

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
and STATE OF CALIFORNIA
DEPARTMENT OF HEALTH
SERVICES HAZARDOUS
SUBSTANCES CLEANUP FUND,

Plaintiffs,

v.

SHELL OIL COMPANY, UNION OIL
COMPANY OF CALIFORNIA,
ATLANTIC RICHFIELD COMPANY,
TEXACO, INC., LOS COYOTES
ESTATES LTD., RAMPARTS
RESEARCH CORPORATION, and
MCAULEY LCX CORP.,

Defendants.

Case No. CV-91-0589 (CJC)

Partial Consent Decree Among
Plaintiff United States of
America and Defendant Shell
Oil Company Regarding Certain
Cost Claims and [Proposed]
Order

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (EPA), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the McColl Superfund Site in Fullerton, Orange County, California (“the Site”).

B. The Central District of California found the defendants liable under CERCLA Section 107(a), including the defendant that has entered into this Consent Decree (“Settling Defendant”). *United States v. Shell Oil Co.*, 841 F. Supp. 962 (C.D. Cal. 1993).

C. On July 8, 1993, EPA issued a Unilateral Administrative Order (“1993 UAO”) for Remedial Design at the McColl Superfund Site to Shell Oil Company (“Settling Defendant”) and Union Oil Company of California, Atlantic Richfield Company, Texaco, Inc., and McAuley LCX Corporation. On July 17, 1996, EPA issued a Unilateral Administrative Order (“1996 UAO”) for Remedial Design and Remedial Action at the McColl Superfund Site to Shell Oil Company (“Settling Defendant”) and Union Oil Company of California, Atlantic Richfield Company, and Texaco, Inc. Copies of the 1993 UAO and the 1996 UAO, with their respective Statements of Work attached to and included as part of the UAOs, are attached to this Consent Decree, for reference only, as Appendix A and Appendix B, respectively.

D. The purpose of this Consent Decree is to provide for Settling Defendant’s payment of a share of Past Response Costs, and for its continued compensation of the United States for Future Response Costs. Except as otherwise settled by this Consent Decree with respect to Settling Defendant’s payment of a share of Past Response Costs and continued compensation of the United States for Future Response Costs, this Decree does not address issues with respect to Settling Defendant’s obligations or continuing performance under the 1993 UAO and the 1996 UAO.

E. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without any further admission or adjudication of any issue of fact or law is

appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control. However, no provision of the 1993 UAO or 1996 UAO attached as appendices shall be deemed incorporated into this Consent Decree based solely on their inclusion as appendices except as expressly stated in this Consent Decree.

1 “Day” or “day” shall mean a calendar day. In computing any period of time
2 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or
3 federal or State holiday, the period shall run until the close of business of the next
4 working day.

5 “DOJ” shall mean the U.S. Department of Justice and its successor
6 departments, agencies, or instrumentalities.

7 “Effective Date” shall mean the date upon which the approval of this Consent
8 Decree is recorded on the Court’s docket.

9 “EPA” shall mean the U.S. Environmental Protection Agency.

10 “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance
11 Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

12 “Future Response Costs” shall mean all costs, including, but not limited to,
13 direct and indirect costs, that the United States incurs at or in connection with the
14 McColl Superfund Site on or after July 31, 2018, in reviewing or developing
15 deliverables submitted pursuant to the 1993 UAO, the 1996 UAO, or this Consent
16 Decree; reviewing or verifying the Work, as that term is defined in the UAOs,
17 conducted pursuant to the 1993 UAO or the 1996 UAO; conducting response
18 activities pursuant to Section IX.B.4 of the 1993 UAO or Section XIV (EPA
19 Review of Submissions) of the 1996 UAO as it relates to EPA’s performance of all
20 or part of the response action; performing periodic remedial action reviews under
21 Section XI (EPA Periodic Review) of the 1996 UAO or Section 121 of CERCLA,
22 42 U.S.C. § 9621; or otherwise implementing, overseeing, or enforcing this
23 Consent Decree against Settling Defendant, including, but not limited to, payroll
24 costs, contractor costs, travel costs, laboratory costs, community involvement costs
25 (including the costs of any technical assistance grant under Section 117(e) of
26 CERCLA, 42 U.S.C. § 9617(e)), and all litigation costs. Future Response Costs
27 shall also include all Interim Response Costs and Agency for Toxic Substances and
28 Disease Registry (ATSDR) costs regarding the Site.

