

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA, :  
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 Plaintiff, :  
 :  
 v. :  
 ESTATE OF DOROTHY MEDORE, :  
 :  
 Defendant. :  
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Civil Action No. \_\_\_\_\_

**PARTIAL CERCLA SECTION 107 CONSENT DECREE  
FOR RECOVERY OF PAST RESPONSE COSTS**

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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, 42 U.S.C. § 9607 (CERCLA), 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 Banaire Enterprises and Banaire Radium Trailers Superfund Sites in Cabazon, California (“the Sites”).

B. The defendant that has entered into this Consent Decree (“Settling Defendant”) does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. 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 the 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:

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**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:

1 “Affected Property” means all real property at the Sites and any other real property,  
2 owned or controlled by Settling Defendant, where EPA determines, at any time, that access or  
3 land, water, or other resource use restrictions are needed to implement response actions at the  
4 Sites, including, but not limited to, the following properties 49800 Bonita Avenue, Cabazon, CA  
(APN 519350010-2); 14993 South Broadway, Cabazon, CA (APN 526210007-9); and 4972  
Main Street, Cabazon, CA (APN 519320010-9).

5 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and  
6 Liability Act, 42 U.S.C. §§ 9601-9675.

7 “Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In  
8 the event of conflict between this Consent Decree and any appendix, the Consent Decree shall  
control.

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

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

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

14 “EPA” shall mean the U.S. Environmental Protection Agency and its successor  
15 departments, agencies, or instrumentalities.

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

18 “Estate Property” shall mean all property contained in the final inventory of Settling  
Defendant pursuant to Section VI below.

19 “Interest” shall mean interest at the rate specified for interest on investments of the EPA  
20 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on  
21 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  
22 on October 1 of each year. Rates are available online at  
[http://www.epa.gov/ocfopage/finstatement/superfund/int\\_rate.htm](http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm).

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

25 “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral  
26 or an upper or lower case letter.

27 “Parties” shall mean the United States and Settling Defendant.  
28

1 “Past Response Costs” shall mean all costs, including but not limited to direct and  
2 indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Sites  
through June 17, 2014, plus accrued Interest on all such costs through such date.

3 “Plaintiff” shall mean the United States.

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

6 “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

7 “Settling Defendant” shall mean the Estate of Dorothy Medore.

8 “Banaire Enterprises Site” shall mean the Banaire Enterprises Superfund Site,  
9 encompassing approximately 4.3 acres in two parcels, located at 49800 Bonita Avenue,  
Cabazon, CA (APN 519350010-2); and 14993 South Broadway, Cabazon, CA (APN  
10 526210007-9), and generally shown on the map included in Appendix A.

11 “Banaire Radium Trailers Site” shall mean the Banaire Radium Trailers Superfund Site,  
12 encompassing approximately 0.75 acres, located at 4972 Main Street, Cabazon, CA (APN  
519320010-9), and generally shown on the map included in Appendix A.

13 “Site Property” shall mean the real property comprising the Banaire Enterprises Site and  
14 the Banaire Radium Trailers Site.

15 “Sites” shall mean the Banaire Enterprises Site and the Banaire Radium Trailers Site.

16 “Banaire Enterprises Special Account” shall mean the special account, within the EPA  
17 Hazardous Substance Superfund, established for the Sites by EPA pursuant to Section 122(b)(3)  
of CERCLA, 42 U.S.C. § 9622(b)(3).

18 “State” shall mean the State of California.

19 “Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest  
20 in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest  
by operation of law or otherwise.

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

23 **V. INITIAL PAYMENT OF RESPONSE COSTS**

24 4. Payment by Settling Defendant for Past Response Costs. Within 7 days after  
25 Settling Defendant receives notice from the United States that this Consent Decree has been  
lodged with the United States District Court for the Central District of California, Settling  
26 Defendant shall deposit \$150,000 into an interest-bearing escrow account in a duly chartered  
bank or trust company that is insured by the Federal Deposit Insurance Corporation (the “Escrow  
27 Account”). If the Consent Decree is not entered by the Court, and the time for any appeal of that  
decision has run, or if the Court’s denial of entry is upheld on appeal, the monies placed in  
28 escrow, together with accrued interest thereon, shall be returned to Settling Defendant. If the  
Consent Decree is entered by the Court, Settling Defendant shall, within 15 days after the

1 Effective Date, cause the monies in the Escrow Account, together with accrued interest thereon,  
2 to be paid to EPA in accordance with Paragraphs 5 and 7.

