

MINUTE ITEM

This Calendar Item No. C71 was approved as Minute Item No. 71 by the California State Lands Commission by a vote of 3 to 0 at its 08/21/96 meeting.

**CALENDAR ITEM
C71**

A 67

08/21/96

W 503.1648

S 35

J. Frey

Approval of Settlement Agreement in case of People of the State of California ex rel. the California Department of Fish and Game et al. v. BP America, Inc. et al., Orange County Superior Court Case No. 64 63 39

BACKGROUND:

On February 7, 1990 the steam tanker American Trader ran aground on one of its anchors at the Golden West Marine Terminal, Huntington Beach causing Alaskan north slope crude oil to spill from the ship's tanks into and on the waters, beaches and other natural resources of Huntington Beach and surrounding communities. The spill resulted in the closure of many public beaches and damages to the environment. The Commission and other State and local agencies filed lawsuits against BP America, the Trans-Alaskan Pipeline Fund, Golden West Refining Company and other defendants seeking compensation for natural resource and recreational losses, damage assessments and civil penalties. Previously, the Commission has approved settlements between the Commission and BP America and the Trans-Alaskan Pipeline Fund.

CURRENT SITUATION:

The Office of the Attorney General has continued settlement negotiations with the remaining defendants. The settlement now brought before the Commission is with defendant Golden West Refining Company and its insurers. The defendants have agreed to pay the Commission and other plaintiffs \$4,150,000 in settlement of all claims against Golden West. The proceeds of this settlement are compensation for natural resources damages and response costs, damage assessment costs, civil liabilities and attorney fees. In consideration of this payment the Commission and the other plaintiffs will release Golden West from and covenant not to sue Golden West for any other civil or administrative action arising out of the American Trader oil spill. Commission staff have reviewed the proposed settlement and believe it is in the State's best interests to enter into it.

AB 884:

N/A

CALENDAR ITEM NO. C71 (CONT'D)

EXHIBITS:

- Exhibit A - Location Map
- Exhibit B - Settlement Agreement

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND 14 CAL. ADM. CODE 15378.
2. FIND THAT THE SETTLEMENT AGREEMENT IN THE CASE OF PEOPLE OF THE STATE OF CALIFORNIA EX REL. DEPARTMENT OF FISH AND GAME ET AL. V. BP AMERICA, ET AL. AND ATTACHED AS EXHIBIT B HERETO IS IN THE BEST INTERESTS OF THE STATE AND AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE SETTLEMENT AGREEMENT.

