

1 WE HEREBY CONSENT to the entry of this Decree:

Steven A. Werman

Date: 10/6/96

2
3 STEVEN A. WERMAN
4 Assistant Administrator for
5 Enforcement and Compliance Assurance
6 U.S. Environmental Protection Agency
7 Washington, D.C.

Felicia Marcus

Date: 6 August 1996

8 FELICIA MARCUS
9 Regional Administrator
10 U.S. Environmental Protection Agency,
11 Region 9
12 San Francisco, CA

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1 WE HEREBY CONSENT to the entry of this Decree:

2 FOR THE STATE AGENCIES:

3 CALIFORNIA DEPARTMENT OF FISH &
4 GAME/OFFICE OF OIL SPILL
5 PREVENTION AND RESPONSE

6

7

PETER F. BONTADELLI
Administrator

Date: _____

8

9 CALIFORNIA DEPARTMENT OF PARKS &
10 RECREATION

11

12

DONALD W. MURPHY
Director

Date: _____

13

14

15 CALIFORNIA REGIONAL WATER QUALITY
16 CONTROL BOARD-LOS ANGELES REGION

17

18

Dr. ROBERT GHIRELLI
Executive Officer

Date: _____

19

20 CALIFORNIA STATE LANDS COMMISSION

21

Robert C. Hight
ROBERT C. HIGHT
Executive Officer

Date: 6-28-96

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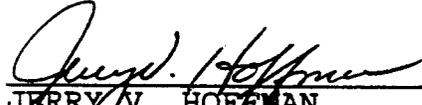
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WE HEREBY CONSENT to the entry of this Decree:

FOR BERRY PETROLEUM COMPANY:



JERRY V. HOFFMAN
President
BERRY PETROLEUM COMPANY
a Delaware corporation

Date: 6/19/96

APPROVED AS TO FORM:

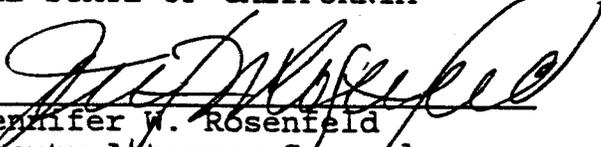
NORDMAN, CORMANY, HAIR & COMPTON

By: 

Laura K. McAvoy
Attorney for Berry Petroleum
Company

Date: June 24, 1996

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA

By: 

Jennifer W. Rosenfeld
Deputy Attorney General

Date: 10/24/96

1 EXHIBIT 1

2 McGRATH LAKE TRUST

3 This Trust is established with the National Fish and
4 Wildlife Foundation (the "Foundation") by Berry Petroleum Company
5 (the "Settlor"), for the benefit of the State Natural Resources
6 Trustees, the California Department of Fish and Game and the
7 California Department of Parks and Recreation.

8 I. DEFINITIONS

9 1. The "Consent Decree" means the Consent Decree in the
10 Federal District Court for the Central District of California
11 styled United States, et al. v. Berry Petroleum Company,
12 resolving claims regarding the McGrath Lake oil spill.

13 2. The "Court" means the United States District Court for
14 the Central District of California.

15 3. The "Foundation" means the National Fish and Wildlife
16 Foundation.

17 4. "MOU" means the Memorandum of Understanding entered
18 into in connection with the McGrath Lake oil spill by the
19 California Department of Fish and Game, the California Department
20 of Parks and Recreation and the United States Fish and Wildlife
21 Service.

22 5. "Natural Resource" and "Natural Resources" mean land,
23 fish, wildlife, biota, air, water, ground water, drinking water
24 supplies, and other such resources belonging to, managed by, held
25 in trust by, appertaining to, or otherwise controlled by the
26 United States or the State of California.

27 6. The "Natural Resource Trustees" means the California
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1 Department of Fish and Game and the California Department of
2 Parks and Recreation.

3 7. The "Natural Resource Trustee Council" or "NRT Council"
4 means the group of representatives of each of the California
5 Natural Resource Trustees and the United States Fish and Wildlife
6 Service, selected pursuant to a Memorandum of Understanding
7 entered into by the Natural Resource Trustees.

8 8. "Restoration Project" means any action to restore or
9 rehabilitate any injured, lost, damaged, or destroyed Natural
10 Resource (and the services provided by that Natural Resource), or
11 any action that replaces or acquires the equivalent of, the
12 injured, lost, or destroyed Natural Resource and affected
13 services injured, lost, or destroyed as a result of rupture of an
14 oil pipeline occurring in Berry Petroleum Corporation's West
15 Montalvo Oil Field Facilities in December, 1993, creating
16 contamination that resulted in the release and migration of crude
17 oil into the soil and surface waters (collectively "December 1993
18 Oil Discharge") in and around McGrath Lake, McGrath State Beach,
19 the Santa Clara River Estuary and the Pacific Ocean at McGrath
20 State Beach, Ventura County, State of California.

