

Guadalupe Settlement Funding Criteria:

The blueprint must consider the seven criteria adopted by the Water Board in 1999. The first four criteria are included as a part of the Guadalupe settlement. The Guadalupe Settlement Agreement Criteria was signed July 1998 (See conditions page four of Settlement Agreement attached). The Settlement Agreement allows the Water Board to modify these criteria from time to time. The criteria are as follows:

1. **Geographic Nexus:** An evaluation of a projects location relative to the Guadalupe Oilfield. The Guadalupe Oilfield property is located on the Santa Barbara-San Luis Obispo County line;
2. **Waste Type or Violation:** Projects are given credit under this criterion if they share a petroleum component similar to the oilfield discharge;
3. **Beneficial Use Protection:** Projects that protect or restore beneficial uses of water that were affected by the Guadalupe Oil Field discharges are given credit under this criteria. Those beneficial uses included, drinking water and agricultural supply (present or potential water supplies), aquatic habitat (fresh and saline) and aquatic endangered species. Additionally, beneficial uses not specifically identified in the settlement will also be restored or protected through the Fund blueprint projects;
4. **Institutional Stability and Capacity:** This is a measure of a project proponent's ability to complete the funded project;

Additional Water Board Criteria adopted through Water Board Resolution No. 99-02, May 1999 (See conditions page one Resolution No. 99-02 attached).

5. **Water Quality Focus:** All projects must directly improve or study water quality. This is a specific requirement of the settlement for all projects receiving money from the Fund. Activities such as public awareness projects and watershed

management facilitation services (e.g., watershed coordinators) improve water quality and therefore meet this criterion. (See, *State Water Resources Control Board Water Quality Enforcement Policy*, §IX.C(b).)

6. **Leveraged Funding:** Projects that use Water Board funding as seed money to garner additional money or resources, and create higher value projects, are given credit under this criteria. Because we will be drafting the scope of work and project cost proposal, we will require that leveraging exists for each project; and
7. **Region-wide use or benefit:** A project may benefit both a local geographic area and have broader application throughout the region or statewide. Successful development of the Sanctuary Model, completion of the Fund blueprint projects, and implementation of the watershed management plans will result in addressing, on a small scale, one of the largest water quality problems confronting this region and the state, nonpoint source pollution from agriculture.

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**GUADALUPE OIL FIELD SETTLEMENT
WATER QUALITY PROJECT TRUST**

This Trust is established with the National Fish and Wildlife Foundation (the "Foundation") by Unocal for the benefit of the California Regional Water Quality Control Board, Central Coast Region ("RWQCB") on behalf of the People of the State of California.

PURPOSE

1. The purpose of this Agreement is to establish the Guadalupe Oil Field Settlement Water Quality Project Trust ("Trust") and to appoint the Foundation as its Trustee. This Agreement outlines the terms under which the Foundation shall exercise this function.

2. The purpose of the Trust is to receive, manage and disburse funds, in accordance with the direction of the RWQCB for certain water quality projects to be selected by the RWQCB in accordance with the provisions of this Trust.

3. This Trust is created pursuant to the Settlement Agreement and Judgment reached by the parties People v. Unocal, San Luis Obispo County Superior Court No. CV 075194 concerning diluent (a type of petroleum product) discharges to soil, ground water and surface waters including the Santa Maria River and Estuary and the Pacific Ocean at Guadalupe Oil Field by Unocal. ("Stipulated Judgment"). The Stipulated Judgment requires Unocal to undertake certain site investigation and remediation activities and to make monetary payments, which include, among other things, funding supplemental environmental projects that benefit water quality. This Trust is created in order to administer the funds for the supplemental environmental projects to be administered by the RWQCB. For the purpose of this Trust, the term "settlement funds" means the

4. For the purpose of this Trust the term "water quality projects" means projects that directly benefit or study ground water or surface water quality and the beneficial use of ground water or surface water. Types of projects that would fall within this definition include, but are not limited to: water quality/water pollution monitoring programs (including long term regional monitoring), studies or investigations; treatment of polluted soils, ground water or