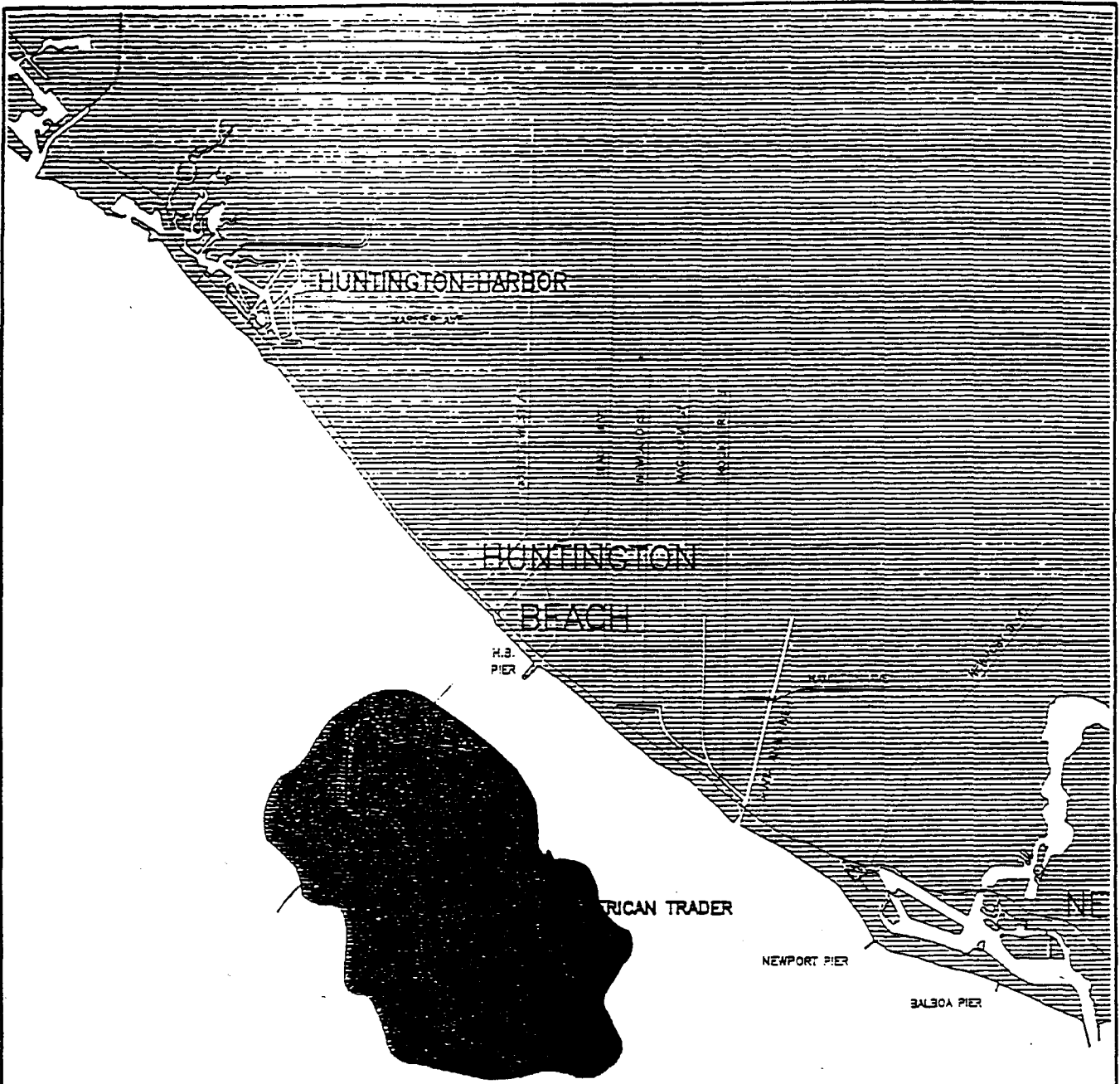


EXHIBIT "A"
W 503.1648



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EXHIBIT "B"

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by the State of California ex rel. the California Department of Fish and Game, the Department of Parks and Recreation, the Regional Water Quality Control Board, Santa Ana Region, the State Coastal Conservancy, the State Lands Commission ("State Agencies"), the City of Huntington Beach, the City of Newport Beach, the Orange County Flood Control District, and the County of Orange ("Local Governments") on the one hand, and Golden West Refining Company and its insurers subscribing to Policy No. JHB99GM0004950 ("Golden West"), on the other hand.

DEFINITIONS

1. Whenever the following terms are used in this Agreement, they shall have the following meanings:

(a) "Claims Against Golden West for Contribution" means claims or causes of action, originating under state, federal, or maritime law, now or in the future, by Non-Settling Parties against Golden West for equitable comparative contribution; partial, comparative, or total indemnity; contribution; or equitable indemnity which arise from or are related to the State Agencies' or Local Governments' claims for damages caused by the Oil Spill, except that claims based upon a written express indemnity agreement are not included within the scope of this definition.

