall have appropriate training and experience to oversee environmental compliance at the Terminal, including but not limited to training and experience in proper sampling and reporting procedures. This employee's written job description shall also include responsibility for training any other of Pacific Energy's employees whose work involves compliance with the NPDES Permit. Pacific Energy shall ensure that, regardless of any other assigned duties, this employee is allowed sufficient time to successfully oversee environmental compliance at the Terminal.

23. Within 120 Days of the Effective Date, Pacific Energy shall ensure that each employee or contractor whose work involves compliance with the NPDES Permit has received training on the requirements imposed by the NPDES Permit and this Consent Decree. Each new employee or contractor whose work involves compliance with the NPDES Permit shall receive such training within 30 Days of hiring. Pacific Energy shall provide such training to each employee or

contractor whose work involves compliance with the NPDES Permit at least once per Calendar Year. Pacific Energy shall create and maintain a written record verifying its compliance with this Paragraph, including employee or contractor names and titles and the dates on which they received training.

24. Approval of Deliverables. Pacific Energy shall submit any plan, report, or other item that it is required to submit for approval pursuant to this Consent Decree to EPA. EPA may approve the submission or decline to approve it and provide written comments. Within 30 Days of receiving EPA's written comments, Pacific Energy shall either: (i) alter the submission consistent with EPA's written comments and provide the submission to EPA for final approval, or (ii) submit the matter for dispute resolution under Section X of this Decree.

25. Upon receipt of EPA's final approval of the submission, or upon completion of the submission pursuant to dispute resolution, Pacific Energy shall implement the submission in accordance with the schedule in the approved submission.

26. Any stipulated penalties applicable to the original submission, as provided in Section VII, shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so

deficient as to constitute a material breach of Pacific Energy's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

27. Permits. Where any compliance obligation under this Section requires Pacific Energy to obtain a federal, territorial, or local permit or approval, Pacific Energy shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Pacific Energy may seek relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Pacific Energy has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

28. Possible Future Elimination of All Wastewater Discharges from the Terminal. Pacific Energy is currently exploring the possibility of further modifying its industrial wastewater collection practices such that all wastewater generated at the Terminal would be diverted to the American Samoa Power Authority Utulei Sewage Treatment Plant, thereby eliminating all discharges of wastewater to Pago Pago Harbor from the Terminal. If Pacific Energy implements this approach to handling its wastewater and terminates its NPDES Permit (which would no longer be necessary if Pacific Energy is no longer discharging

wastewater), it shall be deemed to have completed the requirements of this Section V for purposes of Section XVII (Termination). If Pacific Energy has also paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, it may then serve upon the United States a Request for Termination as specified in Paragraph 88.

VI. REPORTING REQUIREMENTS

29. Each year, Pacific Energy shall submit two reports to EPA describing its efforts to comply with the Consent Decree (“**Semi-annual Reports**”). The first Semi-annual Report, due on January 31 of each year, shall describe Pacific Energy’s compliance efforts between July 1 and December 31 of the previous year. The second Semi-annual Report, due on July 31 of each year, shall describe Pacific Energy’s efforts between January 1 and June 30 of the current year.

30. Each Semi-annual Report shall address the following: (a) Pacific Energy’s compliance with the NPDES Permit consistent with Paragraph 14; (b) Pacific Energy’s submission and implementation of corrective action plans for any violations of NPDES Permit effluent limits consistent with Paragraph 19; (c) Pacific Energy’s compliance with the monitoring and record-keeping requirements of Paragraphs 20-21; and (d) Pacific Energy’s compliance with the hiring and training requirements of Paragraphs 22-23. Each Semi-annual Report shall also include a description of any non-compliance with the requirements of this Consent

Decree during the period covered by the report, and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

31. If Pacific Energy violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Pacific Energy shall notify the United States and EPA of such violation and its likely duration, in writing, within ten Days of the Day Pacific Energy first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Pacific Energy shall so state in the report. Pacific Energy shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Pacific Energy becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Pacific Energy of its obligation to provide the notice required by Section VIII (Force Majeure).

32. Whenever any violation of this Consent Decree, or of any applicable permits, or any other event affecting Pacific Energy's performance under this Decree, or the performance of its Terminal, may pose an immediate threat to the public health or welfare or the environment, Pacific Energy shall notify EPA orally

or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Pacific Energy first knew of the violation or event. This procedure is in addition to the requirements set forth in Paragraph 31.

33. All reports shall be submitted to the persons designated in Section XIII (Notices).

34. Each report submitted by Pacific Energy under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

35. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

36. The reporting requirements of this Consent Decree do not relieve Pacific Energy of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, territorial, or local law, regulation, permit, or other requirement.

37. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

38. Pacific Energy shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree – including any work plan or schedule approved under this Decree – according to all applicable requirements of this Decree, and within the specified time schedules established by or approved under this Decree.

39. Late Payment of Civil Penalty. If Pacific Energy fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Pacific Energy shall pay a stipulated penalty of \$1,500 USD per Day for each Day that the payment is late.

40. Discharge in Violation of Section 301(a) of the Clean Water Act or NPDES Permit Effluent Limits. The following stipulated penalty shall accrue per violation per Day for each discharge in violation of Paragraph 14 or Paragraph 18.c: \$1,500 USD, except that no stipulated penalties shall accrue for exceedances

of the NPDES Permit effluent limits for total nitrogen or total phosphorus so long as (1) Pacific Energy has successfully eliminated co-mingling of industrial wastewater and storm water at the Terminal as required under Paragraph 15, and (2) Pacific Energy has submitted an application for a major modification of its NPDES Permit as required under Paragraph 16, and is awaiting final action from EPA on that application.

41. Violation of Other NPDES Permit Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of Paragraph 14 (excepting Paragraph 18.c):

| <i>Penalty Per Violation Per Day</i> | <i>Period of Noncompliance</i> |
|--------------------------------------|--------------------------------|
| \$500 USD | 1st through 14th day |
| \$750 USD | 15th through 30th day |
| \$1,250 USD..... | 31st day and beyond |

42. Failure to Submit or Implement Corrective Action Plan. The following stipulated penalties shall accrue per violation per Day for each violation of Paragraph 19:

| <i>Penalty Per Violation Per Day</i> | <i>Period of Noncompliance</i> |
|--------------------------------------|--------------------------------|
| \$250 USD | 1st through 14th day |
| \$500 USD | 15th through 30th day |
| \$1,000 USD..... | 31st day and beyond |

43. Failure to Create or Maintain Records. The following stipulated penalties shall accrue per violation per Day for each violation of Paragraph 20 or 21:

| <i>Penalty Per Violation Per Day</i> | <i>Period of Noncompliance</i> |
|--------------------------------------|--------------------------------|
| \$250 USD | 1st through 14th day |
| \$500 USD | 15th through 30th day |
| \$1,000 USD..... | 31st day and beyond |

44. Failure to Retain Environmental Compliance Officer. The following stipulated penalties shall accrue per violation per Day for each violation of Paragraph 22:

| <i>Penalty Per Violation Per Day</i> | <i>Period of Noncompliance</i> |
|--------------------------------------|--------------------------------|
| \$250 USD | 1st through 14th day |
| \$500 USD | 15th through 30th day |
| \$1,000 USD..... | 31st day and beyond |

45. Failure to Provide Environmental Compliance Training. The following stipulated penalties shall accrue per violation per Day for each violation of Paragraph 23:

| <i>Penalty Per Violation Per Day</i> | <i>Period of Noncompliance</i> |
|--------------------------------------|--------------------------------|
| \$250 USD | 1st through 14th day |
| \$500 USD | 15th through 30th day |
| \$1,000 USD..... | 31st day and beyond |

46. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI:

| <i>Penalty Per Violation Per Day</i> | <i>Period of Noncompliance</i> |
|--------------------------------------|--------------------------------|
| \$250 USD | 1st through 14th day |
| \$500 USD | 15th through 30th day |
| \$1,000 USD..... | 31st day and beyond |

47. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

48. Pacific Energy shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

49. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to it under this Consent Decree.

50. Stipulated penalties shall continue to accrue as provided in Paragraph 47, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the District Court, Pacific Energy shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.
- b. If the dispute is appealed to the District Court and the United States prevails in whole or in part, Pacific Energy shall pay all accrued penalties determined by the District Court to be owing, together with interest, within 60 Days of receiving the District Court's decision or order, except as provided in subparagraph c, below.
- c. If any Party appeals the District Court's decision, Pacific Energy shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

51. Pacific Energy shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 11, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

52. If Pacific Energy fails to pay stipulated penalties according to the terms of this Consent Decree, Pacific Energy shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became past-due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Pacific Energy's failure to pay any stipulated penalties.

53. The payment of penalties and interest, if any, shall not alter in any way Pacific Energy's obligation to complete the performance of the requirements of this Consent Decree.

54. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Pacific Energy's violation of this Decree or applicable law, including but not

limited to an action against Pacific Energy for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

55. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Pacific Energy, of any entity controlled by Pacific Energy, or of Pacific Energy’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Pacific Energy’s best efforts to fulfill the obligation. The requirement that Pacific Energy exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any Force Majeure event (a) as it is occurring and (b) following the Force Majeure, such that the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Pacific Energy’s financial inability to perform any obligation under this Consent Decree.

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Pacific Energy shall provide notice orally or by e-mail to EPA,

within 72 hours of when Pacific Energy first knew that the event might cause a delay. Within seven days thereafter, Pacific Energy shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Pacific Energy's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Pacific Energy, such event may cause or contribute to an endangerment to public health, welfare or the environment. Pacific Energy shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure. Failure to comply with the above requirements shall preclude Pacific Energy from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Pacific Energy shall be deemed to know of any circumstance of which Pacific Energy, any entity controlled by Pacific Energy, or Pacific Energy's contractors knew or should have known.

57. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by

EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Pacific Energy in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

58. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, EPA will notify Pacific Energy in writing of its decision.

59. If Pacific Energy elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Pacific Energy shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Pacific Energy complied with the requirements of Paragraphs 55 and 56. If Pacific Energy carries this burden, the delay at issue shall be deemed not to be a violation by Pacific Energy of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

60. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Pacific Energy's failure to seek resolution of an issue under this Section shall preclude Pacific Energy from raising that issue as a defense to an action by the United States to enforce any obligation of Pacific Energy arising under this Decree.

61. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Pacific Energy sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 21 Days from the date the dispute arises, unless that period is modified by written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 14 Days after the conclusion of the informal negotiation period, Pacific Energy invokes formal dispute resolution procedures as set forth below.

62. Formal Dispute Resolution. Pacific Energy shall invoke formal dispute resolution procedures within the time period provided in the preceding Paragraph by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Pacific Energy's position and any supporting documentation relied upon by Pacific Energy.

63. The United States shall serve its Statement of Position on Pacific Energy within 45 Days of receipt of Pacific Energy's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Pacific Energy, unless Pacific Energy files a motion for judicial review of the dispute in accordance with the following Paragraph.

64. Pacific Energy may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 14 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Pacific Energy's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief

requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

65. The United States shall respond to Pacific Energy's motion within the time period allowed by the Local Rules of this Court. Pacific Energy may file a reply memorandum, to the extent permitted by the Local Rules.

66. Standard of Review

a. Disputes Concerning Matters Accorded Record Review.

Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 62 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Pacific Energy shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

- b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 62, Pacific Energy shall bear the burden of demonstrating that its position complies with this Consent Decree and better further the objectives of the Consent Decree.

67. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Pacific Energy under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 50. If Pacific Energy does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

68. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and splits of any samples taken by Pacific Energy or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Pacific Energy's compliance with this Consent Decree.

69. Upon request by the United States, Pacific Energy shall provide EPA or its authorized representatives splits of any samples taken by Pacific Energy. Upon request by Pacific Energy, EPA shall provide Pacific Energy splits of any samples taken by EPA.

70. Until five years after the termination of this Consent Decree, Pacific Energy shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its

contractors' or agents' possession or control, and that relate in any manner to Pacific Energy's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Pacific Energy shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

71. At the conclusion of the information-retention period provided in the preceding Paragraph, Pacific Energy shall notify the United States and EPA at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Pacific Energy shall deliver any such documents, records, or other information to EPA. Pacific Energy may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Pacific Energy asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Pacific Energy. However, no

documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

72. Pacific Energy may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Pacific Energy seeks to protect as CBI, Pacific Energy shall follow the procedures set forth in 40 C.F.R. Part 2.

73. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Pacific Energy to maintain documents, records, or other information imposed by applicable federal or territorial laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

74. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

75. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be

construed to limit the rights of the United States to obtain penalties or injunctive relief under the Clean Water Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 74.

76. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Terminal or Pacific Energy's violations, Pacific Energy shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 74.

77. This Consent Decree is not a permit, or a modification of any permit, under any federal, territorial, or local laws or regulations. Pacific Energy is responsible for achieving and maintaining complete compliance with all applicable federal, territorial, and local laws, regulations, and permits; and Pacific Energy's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant

or aver in any manner that Pacific Energy's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act, 33 U.S.C. § 1251, et seq., or with any other provisions of federal, territorial, or local laws, regulations, or permits.

78. This Consent Decree does not limit or affect the rights of Pacific Energy or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Pacific Energy, except as otherwise provided by law.

79. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

80. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Pacific Energy.

