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By Fax

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[Exempt from fees pursuant to Government Code section 6103]

ENDORSED
FILED
ALAMEDA COUNTY

APR 13 2015

CLERK OF THE SUPERIOR COURT
By MICHELLE BANKS
Deputy

8 *Attorneys for Plaintiffs*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ALAMEDA

12
13 **PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. STATE WATER
14 RESOURCES CONTROL BOARD;**

15 **PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. DEPARTMENT OF
16 FISH AND WILDLIFE;**

17
18 Plaintiffs,

19 v.

20 **THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA AND DOES 1-20
21 INCLUSIVE,**

22 Defendants.
23

Case No. RG15765621

**STIPULATION FOR ENTRY OF FINAL
CONSENT JUDGMENT AND
INJUNCTION**

(Health & Saf. Code, Div. 20, Chapter 6.7;
Government Code, Title 2 Div. 1, Chapter
7.4)

24 This Stipulation for Entry of Final Consent Judgment and Injunction ("Stipulation") is
25 entered into by Plaintiffs, the People of the State of California, *ex rel.* State Water Resources
26 Control Board ("State Water Board") and People of the State of California, *ex rel.* Department of
27 Fish and Wildlife ("CDFW") (Collectively "Plaintiffs") and Defendant The Regents of the
28

1 the Settling Defendant shall be referred to herein collectively as the "Parties," and individually as
2 "Party."

3 The Parties have agreed to settle the above-captioned matter without further litigation, as
4 set forth below.

5 INTRODUCTION

6 Concurrent with the filing of this Stipulation, the Plaintiffs are filing a Complaint in this
7 matter alleging that the Settling Defendant violated various laws and regulations governing the
8 operation and maintenance of underground storage tanks (USTs) and UST systems located at
9 Settling Defendant's campus at Berkeley. In addition, the Complaint alleges the following: (1)
10 on or about December 10, 2011, a 200 gallon fuel tank located in the generator room of Stanley
11 Hall at the University of California, Berkeley, discharged approximately 1650 gallons of diesel
12 fuel when a fuel transfer pump failed to shut off; (2) the fuel flowed into a sump room located in
13 the basement of Stanley Hall and approximately 850 gallons of the fuel entered a storm drain and
14 was then discharged into Strawberry Creek, located in the City of Berkeley, in Alameda County,
15 California where it travelled downstream to the creek mouth and entered San Francisco Bay (the
16 "Stanley Hall Incident"); (3) fuel from the Stanley Hall Incident and the resulting cleanup actions
17 caused injuries to natural resources, including injuries to the creek channel, riparian habitat, and
18 mudflat/shoreline habitats; and (4) the Stanley Hall Incident and resultant harms were directly and
19 proximately caused by the acts, omissions, strict liability, fault, negligence, breach, and violations
20 by Settling Defendant and/or their agents, representatives, contractors, design professionals
21 and/or suppliers in regard to the UST violations and applicable California laws and regulations.
22 Settling Defendant denies that the Stanley Hall Incident caused injuries to natural resources or the
23 creek channel, riparian habitat, and mudflat/shoreline habitats, and further denies that the Stanley
24 Hall Incident resulted from its acts, omissions, fault, negligence, breach or violations of
25 applicable California laws and regulations.

26 In these negotiations, both the Plaintiffs and the Settling Defendant were represented by
27 counsel.
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STIPULATION FOR ENTRY OF FINAL JUDGMENT

The Parties have now agreed to settle this matter in order to avoid prolonged and complicated litigation, and after opportunity for review by counsel, hereby stipulate and consent to the entry by the Court of a Final Consent Judgment and Injunction (“Final Judgment”), attached hereto as Exhibit A, on the terms set forth below.

1. DEFINITIONS

1.1. Except where otherwise expressly defined herein, all terms shall be interpreted consistent with Chapters 6.7 of Division 20 of the California Health and Safety Code and Title 23, Division 3, Chapter 16 of the California Code of Regulations (“the UST Regulations”) and Chapter 7.4 of Title 2, Division 1 of the Government Code (“the Lempert-Keene Act”).

1.2. “Certified Unified Program Agency” or “CUPA” is an agency certified by the Secretary of the California Environmental Protection Agency pursuant to the requirements of Chapter 6.11 of the Health and Safety Code and California Code of Regulations, Title 27 to implement certain State environmental programs within a jurisdiction. As used in this Stipulation and in the Final judgment, “CUPA” includes any Participating Agency (as defined at Health and Safety Code section 25501(h)(2)) or Unified Program Agency (as defined at Health and Safety Code section 25501(h)(3)).

1.3. “Released USTs” shall mean the seven (7) USTs owned and operated by the Settling Defendant and located on the Settling Defendant’s campus in Berkeley, California. More specifically, the USTs are located at:

- a. Doe Library;
- b. Life Sciences Building (Emergency Containment Tank #1);
- c. Life Sciences Building (Emergency Containment Tank #4);
- d. Hazardous Material Facility (Emergency Containment Tank #7);
- e. Koshland Hall;
- f. Life Sciences Building; and
- g. Stanley Hall.

1.4. “Covered USTs” shall mean all USTs that are owned and/or operated by the

1 Settling Defendant and located on the Settling Defendant's campus in Berkeley, California as of
2 the date of entry of the Final Judgment and any USTs that are installed at the Settling Defendant's
3 campus in Berkeley, California within the five-year period starting on the date of entry of the
4 Final Judgment.

5 1.5. "Stanley Hall Incident" shall mean the occurrence described in the Introduction,
6 including but not limited to the discharge of fuel into Strawberry Creek and San Francisco Bay.

7 1.6. "Promptly" means as soon as reasonably practicable.

8 1.7. "Suspended Penalty Conduct" shall mean a violation of one or more of the
9 provisions of Paragraph 6, below.

10 **2. JURISDICTION**

11 The Parties agree that the Superior Court of California, County of Alameda, has subject
12 matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties
13 to this Stipulation.

14 **3. SETTLEMENT OF DISPUTED CLAIMS**

15 The Parties enter into this Stipulation pursuant to a compromise and settlement of disputed
16 claims set forth in the Complaint. This Stipulation is not an admission by the Settling Defendant
17 regarding any issue of law or fact in the above-captioned matter or any violation of law. The
18 Settling Defendant waives its right to a hearing on any matter covered by the Complaint prior to
19 the entry of the Final Judgment.

20 **4. SETTLEMENT PAYMENT AND OTHER PAYMENTS**

21 4.1. Upon entry of the Final Judgment, the Settling Defendant is liable for a total of
22 FOUR HUNDRED FORTY NINE THOUSAND DOLLARS (\$449,000) in civil penalties,
23 investigative and enforcement costs, and restoration and oversight costs, to be paid and/or
24 suspended, as set forth in paragraphs 4.2 through 4.5, below.

25 4.2. Cash Civil Penalties:

26 4.2.a. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall
27 pay a total of TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000) in civil
28 penalties under Chapter 6.7 of Division 20 of the Health and Safety Code and the UST

1 Regulations. This payment shall be made by check, payable to the State Water Board's "State
2 Water Pollution Cleanup and Abatement Account." The check shall be delivered to:

3 State Water Resources Control Board
4 Division of Administrative Services, Accounting Branch
5 1001 I Street, 18th Floor [95814]
6 P.O. Box 1888
7 Sacramento, CA 95812-1888

8 A copy of the check shall be submitted to:

9 State Water Resources Control Board
10 Office of Enforcement
11 Attn: David Boyers, Assistant Chief Counsel
12 1001 I Street, 16th Floor
13 Sacramento, CA 95814

14 These funds may be used by the State Water Board, at its discretion, to fund activities associated
15 with the investigation and/or enforcement of UST requirements, including those codified at
16 Chapter 6.7 of the Health and Safety Code and the UST Regulations, and the investigation and/or
17 protection of the Underground Storage Tank Cleanup Fund. These activities may include, but are
18 not limited to, training State and local enforcement staff, hiring enforcement staff, expert witness
19 support, and criminal investigation development and support.