1 surface water; restoration of and augmentation of aquatic and riparian and watershed habitat;
2 water pollution prevention; wetlands protection, studies, investigations, restoration, or
3 augmentation of marine and coastal habitat and waters; enhancement, restoration, or creation of
4 wetlands, aquatic habitat, and marine habitat; and conservation easement purchase, improvement
5 and management needed to protect or improve water quality or the beneficial uses of ground
6 water or surface water; study water quality impacts on endangered species (wildlife and flora),
7 address water rights for aquatic or wildlife habitat, municipal supply or other beneficial uses as
8 a water quality issue, projects to mitigate the impacts of water pollution; stream augmentation;
9 waste water reclamation; and planning, feasibility studies, oversight and other activities needed
10 to support the projects that have been selected for funding, including the costs of the RWQCB
11 incurred in the selection of projects for funding.

12 **SETTLOR**

13 5. Unocal shall fund this Trust with certain settlement funds pursuant to a
14 requirement in the Stipulated Judgment. With the exception of the obligation to establish this
15 Trust, Unocal shall have no rights, duties, obligations, fiduciary or financial responsibilities of
16 any kind in connection with this Trust. Without limiting the foregoing, Unocal shall have no
17 rights, duties, obligations, fiduciary or financial responsibilities with respect to the management
18 of this Trust, the use of funds held in this Trust, property acquired with Trust funds, or water
19 quality projects funded by the Trust. This Trust is irrevocable and Unocal retains no interest
20 whatsoever in the corpus or proceeds of this Trust.

21 **TRUSTEE**

22 6. The Foundation shall be Trustee of the Trust.
23 7. The Foundation and/or any successors appointed by RWQCB, submits to the
24 jurisdiction of the San Luis Obispo County Superior and Municipal Courts ("the Court") for
25 purposes of enforcement and supervision of the Trust.
26 8. The RWQCB shall have the power to appoint a replacement Trustee if the office
27 of the Trustee becomes vacant.

1 9. The RWQCB shall have the power to remove the Trustee if at any time it
2 determines that the Trustee is not performing its duties in a manner that is consistent with the
3 purposes of the Trust. The RWQCB shall have the right to ask the Court to remove the Trustee
4 or to terminate the Trust. The Foundation may resign as Trustee at any time for cause upon 90
5 days written notice to RWQCB. If the Foundation resigns, the RWQCB shall appoint a new
6 Trustee or petition the Court to appoint a new Trustee and the Foundation shall transfer any and
7 all moneys in the restricted account and all necessary records to the new Trustee as specified by
8 the RWQCB and shall promptly provide the RWQCB and new Trustee with an accounting of
9 the status of the Trust. The change in Trustee shall not otherwise alter the terms of the Trust.

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

13 11. Unless otherwise agreed by the RWQCB, the Foundation shall not hold an interest
14 in any real or personal property acquired with settlement funds nor shall it acquire, manage or
15 dispose of such property.

16 12. The settlement funds shall not be deemed federal funds within the meaning of 16
17 U.S.C. § 3703(e) and shall not be deemed state moneys within the meaning of California
18 Government Code section 16305.2.

19 DUTIES OF THE TRUSTEE

20 13. The Trustee shall maintain funds subject to the Trust in a Segregated Account
21 separate from all other Foundation accounts.

22 14. All funds held in the Segregated Account shall be invested as directed by the
23 RWQCB and, in the absence of specific instructions, shall be invested in U.S. Treasury Bills
24 and notes. Interest and earnings accruing to the Segregated Account shall be reinvested in the
25 Segregated Account and used to carry out the purpose of the Trust.

26 15. The Trustee is authorized and obligated to make disbursements of funds from the
27 Segregated Account pursuant to the requirements of this Trust document.

1 16. The Foundation shall appoint an individual, the Foundation Representative, who
2 will represent the Foundation in carrying out its obligations as Trustee under this Agreement.
3 The Foundation shall identify to the RWQCB, in writing, the identity, mailing address, and
4 phone number of the Foundation Representative. Any change in the Foundation Representative
5 shall be communicated to the RWQCB within 10 business days of the change.