“Interest” shall mean interest at the rate specified for interest on investments
of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
compounded annually on October 1 of each year, in accordance with 42 U.S.C. §
9607(a). The applicable rate of interest shall be the rate in effect at the time the
interest accrues. The rate of interest is subject to change on October 1 of each year.
Rates are available online at [https://www.epa.gov/superfund/superfund-interest-](https://www.epa.gov/superfund/superfund-interest-rates)
[rates](https://www.epa.gov/superfund/superfund-interest-rates).

“Interim Response Costs” shall mean all costs, including, but not limited to,
direct and indirect costs, (a) paid by the United States in connection with the Site

1 between July 31, 2018, and the Effective Date for EPA's costs and between
 2 September 30, 2019, and the Effective Date for DOJ's costs, or (b) incurred prior to
 3 the Effective Date but paid after that date.

4 "McColl Special Account" shall mean the special account, within the EPA
 5 Hazardous Substance Superfund, established for the Site by EPA pursuant to
 6 Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

7 "National Contingency Plan" or "NCP" shall mean the National Oil and
 8 Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section
 9 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any
 10 amendments thereto.

11 "Paragraph" shall mean a portion of this Consent Decree identified by an
 12 Arabic numeral or an upper- or lower-case letter.

13 "Parties" shall mean the United States and Settling Defendant.

14 "Past Response Costs" shall mean all costs, including but not limited to
 15 direct and indirect costs, that EPA has paid at or in connection with the Site from
 16 July 1, 1990, through July 31, 2018, and all costs, including but not limited to direct
 17 and indirect costs, that DOJ has paid on behalf of EPA at or in connection with the
 18 Site from October 1, 1990, through September 30, 2019, plus accrued Interest on all
 19 such costs through February 2, 2021; and Interest that accrued on amounts paid
 20 pursuant to the 1994 Consent Decree (Docket No. 270) from July 31, 1993, through
 21 September 30, 2019.

22 "Plaintiff" shall mean the United States.

23 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
 24 §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

25 "Section" shall mean a portion of this Consent Decree identified by a Roman
 26 numeral.

27 "Settling Defendant" shall mean Shell Oil Company.

28 "Site" shall mean the McColl Superfund Site, encompassing approximately
 22 acres, located at the southwest corner of Rosecrans Avenue and Sunny Ridge
 Drive in Fullerton, Orange County, California, and the areal extent of
 contamination therefrom generally shown on the map included in Appendix C.

"1993 Unilateral Administrative Order" or "1993 UAO" shall mean EPA's
 July 8, 1993 Unilateral Administrative Order No. 93-21, including the Statement of
 Work attached thereto, issued under Section 106 of CERCLA, 42 U.S.C. § 9606,

(and Section 7003 of RCRA, 42 U.S.C. § 6973,) relating to the McColl Superfund Site. The 1993 UAO is attached as Appendix A.

“1996 Unilateral Administrative Order” or “1996 UAO” shall mean EPA’s July 17, 1996 Unilateral Administrative Order No. 96-10, including the Statement of Work attached thereto, issued under Section 106 of CERCLA, 42 U.S.C. § 9606, (and Section 7003 of RCRA, 42 U.S.C. § 6973,) relating to the McColl Superfund Site. The 1996 UAO is attached as Appendix B.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

4. **Payment by Settling Defendant for Past Response Costs.** Within 30 days after the Effective Date, Settling Defendant shall pay to EPA \$29,501,511.85, which includes Interest in the amount of \$14,876,493.38 and post-judgment interest under 28 U.S.C. § 1961 through March 15, 2021, in the amount of \$3,050.39, plus post-judgment interest under 28 U.S.C. § 1961 in the amount of \$75.83 per day from March 16, 2021, through the date of payment.