3 5. Settling Defendant shall make payment at <https://www.pay.gov> to the U.S.  
4 Department of Justice account, in accordance with instructions provided to Settling Defendant by  
5 the Financial Litigation Unit (FLU) of the U.S. Attorney's Office for the Central District of  
6 California after the Effective Date. The payment instructions provided by the FLU will include a  
7 Consolidated Debt Collection System (CDCS) number, which shall be used to identify all  
8 payments required to be made in accordance with this Consent Decree. The FLU will provide the  
9 payment instructions to:

10 Scott Grossman  
11 The Grossman Law Firm, A.P.C.,  
12 6370 Magnolia Avenue, Suite 320,  
13 Riverside, CA 92506

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

17 6. Deposit of Payment. The total amount to be paid pursuant to Paragraph 4 shall be  
18 deposited by EPA in the Banaire Enterprises Special Account to be retained and used to conduct  
19 or finance response actions at or in connection with the Sites, or to be transferred by EPA to the  
20 EPA Hazardous Substance Superfund

21 7. Notice of Payment. At the time of payment, Settling Defendant shall send notice  
22 that payment has been made: (a) to EPA in accordance with Section XV (Notices and  
23 Submissions); (b) to DOJ by email or by mail in accordance with Section XV (Notices and  
24 Submissions); and (c) to the EPA Cincinnati Finance Center by email or by regular mail at:

25 **Email:** cinwd\_acctsreceivable@epa.gov

26 **Regular mail:** EPA Cincinnati Finance Center  
27 26 W. Martin Luther King Drive  
28 Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Numbers A940 and A941, and DJ  
Number 90-11-3-10880.

## 29 VI. INVENTORY, APPRAISAL, SALE AND DISTRIBUTION OF REMAINING 30 ESTATE ASSETS

31 8. Settling Defendant shall, within 60 days of the Effective Date, complete an  
32 inventory and appraisal of all Estate Property that complies in all respects with the California  
33 Probate Code. Settling Defendant shall initiate in the California Probate Court any action  
34 necessary to resolve title disputes related to Estate Property during this same time frame.

35 9. Within 14 days of receipt of all necessary approvals from the California Probate  
36 Court, Settling Defendant shall use best efforts to sell all Estate Property. Settling Defendant  
37 shall deposit sums received from all such sales into an account established by Settling Defendant

1 for the liquidation of Estate Property. All sales of Estate Property, both real and personal, shall  
2 be conducted in accordance with the California Probate Code.

- 3 a. For the sale of real property, best efforts shall include, at a minimum,  
4 listing the property with a licensed real estate agent, who shall market the  
5 property consistent with local practices, to include listing in the Multiple  
6 Listing Service (MLS), advertisement in local publications and periodic  
7 open houses. Settling Defendant shall continue such best efforts for a  
8 period of one year from the date that real property is placed on the market  
9 for sale.
- 10 b. Settling Defendant shall provide EPA with notice and a copy of any  
11 written, bona fide, firm offer of fair or reasonable consideration for any  
12 portion of the real property within 5 days after receipt of such offer.
- 13 c. Settling Defendant's acceptance of an offer to purchase any portion of the  
14 real property shall require the written approval of EPA. If EPA does not,  
15 for any reason, approve acceptance of an offer for any portion of the real  
16 property, Settling Defendant shall continue to use its best efforts to sell the  
17 real property.
- 18 d. If, despite best efforts, Settling Defendant is unable to sell any portion of  
19 the real property at the expiration of the one-year period described in  
20 Paragraph 9(a), Settling Defendant shall auction the real property to the  
21 highest bidder.
- 22 e. Prior to or concurrent with its conveyance of any portion of the real  
23 property, Settling Defendant shall remove, through payment or otherwise,  
24 all liens and encumbrances on the real property. EPA will remove any  
25 Superfund lien placed on the real property to be sold prior to closing.

26 10. Distribution of Estate. Upon the sale of all real and personal Estate Property,  
27 Settling Defendant shall petition the Probate Court for an order to distribute to the United States  
28 all Net Proceeds from sales of Estate Property under this Section, together with all other assets of  
the Estate ("Remaining Estate Assets") in satisfaction of Past Response Costs. "Net Proceeds"  
shall mean, for the purpose of this Paragraph, the gross proceeds from the sale of any Estate  
Property, less the costs of administration of the Estate allowed and approved by the California  
Probate Court, including attorney's fees. Not less than 30 days before petitioning the California  
Probate Court for distribution of the Remaining Estate Assets, Settling Defendant shall present an  
accounting the United States of the Remaining Estate Assets, and any deductions made for the  
costs of administration of the Estate, including attorney's fees. Settling Defendant's payment of  
the Remaining Estate Assets to the United States shall be made according to the terms of  
Paragraphs 5 and 7 above.