21 9. The "Segregated Account" means the account in which the
22 Foundation holds funds subject to the McGrath Lake Trust.

23 10. "Settlement Funds" means the money paid into this Trust
24 pursuant to a requirement in the Consent Decree.

25 11. The "State" means the California Department of Fish
26 and Game and the California Department of Parks and Recreation.

27 12. The "Trust" means the McGrath Lake Trust established by
28

1 this Agreement.

2 13. The "Trustee" means the trustee of the McGrath Lake
3 Trust.

4 14. The "United States" means the United States of America,
5 its departments and agencies.

6 II. PURPOSE

7 15. The purpose of this Agreement is to establish the Trust
8 and to appoint the Foundation as its Trustee. This Agreement
9 outlines the terms under which the Foundation shall exercise this
10 function.

11 16. The purpose of the Trust is to receive, manage and
12 disburse funds, in accordance with the direction of the NRT
13 Council through their designated representative(s), for certain
14 Restoration Projects to Restore Natural Resources injured as a
15 result of the December 1993 Oil Discharge.

16 III. SETTLOR

17 17. The Settlor, Berry Petroleum Company, shall fund this
18 Trust pursuant to a requirement in the Consent Decree. With the
19 exception of the obligation to establish and fund this Trust,
20 Settlor shall have no rights, duties, obligations, fiduciary or
21 financial responsibilities of any kind in connection with this
22 Trust. Without limiting the foregoing, Settlor shall have no
23 rights, duties, obligations, fiduciary or financial
24 responsibilities with respect to the management of this Trust,
25 the use of funds held in this Trust, property acquired with Trust
26 funds, or Natural Resource Restoration Projects funded by the
27 Trust. This Trust is irrevocable and Settlor retains no interest

1 whatsoever in the corpus or proceeds of this Trust.

2 IV. TRUSTEE

3 18. The Foundation shall be Trustee of the Trust.

4 19. The Court shall have the power to appoint a replacement
5 Trustee if the office of the Trustee becomes vacant.

6 20. The Court shall have the power to remove the Trustee if
7 at any time it determines that the Trustee is not performing its
8 duties in a manner that is consistent with the purposes of the
9 Trust. The State shall have the right to ask the Court to remove
10 the Trustee or to terminate the Trust.

11 21. In addition to the powers expressly granted to the
12 Trustee by this Agreement, the Trustee shall have all other
13 powers granted to Trustees under the laws of the State of
14 California, except as otherwise provided in this Agreement.

15 22. The Foundation submits to the jurisdiction of the U.S.
16 District Court for the Central District of California for
17 purposes of enforcement, administration, and supervision of the
18 Trust.

19 23. Unless otherwise agreed by the NRT Council, the
20 Foundation shall not hold an interest in any real or personal
21 property acquired with Settlement Funds nor shall it acquire,
22 manage or dispose of such property.

23 24. Settlement Funds shall not be deemed federal funds
24 within the meaning of 16 U.S.C. § 3703(e).

25 V. BENEFICIARIES

26 25. The People of the State of California are the
27 beneficiaries of the Trust.

1 VI. DUTIES OF TRUSTEE

2 26. The Trustee shall maintain funds subject to the Trust
3 in a Segregated Account separate from all other Foundation
4 accounts.

5 27. All funds held in the Segregated Account shall be
6 invested as directed by the NRT Council and, in the absence of
7 specific instructions, shall be invested in U.S. Treasury Bills
8 and notes. Interest and earnings accruing to the Segregated
9 Account shall be reinvested in the Segregated Account and used to
10 carry out the purposes of the Trust.

11 28. The Trustee is authorized and obligated to make
12 disbursements of funds from the Segregated Account pursuant to
13 paragraphs 34 and 37 below.

14 29. The Foundation shall appoint an individual, the
15 Foundation Representative, who will represent the Foundation in
16 carrying out its obligations as Trustee under this Agreement.
17 The Foundation shall identify to the NRT Council, in writing, the
18 identity, mailing address, and phone number of the Foundation
19 Representative. Any change in the Foundation Representative
20 shall be communicated to the NRT Council within 10 business days
21 of the change.

22 30. The Trustee shall fund, subject to paragraph 37 below,
23 Restoration Projects as directed by the NRT Council.