(b) "Final Approval" means the earliest date on which all of the following have occurred:

(1) The Superior Court has found in the State Action that this Agreement was made in "good faith" as that term is used in section 877.6 of the California Code of Civil Procedure, and determined that all Claims Against Golden West for Contribution asserted or capable of assertion in the State Action are barred as a result of this Agreement and all applicable appeal periods have expired without an appeal being filed, or, if an appeal is taken, the Superior Court's judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed; and,

(2) All Claims Against Golden West for Contribution in the State Action have been dismissed with prejudice. Final approval does not require that the Court grant Golden West's motion to sever and stay the trial of

Defendants' cross-claims against one another in the State Action.

(c) "Natural Resources Damages" means civil compensatory and remedial relief recoverable by the State Agencies or Local Governments on behalf of the public for injury to, destruction of, loss of use of or loss of natural resources resulting from the Oil Spill, including any and all (1) costs of damage assessment, including related enforcement costs, (2) compensation for loss, injury, impairment, damage or destruction of Natural Resources, whether temporary or permanent, or for loss of use values (active and passive), consumer surplus, economic rent, or any other similar value of natural resources, including without limitation beach and recreational uses, and (3) costs of restoration, rehabilitation or replacement of injured natural resources or the acquisition of equivalent resources.

(d) "Non-Settling Parties" means all persons and entities who are not Parties to this Agreement, including but not limited to (i) defendants in United States District Court for the Central District of California Case No. CV 91-3363 or any case consolidated with that action, and/or (ii) defendants in Orange County Superior Court Case No. 64-63-39 or any case consolidated with that action.

(e) "Oil Spill" means the grounding of the steam tanker, AMERICAN TRADER, on February 7, 1990 at the Golden West Marine Terminal and the resulting oil spill and response activity.

(f) "Party" or "Parties" mean Golden West, the State Agencies and the Local Governments, and each of them.

(g) "Response and/or Cleanup Costs" mean response and/or cleanup costs incurred by the Governments in responding to the Oil Spill, including but not limited to actions taken to remove and clean up the spilled oil.

(h) "Superior Court" means the Superior Court for the County of Orange.

INTRODUCTION

2. On February 7, 1990, the steam tanker AMERICAN TRADER ran aground on one of its anchors at the Golden West Marine Terminal, causing Alaska north slope crude oil to spill from the ship's tanks into or upon waters, beaches, and other natural resources near Huntington Beach, California, and requiring

cleanup of the spilled oil. The State Agencies and Local Governments assert that the oil covered approximately sixty square miles of ocean and washed ashore along approximately fourteen miles of beaches, injuring birds and fisheries and other natural resources.

3. AMERICAN TRADER was owned by American Trading Transportation Company ("Attransco") on the day of the spill, and had Mooring Master John Keon aboard for the purpose of bringing the tanker into the offshore terminal which was leased and operated by Golden West Refining Company ("Golden West").

4. AMERICAN TRADER's crude oil cargo was to be delivered to Golden West pursuant to a crude oil sales contract between Golden West and BP Oil Supply Company. BP alleges that at the time of the Oil Spill, BP Oil Supply Company was the title owner of the oil aboard the AMERICAN TRADER.

5. BP Oil Shipping Company, USA was the time charterer of the AMERICAN TRADER on February 7, 1990.

6. The State Agencies and Local Governments have filed an action in Superior Court against Golden West, Attransco, BP, and Brandenburger Marine, Inc., seeking, inter alia, attorneys fees, civil liabilities, assessment costs, Natural Resources Damages and Response Costs. People of the State of California, et al., v. BP AMERICA, Inc. et al., Orange County Superior Court Case No. 64-63-39 ("the State Action").

7. The United States, on behalf of the United States Department of Commerce, the United States Department of the Interior, the United States Navy, the United States Coast Guard, and all interested federal governmental agencies has filed an action in federal district court against the steam tanker AMERICAN TRADER, in rem; Attransco; Golden West; Brandenburger Marine, Inc.; the Assuanceforeninger Gard, the AMERICAN TRADER's liability insurer; and the Trans-Alaska Pipeline Liability Fund, created by the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. §§ 1651, et seq. ("TAPAA"). The United States' action seeks, under the Clean Water Act, 33 U.S.C §§ 1251, et seq. ("Clean Water Act"), TAPAA, and other federal statutory and maritime law, inter alia, Natural Resources Damages and Response Costs. United States v. The Steam Tanker, AMERICAN TRADER et al., United States District Court for the Central District of California Case No. CV 91-3363.