6 17. The Trustee shall fund, subject to paragraph 19, below, water quality projects
7 (including reimbursement to the RWQCB for selection, design, implementation, permitting (as
8 necessary), monitoring and oversight associated with the funded projects) as directed by the
9 RWQCB.

10 18. The Trustee shall submit to the RWQCB an annual report, by December 15 of
11 each year, which itemizes all funds maintained, deposited, accrued, and disbursed from the
12 Segregated Account. The Trustee shall also provide the RWQCB any special periodic reports
13 of the Segregated Account's financial status upon request by the RWQCB.

14 SELECTION OF AUTHORIZED PROJECTS

15 19. The RWQCB, at public meetings, shall select water quality projects to be funded
16 by the Trust. Prior to selection, the RWQCB shall seek review and comment regarding projects
17 proposed for funding from the California Department of Fish and Game and the California State
18 Coastal Conservancy. The RWQCB may select for funding only water quality projects as
19 defined in paragraph 4, above. The RWQCB may also be reimbursed for selection, design,
20 implementation, permitting (as necessary), monitoring and oversight associated with the funded
21 projects. The RWQCB shall consider the following criteria in selecting water quality projects
22 for funding: 1) Geographical nexus (Santa Maria watershed, Santa Maria Ground Water Basin,
23 Nipomo Dunes, Near Coastal Waters); 2) Waste type nexus (petroleum); 3) Beneficial use nexus
24 (drinking water and agricultural supply (present/potential water supplies), aquatic habitat (fresh
25 and saline) and aquatic endangered species); 4) Institutional stability and capacity of the
26 recipients. Projects will be ranked based on the criteria, although greater weight will be given
27 to geographical criteria, and funding recipients must demonstrate sufficient institutional stability

1 and capacity to carry out the project. After the first round of project selection, the RWQCB
2 may review and modify these criteria from time to time. The RWQCB may only select projects
3 to be implemented within its geographical jurisdiction. The RWQCB may select projects that
4 will be implemented by the RWQCB.

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

12 21. The Trustee shall make disbursements from the Trust only when the RWQCB
13 Representative has submitted to the Trustee an original signed written authorization for the
14 disbursements approved by the RWQCB.

15 PAYMENT OF TRUST EXPENSES AND DISBURSEMENT OF FUNDS

16 22. The Trustee shall receive, at the time funds are transferred to the Trust, an initial
17 administrative overhead reimbursement equal to two percent (2%) of the total funds transferred
18 to the Segregated Account. This initial administrative fee will be the sole charge for the cost
19 of day to day management of the Trust, initial bank charges for establishment of the Trust and
20 charges for the first year, and for personnel time for tracking, managing, and making
21 disbursements from the Trust. This initial administrative fee shall be paid from the corpus of
22 the Trust. There shall be no liability for payment by Unocal beyond the money paid pursuant
23 to paragraph 4.3 of the Stipulated Judgment comprised of the following: \$15,000,000.00 for
24 supplemental environmental projects; and half of the interest earned in escrow less escrow fees
25 and half of any amount remaining from the sum designated to pay costs incurred by DFG and/or
26 its designees. The Trustee shall make no charge against Unocal for the establishment of this
27 Trust, and except as provided in paragraph 23, below, no additional charges or deductions shall

1 be made against the corpus of the Trust in connection with the Administration of the Trust.

2 23. The Trustee will be reimbursed for extraordinary expenses not contemplated to
3 be incurred as part of normal management of the Trust, as set forth in paragraph 22, provided
4 such expenses are reasonable and actual expenses approved in writing by the RWQCB. Bank
5 charges for the Trust after the first year may be paid from interest collected on the Trust. For
6 the first three years following deposit of funds into the Trust, annual bank charges shall not
7 exceed .025% of the corpus of the Trust.