20 4.2.b. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall
21 pay a total of SEVENTY THOUSAND (\$70,000) in civil penalties under Government Code
22 section 8670.66(a)(3). This payment shall be made by check payable to the "State of California
23 Department of Fish and Wildlife." The check shall be delivered to:

24 State of California Department of Fish and Wildlife
25 Office of Spill Prevention and Response
26 Attn: Katherine Verrue-Slater, Staff Counsel III
27 1700 "K" Street, Suite 250
28 Sacramento, California 95811

A copy of the check shall be submitted to:

State Water Resources Control Board
Office of Enforcement
Attn: David Boyers, Assistant Chief Counsel
1001 I Street, 16th Floor
Sacramento, CA 95814

1 Sacramento, CA 95814

2 The check shall reference the U.C. Berkeley/Stanley Hall Diesel Spill.

3 4.4. Natural Resource Damages:

4 4.4.a. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall
5 pay a total of THIRTY ONE THOUSAND FIVE HUNDRED DOLLARS (\$31,500) to the
6 National Fish and Wildlife Foundation to fund projects to restore or enhance riparian, mudflat,
7 and shoreline habitats and lost recreation in Alameda County. Payment is to be made by check
8 payable to the "National Fish and Wildlife Foundation." The check shall be delivered to:

9 State of California Department of Fish and Wildlife
10 Office of Spill Prevention and Response
11 Attn: Katherine Verrue-Slater, Staff Counsel III
12 1700 "K" Street, Suite 250
13 Sacramento, California 95811

14 A copy of the check shall be submitted to:

15 State Water Resources Control Board
16 Office of Enforcement
17 Attn: David Boyers, Assistant Chief Counsel
18 1001 I Street, 16th Floor
19 Sacramento, CA 95814

20 The check shall reference the U.C. Berkeley/Stanley Hall Diesel Spill. The National Fish
21 and Wildlife Foundation shall deposit the funds into the UC Berkeley/Stanley Hall Subaccount of
22 the Environmental Fund for Habitat and Incident Specific Restoration Projects. The money shall
23 be used to fund projects to restore or enhance riparian and shoreline habitat in and around
24 Strawberry Creek and Brickyard Cove, marine environmental education and/or shoreline cleanup
25 overseen by the Berkeley Marina Shorebird Center, as more fully described in the Natural
26 Resource Damage Assessment Summary and Restoration Proposal for the U.C. Berkeley (Stanley
27 Hall) Diesel Spill, dated August 20, 2014.

28 4.4.b. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall
pay a total of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) for restoration oversight
and administrative costs associated with the Stanley Hall Incident. Payment is to be made by

1 check payable to the "State of California Department of Fish and Wildlife." The check shall be
2 delivered to:

3 State of California Department of Fish and Wildlife
4 Office of Spill Prevention and Response
5 Attn: Katherine Verrue-Slater, Staff Counsel III
6 1700 "K" Street, Suite 250
7 Sacramento, California 95811

8 A copy of the check shall be submitted to:

9 State Water Resources Control Board
10 Office of Enforcement
11 Attn: David Boyers, Assistant Chief Counsel
12 1001 I Street, 16th Floor
13 Sacramento, CA 95814

14 The check shall reference the U.C. Berkeley/Stanley Hall Diesel Spill.

15 4.5. Suspended Penalties:

16 4.5.a. Of the Settling Defendant's total liability for penalties payable to the State Water
17 Board of THREE HUNDRED THOUSAND DOLLARS (\$300,000), SEVENTY FIVE
18 THOUSAND DOLLARS (\$75,000) shall be suspended on the condition that: (1) the Settling
19 Defendant complies with its payment obligations of cash civil penalties, investigative and
20 enforcement costs and restoration and oversight costs as set forth in Paragraphs 4.2 through 4.4
21 and (2) the Settling Defendant does not engage in any Suspended Penalty Conduct specified in
22 Paragraph 6 for a period of five (5) years, beginning immediately upon entry of the Final
23 Judgment.

24 4.5.b. If the State Water Board determines that the Settling Defendant has engaged in
25 Suspended Penalty Conduct, as set forth in Paragraph 6, below, the State Water Board may
26 initiate a new enforcement action and seek appropriate relief as authorized by law, including but
27 not limited to, injunctive relief and civil penalties, and/or move the Court by noticed motion to
28 assess and collect suspended civil penalties as provided herein. The Settling Defendant shall
retain all of its rights to contest the State Water Board's claim that it has engaged in Suspended
Penalty Conduct, including the right to assert that the alleged violation was due to a *Force
Majeure Event* as described in Paragraph 22.

4.5.c. If the State Water Board elects to assess and collect suspended penalties as

1 provided herein and the Court finds that the Settling Defendant has engaged in Suspended Penalty
2 Conduct, or failed to act when it had a duty to act on one or more occasions that constitute a
3 violation of the provisions that are designated below as Suspended Penalty Conduct, the Court
4 shall impose a civil penalty as follows: For each Suspended Penalty Conduct violation and for
5 each thirty (30) calendar day period that a Suspended Penalty Conduct violation remains
6 uncorrected, the Court shall impose a mandatory TWENTY FIVE THOUSAND DOLLARS
7 (\$25,000) civil penalty payable to the "State Water Pollution Cleanup and Abatement Account."
8 The State Water Board shall have the burden of proof for establishing that the alleged Suspended
9 Penalty Conduct violation(s) has occurred, and the Settling Defendant shall have the burden of
10 proof for establishing that the alleged Suspended Penalty Conduct violation(s) has been corrected
11 in accordance with all applicable laws. A Suspended Penalty Conduct violation that is corrected
12 in less than thirty (30) calendar days from the initial date of violation shall not be assessed a civil
13 penalty under this paragraph. However, the State Water Board may still take enforcement action
14 and seek any appropriate relief for such alleged Suspended Penalty Conduct as authorized by law,
15 including, but not limited to, the assessment and collection of civil penalties pursuant to Health
16 and Safety Code section 25299, and Settling Defendants retains all defenses to any enforcement
17 action. If the Court finds that the Settling Defendant has engaged in Suspended Penalty Conduct
18 and has failed to timely correct the violation(s) as set forth in this paragraph, the Parties agree that
19 the Court shall have no discretion to reduce, increase, or otherwise modify the amount of
20 suspended civil penalties to be assessed and awarded to the State Water Board pursuant to this
21 Stipulation and the Final Judgment, and that the aggregate suspended penalties awarded by the
22 Court shall not exceed the entire suspended penalty amount of SEVENTY FIVE THOUSAND
23 DOLLARS (\$75,000) specified herein. Payment of the suspended penalties awarded by the Court
24 pursuant to this paragraph shall be due to the State Water Board forty-five (45) days from the
25 Court's final order(s). This payment shall be made by check, payable to the State Water Board's
26 "State Water Pollution Cleanup and Abatement Account." The check shall be delivered to:

27 State Water Resources Control Board
28 Division of Administrative Services, Accounting Branch
1001 I Street, 18th Floor [95814]

1 P.O. Box 1888
2 Sacramento, CA 95812-1888

3 A copy of the check shall be submitted to:

4 State Water Resources Control Board
5 Office of Enforcement
6 Attn: David Boyers, Assistant Chief Counsel
7 1001 I Street, 16th Floor
8 Sacramento, CA 95814

9 If the Settling Defendant complies with its payment obligations set forth in Paragraphs 4.2
10 through 4.4 and does not engage in Suspended Penalty Conduct for a period of three (3) years,
11 beginning with the entry of the Final Judgment, the suspension of penalties as herein provided
12 shall become permanent and the Settling Defendant shall no longer be liable for such unpaid
13 suspended penalties. However, if a motion to assess and collect suspended civil penalties as
14 provided herein is still pending before the Court three (3) years after the entry of the Final
15 Judgment, the suspension of penalties shall not become final until a final order has been issued on
16 the pending motion and payment of civil penalties to the State Water Board has been made if
17 required by such order.

18 4.5.d. The suspended penalties provided by Paragraph 4.5 are in addition to, and do not
19 bar, any other remedies or sanctions that may be available for any violations of Chapter 6.7 of
20 Division 20 of the California Health and Safety Code and the UST Regulations.

21 4.6. Late Payments: The Settling Defendant shall be liable for a stipulated civil penalty
22 of ONE THOUSAND DOLLARS (\$1,000) for each day that a payment required pursuant to this
23 Stipulation and the Final Judgment is late.

24 5. INJUNCTIVE RELIEF

25 Pursuant to the provisions of Health and Safety Code section 25299.01, but subject to the
26 termination Paragraph 20 below, upon approval and entry of the Final Judgment by the Court, the
27 Settling Defendant, with respect to the Covered USTs, is enjoined to comply with Chapter 6.7 of
28 Division 20 of the Health and Safety Code and the UST Regulations. Specifically, the Settling
Defendant is enjoined to comply with the following requirements for each of the Covered USTs:

1 5.1. The Settling Defendant shall, at all times, operate the Covered USTs only after a valid
2 operating permit has been issued by the CUPA, in accordance with the requirements of Health
3 and Safety Code section 25284(a)(1).

4 5.2. The UST monitoring equipment shall be operated and maintained in accordance with
5 the equipment manufacturer's instructions and certified every 12 months for operability, proper
6 operating condition and proper calibration, as required by Title 23, California Code of
7 Regulations section 2638(a).

8 5.3 The UST monitoring system shall be capable of detecting an unauthorized release
9 from any portion of the UST system at the earliest possible opportunity, as required by Health and
10 Safety Code sections 25290.1(d), 25290.2(d), 25291(b) and 25292(a) and title 23, California
11 Code of Regulations sections 2630(d) and 2641(a). The Settling Defendant shall properly install
12 and place all leak-detecting sensors so that each is capable of detecting a leak at the earliest
13 possible opportunity as required by California Code of Regulations, title 23, including but not
14 limited to section 2630(d). The Settling Defendant shall promptly replace or repair any sensor
15 that, for any reason, becomes incapable of detecting a leak at the earliest possible opportunity.