24 31. The Trustee shall submit to the NRT Council an annual
25 report, by December 15 of each year, which itemizes all funds
26 maintained, deposited, accrued, and disbursed from the Segregated
27 Account.

1 VII. SELECTION OF AUTHORIZED PROJECTS

2 32. The NRT Council shall, pursuant to the MOU, select
3 Restoration projects to be funded by the Trust.

4 33. The NRT Council shall appoint a representative ("NRT
5 Council Representative") for purposes of communicating with the
6 Foundation regarding management of the Trust and disbursements
7 from the Trust to facilitate Restoration Projects selected by the
8 NRT Council. The NRT Council shall give the Foundation
9 Representative written notice of the name, address, and telephone
10 number of the NRT Council Representative. Any action taken by
11 the Trustee in strict accordance with this Trust Agreement and
12 instructions from the NRT Council Representative shall be
13 considered authorized by the State.

14 34. The Trustee shall make disbursements from the Trust
15 only when the NRT Council Representative has submitted to the
16 Trustee a written authorization for the disbursements approved by
17 the Natural Resource Trustee Council.

18 VIII. PAYMENT OF TRUST EXPENSES AND DISBURSEMENT OF FUNDS

19 35. The Trustee shall receive, at the time funds are
20 transferred to the Trust, an initial administrative overhead
21 reimbursement equal to three percent (3%) of the total funds
22 transferred to the Segregated Account. The uses of these funds
23 include expenses for day to day management of the Trust, initial
24 bank charges for establishment of the Trust and charges for the
25 first year, and for personnel time for tracking, managing, and
26 making disbursement from the Trust. This reimbursement shall be
27 made against the corpus of the Trust. There shall be no

1 liability for payment by the Settlor beyond the \$1,315,000, plus
2 the accrued interest thereon, for natural resource damages
3 required to be paid pursuant to the Consent Decree and Settlement
4 Agreement. The Trustee shall make no charge against the Settlor
5 for the establishment of this Trust, and except as provided in
6 paragraph 34, no additional charges or deductions shall be made
7 against the corpus of the Trust in connection with the
8 administration of the Trust.

9 36. The Trustee will be reimbursed for all reasonable and
10 actual expenses incurred in connection with the satisfaction of
11 its obligations under this Agreement, provided however, that such
12 expenses must be approved in writing as reasonable by the NRT
13 Council. Such expenses would generally be for extraordinary
14 expenses not contemplated to be incurred as part of normal
15 management of the Trust, as set forth in paragraph 35. Bank
16 charges for the Trust after the first year may be paid from
17 interest collected on the Trust, and to the extent not covered by
18 accrued interest, shall be paid pursuant to this paragraph.

19 37. Upon receipt of written approval by the NRT Council to
20 fund Restoration Project(s) pursuant to paragraph 35 above, the
21 Trustee is authorized and obliged to disburse funds in the
22 Segregated Account as directed by the NRT Council Representative.

23 38. Nothing in this Agreement shall create any right or
24 benefit, substantive or procedural, enforceable at law by a party
25 against the Foundation, its officers, employees, or any other
26 person.

27 IX. AMENDMENTS
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1 39. This Agreement may be amended only by written agreement
2 of the Foundation and all of the Natural Resource Trustees, and
3 with approval of the Court that entered the Consent Decree.

4 X. NOTICES

5 40. Notices under this Agreement shall be made in writing
6 and may be given by delivery in person, by mail or by telecopy
7 (fax).

8 Administrator, California Office of
9 Oil Spill Prevention and Response
10 1700 K. Street
11 Suite 250
12 Sacramento, CA 95814

13 41. Notices to the Foundation shall be sent to:

14 Whitney C. Tilt
15 National Fish and Wildlife Foundation
16 1120 Connecticut Ave., NW
17 Washington, D.C. 20036
18 Phone: (202) 857-0166
19 Fax: (202) 857-0162

20 XI. EFFECTIVE DATE

21 42. The Trust shall become effective upon transfer of
22 settlement proceeds to the Trustee pursuant to the Consent
23 Decree.

24 XII. TERMINATION

25 43. The Trust shall terminate when all funds subject to the
26 Trust have been disbursed and the parties agree to termination in
27 writing.