5. Settling Defendant shall make payment at <https://www.pay.gov> in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit (FLU) of the U.S. Attorney’s Office for the Central District of California after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, Site/Spill ID Number 0904, and DJ Number 90-11-2-3A, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Cisselon Nichols Hurd
Senior Legal Counsel
Shell Oil Company
150 N Dairy Ashford Rd, Room F0614F
Houston, TX 77079
Email: cisselon.nichols@shell.com

on behalf of Settling Defendant. Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section 0 (Notices and Submissions).

6. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 0 shall be deposited by EPA in the McColl Special Account to be

retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

7. **Notice of Payment.** At the time of payment, Settling Defendant shall send to EPA and DOJ, in accordance with Section 0 (Notices and Submissions), a notice of this payment including references to the CDCS Number, Site/Spill ID Number 0904, and DJ Number 90-11-2-3A.

8. **Payments by Settling Defendant for Future Response Costs.** Settling Defendant shall pay to EPA a total of 58 percent of all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis not to exceed 3 years, EPA will send Settling Defendant a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. Settling Defendant shall make all payments within 30 days after Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in ¶ 9, at <https://www.pay.gov> using the "EPA Miscellaneous Payments Cincinnati Finance Center" link, and including references to the Site/Spill ID Number 0904, DJ Number 90-11-2-3A, and the purpose of the payment. Settling Defendant shall send to DOJ and EPA, in accordance with Section 0 (Notices and Submissions), a notice of this payment including these references.

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by Settling Defendant pursuant to ¶ 8.a. (Periodic Bills) shall be deposited by EPA in the McColl Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the McColl Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.

9. **Contesting Future Response Costs.** Settling Defendant may submit a Notice of Dispute, initiating the procedures of Section 0 (Dispute Resolution), regarding any Future Response Costs billed under ¶ 8 (Payments by Settling Defendant for Future Response Costs) in accordance with the standards and procedures in Section VII. The dispute resolution procedures set forth in Section 0

(Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

10. Except as otherwise settled by this Consent Decree with respect to Settling Defendant's payment of a share of Past Response Costs and continued compensation of the United States for Future Response Costs, the Parties agree that this Consent Decree does not address Settling Defendant's obligations or continued performance under the 1993 UAO or the 1996 UAO, and Settling Defendant otherwise reserves any rights it may have to object to or challenge any EPA action under the 1993 UAO or the 1996 UAO.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

11. **Interest on Late Payments.** If Settling Defendant fails to make any payment under Paragraph 8 (Payments by Settling Defendant for Future Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section, including, but not limited to, payment of stipulated penalties pursuant to Paragraph 12 (Stipulated Penalties).

12. Stipulated Penalty

a. If any amounts due to EPA under Paragraph 0 (Payment by Settling Defendant for Past Response Costs) or Paragraph 8 (Payments by Settling Defendant for Future Response Costs) are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 11, the following stipulated penalties per violation per Day that such payment is late:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$1,000.....	1st through 7th Day
\$2,000.....	8th through 15th Day
\$3,000.....	16th Day and beyond

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. Settling Defendant shall make payment at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including references to the Site/Spill ID and DJ numbers listed in Paragraph 0, and the purpose of the payment. Settling Defendant shall send a notice of this payment to DOJ and EPA, in accordance with

Paragraph 0. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Settling Defendant under the CD.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

13. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

14. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

15. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section 0 (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VII. DISPUTE RESOLUTION

16. **Standard.** Settling Defendant may contest payment of any Future Response Costs billed by the United States if it determines that the United States has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP.