8 23. Upon receipt from the RWQCB representative of the written approval by RWQCB
9 to fund water quality projects selected pursuant to paragraph 19 above, the Trustee is authorized
10 and obliged to disburse funds in the Segregated Account as directed by the RWQCB.

11 24. Nothing in this Agreement shall create any rights or causes of action in persons
12 who are not signatories to this Agreement.

13 AMENDMENTS

14 25. This Agreement may be amended only by written agreement of the Foundation
15 and RWQCB.

16 NOTICES

17 26. Notices under this Agreement shall be made in writing and may be given by
18 delivery in person, by mail or by telecopy (fax).

19 27. Notices to the RWQCB shall be sent to:

20 Roger Briggs, Executive Officer
21 Regional Water Quality Control Board, Central Coast Region
22 81 Higuera Street, Suite 200
23 San Luis Obispo, CA 93401-5427
24 Phone: (805) 549-3147
25 Fax: (805) 549-0397

26 28. Notices to the Foundation shall be sent to:

27 Eric Hammerling
National Fish and Wildlife Foundation
116 New Montgomery St., Ste 203
San Francisco, CA 94105
Phone: (415) 778-0999
Fax: (415) 778-0998

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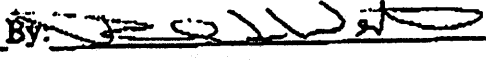
EFFECTIVE DATE

29. The Trust shall become effective upon transfer of settlement funds to the Trustee pursuant to the Stipulated Judgment.

TERMINATION

30. The Trust shall terminate when all funds subject to the Trust have been disbursed and the parties, excluding Unocal, agree to termination in writing.

FOR UNOCAL CORPORATION

Dated: 7/20/98 By: 

Paul T. West
General Manager
California Operating Services

FOR RWOCE

Dated: _____ By: _____

Roger Briggs
Executive Officer

FOR THE FOUNDATION

Dated: _____ By: _____

Amos S. Eno
Executive Director

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FOR UNOCAL CORPORATION

Dated: _____ By: Paul T. West
General Manager
California Operating Services

FOR RWOCEB

Dated: 7-20-98 By: Paul Jagger
Roger Briggs
Executive Officer

FOR THE FOUNDATION

Dated: _____ By: Amos S. Eno
Executive Director

EFFECTIVE DATE

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FOR UNOCAL CORPORATION

Dated: _____ By: Paul T. West
General Manager
California Operating Services

FOR RWOCB

Dated: _____ By: Roger Briggs
Executive Officer

FOR THE FOUNDATION

Dated: 7/20/98 By: Eric Hamann Jr.
for Amos S. Eno
Executive Director

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**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

RESOLUTION NO. 99-02

GUADALUPE OIL FIELD SETTLEMENT WATER QUALITY PROJECTS

WHEREAS, the California Regional Water Quality Control Board, Central Coast Region (hereafter "Regional Board"), finds that:

1. In July 1998, Unocal and several state agencies entered into an agreement to settle the state's damage and penalty claims arising from Unocal's pollution of the Guadalupe Oil Field. Approximately \$15 million from the settlement was dedicated for water quality projects to be selected by the Regional Board. The approximately \$15 million dollars was deposited in the Guadalupe Oil Field Settlement Water Quality Project Trust with the National Fish and Wildlife Foundation acting as Trustee ("Water Quality Project Trust").
2. The settlement set aside an additional \$9 million for restoration projects to be selected by the California State Coastal Conservancy and Fish and Game's Office of Spill Prevention and Response (OSPR). The Regional Board, Coastal Conservancy, and Office of Spill Prevention and Response entered into a memorandum of understanding that defines a process for reviewing projects for funding.
3. In anticipation of the settlement, the Regional Board sent a letter on February 25, 1998, to the respective chairs of the boards of supervisors of San Luis Obispo and Santa Barbara counties inviting them to submit potential water quality projects for consideration by the Regional Board (see Attachment 1). Copies of this letter were widely distributed to other parties potentially interested in submitting proposals. The Board established a deadline of May 18, 1998, for proposal submittal. As a result of this letter, we received 95 proposals, comprising a cumulative funding request of over \$130 million.
4. Regional Board staff reviewed and ranked the proposals in accordance with the following criteria:
 - a) Geographical nexus: Staff gave higher priority to projects located within the Santa Maria River watershed or in near coastal waters.
 - b) Petroleum nexus: Proposals related to petroleum discharges or pollution were scored higher.
 - c) Beneficial use type: This criterion was not especially useful since all water quality project proposals had a relationship to one of the beneficial uses specified in the Board's letter. All water quality projects were scored equally on this criterion.
 - d) Institutional stability and capacity of the applicant to complete the project.
 - e) Level of direct water quality improvement that will result from the project.