28 FOR SETTLOR

BERRY PETROLEUM CORPORATION

Dated: 6/19/96

By: 
Jerry Y. Hoffman

1 President

2 FOR THE STATE AGENCIES

3 CALIFORNIA DEPARTMENT OF FISH &
4 GAME/OFFICE OF OIL SPILL
5 PREVENTION AND RESPONSE

6 Dated: 17 July 1996

7 By: *Peter F. Bontadelli*
8 Peter F. Bontadelli
9 Administrator

10 CALIFORNIA DEPARTMENT OF PARKS &
11 RECREATION

12 Dated: _____

13 By: _____
14 Donald W. Murphy
15 Director

16 FOR THE NATIONAL FISH AND
17 WILDLIFE FOUNDATION

18 Dated: _____

19 By: _____
20 Whitney C. Tilt

1 President

2 FOR THE STATE AGENCIES

3 CALIFORNIA DEPARTMENT OF FISH &
4 GAME/OFFICE OF OIL SPILL
5 PREVENTION AND RESPONSE

6 Dated: _____

7 By: _____
8 Peter F. Bontadelli
9 Administrator

10 CALIFORNIA DEPARTMENT OF PARKS &
11 RECREATION

12 Dated: 7/10/96

13 By: Donald W. Murphy
14 Donald W. Murphy
15 Director

16 FOR THE NATIONAL FISH AND
17 WILDLIFE FOUNDATION

18 Dated: _____

19 By: _____
20 Whitney C. Tilt

President

FOR THE STATE AGENCIES

CALIFORNIA DEPARTMENT OF FISH &
GAME/OFFICE OF OIL SPILL
PREVENTION AND RESPONSE

Dated: _____

By: _____

Peter F. Bontadelli
Administrator

CALIFORNIA DEPARTMENT OF PARKS &
RECREATION

Dated: _____

By: _____

Donald W. Murphy
Director

FOR THE NATIONAL FISH AND
WILDLIFE FOUNDATION

Dated: 30 October 76

By: _____

Whitney C. Tilt
Whitney C. Tilt

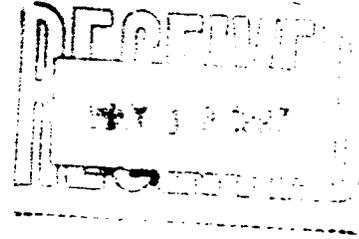
APPENDIX C MEMORANDUM OF UNDERSTANDING

DEPARTMENT OF FISH AND GAME

1416 NINTH STREET
BOX 944209
AMENITO, CA 94244-2090
Telephone (916) 445-9338



May 15, 1997



Mr. Michael J. Spear
Regional Director - Region One
U.S. Department of Interior
Fish and Wildlife Service
911 N.E. Eleventh Avenue
Portland, Oregon 97232-4181

Mr. Donald W. Murphy
District Superintendent
Department of Parks and Recreation
Channel Coast District
1933 Cliff Drive, Suite 27
Santa Barbara, California 93109

Mr. Chuck McKinley
Department of the Interior
U.S. Fish & Wildlife Service
Office of the Solicitor
600 Harrison Street, Suite 545
San Francisco, California 94107-1373

Dear Mssrs. Spear, McKinley, and Murphy:

**McGrath Lake Oil Spill
Trustee Council Memorandum of Understanding (MOU)**

Please find enclosed a fully executed copy of the McGrath Lake Oil Spill Trustee MOU. The United States Fish and Wildlife Service has designated its Natural Resource Trustee (NRT) Council representatives as Ms. Diane Noda, Project Leader, Ventura Field Office (primary) and Mr. Steven Henry, Division of Environmental Contaminants, Ventura Field Office (alternate). Pursuant to section VII of the MOU, each Trustee has twenty (20) days after full execution within which to notify the others of the names, addresses, telephone numbers and facsimile numbers of that Trustee's primary and alternative representatives and designated legal counsel to the NRT Council.

If you have any questions or comments, please feel free to contact either my secretary, Marguerite L. Diaz, at telephone number (916) 324-9799 or me at telephone number (916) 324-9813.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Verrue-Slater".

Katherine Verrue-Slater
Staff Counsel
Office of Spill Prevention
and Response

Enclosure

cc: Mr. Tim LaFranchi
Department of Parks and Recreation

Mr. Roger Helm
U.S. Department of Interior

**MEMORANDUM OF UNDERSTANDING
RELATING TO
THE McGRATH LAKE OIL SPILL
BETWEEN THE
DEPARTMENT OF FISH AND GAME
OFFICE OF OIL SPILL PREVENTION AND RESPONSE,
THE DEPARTMENT OF PARKS AND RECREATION,
AND
THE U.S. DEPARTMENT OF INTERIOR,
Represented by the U.S. FISH AND WILDLIFE SERVICE**

I. INTRODUCTION

The Memorandum of Understanding (MOU), is between the California Department of Fish and Game (DFG), the California Department of Parks and Recreation (DPR), and the U.S. Department of the Interior represented by the U.S. Fish and Wildlife Service (USFWS) (hereafter referred to individually as the "Trustee" and collectively as the "Trustees"). This MOU is entered into to ensure the coordination and cooperation of the Trustees in restoring, rehabilitating, replacing, and/or acquiring the equivalent of the natural resources injured as a result of the release of oil from the Berry Petroleum Company (Berry) pipeline near McGrath State Beach in Ventura County, California, in December 1993.