16 5.4. All corrodible underground piping; if in direct contact with backfill, shall be protected
17 against corrosion, as required by Title 23, California Code of Regulations section 2636(b).

18 5.5. USTs shall be equipped with a spill container that will collect any hazardous
19 substances spilled during product delivery operations to prevent the hazardous substance from
20 entering the subsurface environment, as required by Health and Safety Code section 25284.2 and
21 Title 23, California Code of Regulations section 2635(b)(1), and the spill containment structure
22 shall be tested annually in accordance with the requirements of Health and Safety Code section
23 25284.2.

24 5.6. USTs shall be maintained so that the primary and secondary containment is "product
25 tight" as required by Health and Safety Code sections 25290.1(c), 25290.2(c) and 25291(a)(1).

26 5.7. Paragraph 5 is not intended to impose conditions or requirements on a Covered UST
27 that are not otherwise applicable to that Covered UST.

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1 **6. SUSPENDED PENALTY CONDUCT**

2 The following acts, occurring within the five-year period starting upon entry of the Final
3 Judgment, shall constitute Suspended Penalty Conduct for purposes of Paragraph 4.5, above.

4 6.1. Operating one or more Covered USTs without first obtaining a valid operating permit
5 from the CUPA as required by Health and Safety Code section 25284(a)(1).

6 6.2. Failure to operate and maintain Covered UST monitoring equipment in accordance
7 with the equipment manufacturer's instructions, as required by Title 23, California Code of
8 Regulations section 2638(a).

9 6.3. Failure to have a UST monitoring system that is capable of detecting an unauthorized
10 release from any portion of the Covered UST system at the earliest possible opportunity, as
11 required by Health and Safety Code sections 25290.1(d), 25290.2(d), 25291(b) and 25292(a) and
12 Title 23, California Code of Regulations sections 2630(d) and 2641(a).

13 6.4. Failure to provide adequate corrosion protection for a Covered UST for all corrodible
14 underground piping in direct contact with backfill, as required by Title 23, California Code of
15 Regulations section 2636(b).

16 6.5. Failure to equip Covered USTs with a spill container that will collect any hazardous
17 substances spilled during product delivery operations to prevent the hazardous substance from
18 entering the subsurface environment, as required by Health and Safety Code section 25284.2 and
19 Title 23, California Code of Regulations section 2635(b)(1).

20 6.6. Failure to maintain Covered USTs so that the primary and secondary containment is
21 "product tight," in accordance with Health and Safety Code sections 25290.1(c), 25290.2(c) and
22 25291(a)(1).

23 **7. MATTERS COVERED BY THE FINAL JUDGMENT**

24 7.1. The Final Judgment is a final and binding resolution and settlement of: (a) all claims,
25 violations, penalties and causes of action alleged by the Plaintiffs in the Complaint regarding the
26 Released USTs and the Stanley Hall Incident; (b) all claims, violations, penalties and causes of
27 action related to the Released USTs or the Stanley Hall Incident that could have been asserted by
28 the Plaintiffs based upon the acts, omissions and/or events that are alleged in the Complaint; (c)

1 all damages, claims, violations, penalties and causes of action for injury to, destruction of, loss of,
2 or loss of use of, natural resources arising from the Stanley Hall Incident, including natural
3 resource damage assessment costs and restoration monitoring costs associated with the Stanley
4 Hall Incident; and (d) all claims, actions or penalties for the performance, or lack of performance
5 of, cleanup, corrective action, or response action concerning or arising out of actual past or future
6 releases, spills, leaks, discharges or disposal of petroleum hydrocarbons, hazardous wastes, or
7 hazardous substances relating to the Stanley Hall Incident (hereinafter referred to as "Covered
8 Matters").

9 7.2. The Parties reserve the right to pursue any claim that is not a Covered Matter
10 ("Reserved Claim") and to defend against any Reserved Claim. Reserved Claims includes
11 claims, actions or penalties for the performance, or lack of performance of, cleanup, corrective
12 action, or response action concerning or arising out of actual past or future releases, spills, leaks,
13 discharges or disposal of petroleum hydrocarbons, hazardous wastes, or hazardous substances
14 caused or contributed to by the Settling Defendant at locations at or from the Covered USTs or
15 any other UST facility owned and/or operated by the Settling Defendant, other than the release
16 associated with the Stanley Hall Incident. The Final Judgment does not prevent any claims,
17 actions, or penalties by the Plaintiffs and/or other regulatory entity based upon the actual release
18 of any hazardous substance into the soil and/or groundwater, other than the release associated
19 with the Stanley Hall Incident.

20 7.3. Except as otherwise provided in this Stipulation and in the Final Judgment, the
21 Plaintiffs covenant not to sue or pursue any further civil claims, actions or penalties against the
22 Settling Defendant or any of their officers, employees, representatives, agents or attorneys for the
23 Covered Matters.

24 7.4. The Settling Defendant covenants not to sue or pursue any civil or administrative
25 claims against the Plaintiffs or against any agency of the State of California or against their
26 officers, employees, representatives, agents or attorneys arising out of or related to any Covered
27 Matters.

28 7.5. Any claims, violations, or causes of action that are based on acts, omissions or

1 events occurring after the date of entry of the Final Judgment in this matter, are not resolved,
2 settled or covered by the Final Judgment.

3 7.6 This Stipulation and Final Judgment does not limit or affect the rights of the
4 Settling Defendant against any third parties.

5 7.7. In any subsequent action that may be brought by the Plaintiffs based on any
6 Reserved Claims, the Settling Defendant agrees that it will not assert that failing to pursue the
7 Reserved Claim as part of this action constitutes claim-splitting, laches, or is otherwise
8 inequitable. This Paragraph does not prohibit the Settling Defendant from asserting any statute of
9 limitations defense that may be applicable to any Reserved Claims.

10 **8. NON-ADMISSION OF LIABILITY**

11 The Settling Defendant does not admit any allegation, finding, determination or
12 conclusion contained, alleged or asserted in the Complaint, and the Final Judgment is not an
13 admission by the Settling Defendant regarding any issue of law or fact alleged in the Complaint
14 and shall not be construed as an admission by the Settling Defendant regarding the same. Except
15 as otherwise expressly provided in the Final Judgment, nothing in the Final Judgment shall
16 prejudice, waive or impair any right, remedy or defense that the Settling Defendant has against
17 any person or entity not party to the Final Judgment.

18 **9. PLAINTIFFS NOT LIABLE**

19 The Plaintiffs shall not be liable for any injury or damage to persons or property resulting
20 from acts or omissions by the Settling Defendant in carrying out the activities pursuant to the
21 Final Judgment, nor shall the Plaintiffs be held as a party to or guarantor or any contract entered
22 into by the Settling Defendant, its officers, employees, agents, representatives or contractors in
23 carrying out activities required pursuant to the Final Judgment.

24 **10. EFFECT OF JUDGMENT**

25 Except as expressly provided in the Final Judgment or applicable statutory or common
26 law, nothing in the Final Judgment is intended not shall it be construed to preclude the Plaintiffs
27 from exercising its authority under any law, statute or regulation. Except as expressly provided
28 by the Final Judgment, the Settling Defendant retains all of its defenses and rights to the exercise

1 of such authority.

2 **11. APPLICATION OF FINAL JUDGMENT**

3 The Final Judgment shall apply to and be binding upon the Plaintiffs, and upon the
4 Settling Defendant and to each of their respective predecessors, subsidiaries, affiliates, successors
5 and assigns.

6 **12. REGULATORY CHANGES**

7 Nothing in the Final Judgment shall excuse the Settling Defendant from complying with
8 any more stringent requirements that may be imposed by changes in applicable law. To the
9 extent any future regulatory or statutory changes make the obligations of the Settling Defendant
10 less stringent than as provided for in Paragraphs 5 and 6 of this Stipulation and in the
11 corresponding paragraphs of the Final Judgment, the Settling Defendant may apply to this Court,
12 upon noticed motion, for modification(s) of any of the obligations contained in Paragraphs 5 and
13 6 hereof, and the Court will grant such motion upon a showing that the applicable requirements
14 have changed.

15 **13. AUTHORITY TO ENTER STIPULATION**

16 Each signatory to this Stipulation certifies that he or she is fully authorized by the Party he
17 or she represents to enter into this Stipulation, to execute it on behalf of the Party, and legally to
18 bind that Party.

19 **14. PAYMENT OF LITIGATION EXPENSES AND FEES**

20 Except as otherwise provided in this Stipulation and in the Final judgment, each of the
21 Parties shall bear and pay their own fees and costs, including, but not limited to, their attorney
22 fees, expert witness fees, and costs and all other costs of litigation, investigation, inspection,
23 enforcement, prosecution, recovery and assessment of natural resource damages and suit incurred
24 to date, in and regarding this action, although nothing in this Paragraph is intended to abridge the
25 payments or allocation of the payments made by the Settling Defendant pursuant to Paragraph 4
26 hereof.