8. The State Agencies and the Local Governments have also filed an action in federal district court against the Trans-Alaska Pipeline Liability Fund under TAPAA for, inter alia, Natural Resources Damages and Response Costs. People of the

State of California, et al., v. Trans-Alaska Pipeline Liability Fund, United States District Court for the Central District of California Case No. CV 92-0837.

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

10. The Parties have entered into this Settlement Agreement to settle the pending litigation between Golden West, the State Agencies, and Local Governments.

SETTLEMENT PAYMENT BY GOLDEN WEST

11. In consideration of the covenants contained herein, Golden West's insurers subscribing to Policy No. JHB99GM0004950 shall pay to the State Agencies and Local Governments the sum of \$4,150,000.00, four million one hundred fifty thousand dollars, (the "Settlement Amount"), in the manner set forth in paragraphs 12, 13, and 14 of this Agreement. \$1,500,000.00 of the Settlement Amount, which represents one-half of the attorneys fees and costs incurred to date by the State Agencies and Local Governments, shall be paid on account of said attorneys fees and costs.

12. Within forty five (45) days of the date of notice to Golden West that all signatories of the State Agencies and Local Governments have executed this Agreement, Golden West shall pay the Settlement Amount into the Golden West Settlement Escrow Account as prescribed in paragraph 13 of this Agreement.

ESTABLISHMENT OF SETTLEMENT ESCROW ACCOUNT AND SETTLEMENT DISTRIBUTION FUND

13. Golden West shall establish or cause to be established an interest-bearing escrow account at a financial institution to be selected by the State Agencies and Local Governments (the "Golden West Settlement Escrow Account") to receive and hold the Settlement Amount and all interest accumulated on the Settlement Amount pending final Approval or termination of this Agreement. All interest earned on the Golden West Settlement Escrow Account shall be for the benefit of and paid to the State Agencies and Local Governments, except that if the Settlement Amount is returned to Golden West's insurers as a result of termination of this Agreement, all interest thereon shall be for the benefit of and paid to Golden West's insurers.

14. The State Agencies and Local Governments shall establish or cause to be established a separate escrow or court

registry account (the "Golden West Settlement Fund") to receive and distribute the Settlement Amount and all interest accumulated on the Settlement Amount. Within fifteen (15) days after Final Approval, Golden West shall instruct the escrow holder holding the Golden West Settlement Escrow Account to irrevocably transfer the Settlement Amount plus all accrued interest on the Settlement Amount to the Golden West Settlement Fund created under this paragraph. After deposit of the Settlement Amount, plus all interest accumulated on this sum to the Golden West Settlement Fund, the State Agencies and Local Governments may allocate and disburse the Settlement Amount, plus all interest accumulated on this sum.

RELEASES AND COVENANTS NOT TO SUE

15. Effective upon Final Approval and Golden West's payment of the Settlement Amount in the manner prescribed in paragraph 12, 13, and 14 of this Agreement, the State Agencies and Local Governments release Golden West from, and covenant not to sue or take any other civil or administrative action against Golden West for, any and all attorneys fees and costs, and fines, penalties and civil claims (whether of a compensatory, restitutionary, remedial, or punitive nature) that arise from or are based on, the Oil Spill. For the purposes of this paragraph, "Golden West" includes present and former directors, officers, shareholders, and employees of Golden West. Notwithstanding the above, the State Lands Commission does not release Golden West's insurers for defense or indemnity under the policies of insurance in which the State Lands Commission is named as an additional insured for any claims, demands, liabilities, causes of action or damages asserted or assertable against the State Lands Commission arising from or based upon the Oil Spill. The State Lands Commission expressly retains all rights to all benefits under such insurance policies.