II. PARTIES

The following officials, or their designees, are parties to this MOU and act on behalf of the public as Trustees for natural resources under this MOU:

- Administrator
Department of Fish and Game
Office of Oil Spill Prevention and Response
- Director
Department of Parks and Recreation
- Regional Director
United States Fish and Wildlife Service
Region 1
(on behalf of the Secretary of the U.S. Department of the Interior)

III. AUTHORITY

The Trustees enter into this MOU pursuant to the Natural Resources Trustee (NRT) authorities provided to the Trustees by: the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.); the Water Pollution Prevention and Control Act (33 U.S.C. §§ 1251 et seq.); the National Oil and Hazardous Substances Pollution Contingency Plan, Subpart G (40 C.F.R. §§ 300.600 et seq.); Executive Order 12580 (3 C.F.R., 1987 Comp., p. 193, 52 Fed.Reg. 2923 (January 23, 1987)), as amended by Executive Order 12777 (56 Fed.Reg. 54757 (October 19, 1991)), and Executive Order 13016 (61 Fed.Reg. 45871 (August 30, 1996)); the Oil Pollution Act Damage Assessment

Regulations (15 C.F.R. §§ 990 et seq.); the DOI's Natural Resources Damage Assessment Regulations, as amended (43 C.F.R. §§ 11 et seq.), as applicable; and any other applicable law. The DFG also enters into this MOU pursuant to its NRT authority (Fish & G. Code § 1802), and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Gov. Code §§ 8670.1 et seq.).

IV. DEFINITIONS

Whenever the following terms are used in this MOU, they shall have the following meanings:

A. Natural Resource and Natural Resources

"Natural Resource" and "Natural Resources" mean land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the State of California, and the "services" that the resources provided to other natural resources and/or humans.

B. Oil Spill

"Oil Spill" means the release of approximately 2075 barrels of crude oil from a Berry pipeline at the West Montalvo Field near Oxnard, California, in December 1993.

C. Restoration

"Restoration" means any action which restores, replaces, rehabilitates, and/or acquires the equivalent of the Natural Resources and the "services" (as that term is defined at 15 C.F.R. § 990.30 and 43 C.F.R. § 11.14 (nn), as applicable) provided by the Natural Resources that were injured, lost, or destroyed by the Oil Spill.

V. THE SETTLEMENT OF THE OIL SPILL

A settlement of the Oil Spill has been reached with Berry in lieu of litigation and has been embodied in a Consent Decree which was entered by the U.S. District Court for the Central District of California on February 13, 1997. Pursuant to the Consent Decree the defendant paid the sum of \$1,315,000, plus interest, to be dedicated to restoring Natural Resources. Additionally, the Consent Decree required the defendant to pay the sum of \$100,000, plus interest, to the DFG, \$100,000, plus interest, to the DPR, and \$10,000, plus interest, to the USFWS to develop a plan for restoration and for future oversight and monitoring of the restoration plan implementation.

Pursuant to the Consent Decree, \$1,315,000, plus interest, will be maintained in a trust account with the National Fish and Wildlife Foundation (the "McGrath Lake Trust"). The DFG, DPR, and USFWS, as co-equal joint Trustees, commit to the expenditure of the funds set forth in this paragraph, for the design, implementation, permitting, as necessary, and monitoring and oversight of Restoration projects in and around McGrath State Beach. The Trustees shall use said funds for water quality improvement of McGrath Lake, habitat improvements, revegetation, and/or protection of areas in and around McGrath State Beach.

The Trustees have prepared a Restoration Scoping Document (Attachment A) which contains three restoration components: (1) Lake Restoration; (2) Riparian Restoration, and (3) Restoration of Modified Dunes. The Trustees shall prepare a Restoration Plan proposal containing details for specific projects outlined in the Restoration Scoping Document and/or

projects providing similar benefits to the affected resources. The final Restoration Plan will be developed and implemented after providing public notice, opportunity for a hearing, and consideration of all public comments. The Trustees retain the ultimate authority and responsibility to determine the use of funds received for Natural Resource damages in accordance with the provisions of the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.), other relevant Federal and State laws, and the regulations governing use of recoveries for Natural Resource damages.