27 **15. COUNTERPART SIGNATURES**

28 This Stipulation may be executed by the Parties in counterpart.

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16. ENTRY OF JUDGMENT

Pursuant to this Stipulation, the Parties seek approval of the Final Judgment and request that the Court make a determination that the Final Judgment is fair and in the public interest.

17. INTEGRATION

The Stipulation and Final Judgment constitutes the whole agreement between the Parties. The Final Judgment may not be amended or modified except as provided for in this Stipulation and in the Final Judgment.

18. MODIFICATION OF FINAL JUDGMENT

The Final Judgment may be amended or modified only on a noticed motion by one of the Parties with subsequent approval by the Court or upon written consent by the Parties and the subsequent approval of the Court.

19. NOTICES

All notices and submissions required by this Stipulation and the Final Judgment shall be sent to the following via personal delivery, overnight mail using a reputable delivery courier, or United States Postal Service mail, certified or registered mail, return receipt requested:

For Plaintiffs:

State Water Resources Control Board, Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
Attn: David Boyers

And

State of California Department of Fish and Wildlife
Office of Spill Prevention and Response
Attn: Katherine Verrue-Slater, Staff Counsel III
1700 "K" Street, Suite 250
Sacramento, California 95811

And

Office of the California Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Attn: Jonathan Wiener

For The Regents of the University of California:

Mark Freiberg, CIH, CSP

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Executive Director
Environment, Health & Safety, and Emergency Management
University of California, Berkeley
2199 Addison, Room 317
University Hall
Berkeley, CA 94720-1150

And

Brett S. Henrikson, Esq.
Senior Counsel, Environmental Health & Safety
Office of the General Counsel, University of California
1111 Franklin St., 8th Fl.
Oakland, CA 94607

And

Robert C. Goodman, Esq.
Rogers Joseph O'Donnell, P.C.
311 California Street
San Francisco, CA 94104

Any Party may change the individual or address for purpose of notice to that Party by written notice specifying the new individual or address, but no such change is effective until the written notice is actually received by the Party sought to be charged with its contents.

20. TERMINATION OF INJUNCTIVE RELIEF PROVISIONS

After the Final Judgment has been in effect for five (5) years, the Settling Defendant shall be relieved from any further compliance with all of the injunctive relief provisions of Paragraph 5 of this Stipulation and the corresponding provisions of the Final Judgment; provided, however, that prior to five (5) years after the effective date this Final Judgment, the State Water Board may file a motion seeking to have the Court extend all and/or some of the injunctive relief provisions of Paragraph 5 of this Stipulation and the corresponding provisions of the Final Judgment based upon the Settling Defendant's demonstrated history of non-compliance with Paragraph 5. Within thirty (30) calendar days of the filing of the State Water Board's motion, Settling Defendant may file either a statement of non-opposition, or an opposition, and within forty-five (45) calendar days of the filing of the Settling Defendant's motion, the State Water Board may file a reply. The Parties agree that the Court may grant the State Water Board's request upon a showing by the State Water Board that Settling Defendant has failed to comply with the obligations set forth in Paragraph 5 of this Stipulation and the corresponding provisions of the Final Judgment.

1 **21. ENFORCEMENT OF FINAL JUDGMENT**

2 21.1. The State Water Board may move this Court to enjoin the Settling Defendant from
3 any violation of any provisions of the Final Judgment and to award other appropriate relief,
4 including penalties and costs, by serving and filing a regularly noticed motion in accordance with
5 Code of Civil Procedure section 1005 (“Enforcement Motion”). The Settling Defendant may file
6 an opposition and the State Water Board may file a reply. At least ten (10) business days before
7 filing an Enforcement Motion, the State Water Board will meet and confer in good faith with the
8 Settling Defendant to attempt to resolve the matter without judicial intervention. Notwithstanding
9 any other provisions in this Stipulation or the Final Judgment, the State Water Board may take
10 immediate action as authorized by law in order to respond to an immediate threat to human health
11 or the environment.

12 21.2. The Court has the authority to enjoin any violation of the Final Judgment. On the
13 State Water Board’s Enforcement Motion and the Court’s determination that State Water Board
14 has met its burden of proof as required by Paragraph 4.5, if applicable, the payment amounts as
15 provided in those Paragraphs shall be binding on the Settling Defendant, subject to Settling
16 Defendant’s right to seek appellate review of the Court’s determination. The Court retains, in
17 addition, its power to enforce the Final Judgment through contempt. Except as to Covered
18 Matters, nothing in the Final Judgment or this Stipulation shall restrict the authority of any state
19 or local agency to seek criminal or civil penalties and injunctive relief as provided by law.

20 **22. FORCE MAJEURE EVENT**

21 22.1. It is not a breach of the Settling Defendant’s obligations under Paragraphs 5 and 6
22 if the Settling Defendant is unable to perform due to a *Force Majeure Event*. Any event due to
23 acts of God, acts of war or circumstances beyond the control of the Settling Defendant that
24 prevents the performance of such an obligation despite the Settling Defendant’s timely and
25 diligent efforts to fulfill the obligation is a *Force Majeure Event*. A *Force Majeure Event* does
26 not include financial inability to fund or complete any work, any failure by the Settling
27 Defendant’s suppliers, contractors, subcontractors or other persons contracted to perform the
28 work for or on behalf of the Settling Defendant (unless their failure to do so is itself due to a

1 *Force Majeure Event*), nor does it include circumstances which could have been avoided if the
2 Settling Defendant had complied with preventative requirements imposed by law, regulation or
3 ordinance.

4 22.2. If the Settling Defendant claims a *Force Majeure Event*, it shall notify the State
5 Water Board in writing within five (5) business days of when the Settling Defendant learns that
6 the event will prevent performance of an obligation in Paragraph 5. Within fourteen (14)
7 calendar days thereafter, the Settling Defendant shall provide the State Water Board a written
8 explanation and description of the reasons for the prevention of performance, all actions taken or
9 to be taken to prevent or mitigate the nonperformance, the anticipated date for performance, and
10 explanation of why the event is a *Force Majeure Event*, and any documentation to support the
11 Settling Defendant's explanation. Within fourteen (14) calendar days of receipt of such
12 explanation, the State Water Board will notify the Settling Defendant in writing whether the State
13 Water Board agreed or disagrees with the Settling Defendant's assertion of a *Force Majeure*
14 *Event*. If the Parties do not agree that a particular delay or lack of performance is attributable to a
15 *Force Majeure Event*, either Party may petition the Court to resolve the dispute. If either Party
16 petitions the Court to resolve the dispute, it will neither prejudice nor preclude the State Water
17 Board from bringing a motion to enforce any of the provisions of Paragraph 5 and 6 against the
18 Settling Defendant as provided in Paragraph 22.4, below.

19 22.3. The time for performance of the obligations under Paragraphs 5 and 6 of this
20 Stipulation that are affected by a *Force Majeure Event* will be extended for such time as is
21 necessary to complete those obligations. An extension of time for performance of the obligations
22 affected by the *Force Majeure Event* shall not, of itself, extend the time for performance of any
23 other obligation.

24 22.4. If the State Water Board decides to enforce the Provisions of Paragraphs 5 and 6
25 against the Settling Defendant for the failure to perform in spite of the Settling Defendant's claim
26 of a *Force Majeure Event*, the Settling Defendant may raise the claimed *Force Majeure Event* as
27 a defense to such an action and shall have the burden of proof to demonstrate the *Force Majeure*
28 *Event*.

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23. NO WAIVER OF RIGHT TO ENFORCE

The failure of the State Water Board to enforce any provision of the Final Judgment shall neither be deemed a waiver of such provision nor in any way affect the validity of the Final Judgment. The failure of the State Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of the Final Judgment. Except as expressly provided in the Final Judgment, the Settling Defendant retains all defenses allowed by law to any such later enforcement. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered in the Final Judgment shall be construed to relieve any Party of its obligations under the Final Judgment.

24. NECESSITY FOR WRITTEN APPROVALS

All approvals and decisions of the State Water Board under the terms of the Final Judgment shall be communicated to the Settling Defendant in writing. No oral advice, guidance, suggestions or comments by employees of or officials of the State Water Board regarding submissions or notices shall be construed to relieve the Settling Defendant of its obligation to obtain any final written approval required by the Final Judgment.

25. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS

The Settling Defendant shall permit any duly authorized representative of the State Water Board to inspect and copy the Settling Defendant's records and documents, and to enter and inspect the Settling Defendant's Covered USTs to determine whether the Settling Defendant is in compliance with the terms of the Final Judgment. Such documents include, but are not limited to, the Settling Defendant's designated operator reports. Nothing in this Paragraph is intended to require access to or production of any documents that are protected from production or disclosure by the attorney-client privilege, attorney work product doctrine or any other applicable privilege afforded to the Settling Defendant under law.