16. Effective upon Final Approval, Golden West releases each of the State Agencies and Local Governments from, and covenants not to sue or to take any other civil or administrative action against the State Agencies and Local Governments, or any of them, for any and all civil claims of whatever nature that arise from, or are based on, the Oil Spill. For the purposes of this paragraph, "State Agencies and Local Governments" includes present and former employees of the State Agencies and the Local Governments and their attorneys.

17. The Parties recognize that this Agreement is an accord and satisfaction of a contested matter and that neither the payment nor the acceptance of any consideration represents an admission of liability or responsibility on the part of any Party.

18. The Parties, and each of them, expressly waive all rights concerning any of the matters released by this Agreement under Section 1542 of the Civil Code of California which provides as follows:

"Section 1542. Certain Claims Not Affected by General Release. A General Release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

DISMISSAL OF ACTIONS AND CLAIMS

19. Not later than fifteen (15) days after both Final Approval and payment of the Settlement Amount in the manner prescribed in paragraphs 12, 13, and 14 of this Agreement, the claims arising from the Oil Spill and asserted by the State Agencies and Local Governments against Golden West in the State Action, shall be dismissed with prejudice and without an award of costs or attorney's fees to any Party except as set forth in this Agreement. The Parties shall enter into, and execute all stipulations of dismissal, with prejudice, in whatever form necessary to implement the provisions of this paragraph. Golden West acknowledges that the Settlement Agreement is not contingent upon final affirmance of the State Lands Commission's Motion for Summary Judgment.

GOOD FAITH SETTLEMENT AND BIFURCATION

20. The State Agencies and Local Governments agree to join in any motions or pleadings that Golden West might file in state court seeking a determination under section 877.6 of the California Code of Civil Procedure that this settlement was made in good faith. The State Agencies also agree to join in any motion by Golden West to sever and stay the trial of the Defendants' cross claims against one another in the State Action.

THIRD PARTY LITIGATION

21. The Parties agree that they will not tender each other to any third party as direct defendants in any action relating to or arising from the Oil Spill pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.

RESERVATION OF RIGHTS

22. Except as expressly stated in this Agreement, each Party reserves against all Non-Settling Parties all rights, claims, or defenses available to it arising from or based upon the Oil Spill. Without limiting the generality of the foregoing, the State Agencies and Local Governments expressly reserve their rights to pursue the balance of their remaining claims including loss of use of beaches, damage assessment costs, civil liabilities and attorneys fees from Non-Settling Parties.

23. Nothing in this Agreement creates, nor shall it be construed as creating, any claim in favor of any person not a party to this Agreement.

24. The releases or covenants not to sue in paragraphs 15 and 16 of this Agreement shall apply only to matters in said paragraphs and shall not apply to claims based on a failure to satisfy the requirements of this Agreement. The Parties agree that the Superior Court retains jurisdiction to enforce this Agreement and to award reasonable attorneys fees and costs to the prevailing party in any such enforcement action.

25. Nothing in this Agreement shall affect the subrogation rights, if any, of the Trans-Alaska Pipeline Liability Fund against any Non-Party or Party to this Agreement. Neither the existence or non-existence of such subrogation rights shall affect or preclude Final Approval as defined in this Agreement.

NOTICES AND SUBMITTALS

26. Whenever, under the terms of this Agreement, written notice is required to be given by one Party to another, it shall be directed to the individuals and addresses specified below, unless the individuals specified or their successors give notice, in writing, to the other Parties that notice should be directed to a different individual or address.