17. **Procedures.** The dispute resolution procedures set forth in this Section 0 shall be the exclusive mechanism for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its Future Response Costs. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

18. **Dispute Resolution.** The dispute resolution mechanism described in this Section 0 is only available if Settling Defendant complies with the following conditions:

1 a. Notice. Any objection to the payment of Future Response Costs
2 shall be made in writing within 30 days of receipt of the bill and accompanying
3 accounting of costs and must be sent to the United States in accordance with
4 Section 0 (Notices and Submissions). EPA may, in its sole discretion, extend the
5 time period for payment. Any such objection (hereinafter referred to as the “Notice
6 of Objection” shall specifically identify the contested Future Response Costs and
7 the basis for objection.

8 b. Payment of Undisputed Amounts. In the event of an objection to
9 some but not all Future Response Costs, Settling Defendant shall, within the 30-day
10 period, pay all uncontested Future Response Costs to the United States in the
11 manner described in Paragraph 8.

12 c. Escrow for Disputed Amounts. Within 30 days of receipt of a
13 bill for Future Response Costs that are disputed, Settling Defendant shall establish
14 an interest-bearing escrow account in a federally-insured bank and remit to that
15 escrow account funds equivalent to the amount of the contested Future Response
16 Costs. Settling Defendant shall send to the United States, as provided in Section 0
17 (Notices and Submissions), a copy of the correspondence that establishes and funds
18 the escrow account, including, but not limited to, information containing the
19 identity of the bank and bank account under which the escrow account is
20 established as well as a bank statement showing the initial balance of the escrow
21 account.

22 19. **Informal Dispute Resolution.** Any dispute with respect to Future
23 Response Costs shall in the first instance be the subject of informal negotiations
24 between the United States and Settling Defendant. The period for informal
25 negotiations shall not exceed 45 days from the time the dispute arises, unless it is
26 modified by written agreement of the parties to the dispute.

27 20. **Formal Dispute Resolution.**

28 a. Initiation. If the dispute is not resolved by informal dispute
resolution, then the position advanced by EPA shall be considered binding unless,
within 60 days after the conclusion of the informal negotiation period, Settling
Defendant commences formal dispute resolution by sending a Notice of Formal
Dispute Resolution to the United States. The Notice of Formal Dispute Resolution
shall be accompanied by a written Statement of Position by Settling Defendant,
stating the basis of its position and citing all factual data, analysis, opinion or other
information on which Settling Defendant relies to support its position. The United
States shall have 30 days in which to serve a Response setting forth the same
information supporting its position.

b. Administrative Record and Decision. EPA shall maintain an administrative record of any dispute as to Future Response Costs for which formal dispute resolution has been initiated. The administrative record shall include the disputed bill and all cost documentation sent by EPA to Settling Defendant, the Notice of Objection served by Settling Defendant, the Notice of Formal Dispute Resolution and accompanying Statement of Position, the United States' Response, and any other documents and information sent to EPA by Settling Defendant for inclusion in the record or relied on by EPA in reaching an administrative resolution of the dispute. The Director of the Superfund and Emergency Management Division, EPA Region IX, will issue a final administrative decision determining whether the disputed Future Response Costs, or any part of them, shall be disallowed as inconsistent with the NCP, as the result of a mathematical error, or as costs outside the scope of this Consent Decree.

c. Judicial Appeal. Settling Defendant may appeal EPA's administrative decision made pursuant to the preceding subparagraph to this Court within 30 days of its receipt of EPA's decision. The Court's review of EPA's decision shall be limited to EPA's administrative record except to the extent that Settling Defendant establishes that supplemental materials may be considered by the Court under CERCLA and applicable principles of administrative law. Judicial review of any dispute under this subparagraph shall be governed by CERCLA and applicable principles of administrative law.