11. Settling Defendant's conveyance of an interest in the Estate Property shall not  
affect its obligations under this Consent Decree. In no event shall such conveyance release or  
otherwise affect the obligation of Settling Defendant to comply with all provisions of this  
Decree.

1 12. Settling Defendant shall consult every 60 days with the United States until final  
2 distribution of the Estate is completed pursuant to Paragraph 11 below.

3 **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

4 13. Interest on Late Payments. If Settling Defendant fails to make any payment under  
5 Paragraph 4 (Payment by Settling Defendant for Past Response Costs) by the required due date,  
6 Interest shall continue to accrue on the unpaid balance through the date of payment.

7 14. Stipulated Penalty.

8 a. If any amounts due to EPA under Paragraph 4 (Payment by Settling  
9 Defendant for Past Response Costs) are not paid by the required date, Settling Defendant shall be  
10 in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to  
11 the Interest required by Paragraph 13, \$500 per violation per day that such payment is late.

12 b. If Settling Defendant does not comply with any other obligation of this  
13 Consent Decree, Settling Defendant shall be in violation of this Consent Decree and shall pay to  
14 EPA, as a stipulated penalty, \$1000 per violation per day of such noncompliance.

15 c. Stipulated penalties are due and payable within 30 days after the date of  
16 the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph  
17 shall be identified as “stipulated penalties” and shall be made by Fedwire EFT to:

18 Federal Reserve Bank of New York  
19 ABA = 021030004  
20 Account = 68010727  
21 SWIFT address = FRNYUS33  
22 33 Liberty Street  
23 New York NY 10045  
24 Field Tag 4200 of the Fedwire message should read  
25 “D 68010727 Environmental Protection Agency”

26 d. At the time of payment, Settling Defendant shall send notice that payment  
27 has been made to EPA and DOJ as provided in Paragraph 7 (Notice of Payment).

28 e. 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 or  
performance is due or the day a violation occurs and shall continue to accrue through the date of  
payment or the final day of correction of the noncompliance or completion of the activity.  
Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for  
separate violations of this Consent Decree.

15. 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.



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

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

9 **VIII. COVENANTS BY PLAINTIFF**

10 18. Covenants for Settling Defendant by United States. Except as specifically  
11 provided in Section IX (Reservation of Rights by United States), the United States covenants not  
12 to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of  
13 CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take  
14 effect upon the Effective Date. These covenants are conditioned upon the satisfactory  
15 performance by Settling Defendant of its obligations under this Consent Decree. These  
16 covenants extend only to Settling Defendant and do not extend to any other person.

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

18 19. The United States reserves, and this Consent Decree is without prejudice to, all  
19 rights against Settling Defendant with respect to all matters not expressly included within  
20 Paragraph 18 (Covenants for Settling Defendant by United States). Notwithstanding any other  
21 provision of this Consent Decree, the United States reserves all rights against Settling Defendant  
22 with respect to:

- 23 a. liability for failure of Settling Defendant to meet a requirement of this  
24 Consent Decree;
- 25 b. liability for costs incurred or to be incurred by the United States that are  
26 not within the definition of Past Response Costs;
- 27 c. liability for injunctive relief or administrative order enforcement under  
28 Section 106 of CERCLA, 42 U.S.C. § 9606;
- 29 d. criminal liability; and
- 30 e. liability for damages for injury to, destruction of, or loss of natural  
31 resources, and for the costs of any natural resource damage assessments.

32 **X. COVENANTS BY SETTLING DEFENDANT**

33 20. Covenants by Settling Defendant. Settling Defendant covenants not to sue and  
34 agree not to assert any claims or causes of action against the United States or its contractors or  
35 employees, with respect to Past Response Costs and this Consent Decree, including but not  
36 limited to:

1 a. any direct or indirect claim for reimbursement from the EPA Hazardous  
2 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;

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

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

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

10 22. Waiver of Claims by Settling Defendant.

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

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

18 (2) Ability to Pay Waiver. For response costs relating to the Sites  
19 against any person that has entered or in the future enters into a final settlement based on  
20 limited ability to pay with EPA with respect to the Sites.

21 b. Exceptions to Waivers.