The following two factors were then used to clarify projects' attributes vs. the criteria:

- f) Lack of other potential funding sources: Proposals with other potential funding sources (e.g., 319(h) funds) were not scored as high as projects without other potential funding.

- g) Relationship or coordination with existing watershed problems: Staff used this criterion to emphasize projects that will assist the Board with existing watershed programs and efforts.
5. Before making their final recommendation to the Board, staff consulted the California Coastal Conservancy and OSPR. They also consulted a public advisory committee (PAC), which included the City of Santa Maria, San Luis Obispo County, the City of San Luis Obispo, the Dunes Center, the Cachuma Resource Conservation District, the City of Guadalupe, Santa Barbara County, US Fish and Wildlife Service, and The Nature Conservancy. The recommendations of the Coastal Conservancy, OSPR and the PAC were incorporated into the staff's recommendation.
 6. The staff draft recommendations were sent to interested persons for comment on March 5, 1999. Staff reviewed all comments and drafted written responses to all written comments received by April 1, 1999.
 7. At a public meeting on May 20, 1999, the Board heard and considered comments and evidence presented at the meeting as well as comments and evidence in the Regional Board record pertaining to conditional selection of water quality projects for funding from the Water Quality Project Trust.

THEREFORE, the Regional Board hereby resolves:

1. Subject to the conditions specified, below, and subject to the descriptions and limitations in the staff report presented to the Board on May 20, 1999, the following projects are selected for funding from the Water Quality Project Trust:

<u>Project Title</u>	<u>Project Proponent</u>	<u>Funding</u>
Monitoring of Petroleum Hydrocarbons Using Sand Crabs	Department of Fish & Game	\$ 288,789
Santa Maria River Basin Water Quality Assessment	Komex H2O Science	\$ 610,000
Piece Together Protected Landscape	The Nature Conservancy	\$ 2,500,000
Santa Maria Estuary Plan	Coastal Conservancy	\$ 440,000
Central Coast Ambient Monitoring Program	NFWF dedicated for annual income to RWQCB	\$ 2,000,000
School Lake and Wetlands Restoration	City of Guadalupe	\$ 900,000
Ayers Property Acquisition	City of San Luis Obispo	\$ 400,000
<u>Wastewater Treatment Plant Improvements</u>	<u>City of Guadalupe</u>	<u>\$ 1,300,000</u>
<u>Aerial Photograph Archive</u>	<u>Division of Oil, Gas, and Geothermal Resources</u>	<u>\$ 21,545</u>

2. Selection of proposals for funding by the Board is tentative, subject to successful negotiation of a detailed project description, scope of work, and contract satisfactory to the proponent, the Executive Officer, and the fund trustee, National Fish and Wildlife Foundation. If the Executive Officer, at his sole discretion, determines that it is not likely an agreement will be reached, he will bring a recommendation to the Board to withdraw funding. If the Board withdraws funding, the affected funds will remain in the Water Quality Project Trust, available for other projects. Project proponents will perform the work under contract to the National Fish and Wildlife Foundation. Contracts will provide for payment based on successful completion of project milestones or deliverables. Board staff will monitor and track the projects for compliance with the contracts, and will not approve disbursement of funds until project milestones or deliverables, as specified in the contract, are met.
3. Process and timing for the next round of funding selection will be determined by this Board at a later date.

Paul Fagg
fr Executive Officer
5-27-99
Date