IT IS SO STIPULATED

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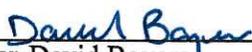
FOR THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:

Dated: January 21, 2015


By: Tom Howard
Executive Director
California State Water Resources Control Board

APPROVED AS TO FORM:

Dated: January 21, 2015

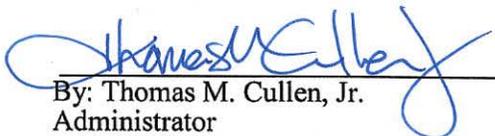

By: David Boyers
Assistant Chief Counsel
Counsel for California State Water Resources Control Board

Dated: April 8, 2015


By: Jonathan Wiener
Deputy Attorney General
California Attorney General's Office
Attorney for California State Water Resources Control Board

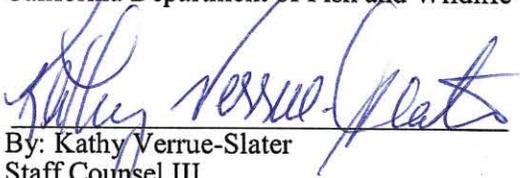
FOR THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE:

Dated: January 27, 2015


By: Thomas M. Cullen, Jr.
Administrator
Office of Spill Prevention and Response
California Department of Fish and Wildlife

APPROVED AS TO FORM:

Dated: January 26, 2015


By: Kathy Verrue-Slater
Staff Counsel III
Counsel for California Department of Fish and Wildlife

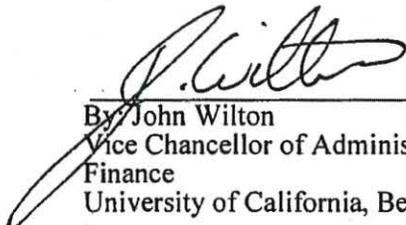
Dated: April 8, 2015


By: Jonathan Wiener
Deputy Attorney General
California Attorney General's Office
Attorney for California Department of Fish And Wildlife

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**FOR THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

Dated: ~~January~~ ^{March} 3, 2015

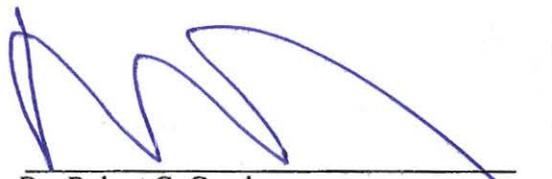

By: John Wilton
Vice Chancellor of Administration and
Finance
University of California, Berkeley

Dated: January __, 2015

By: Karen Petrulakis
Chief Deputy General Counsel
Office of General Counsel
Counsel for the Regents of the University of
California

APPROVED AS TO FORM:

Dated: ~~January~~ ^{March} 3, 2015


By: Robert C. Goodman
Attorney for the Regents of the University of
California

1 **FOR THE REGENTS OF THE**
2 **UNIVERSITY OF CALIFORNIA**

3 Dated: January __, 2015

4 _____
5 By: John Wilton
6 Vice Chancellor of Administration and
7 Finance
8 University of California, Berkeley

9
10 Dated: ^{March} ~~January~~ 2, 2015

11 _____
12 *Karen J. Petoulakis*
13 By: Karen Petoulakis
14 Chief Deputy General Counsel
15 Office of General Counsel
16 Counsel for the Regents of the University of
17 California

18
19 APPROVED AS TO FORM:

20 Dated: January __, 2015

21 _____
22 By: Robert C. Goodman
23 Attorney for the Regents of the University of
24 California

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EXHIBIT A
FINAL CONSENT JUDGMENT AND INJUNCTION

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. STATE WATER RESOURCES CONTROL BOARD;

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. DEPARTMENT OF FISH AND WILDLIFE;

Plaintiffs,

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA AND DOES 1-20 INCLUSIVE,

Defendants.

Case No.

[PROPOSED] FINAL CONSENT JUDGMENT AND INJUNCTION

(Health & Saf. Code, Div. 20, Chapter 6.7; Government Code, Title 2 Div. 1, Chapter 7.4)

Plaintiffs the People of the State of California, ex. rel State Water Resources Control Board (“State Water Board”) and the People of the State of California, ex. rel Department of Fish and Wildlife (“CDFW”) (Collectively “Plaintiffs”) and Defendant Regents of the University of California (“Settling Defendant”), having consented pursuant to the entry of this Final Consent Judgment and Injunction (“Final Judgment”); and

The Court having considered the pleadings, which include, without limitation, the Complaint, the parties’ Stipulation for Entry of Final Consent Judgment and Injunction, and the proposed Final Consent Judgment and Injunction;

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1 IT IS HEREBY ORDERED, AGJUDICATED, AND DECREED as follows:

2 **INTRODUCTION**

3 Concurrent with the filing of the Stipulation, the Plaintiffs filed a Complaint in this
4 matter alleging that the Settling Defendant violated various laws and regulations governing the
5 operation and maintenance of underground storage tanks (USTs) and UST systems located at
6 Settling Defendant's campus at Berkeley. In addition, the Complaint alleges the following: (1)
7 on or about December 10, 2011, a 200 gallon fuel tank located in the generator room of Stanley
8 Hall at the University of California, Berkeley, discharged approximately 1650 gallons of diesel
9 fuel when a fuel transfer pump failed to shut off; (2) the fuel flowed into a sump room located in
10 the basement of Stanley Hall and approximately 850 gallons of the fuel entered a storm drain and
11 was then discharged into Strawberry Creek, located in the City of Berkeley, in Alameda County,
12 California where it travelled downstream to the creek mouth and entered San Francisco Bay (the
13 "Stanley Hall Incident"); (3) fuel from the Stanley Hall Incident and the resulting cleanup actions
14 caused injuries to natural resources, including injuries to the creek channel, riparian habitat, and
15 mudflat/shoreline habitats; and (4) the Stanley Hall Incident and resultant harms were directly and
16 proximately caused by the acts, omissions, strict liability, fault, negligence, breach, and violations
17 by Settling Defendant and/or their agents, representatives, contractors, design professionals
18 and/or suppliers in regard to the UST violations and applicable California laws and regulations.
19 Settling Defendant denies that the Stanley Hall Incident caused injuries to natural resources or the
20 creek channel, riparian habitat, and mudflat/shoreline habitats, and further denies that the Stanley
21 Hall Incident resulted from its acts, omissions, fault, negligence, breach or violations of
22 applicable California laws and regulations.

23 In these negotiations, both the Plaintiffs and the Settling Defendant were represented by
24 counsel.

25 **STIPULATION FOR ENTRY OF FINAL JUDGMENT**

26 The Parties have entered into a Stipulation for Entry of Final Consent Judgment and
27 Injunction ("Stipulation") to settle this matter in order to avoid prolonged and complicated
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1 litigation, and after opportunity for review by counsel, the Parties consent to the entry by the
2 Court of this Final Consent Judgment and Injunction (“Final Judgment”) on the terms set forth
3 below. As set forth in the Stipulation, the parties have requested, and the court has approved, that
4 the Court retain jurisdiction for the purpose of enabling any party to this Final Judgment to apply
5 to the Court at any time for such further order and directions as may be necessary and appropriate
6 for the enforcement or compliance with the Final Judgment.

7 **1. DEFINITIONS**

8 1.1. Except where otherwise expressly defined herein, all terms shall be interpreted
9 consistent with Chapters 6.7 of Division 20 of the California Health and Safety Code and Title
10 23, Division 3, Chapter 16 of the California Code of Regulations (“the UST Regulations”) and
11 Chapter 7.4 of Title 2, Division 1 of the Government Code (“the Lempert-Keene Act”).

12 1.2. “Certified Unified Program Agency” or “CUPA” is an agency certified by the
13 Secretary of the California Environmental Protection Agency pursuant to the requirements of
14 Chapter 6.11 of the Health and Safety Code and California Code of Regulations, Title 27 to
15 implement certain State environmental programs within a jurisdiction. As used in the Stipulation
16 and in this Final judgment, “CUPA” includes any Participating Agency (as defined at Health and
17 Safety Code section 25501(h)(2)) or Unified Program Agency (as defined at Health and Safety
18 Code section 25501(h)(3)).

19 1.3. “Released USTs” shall mean the seven (7) USTs owned and operated by the
20 Settling Defendant and located on the Settling Defendant’s campus in Berkeley, California. More
21 specifically, the USTs are located at:

- 22 a. Doe Library;
 - 23 b. Life Sciences Building (Emergency Containment Tank #1);
 - 24 c. Life Sciences Building (Emergency Containment Tank #4);
 - 25 d. Hazardous Material Facility (Emergency Containment Tank #7);
 - 26 e. Koshland Hall;
 - 27 f. Life Sciences Building; and
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g. Stanley Hall.

1.4. "Covered USTs" shall mean all USTs that are owned and/or operated by the Settling Defendant and located on the Settling Defendant's campus in Berkeley, California as of the date of entry of the Final Judgment and any USTs that are installed at the Settling Defendant's campus in Berkeley, California within the five-year period starting on the date of entry of the Final Judgment.