21. **Payment Following Dispute Resolution.** Payments determined to be owing to the United States following dispute resolution shall be paid from the escrow account (including accrued Interest on the amounts owed) to the United States in the manner described in Paragraph 8, within 10 days after receipt of the Court's decision or, if EPA's final administrative decision is not timely appealed, within 40 days after EPA's decision. To the extent that any amounts are determined not to be owed, Settling Defendant shall be disbursed the remainder of the escrow account.

VIII. COVENANTS BY PLAINTIFF

22. **Covenants for Settling Defendant by United States.** Except as specifically provided in Section 0 (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree.

1 These covenants extend only to Settling Defendant and do not extend to any other
2 person.

3 **IX. RESERVATIONS OF RIGHTS BY UNITED STATES**

4 23. The United States reserves, and this Consent Decree is without
5 prejudice to, all rights against Settling Defendant with respect to all matters not
6 expressly included within Paragraph 0 (Covenants for Settling Defendant by United
7 States). Notwithstanding any other provision of this Consent Decree, the United
8 States reserves all rights against Settling Defendant with respect to:

9 a. liability for failure of Settling Defendant to meet a requirement
10 of this Consent Decree;

11 b. liability for costs incurred or to be incurred by the United States
12 that are not within the definition of Past Response Costs or Future Response Costs;

13 c. liability for injunctive relief or administrative order enforcement
14 under Section 106 of CERCLA, 42 U.S.C. § 9606;

15 d. liability for any and all response costs incurred by the United
16 States (that are not within the definitions of Past Response Costs or Future
17 Response Costs) that are related to Settling Defendant's violation of, or failure or
18 refusal to comply with, the 1993 UAO or the 1996 UAO;

19 e. criminal liability;

20 f. liability for damages for injury to, destruction of, or loss of
21 natural resources, and for the costs of any natural resource damage assessments;

22 g. defenses to claims alleged by Settling Defendant in the United
23 States Court of Federal Claims; and

24 h. counterclaims against Settling Defendant in the United States
25 Court of Federal Claims.

26 **X. COVENANTS BY SETTLING DEFENDANT**

27 24. Except as specifically provided in Section 0 (Reservation of Rights by
28 Settling Defendant), Settling Defendant covenants not to sue and agrees not to
assert any claims or causes of action against the United States, or its contractors or
employees, with respect to Past Response Costs, Future Response Costs, and this
Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA
Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113

of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs or Future Response Costs;

d. appeal of the Court's December 10, 2020 Order Granting the United States' Motion for Summary Judgment (WL 2020 7331993), and Judgment entered on February 3, 2021 (Docket No. 704).

XI. RESERVATIONS OF RIGHTS BY SETTLING DEFENDANT

25. The Settling Defendant reserves, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters not expressly included within Paragraph 0 (Covenants for Settling Defendant by United States). Notwithstanding any other provision of this Consent Decree, the Settling Defendant reserves all rights against the United States with respect to:

a. liability for failure of the United States to indemnify the Settling Defendant for all costs paid by the Settling Defendant in connection with the Site, including but not limited to, all costs paid by the Settling Defendant pursuant to the Consent Decree;

b. liability for the claims of Settling Defendant against the United States that were asserted in the matter *Shell Oil Company, Union Oil Company of California, Atlantic Richfield Company, and Texaco Inc. v. United States of America*, Civ. No. 1:06-CV-00141 in the United States Court of Federal Claims;

c. liability for the claims of Settling Defendant against the United States that were asserted in the matter *Shell Oil Company, Union Oil Company of California, Atlantic Richfield Company, and Texaco Inc. v. United States of America*, Civ. No. 1:19-CV-1795 in the United States Court of Federal Claims; and

d. liability for any claims of Settling Defendant against the United States that may be asserted in an action in the United States of Court of Federal Claims in the future seeking the recovery of any amounts paid by the Settling Defendant in connection with the Site, including but not limited to amounts paid pursuant to this Consent Decree.