VI. PURPOSE

The purpose of this MOU is to provide a framework for coordination and cooperation among the trustees in the use of the proceeds from the Oil Spill settlement for water quality improvement of McGrath Lake, habitat improvements, revegetation, and/or protection of areas in and around McGrath State Beach.

VII. ORGANIZATION - NATURAL RESOURCES TRUSTEE COUNCIL AND LEAD TRUSTEES FOR SPECIFIC PROJECTS

To implement this MOU, there is hereby created a Natural Resources Trustee Council (the "NRT Council") to which each of the Trustees will designate one primary representative and at least one alternate representative. Each party to this MOU shall have one vote that shall be cast by the parties' primary representative, or in the absence of the primary representative, by their respective alternate representative.

Within twenty (20) working days after the final execution of this MOU, each Trustee shall notify the other Trustees of the names, addresses, telephone numbers, and facsimile numbers of that Trustee's primary and alternative representatives and designated legal counsel to the NRT Council. Communications regarding the NRT Council business shall be addressed to the primary representatives and, unless the NRT Council directs otherwise, copied to the alternate representatives.

Designated representatives of the DOI's Office of the Solicitor and the legal advisor of the Office of Oil Spill Prevention and Response (OSPR) shall serve as legal counsel to the NRT Council. The NRT Council will also seek advisory participation of other Federal or State agencies, including the California Attorney General's Office, the U.S. Department of Justice, the DOI's Office of Environmental Policy and Compliance, or any other agency as deemed appropriate by the NRT Council.

VIII. DECISION-MAKING

The Trustees agree that, except as specifically delegated to a specific Trustee pursuant to Section IX below, decisions implementing this MOU and the Consent Decree shall require the unanimous approval of the voting NRT Council members. Decisions shall be recorded in writing, either by resolution signed by the parties, or in minutes approved as to content and form by the parties.

In the event that unanimous agreement cannot be reached among the NRT Council members, the matter in dispute will be elevated within the Trustee agencies for resolution. If necessary, the trustees may establish further mechanisms to resolve disputes. The Trustees agree that decision-making deliberations will focus on the trustee's mutual purposes of restoring injured Natural Resources and lost services rather than on individual Trustee control or trusteeship over those resources.

IX. POWERS, DUTIES, AND RESPONSIBILITIES

A. Natural Resources Trustee Council

On behalf of the Trustees, the NRT Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the procedures contained in Section VII above. The NRT Council may take whatever actions the NRT Council, in its discretion, determines are necessary to fulfill the Trust responsibilities of each Trustee under, and to effectuate the purposes of, the Consent Decree and applicable Federal and State law. Any Trustee representative on the NRT Council may consent to a meeting of the full NRT Council. It is expected that the NRT Council, in accordance with applicable laws and policies, may take the following actions, among others, to address the Trustees' Natural Resource trustee responsibilities:

1. **Oversee the development and implementation of the plan for Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes. If such plan includes acquisition, ensure that such acquisition includes any improvements of habitat on these sites necessary to achieve total replacement of Natural Resources lost as a result of the Oil Spill;**
2. **Arrange for the letting of contracts that the NRT Council determines are necessary, with professional consultant(s) or contractor(s), technical or otherwise, best qualified to provide services to the NRT Council;**
3. **Make or oversee all necessary decisions for the management and administration of monies deposited into the McGrath Lake Trust for the purpose of implementing the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;**
4. **Direct the Lead Trustee for the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes, as set forth below in Subsection B, to approve disbursements from the McGrath Lake Trust and to take all steps necessary to effect the disbursements, when so directed by the Trustee Council;**
5. **Select other Restoration projects if: (a) the Lake Restoration and/or Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes described in the final Restoration Plan prove infeasible, impractical, or otherwise not in the public interest; or (b) any funds remain after the successful implementation of the projects described in the final Restoration Plan, provided that such other projects address and have a reasonable geographic and Natural Resource nexus to the injuries caused by the Oil Spill or otherwise meet the requirements of applicable Federal and State law; and**
6. **Delegate specific duties to individual Trustee representatives. Certain duties set out below are hereby delegated to the Lead Trustee for specific projects.**

B. Lead Trustee for the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes

The Lead Trustee for the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes shall be the DPR. The NRT Council primary representative for the DPR or that representative's designee, on behalf of the Lead

Trustee for the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes, shall:

1. Ensure that the \$1,315,000 allocated toward these projects, plus interest thereon, is placed in the McGrath Lake Trust;
2. Ensure that the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes or any other use of funds segregated for these projects, comply with all applicable laws, including the National environmental Policy Act (NEPA) (42 U.S.C.A. §§ 4321 et seq.), the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.), the Costal Zone Management Act (CZMA) (16 U.S.C. § 1451 et seq.), and the California Environmental Quality Act (CEQA) (Pub. Resources Code §§ 21000 et seq.).
3. Provide for the NRT Council's approval a detailed statement of the proposed projects, project schedules, estimated budgets for the life of the projects, including an estimate of any contract, administrative, or overhead costs to be charged to the projects;
4. Obtain the NRT Council's authorization to commence the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
5. Following approval of the NRT Council, direct disbursement of funds from the McGrath Lake Trust to pay costs incurred in connection with the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
6. Oversee, coordinate, and monitor the progress of the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
7. Submit quarterly reports to the NRT Council which shall include a progress report and an estimate of funds spent;
8. Establish and maintain records and relevant documents regarding the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
9. Schedule meetings and prepare an agenda for the NRT Council meetings regarding the Lake Restoration and Habitat Restoration Projects including Riparian Restoration and Restoration of Modified Dunes;
10. Inform the other Trustees of all pertinent developments regarding the projects on a timely basis; and
11. Carry out such other duties as directed by the NRT Council.

C. Lead Administrative Trustee

The Lead Administrative Trustee shall be the DPR. The duties of the NRT Council primary representative of the DPR or that representative's designee, on behalf of the Lead Administrative Trustee, shall include, but are not limited to:

1. Coordinating and monitoring all aspects of the Natural Resource Restoration process not specifically addressed above;

2. Scheduling meetings and preparing an agenda for the NRT Council general meetings;
3. Acting as a central contact point for the NRT Council;
4. Establishing and maintaining records and relevant documents other than those regarding specific Restoration projects; and
5. Carrying out such other duties as directed by the NRT Council.

The Lead Administrative Trustee may delegate any of its duties to another Trustee with the concurrence of the NRT Council.

X. CONFIDENTIALITY

The Trustees agree that it is generally in the public interest that scientific data arising out of their review of the injury to Natural Resources caused by the Oil Spill be made public. Therefore, such data shall be made public if publication will not prejudice assessment or recovery efforts in this or other legal actions. Wherever possible, public sharing of scientific data will be the general policy of the Trustees. However, all parties to this MOU recognize that oral and written communications that are privileged attorney-client communications, attorney work product, or protected by other applicable privileges (or a combination thereof) ("Privileged Communications") will be protected from disclosure to the maximum extent possible under applicable Federal and State law.

The parties to this MOU further agree that whenever a request for production of any written communication is received pursuant to any applicable Federal or State law, the request will be forwarded for response to the Trustee to which any privilege applies or whose representatives originally generated or contributed the record requested. Nothing contained herein shall be construed as prohibiting or restraining a Trustee or the NRT Council from agreeing to release any record. Nothing contained herein shall be construed as requiring a Trustee or the NRT Council to release any record.

XI. RESERVATION OF RIGHTS

Nothing in this MOU is to imply that any signatory government is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over Natural Resources.

XII. LIMITATION

Nothing in this MOU shall be construed as obligating the United States, the State of California or any other public agency, their officers, agents or employees, to expend any funds in excess of the funds deposited into the McGrath Lake Trust and/or appropriations authorized by law.

XIII. THIRD-PARTY CHALLENGES OR APPEALS

Nothing in this MOU may be the basis of any third-party challenges or appeals. Nothing in this MOU creates any rights or causes of action in persons not parties to this MOU.

XIV. MODIFICATION OF AGREEMENT

Modification of this MOU must be in writing and approved by the Trustees currently parties to this MOU.

XV. TERMINATION

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. If at any time the trustees determine that the purposes set forth in this MOU have been satisfied, the MOU may be terminated. In the event a Trustee withdraws from the MOU, such withdrawal must be in writing and provided to the other parties to this MOU at least thirty (30) days in advance of the withdrawal.

In the event of the withdrawal of a Trustee and/or the termination of this MOU, the NRT Council shall request a full and complete accounting from the National Fish and Wildlife Foundation of all restoration funds received, deposited, held disbursed, managed, expended, or otherwise controlled by the trustee for the McGrath Lake Trust.

XVI. EXECUTION: EFFECTIVE DATE

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU and be retained by the Lead Administrative Trustee. The date of execution shall be the date of the signature of the last Trustee to sign the MOU.