1.5. "Stanley Hall Incident" shall mean the occurrence described in the Introduction, including but not limited to the discharge of fuel into Strawberry Creek and San Francisco Bay.

1.6. "Promptly" means as soon as reasonably practicable.

1.7. "Suspended Penalty Conduct" shall mean a violation of one or more of the provisions of Paragraph 6, below.

2. JURISDICTION

The Parties agree, and the Court hereby orders, that the Superior Court of California, County of Alameda, has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to the Stipulation.

3. SETTLEMENT OF DISPUTED CLAIMS

The Parties have stipulated pursuant to a compromise and settlement of disputed claims set forth in the Complaint. The Stipulation is not an admission by the Settling Defendant regarding any issue of law or fact in the above-captioned matter or any violation of law. The Settling Defendant waived its right to a hearing on any matter covered by the Complaint prior to the entry of this Final Judgment.

4. SETTLEMENT PAYMENT AND OTHER PAYMENTS

4.1. Upon entry of the Final Judgment, the Settling Defendant is liable for a total of FOUR HUNDRED FORTY NINE THOUSAND DOLLARS (\$449,000) in civil penalties, investigative and enforcement costs, and restoration and oversight costs, to be paid and/or suspended, as set forth in paragraphs 4.2 through 4.5, below.

4.2. Cash Civil Penalties:

1 4.2.a. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall
2 pay a total of TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000) in civil
3 penalties under Chapter 6.7 of Division 20 of the Health and Safety Code and the UST
4 Regulations. This payment shall be made by check, payable to the State Water Board's "State
5 Water Pollution Cleanup and Abatement Account." The check shall be delivered to:

6 State Water Resources Control Board
7 Division of Administrative Services, Accounting Branch
8 1001 I Street, 18th Floor [95814]
9 P.O. Box 1888
10 Sacramento, CA 95812-1888

11 A copy of the check shall be submitted to:

12 State Water Resources Control Board
13 Office of Enforcement
14 Attn: David Boyers, Assistant Chief Counsel
15 1001 I Street, 16th Floor
16 Sacramento, CA 95814

17 These funds may be used by the State Water Board, at its discretion, to fund activities associated
18 with the investigation and/or enforcement of UST requirements, including those codified at
19 Chapter 6.7 of the Health and Safety Code and the UST Regulations, and the investigation and/or
20 protection of the Underground Storage Tank Cleanup Fund. These activities may include, but are
21 not limited to, training State and local enforcement staff, hiring enforcement staff, expert witness
22 support, and criminal investigation development and support.

23 4.2.b. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall
24 pay a total of SEVENTY THOUSAND (\$70,000) in civil penalties under Government Code
25 section 8670.66(a)(3). This payment shall be made by check payable to the "State of California
26 Department of Fish and Wildlife." The check shall be delivered to:

27 State of California Department of Fish and Wildlife
28 Office of Spill Prevention and Response
 Attn: Katherine Verrue-Slater, Staff Counsel III
 1700 "K" Street, Suite 250
 Sacramento, California 95811

 A copy of the check shall be submitted to:

 State Water Resources Control Board

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Office of Enforcement
Attn: David Boyers, Assistant Chief Counsel
1001 I Street, 16th Floor
Sacramento, CA 95814

The check shall reference the U.C. Berkeley/Stanley Hall Diesel Spill. The funds shall be used to fund environmental enhancement projects approved by the Environmental Enhancement Committee in accordance with Government Code section 8670.71.

4.3. Reimbursement of Costs:

4.3.a. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall pay a total of THIRTY THOUSAND DOLLARS (\$30,000) to the State Water Board for reimbursement of attorneys' fees, costs of investigation and other costs of enforcement. This payment shall be made by check, payable to the State Water Board's "Underground Storage Tank Cleanup Fund." The check shall be delivered to:

State Water Resources Control Board
Division of Administrative Services, Accounting Branch
1001 I Street, 18th Floor [95814]
P.O. Box 1888
Sacramento, CA 95812-1888

A copy of the check shall be submitted to:

State Water Resources Control Board
Office of Enforcement
Attn: David Boyers, Assistant Chief Counsel
1001 I Street, 16th Floor
Sacramento, CA 95814

4.3.b. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall pay a total of FIFTEEN THOUSAND DOLLARS (\$15,000) to the California Department of Fish and Wildlife for reimbursement of unpaid response and Natural Resource Damage Assessment costs associated with the Stanley Hall Incident. Payment is to be made by check payable to the "State of California Department of Fish and Wildlife." The check shall be delivered to:

State of California Department of Fish and Wildlife
Office of Spill Prevention and Response
Attn: Katherine Verrue-Slater, Staff Counsel III
1700 "K" Street, Suite 250
Sacramento, California 95811

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A copy of the check shall be submitted to:

State Water Resources Control Board
Office of Enforcement
Attn: David Boyers, Assistant Chief Counsel
1001 I Street, 16th Floor
Sacramento, CA 95814

The check shall reference the U.C. Berkeley/Stanley Hall Diesel Spill.

4.4. Natural Resource Damages:

4.4.a. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall pay a total of THIRTY ONE THOUSAND FIVE HUNDRED DOLLARS (\$31,500) to the National Fish and Wildlife Foundation to fund projects to restore or enhance riparian, mudflat, and shoreline habitats and lost recreation in Alameda County. Payment is to be made by check payable to the "National Fish and Wildlife Foundation." The check shall be delivered to:

State of California Department of Fish and Wildlife
Office of Spill Prevention and Response
Attn: Katherine Verrue-Slater, Staff Counsel III
1700 "K" Street, Suite 250
Sacramento, California 95811

A copy of the check shall be submitted to:

State Water Resources Control Board
Office of Enforcement
Attn: David Boyers, Assistant Chief Counsel
1001 I Street, 16th Floor
Sacramento, CA 95814

The check shall reference the U.C. Berkeley/Stanley Hall Diesel Spill. The National Fish and Wildlife Foundation shall deposit the funds into the UC Berkeley/Stanley Hall Subaccount of the Environmental Fund for Habitat and Incident Specific Restoration Projects. The money shall be used to fund projects to restore or enhance riparian and shoreline habitat in and around Strawberry Creek and Brickyard Cove, marine environmental education and/or shoreline cleanup overseen by the Berkeley Marina Shorebird Center, as more fully described in the Natural Resource Damage Assessment Summary and Restoration Proposal for the U.C. Berkeley (Stanley Hall) Diesel Spill, dated August 20, 2014.

1 4.4.b. Within thirty (30) days of entry of the Final Judgment, the Settling Defendant shall
2 pay a total of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) for restoration oversight
3 and administrative costs associated with the Stanley Hall Incident. The check shall reference the
4 U.C. Berkeley/Stanley Hall Diesel Spill. The check shall be delivered to:

5 State of California Department of Fish and Wildlife
6 Office of Spill Prevention and Response
7 Attn: Katherine Verrue-Slater, Staff Counsel III
8 1700 "K" Street, Suite 250
9 Sacramento, California 95811

10 A copy of the check shall be submitted to:

11 State Water Resources Control Board
12 Office of Enforcement
13 Attn: David Boyers, Assistant Chief Counsel
14 1001 I Street, 16th Floor
15 Sacramento, CA 95814

16 The check shall reference the U.C. Berkeley/Stanley Hall Diesel Spill.

17 4.5. Suspended Penalties:

18 4.5.a. Of the Settling Defendant's total liability for penalties payable to the State Water
19 Board of THREE HUNDRED THOUSAND DOLLARS (\$300,000), SEVENTY FIVE
20 THOUSAND DOLLARS (\$75,000) shall be suspended on the condition that: (1) the Settling
21 Defendant complies with its payment obligations of cash civil penalties, investigative and
22 enforcement costs and restoration and oversight costs as set forth in Paragraphs 4.2 through 4.4
23 and (2) the Settling Defendant does not engage in any Suspended Penalty Conduct specified in
24 Paragraph 6 for a period of five (5) years, beginning immediately upon entry of the Final
25 Judgment.

26 4.5.b. If the State Water Board determines that the Settling Defendant has engaged in
27 Suspended Penalty Conduct, as set forth in Paragraph 6, below, the State Water Board may
28 initiate a new enforcement action and seek appropriate relief as authorized by law, including but
not limited to, injunctive relief and civil penalties, and/or move the Court by noticed motion to
assess and collect suspended civil penalties as provided herein. The Settling Defendant shall
retain all of its rights to contest the State Water Board's claim that it has engaged in Suspended

1 Penalty Conduct, including the right to assert that the alleged violation was due to a *Force*
2 *Majeure Event* as described in Paragraph 22.