1 26. Nothing in this Consent Decree shall be deemed to constitute approval
2 or preauthorization of a claim within the meaning of Section 111 of CERCLA,
3 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

4 27. **Waiver of Claims by Settling Defendant**

5 a. Settling Defendant agrees not to assert any claims and to waive
6 all claims or causes of action (including but not limited to claims or causes of action
7 under Sections 107(a) and 113 of CERCLA) that it may have:

8 (1) **De Micromis Waiver.** For all matters relating to the Site
9 against any person where the person's liability to Settling Defendant
10 with respect to the Site is based solely on having arranged for disposal
11 or treatment, or for transport for disposal or treatment, of hazardous
12 substances at the Site, or having accepted for transport for disposal or
13 treatment of hazardous substances at the Site, if all or part of the
14 disposal, treatment, or transport occurred before April 1, 2001, and the
15 total amount of material containing hazardous substances contributed
16 by such person to the Site was less than 110 gallons of liquid materials
17 or 200 pounds of solid materials;

18 b. **Exceptions to Waiver**

19 (1) The waiver under this Paragraph 0 shall not apply with
20 respect to any defense, claim, or cause of action that a Settling
21 Defendant may have against any person otherwise covered by such
22 waiver if such person asserts a claim or cause of action relating to the
23 Site against such Settling Defendant.

24 (2) The waiver under Paragraph 0 (De Micromis Waiver)
25 shall not apply to any claim or cause of action against any person
26 otherwise covered by such waiver if EPA determines that: (i) the
27 materials containing hazardous substances contributed to the Site by
28 such person contributed significantly or could contribute significantly,
either individually or in the aggregate, to the cost of the response
action or natural resource restoration at the Site; or (ii) such person has
failed to comply with any information request or administrative
subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of
CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of
RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through
action or inaction, the performance of a response action or natural
resource restoration with respect to the Site; or if (iii) such person has
been convicted of a criminal violation for the conduct to which the

1 waiver would apply and that conviction has not been vitiated on appeal
2 or otherwise.

3 **XII. EFFECT OF SETTLEMENT/CONTRIBUTION**

4 28. Except as provided in Paragraph 0 (Waiver of Claims by Settling
5 Defendant), nothing in this Consent Decree shall be construed to create any rights
6 in, or grant any cause of action to, any person not a Party to this Consent Decree.
7 Except as provided in Section 0 (Covenants by Settling Defendant), each of the
8 Parties expressly reserves any and all rights (including, but not limited to, pursuant
9 to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and
10 causes of action that it may have with respect to any matter, transaction, or
11 occurrence relating in any way to the Site against any person not a Party hereto.
12 Nothing in this Consent Decree diminishes the right of the United States, pursuant
13 to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any
14 such persons to obtain additional response costs or response action and to enter into
15 settlements that give rise to contribution protection pursuant to Section 113(f)(2).

16 29. The Parties agree, and by entering this Consent Decree this Court
17 finds, that this Consent Decree constitutes a judicially-approved settlement pursuant
18 to which Settling Defendant has, as of the Effective Date, resolved liability to the
19 United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C.
20 § 9613(f)(2), and is entitled, as of the Effective Date, to protection from
21 contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as
22 may be otherwise provided by law, for the “matters addressed” in this Consent
23 Decree. The “matters addressed” in this Consent Decree are Past Response Costs
24 and Future Response Costs.

25 30. The Parties further agree, and by entering this Consent Decree this
26 Court finds, that the complaint filed by the United States in this action is a civil
27 action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. §
28 9613(f)(1), and that this Consent Decree constitutes a judicially-approved
settlement pursuant to which Settling Defendant has, as of the Effective Date,
resolved liability to the United States within the meaning of Section 113(f)(3)(B) of
CERCLA, 42 U.S.C. § 9613(f)(3)(B).