SIGNATURES:

Dated: 5/5/97, 1997

UNITED STATES FISH AND WILDLIFE SERVICE

By: 
for MICHAEL J. SPEAR
Regional Director
Region One

Dated: 21 March, 1997

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: Pete Bontadelli
PETE BONTEDELLI
Administrator
Office of Oil Spill Prevention and Response

Dated: 4/14/97, 1997

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

By: Donald W. Murphy
DONALD W. MURPHY
Director

KVS:mld
FILE: ExFile, OSPR, OSPR-RF, Chron, Subject File

APPENDIX D PUBLIC COMMENTS



State of California • The Resources Agency

Arnold Schwarzenegger, Governor

DEPARTMENT OF PARKS AND RECREATION
Channel Coast District
911 San Pedro Street
Ventura, California 93001
(805) 585-1850 Fax (805) 585-1857

Ruth Coleman, Director

October 21, 2004

Mr. Robert E. Boston, EH&S Manager
Berry Petroleum Company
5201 Truxtun Ave., Suite 300
Bakersfield, CA 93309-0640

Re: McGrath State Beach Area Draft Restoration Plan

Dear Mr. Boston,

In follow-up to our recent phone conversation, I would again like to thank you for your written comments on the McGrath State Beach Area Draft Restoration Plan and Environmental Assessment. I hope our conversation helped to clarify any misunderstandings and affirm the Trustee Council's desire to work cooperatively with our neighbors as we begin the implement of restoration actions.

If you have any further questions or concerns, please feel free to contact me at (805) 585-1850.

Thank you again for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Richard A. Rojas".

Richard A. Rojas
Channel Coast District Superintendent
McGrath Trustee Council Lead Trustee



DEPARTMENT OF PARKS AND RECREATION
Channel Coast District
911 San Pedro Street
Ventura, California 93001
(805) 585-1850 Fax (805) 585-1857

Ruth Coleman, Director

October 21, 2004

Robin Blanchfield
Energy and Ocean Resources
45 Fremont St. Suite 2000
San Francisco, CA 94105

Re: McGrath State Beach Area Draft Restoration Plan

Dear Ms. Blanchfield,

On behalf of the McGrath Trustee Council, I would like to thank you for reviewing the McGrath State Beach Area Draft Restoration Plan and Environmental Assessment, and for submitting your written comments. Your comments provide valuable input that will assist the Trustees in selecting appropriate restoration alternatives and making final changes to the Restoration Plan and Environmental Assessment.

If you have questions or would like further information, please contact Barbara Fosbrink at (805) 585-1848 or bfosb@parks.ca.gov.

Thank you again for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Richard A. Rojas".

Richard A. Rojas
Channel Coast District Superintendent
McGrath Trustee Council Lead Trustee



DEPARTMENT OF PARKS AND RECREATION
Channel Coast District
911 San Pedro Street
Ventura, California 93001
(805) 585-1850 Fax (805) 585-1857

Ruth Coleman, Director

October 21, 2004

Shirley Birosik
California Regional Water Quality Control Board
Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Re: McGrath State Beach Area Draft Restoration Plan

Dear Ms. Birosik,

On behalf of the McGrath Trustee Council, I would like to thank you for reviewing the McGrath State Beach Area Draft Restoration Plan and Environmental Assessment, and for submitting your written comments. Your comments provide valuable input that will assist the Trustees in selecting appropriate restoration alternatives and making final changes to the Restoration Plan and Environmental Assessment.

If you have questions or would like further information, please contact Barbara Fosbrink at (805) 585-1848 or bfosb@parks.ca.gov.

Thank you again for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Richard A. Rojas".

Richard A. Rojas
Channel Coast District Superintendent
McGrath Trustee Council Lead Trustee



DEPARTMENT OF PARKS AND RECREATION
Channel Coast District
911 San Pedro Street
Ventura, California 93001
(805) 585-1850 Fax (805) 585-1857

Ruth Coleman, Director

October 21, 2004

Mr. Chris Stephens, Planning Director
Ventura County Planning Division
L1740
800 South Victoria Avenue
Ventura, CA 93009

Re: McGrath State Beach Area Draft Restoration Plan

Dear Mr. Stephens,

On behalf of the McGrath Trustee Council, I would like to thank you for reviewing the McGrath State Beach Area Draft Restoration Plan and Environmental Assessment, and for submitting your written comments. Your comments provide valuable input that will assist the Trustees in selecting appropriate restoration alternatives and making final changes to the Restoration Plan and Environmental Assessment.

If you have questions or would like further information, please contact Barbara Fosbrink at (805) 585-1848 or bfosb@parks.ca.gov.

Thank you again for your time and consideration.

Sincerely,

A handwritten signature in blue ink that reads "Richard A. Rojas".

Richard A. Rojas
Channel Coast District Superintendent
McGrath Trustee Council Lead Trustee