3 4.5.c. If the State Water Board elects to assess and collect suspended penalties as
4 provided herein and the Court finds that the Settling Defendant has engaged in Suspended Penalty
5 Conduct, or failed to act when it had a duty to act on one or more occasions that constitute a
6 violation of the provisions that are designated below as Suspended Penalty Conduct, the Court
7 shall impose a civil penalty as follows: For each Suspended Penalty Conduct violation and for
8 each thirty (30) calendar day period that a Suspended Penalty Conduct violation remains
9 uncorrected, the Court shall impose a mandatory TWENTY FIVE THOUSAND DOLLARS
10 (\$25,000) civil penalty payable to the "State Water Pollution Cleanup and Abatement Account."
11 The State Water Board shall have the burden of proof for establishing that the alleged Suspended
12 Penalty Conduct violation(s) has occurred, and the Settling Defendant shall have the burden of
13 proof for establishing that the alleged Suspended Penalty Conduct violation(s) has been corrected
14 in accordance with all applicable laws. A Suspended Penalty Conduct violation that is corrected
15 in less than thirty (30) calendar days from the initial date of violation shall not be assessed a civil
16 penalty under this paragraph. However, the State Water Board may still take enforcement action
17 and seek any appropriate relief for such alleged Suspended Penalty Conduct as authorized by law,
18 including, but not limited to, the assessment and collection of civil penalties pursuant to Health
19 and Safety Code section 25299, and Settling Defendants retains all defenses to any enforcement
20 action. If the Court finds that the Settling Defendant has engaged in Suspended Penalty Conduct
21 and has failed to timely correct the violation(s) as set forth in this paragraph, the Parties agree that
22 the Court shall have no discretion to reduce, increase, or otherwise modify the amount of
23 suspended civil penalties to be assessed and awarded to the State Water Board pursuant to the
24 Stipulation and the Final Judgment, and that the aggregate suspended penalties awarded by the
25 Court shall not exceed the entire suspended penalty amount of SEVENTY FIVE THOUSAND
26 DOLLARS (\$75,000) specified herein. Payment of the suspended penalties awarded by the Court
27 pursuant to this paragraph shall be due to the State Water Board forty-five (45) days from the
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1 Court's final order(s). This payment shall be made by check, payable to the State Water Board's
2 "State Water Pollution Cleanup and Abatement Account." The check shall be delivered to:

3 State Water Resources Control Board
4 Division of Administrative Services, Accounting Branch
5 1001 I Street, 18th Floor [95814]
6 P.O. Box 1888
7 Sacramento, CA 95812-1888

8 A copy of the check shall be submitted to:

9 State Water Resources Control Board
10 Office of Enforcement
11 Attn: David Boyers, Assistant Chief Counsel
12 1001 I Street, 16th Floor
13 Sacramento, CA 95814

14 If the Settling Defendant complies with its payment obligations set forth in Paragraphs 4.2
15 through 4.4 and does not engage in Suspended Penalty Conduct for a period of three (3) years,
16 beginning with the entry of the Final Judgment, the suspension of penalties as herein provided
17 shall become permanent and the Settling Defendant shall no longer be liable for such unpaid
18 suspended penalties. However, if a motion to assess and collect suspended civil penalties as
19 provided herein is still pending before the Court three (3) years after the entry of the Final
20 Judgment, the suspension of penalties shall not become final until a final order has been issued on
21 the pending motion and payment of civil penalties to the State Water Board has been made if
22 required by such order.

23 4.5.d. The suspended penalties provided by Paragraph 4.5 are in addition to, and do not
24 bar, any other remedies or sanctions that may be available for any violations of Chapter 6.7 of
25 Division 20 of the California Health and Safety Code and the UST Regulations.

26 4.6. Late Payments: The Settling Defendant shall be liable for a stipulated civil penalty
27 of ONE THOUSAND DOLLARS (\$1,000) for each day that a payment required pursuant to the
28 Stipulation and this Final Judgment is late.

29 5. INJUNCTIVE RELIEF

Pursuant to the provisions of Health and Safety Code section 25299.01, but subject to the
termination Paragraph 20 below, upon approval and entry of the Final Judgment by the Court, the

1 Settling Defendant, with respect to the Covered USTs, is enjoined to comply with Chapter 6.7 of
2 Division 20 of the Health and Safety Code and the UST Regulations. Specifically, the Settling
3 Defendant is enjoined to comply with the following requirements for each of the Covered USTs:

4 5.1. The Settling Defendant shall, at all times, operate the Covered USTs only after a valid
5 operating permit has been issued by the CUPA, in accordance with the requirements of Health
6 and Safety Code section 25284(a)(1).

7 5.2. The UST monitoring equipment shall be operated and maintained in accordance with
8 the equipment manufacturer's instructions and certified every 12 months for operability, proper
9 operating condition and proper calibration, as required by Title 23, California Code of
10 Regulations section 2638(a).

11 5.3 The UST monitoring system shall be capable of detecting an unauthorized release
12 from any portion of the UST system at the earliest possible opportunity, as required by Health and
13 Safety Code sections 25290.1(d), 25290.2(d), 25291(b) and 25292(a) and title 23, California
14 Code of Regulations sections 2630(d) and 2641(a). The Settling Defendant shall properly install
15 and place all leak-detecting sensors so that each is capable of detecting a leak at the earliest
16 possible opportunity as required by California Code of Regulations, title 23, including but not
17 limited to section 2630(d). The Settling Defendant shall promptly replace or repair any sensor
18 that, for any reason, becomes incapable of detecting a leak at the earliest possible opportunity.

19 5.4. All corrodible underground piping, if in direct contact with backfill, shall be protected
20 against corrosion, as required by Title 23, California Code of Regulations section 2636(b).

21 5.5. USTs shall be equipped with a spill container that will collect any hazardous
22 substances spilled during product delivery operations to prevent the hazardous substance from
23 entering the subsurface environment, as required by Health and Safety Code section 25284.2 and
24 Title 23, California Code of Regulations section 2635(b)(1), and the spill containment structure
25 shall be tested annually in accordance with the requirements of Health and Safety Code section
26 25284.2.

1 5.6. USTs shall be maintained so that the primary and secondary containment is “product
2 tight” as required by Health and Safety Code sections 25290.1(c), 25290.2(c) and 25291(a)(1).

3 5.7. Paragraph 5 is not intended to impose conditions or requirements on a Covered UST
4 that are not otherwise applicable to that Covered UST.

5 **6. SUSPENDED PENALTY CONDUCT**

6 The following acts, occurring within the five-year period starting upon entry of the Final
7 Judgment, shall constitute Suspended Penalty Conduct for purposes of Paragraph 4.5, above.

8 6.1. Operating one or more Covered USTs without first obtaining a valid operating permit
9 from the CUPA as required by Health and Safety Code section 25284(a)(1).

10 6.2. Failure to operate and maintain Covered UST monitoring equipment in accordance
11 with the equipment manufacturer’s instructions, as required by Title 23, California Code of
12 Regulations section 2638(a).

13 6.3. Failure to have a UST monitoring system that is capable of detecting an unauthorized
14 release from any portion of the Covered UST system at the earliest possible opportunity, as
15 required by Health and Safety Code sections 25290.1(d), 25290.2(d), 25291(b) and 25292(a) and
16 Title 23, California Code of Regulations sections 2630(d) and 2641(a).

17 6.4. Failure to provide adequate corrosion protection for a Covered UST for all corrodible
18 underground piping in direct contact with backfill, as required by Title 23, California Code of
19 Regulations section 2636(b).

20 6.5. Failure to equip Covered USTs with a spill container that will collect any hazardous
21 substances spilled during product delivery operations to prevent the hazardous substance from
22 entering the subsurface environment, as required by Health and Safety Code section 25284.2 and
23 Title 23, California Code of Regulations section 2635(b)(1).

24 6.6. Failure to maintain Covered USTs so that the primary and secondary containment is
25 “product tight,” in accordance with Health and Safety Code sections 25290.1(c), 25290.2(c) and
26 25291(a)(1).

1 7. **MATTERS COVERED BY THE FINAL JUDGMENT**

2 7.1. The Final Judgment is a final and binding resolution and settlement of: (a) all claims,
3 violations, penalties and causes of action alleged by the Plaintiffs in the Complaint regarding the
4 Released USTs and the Stanley Hall Incident; (b) all claims, violations, penalties and causes of
5 action related to the Released USTs or the Stanley Hall Incident that could have been asserted by
6 the Plaintiffs based upon the acts, omissions and/or events that are alleged in the Complaint; (c)
7 all damages, claims, violations, penalties and causes of action for injury to, destruction of, loss of,
8 or loss of use of, natural resources arising from the Stanley Hall Incident, including natural
9 resource damage assessment costs and restoration monitoring costs associated with the Stanley
10 Hall Incident; and (d) all claims, actions or penalties for the performance, or lack of performance
11 of, cleanup, corrective action, or response action concerning or arising out of actual past or future
12 releases, spills, leaks, discharges or disposal of petroleum hydrocarbons, hazardous wastes, or
13 hazardous substances relating to the Stanley Hall Incident (hereinafter referred to as “Covered
14 Matters”).