31. Settling Defendant shall, with respect to any suit or claim brought by it
for matters related to this Consent Decree, notify EPA and DOJ in writing no later
than 60 days prior to the initiation of such suit or claim, except that Settling
Defendant need not provide such notification with respect to any suit brought
against the United States in the United States Court of Federal Claims seeking
recovery of costs paid pursuant to this Consent Decree. Settling Defendant also
shall, with respect to any suit or claim brought against it for matters related to this

1 Consent Decree, notify EPA and DOJ in writing within 10 days after service of the
 2 complaint or claim upon it. In addition, Settling Defendant shall notify EPA and
 3 DOJ within 10 days after service or receipt of any Motion for Summary Judgment,
 4 and within 10 days after receipt of any order from a court setting a case for trial, for
 5 matters related to this Consent Decree, except that Settling Defendant need not
 6 provide such notification with respect to any Motion for Summary Judgment or
 7 order setting a case for trial in a suit brought against the United States in the United
 8 States Court of Federal Claims seeking recovery of costs paid pursuant to this
 9 Consent Decree.

10 32. In any subsequent administrative or judicial proceeding initiated by the
 11 United States for injunctive relief, recovery of response costs, or other relief
 12 relating to the Site, Settling Defendant shall not assert, and may not maintain, any
 13 defense or claim based upon the principles of waiver, res judicata, collateral
 14 estoppel, issue preclusion, claim-splitting, or other defenses based upon any
 15 contention that the claims raised by the United States in the subsequent proceeding
 16 were or should have been brought in the instant case; provided, however, that
 17 nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set
 18 forth in Section 0.

19 XIII. ACCESS TO INFORMATION

20 33. Settling Defendant shall provide to EPA, upon request, copies of all
 21 records, reports, documents, and other information (including records, reports,
 22 documents, and other information in electronic form) (hereinafter referred to as
 23 "Records") within its possession or control or that of its contractors or agents
 24 relating to activities at the Site, including, but not limited to, sampling, analysis,
 25 chain of custody records, manifests, trucking logs, receipts, reports, sample traffic
 26 routing, correspondence, or other documents or information regarding the Site.

27 34. Privileged and Protected Claims

28 a. Settling Defendant may assert that all or part of a Record is
 privileged or protected as provided under federal law, provided it complies with
 Paragraph 0, and except as provided in Paragraph 0.

b. If Settling Defendant asserts a claim of privilege or protection, it
 shall provide Plaintiff with the following information regarding such Record: its
 title; its date; the name, title, affiliation (e.g., company or firm), and address of the
 author, each addressee, and of each recipient; a description of the Record's
 contents; and the privilege or protection asserted. If a claim of privilege or
 protection applies only to a portion of a Record, Settling Defendant shall provide
 the Record to Plaintiff in redacted form to mask the privileged or protected

1 information only. Settling Defendant shall retain all Records that it claims to be
 2 privileged or protected until the United States has had a reasonable opportunity to
 3 dispute the privilege or protection claim and any such dispute has been resolved in
 4 the Settling Defendant's favor.

5 c. Settling Defendant may make no claim of privilege or protection
 6 regarding:

7 (1) any data regarding the Site, including but not limited to,
 8 all sampling, analytical, monitoring, hydrogeologic, scientific,
 9 chemical, radiological, or engineering data, or the portion of any other
 10 Record that evidences conditions at or around the Site; or

11 (2) the portion of any Record that Settling Defendant is
 12 required to create or generate pursuant to this Consent Decree.

13 35. **Business Confidential Claims.** Settling Defendant may assert that all
 14 or part of a Record submitted to Plaintiff under this Section or Section 0 (Retention
 15 of Records) is business confidential to the extent permitted by and in accordance
 16 with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R.
 17 2.203(b). Settling Defendant shall segregate and clearly identify all Records or parts
 18 thereof submitted under this Consent Decree for which Settling Defendant asserts a
 19 business confidentiality claim. Records that Settling Defendant claims to be
 20 confidential business information will be accorded the protection specified in 40
 21 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when
 22 they are submitted to EPA, or if EPA has notified Settling Defendant that the
 23 Records are not confidential under the standards of Section 104(e)(7) of CERCLA
 24 or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records
 25 without further notice to Settling Defendant.