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

25 (2) The waiver under Paragraph 22.a(1) (De Micromis Waiver) shall  
26 not apply to any claim or cause of action against any person otherwise covered by such  
27 waiver if EPA determines that: (i) the materials containing hazardous substances  
28 contributed to the Sites by 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 Sites; or (ii) such person has failed to comply with any

1 information request or administrative subpoena issued pursuant to Section 104(e) or  
2 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of  
3 RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the  
4 performance of a response action or natural resource restoration with respect to the Sites;  
or if (iii) such person has been convicted of a criminal violation for the conduct to which  
the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

#### 5 XI. EFFECT OF SETTLEMENT/CONTRIBUTION

6 23. Except as provided in Paragraph 22 (Waiver of Claims by Settling Defendant),  
7 nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of  
8 action to, any person not a Party to this Consent Decree. Except as provided in Section X  
9 (Covenants by Settling Defendant), each of the Parties expressly reserves any and all rights  
10 (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses,  
11 claims, demands, and causes of action that it may have with respect to any matter, transaction, or  
12 occurrence relating in any way to the Sites against any person not a Party hereto. Nothing in this  
Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3)  
of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional  
response costs or response action and to enter into settlements that give rise to contribution  
protection pursuant to Section 113(f)(2).

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

18 25. The Parties further agree, and by entering this Consent Decree this Court finds,  
19 that the complaint filed by the United States in this action is a civil action within the meaning of  
20 Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes  
21 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).

22 26. Settling Defendant shall, with respect to any suit or claim brought by it for  
23 matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior  
24 to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or  
25 claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in  
26 writing within 10 days after service of the complaint or claim upon it. In addition, Settling  
Defendant shall notify EPA and DOJ within 10 days after service or receipt of any Motion for  
Summary Judgment, and within 10 days after receipt of any order from a court setting a case for  
trial, for matters related to this Consent Decree.

27 27. In any subsequent administrative or judicial proceeding initiated by the United  
28 States or injunctive relief, recovery of response costs, or other relief relating to the Sites, Settling  
Defendant shall not assert, and may not maintain, any defense or claim based upon the principles  
of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses

1 based upon any contention that the claims raised by the United States in the subsequent  
2 proceeding were or should have been brought in the instant case; provided, however, that nothing  
3 in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VIII.

## 4 XII. PROPERTY REQUIREMENTS

5 28. In the event of any Transfer of the Affected Property, unless the United States  
6 otherwise consents in writing, Settling Defendant shall continue to comply with its obligations  
7 under the Consent Decree.

8 29. Notwithstanding any provision of the Consent Decree, the United States retains  
9 all of its access authorities and rights, as well as all of its rights to require institutional controls,  
10 including enforcement authorities related thereto, under CERCLA, RCRA, and any other  
11 applicable statute or regulations.

## 12 XIII. ACCESS TO INFORMATION

13 30. Settling Defendant shall provide to EPA, upon request, copies of all records,  
14 reports, documents, and other information (including records, reports, documents, and other  
15 information in electronic form) (hereinafter referred to as "Records") within their possession or  
16 control or that of their contractors or agents relating to activities at the Sites.

### 17 31. Privileged and Protected Claims.

18 a. Settling Defendant may assert that all or part of a Record is privileged or  
19 protected as provided under federal law, provided it complies with Paragraph 31.b, and except as  
20 provided in Paragraph 31.c.

21 b. If Settling Defendant asserts a claim of privilege or protection, it shall  
22 provide Plaintiff with the following information regarding such Record: its title; its date; the  
23 name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of  
24 each recipient; a description of the Record's contents; and the privilege or protection asserted. If  
25 a claim of privilege or protection applies only to a portion of a Record, Settling Defendant shall  
26 provide the Record to Plaintiff in redacted form to mask the privileged or protected information  
27 only. Settling Defendant shall retain all Records that they claim to be privileged or protected  
28 until the United States has had a reasonable opportunity to dispute the privilege or protection  
claim and any such dispute has been resolved in Settling Defendant's favor.

29 c. Settling Defendant may make no claim of privilege or protection  
30 regarding:

31 (1) any data regarding the Sites, including but not limited to, all  
32 sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or  
33 engineering data, or the portion of any other Record that evidences conditions at or  
34 around the Sites; or

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

37 32. Business Confidential Claims. Settling Defendant may assert that all or part of a  
38 Record submitted to Plaintiff under this Section or Section XIV (Retention of Records) is

1 business confidential to the extent permitted by and in accordance with Section 104(e)(7) of  
2 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendant shall segregate  
3 and clearly identify all Records or parts thereof submitted under this Consent Decree for which  
4 Settling Defendant asserts a business confidentiality claim. Records submitted to EPA  
5 determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R.  
6 Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to  
7 EPA, or if EPA has notified Settling Defendant that the Records are not confidential under the  
8 standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be  
9 given access to such Records without further notice to Settling Defendant.