XIII. NOTICES

81. Unless otherwise specified in this Decree, notifications, submissions, or communications made pursuant to the terms of this Consent Decree, shall be in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-12086

As to the United States by mail: EES Case Management Unit
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-12086

As to EPA by email: aubuchon.beth@epa.gov
garnett.desean@epa.gov

As to EPA by mail:

Manager, Water Section I
ENF-3-1
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

As to Pacific Energy:

Aaron L. Warren
Mooney Wieland PLLC
P.O. Box 3501
Pago Pago, American Samoa 96799
Phone: (684) 699-2100
Email: aaron.warren@mooneywieland.com

and

Taulapapa William Sword
Country Manager
Pacific Energy Southwest Pacific, Ltd.
P.O. Box 488
Pago Pago, Tutuila, American Samoa 96799
Phone: (684) 633-4101
Email: william.sword@p.energy

and

Philippe Dubau
Group Chief Legal Officer
Pacific Islands Energy Group
BP 20653 Papeete – 98713 French Polynesia
Phone: (689) 40 50 42 50
Email: philippe.dubau@p.energy

and

Randall Vallette
Chief Executive Officer
Pacific Energy Southwest Pacific PTE, Ltd.
Suva, Fiji
Phone: (679) 775-7600
Email: randall.vallette@p.energy

82. Any Party may, by written notice to the other Parties, change its designated notice recipient(s) or notice address(es) provided above.

83. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

84. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

85. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

86. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

87. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 66, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

88. After Pacific Energy has completed the requirements of Section V (Compliance Requirements), has thereafter maintained continuous satisfactory compliance with this Consent Decree and the NPDES Permit for a period of five years, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Pacific Energy may serve upon the United States a Request for Termination, stating that Pacific Energy has satisfied those requirements, together with all necessary supporting documentation.

89. Following receipt by the United States of Pacific Energy's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Pacific Energy has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

90. If the United States does not agree that the Decree may be terminated, Pacific Energy may invoke Dispute Resolution under Section IX. However, Pacific Energy shall not seek Dispute Resolution of any dispute regarding termination until 45 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

91. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Pacific Energy consents to entry of this Consent Decree without further notice, and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Pacific Energy in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

92. Each undersigned representative of Pacific Energy and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party they represent to this document.

93. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Pacific Energy agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Pacific Energy need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

94. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 5; Section V (Compliance Requirements), Paragraphs 14-25 and 27; Section VII (Reporting Requirements), Paragraphs 29-30 and 34; and Section XI (Information Collection and Retention), Paragraphs 68-71, is restitution or required to come into compliance with law.

XXI. INTEGRATION

95. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties

acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXII. FINAL JUDGMENT

96. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Pacific Energy.

Dated and entered this ____ day of _____, 2020.

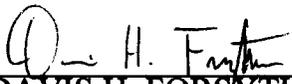
UNITED STATES DISTRICT JUDGE

*Signatures for Consent Decree in
United States v. Pacific Energy South West Pacific, Ltd.*

FOR THE UNITED STATES OF AMERICA:

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

Date: July 21, 2020



DAVIS H. FORSYTHE
Senior Counsel
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
999 18th Street
South Terrace – Suite 370
Denver, CO 80202
Phone: 303-844-1391
Fax: 303-844-1350
davis.forsythe@usdoj.gov

KENJI M. PRICE
United States Attorney

RACHEL S. MORIYAMA
Civil Chief
Room 6-100, PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Rachel.Moriyama@usdoj.gov

*Signatures for Consent Decree in
United States v. Pacific Energy South West Pacific, Ltd.*

FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:

Date: _____

SYLVIA QUAST

Digitally signed by SYLVIA
QUAST
Date: 2020.06.22 09:57:54
-07'00'

SYLVIA QUAST
Regional Counsel
Region 9
U.S. Environmental Protection Agency

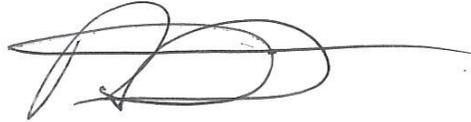
DESEAN GARNETT

Digitally signed by DESEAN
GARNETT
Date: 2020.06.22 10:05:06 -07'00'

DESEAN GARNETT
Attorney-Advisor
Region 9
U.S. Environmental Protection Agency

*Signatures for Consent Decree in
United States v. Pacific Energy South West Pacific, Ltd.*

FOR PACIFIC ENERGY SOUTH WEST
PACIFIC, LTD.:



Date: 15/6/2020

15th June 2020

Randall Vallette
Chief Executive Officer
Pacific Energy South West Pacific, Ltd.