26 36. Notwithstanding any provision of this Consent Decree, the United
 27 States retains all of its information gathering and inspection authorities and rights,
 28 including enforcement actions related thereto, under CERCLA, RCRA, and any
 other applicable statutes or regulations.

29 **XIV. RETENTION OF RECORDS**

30 37. Until 10 years after the Effective Date, Settling Defendant shall
 31 preserve and retain all non-identical copies of Records now in its possession or
 32 control or that come into its possession or control, that relate in any manner to its
 33 liability under CERCLA with respect to the Site. Each of the above record retention
 34 requirements shall apply regardless of any corporate retention policy to the
 35 contrary.

38. At the conclusion of the record retention period, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, and except as provided in Paragraph 0 (Privileged and Protected Claims), Settling Defendant shall deliver any such Records to EPA.

39. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XV. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescdcopy.enrd@usdoj.gov

Re: DJ# 90-11-2-3A

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-3A

As to EPA: SP Davis
Remedial Project Manager
U.S. Environmental Protection Agency
Superfund and Emergency Management Division

75 Hawthorne St.
San Francisco, CA 94105
davis.sp@epa.gov

Re: Site/Spill ID # 0904

As to Settling Defendant: Toni DeMayo
Principle Program Manager
Shell Oil Products US
20945 S. Wilmington Ave.
Carson, CA 90810
toni.demayo@shell.com

Edmond Bourke
Principal
C2 REM
2382 SE Bristol Street Suite B
Newport Beach, CA 92660
ebourke@c2rem.com

XVI. RETENTION OF JURISDICTION

41. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDICES

42. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the 1993 UAO; "Appendix B" is the 1996 UAO; and "Appendix C" is the map of the Site.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

43. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree

disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

44. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIX. SIGNATORIES/SERVICE

45. The undersigned representative of Settling Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, each certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

46. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

47. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XX. FINAL JUDGMENT

48. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 20__.

United States District Judge

Signature Page for Consent Decree Regarding McColl Superfund Site

FOR THE UNITED STATES OF AMERICA:


Todd Kim
Assistant Attorney General
Environment and Natural Resources Division

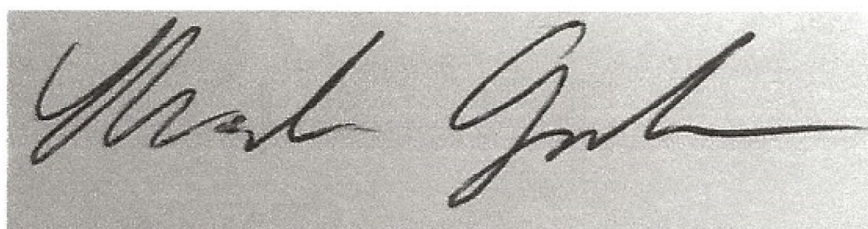
8-4-2021
Dated

/s/William A. Weinischke
William A. Weinischke
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for Consent Decree Regarding McColl Superfund Site

John J. Lyons
Acting Deputy
Director for


Enrique Manzanilla
Superfund and Emergency Management
Division Director, Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94106



Madeline Gallo
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
Mail Code ORC 3-2
San Francisco, CA 94106

Signature Page for Consent Decree Regarding McColl Superfund Site

FOR SHELL OIL COMPANY:

16-Jun-2021

Dated

DocuSigned by:

Hector Pineda

C88D8F3D88D9436...

Name: Hector A. Pineda

Title: VP Legal

Address: 150 N. Dairy Ashford, Houston, TX 77079

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: CT Corporation System

Address: 818 West 7th St, Los Angeles, CA 90017

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Appendix A
1993 UAO

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Appendix B
1996 UAO

Appendix C Site Map