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

#### 13 **XIV. RETENTION OF RECORDS**

14 34. Until the Probate proceeding terminates, Settling Defendant shall preserve and  
15 retain all non-identical copies of Records now in its possession or control or that come into its  
16 possession or control, that relate in any manner to its liability under CERCLA with respect to the  
17 Sites, as well as all Records that relate to the liability of any other person under CERCLA with  
18 respect to the Sites. Each of the above record retention requirements shall apply regardless of any  
19 corporate retention policy to the contrary.

20 35. Within 90 Days of the conclusion of the record retention period, Settling  
21 Defendant shall deliver any such Records to EPA.

22 36. Settling Defendant certifies that, to the best of its knowledge and belief, after  
23 thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any  
24 Records (other than identical copies) relating to its potential liability regarding the Sites since  
25 notification of potential liability by the United States or the State and that it has fully complied  
26 with any and all EPA and State requests for information regarding the Sites pursuant to Sections  
27 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of  
28 RCRA, 42 U.S.C. § 6927, and state law.

#### 29 **XV. NOTICES AND SUBMISSIONS**

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

36 **As to DOJ by email:** eescdcopy.enrd@usdoj.gov  
37 Re: DJ# 90-11-3-10880

1 **As to DOJ by mail:** EES Case Management Unit  
2 U.S. Department of Justice  
3 Environment and Natural Resources Division  
4 P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-10880

5 **As to EPA:** Kathi Moore  
6 Section Chief  
7 Case Development and Cost Recovery  
8 75 Hawthorne Street  
San Francisco, CA 94105

9 **As to Settling Defendant:** Scott Grossman  
10 The Grossman Law Firm, A.P.C.  
11 6370 Magnolia Avenue, Suite 320  
Riverside, CA 92506

12 **XVI. RETENTION OF JURISDICTION**

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

15 **XVII. INTEGRATION/APPENDICES**

16 39. This Consent Decree and its appendices constitute the final, complete and  
17 exclusive agreement and understanding among the Parties with respect to the settlement  
18 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. "Appendix A" is the map of the Sites.

19 **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

20 40. This Consent Decree shall be lodged with the Court for a period of at least  
21 30 days for public notice and comment. The United States reserves the right to withdraw or  
22 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.

23 41. If for any reason this Court should decline to approve this Consent Decree in the  
24 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.

25 **XIX. SIGNATORIES/SERVICE**

26 42. Each undersigned representative of a Settling Defendant and the Deputy Chief,  
27 U.S. Department of Justice, Environment and Natural Resources Division, Environmental  
28 Enforcement Section 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.

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

4 44. Settling Defendant shall identify, on the attached signature page, the name and  
5 address of an agent who is authorized to accept service of process by mail on behalf of that Party  
6 with respect to all matters arising under or relating to this Consent Decree. Settling Defendant  
7 hereby agrees to accept service in that manner and to waive the formal service requirements set  
8 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this  
9 Court, including but not limited to, service of a summons. The Parties agree that Settling  
10 Defendant need not file an answer to the complaint in this action unless or until the Court  
11 expressly declines to enter this Consent Decree.

12 **XX. FINAL JUDGMENT**

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

17 SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.

18 \_\_\_\_\_  
19 United States District Judge

Signature Page for Consent Decree Regarding Banaire Enterprises Superfund Site and Banaire Radium Trailers Superfund Site

**FOR THE UNITED STATES OF AMERICA:**

1  
2  
3  
4 1/9/17  
5 Dated



ELLEN M. MAHAN  
Deputy Chief  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611



PATRICIA L. HURST  
Senior Counsel  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20044-7611

28



Signature Page for Consent Decree Regarding Banaire Enterprises Superfund Site and Banaire Radium Trailers Superfund Site

12/22/2016

Dated



ENRIQUE MANZANILLA  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

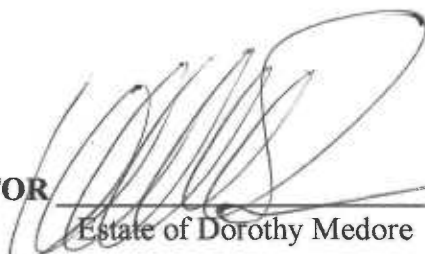
12/15/2016

Dated



MICHELE BENSON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Signature Page for Consent Decree Regarding Banaire Enterprises Superfund Site and Banaire Radium Trailers Superfund Site

FOR  :  
Estate of Dorothy Medore

11/1/2016  
Dated

Marilyn Sabens  
Name (print):  
Title: Executor  
Address: 915 Jordan Court  
Nipomo, CA 93444

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
email: \_\_\_\_\_

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