Notice to the State Agencies:

Sylvia C. Hale
Deputy Attorney General
Office of the California
Attorney General
300 South Spring Street, 5th Floor
Los Angeles, CA 90013

Notice to Insurers Subscribing to Policy No. JHB99GM0004950:

Sanford Kingsley
LeBoeuf, Lamb, Greene & MacRae
One Embarcadero Center
4th Floor
San Francisco, CA 94111

Copy to:

George Koelzer
Lane Powell Spears & Lubersky
333 South Hope Street, Suite 2400
Los Angeles, CA 90071

Notice to the Local Governments:

City of Huntington Beach:

James H. Ackerman
Special Counsel
One World Trade Center, Suite 1440
Long Beach, CA 90831-1440

City of Newport Beach:

Robin Clauson
Asst. City Attorney
City of Newport Beach
P.O. Box 1768
3300 Newport Blvd.
Newport Beach, CA 92659-1768

County of Orange and Orange County Flood Control District:

Nicholas S. Chrisos
Deputy County Counsel
10 Civil Center Plaza, 4th Floor
Santa Ana, CA 92702

Notice to Golden West:

Flynn, Delich & Wise
One World Trade Center, Suite 1800
Long Beach, CA 90831-1800

ELECTION TO TERMINATE

27. Any Party may elect to terminate this Agreement only if, prior to Final Approval, (i) a final judicial determination is made by any court of competent jurisdiction that this Agreement will not be approved in state court as a good faith settlement under Section 877.6 of the California Code of Civil Procedure or, (ii) a final judicial determination is made by any such court that Claims Against Golden West for Contribution asserted or assertable in state court are not barred by this settlement. A Party electing to terminate must do so within fifteen (15) days after the judicial determination specified in the preceding sentence and shall immediately notify the other Parties of such election in writing by hand delivery, facsimile, or overnight mail. Termination of this Agreement by one Party shall effect termination as to all Parties. For purposes of this paragraph, "termination" and "terminate" shall mean the cessation, as of the date of notice of such termination, of any and all rights, obligations, releases, and covenants under this Agreement.

REPRESENTATIVES

28. Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement. The State Agencies, who are parties to this Agreement, represent that they are the sole State agencies authorized to make claims for Natural Resources Damages caused by the Oil Spill, and the Local Governments who are Parties to this Agreement represent that they are the proper and authorized parties to bring this action.

INTEGRATION CLAUSE

29. This document encompasses the entire agreement of the Parties with respect to the subject matter hereof and totally supersedes all prior agreements or understandings, whether oral or in writing.

MODIFICATION

30. No modifications of this Agreement may be made unless the Parties agree to the modification in a writing signed by all the parties.

SIGNATURES:

CALIFORNIA DEPARTMENT OF FISH AND GAME

By:

Pete Bontadelli, Administrator
Office of Oil Spill Prevention
and Response
Department of Fish and Game

Date: _____

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

By: _____ Date: _____
Donald W. Murphy, Director
Department of Parks and Recreation

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION

By:

Gerard J. Thibeault
Executive Officer
Regional Water Quality Control
Board, Santa Ana Region

Date:

STATE COASTAL CONSERVANCY

By: _____

Michael L. Fischer
Executive Officer
State Coastal Conservancy

Date: _____

STATE LANDS COMMISSION

By: _____
Robert Hight
Executive Officer
State Lands Commission

Date: _____

CITY OF HUNTINGTON BEACH

By: _____
James A. Ackerman, Special Counsel
City of Huntington Beach

Date: _____

CITY OF NEWPORT BEACH

By: _____
John Hegdes, Mayor
City of Newport Beach

Date: _____

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COUNTY OF ORANGE and ORANGE COUNTY FLOOD CONTROL DISTRICT

By: _____
Laurence M. Watson
Chief Assistant County Counsel
Nicholas Chrisos
Deputy Counsel

Date: _____

GOLDEN WEST REFINING COMPANY

By: _____

Date: _____

INSURERS SUBSCRIBING TO POLICY NO. JHB99GM0004950

By: _____

Date: _____

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