15 7.2. The Parties reserve the right to pursue any claim that is not a Covered Matter
16 (“Reserved Claim”) and to defend against any Reserved Claim. Reserved Claims includes
17 claims, actions or penalties for the performance, or lack of performance of, cleanup, corrective
18 action, or response action concerning or arising out of actual past or future releases, spills, leaks,
19 discharges or disposal of petroleum hydrocarbons, hazardous wastes, or hazardous substances
20 caused or contributed to by the Settling Defendant at locations at or from the Covered USTs or
21 any other UST facility owned and/or operated by the Settling Defendant, other than the release
22 associated with the Stanley Hall Incident. The Final Judgment does not prevent any claims,
23 actions, or penalties by the Plaintiffs and/or other regulatory entity based upon the actual release
24 of any hazardous substance into the soil and/or groundwater, other than the release associated
25 with the Stanley Hall Incident.

26 7.3. Except as otherwise provided in the Stipulation and in this Final Judgment, the
27 Plaintiffs covenant not to sue or pursue any further civil claims, actions or penalties against the
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1 Settling Defendant or any of their officers, employees, representatives, agents or attorneys for the
2 Covered Matters.

3 7.4. The Settling Defendant covenants not to sue or pursue any civil or administrative
4 claims against the Plaintiffs or against any agency of the State of California or against their
5 officers, employees, representatives, agents or attorneys arising out of or related to any Covered
6 Matters.

7 7.5. Any claims, violations, or causes of action that are based on acts, omissions or
8 events occurring after the date of entry of the Final Judgment in this matter, are not resolved,
9 settled or covered by the Final Judgment.

10 7.6 The Stipulation and this Final Judgment do not limit or affect the rights of the
11 Settling Defendant against any third parties.

12 7.7. In any subsequent action that may be brought by the Plaintiffs based on any
13 Reserved Claims, the Settling Defendant agrees that it will not assert that failing to pursue the
14 Reserved Claim as part of this action constitutes claim-splitting, laches, or is otherwise
15 inequitable. This Paragraph does not prohibit the Settling Defendant from asserting any statute of
16 limitations defense that may be applicable to any Reserved Claims.

17 **8. NON-ADMISSION OF LIABILITY**

18 The Settling Defendant does not admit any allegation, finding, determination or
19 conclusion contained, alleged or asserted in the Complaint, and the Final Judgment is not an
20 admission by the Settling Defendant regarding any issue of law or fact alleged in the Complaint
21 and shall not be construed as an admission by the Settling Defendant regarding the same. Except
22 as otherwise expressly provided in the Final Judgment, nothing in the Final Judgment shall
23 prejudice, waive or impair any right, remedy or defense that the Settling Defendant has against
24 any person or entity not party to the Final Judgment.

25 **9. PLAINTIFFS NOT LIABLE**

26 The Plaintiffs shall not be liable for any injury or damage to persons or property resulting
27 from acts or omissions by the Settling Defendant in carrying out the activities pursuant to the
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1 Final Judgment, nor shall the Plaintiffs be held as a party to or guarantor or any contract entered
2 into by the Settling Defendant, its officers, employees, agents, representatives or contractors in
3 carrying out activities required pursuant to the Final Judgment.

4 **10. EFFECT OF JUDGMENT**

5 Except as expressly provided in the Final Judgment or applicable statutory or common
6 law, nothing in the Final Judgment is intended not shall it be construed to preclude the Plaintiffs
7 from exercising its authority under any law, statute or regulation. Except as expressly provided
8 by the Final Judgment, the Settling Defendant retains all of its defenses and rights to the exercise
9 of such authority.

10 **11. APPLICATION OF FINAL JUDGMENT**

11 This Final Judgment applies to and is binding upon the Plaintiffs, and upon the Settling
12 Defendant and to each of their respective predecessors, subsidiaries, affiliates, successors and
13 assigns.

14 **12. REGULATORY CHANGES**

15 Nothing in the Final Judgment shall excuse the Settling Defendant from complying with
16 any more stringent requirements that may be imposed by changes in applicable law. To the
17 extent any future regulatory or statutory changes make the obligations of the Settling Defendant
18 less stringent than as provided for in Paragraphs 5 and 6 of the Stipulation and in the
19 corresponding paragraphs of this Final Judgment, the Settling Defendant may apply to this Court,
20 upon noticed motion, for modification(s) of any of the obligations contained in Paragraphs 5 and
21 6 hereof, and the Court will grant such motion upon a showing that the applicable requirements
22 have changed.

23 **13. AUTHORITY TO ENTER STIPULATION**

24 Each signatory to the Stipulation certified that he or she is fully authorized by the Party he
25 or she represents to enter into the Stipulation, to execute it on behalf of the Party, and legally to
26 bind that Party.

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14. PAYMENT OF LITIGATION EXPENSES AND FEES

Except as otherwise provided in the Stipulation and in this Final judgment, each of the Parties shall bear and pay their own fees and costs, including, but not limited to, their attorney fees, expert witness fees, and costs and all other costs of litigation, investigation, inspection, enforcement, prosecution, recovery and assessment of natural resource damages and suit incurred to date, in and regarding this action, although nothing in this Paragraph is intended to abridge the payments or allocation of the payments made by the Settling Defendant pursuant to Paragraph 4 hereof.

15. COUNTERPART SIGNATURES

The Stipulation may be executed by the Parties in counterpart.

16. ENTRY OF JUDGMENT

Pursuant to the Stipulation, the Parties sought approval of the Final Judgment and requested that the Court make a determination that the Final Judgment is fair and in the public interest. The Court determines that the Final Judgment is fair and in the public interest.

17. INTEGRATION

The Stipulation and Final Judgment constitutes the whole agreement between the Parties. The Final Judgment may not be amended or modified except as provided for in the Stipulation and in this Final Judgment.

18. MODIFICATION OF FINAL JUDGMENT

The Final Judgment may be amended or modified only on a noticed motion by one of the Parties with subsequent approval by the Court or upon written consent by the Parties and the subsequent approval of the Court.

19. NOTICES

All notices and submissions required by the Stipulation and this Final Judgment shall be sent to the following via personal delivery, overnight mail using a reputable delivery courier, or United States Postal Service mail, certified or registered mail, return receipt requested:

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For Plaintiffs:

State Water Resources Control Board, Office of Enforcement
1001 I Street, 16th Floor
Sacramento, CA 95814
Attn: David Boyers

And

State of California Department of Fish and Wildlife
Office of Spill Prevention and Response
Attn: Katherine Verrue-Slater, Staff Counsel III
1700 "K" Street, Suite 250
Sacramento, California 95811

Office of the California Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102
Attn: Jonathan A. Wiener

For The Regents of the University of California:

Mark Freiberg, CIH, CSP
Executive Director
Environment, Health & Safety, and Emergency Management
University of California, Berkeley
2199 Addison, Room 317
University Hall
Berkeley, CA 94720-1150

And

Brett S. Henrikson, Esq.
Senior Counsel, Environmental Health & Safety
Office of the General Counsel, University of California
1111 Franklin St., 8th Fl.
Oakland, CA 94607

And

Robert C. Goodman, Esq.
Rogers Joseph O'Donnell, P.C.
311 California Street
San Francisco, CA 94104

Any Party may change the individual or address for purpose of notice to that Party by written notice specifying the new individual or address, but no such change is effective until the written notice is actually received by the Party sought to be charged with its contents.

20. TERMINATION OF INJUNCTIVE RELIEF PROVISIONS

After the Final Judgment has been in effect for five (5) years, the Settling Defendant shall

1 be relieved from any further compliance with all of the injunctive relief provisions of Paragraph 5
2 of the Stipulation and the corresponding provisions of this Final Judgment; provided, however,
3 that prior to five (5) years after the effective date this Final Judgment, the State Water Board may
4 file a motion seeking to have the Court extend all and/or some of the injunctive relief provisions
5 of Paragraph 5 of the Stipulation and the corresponding provisions of this Final Judgment based
6 upon the Settling Defendant's demonstrated history of non-compliance with Paragraph 5. Within
7 thirty (30) calendar days of the filing of the State Water Board's motion, Settling Defendant may
8 file either a statement of non-opposition, or an opposition, and within forty-five (45) calendar
9 days of the filing of the Settling Defendant's motion, the State Water Board may file a reply. The
10 Parties agree that the Court may grant the State Water Board's request upon a showing by the
11 State Water Board that Settling Defendant has failed to comply with the obligations set forth in
12 Paragraph 5 of the Stipulation and the corresponding provisions of this Final Judgment.

13 **21. ENFORCEMENT OF FINAL JUDGMENT**

14 21.1. The State Water Board may move this Court to enjoin the Settling Defendant from
15 any violation of any provisions of the Final Judgment and to award other appropriate relief,
16 including penalties and costs, by serving and filing a regularly noticed motion in accordance with
17 Code of Civil Procedure section 1005 ("Enforcement Motion"). The Settling Defendant may file
18 an opposition and the State Water Board may file a reply. At least ten (10) business days before
19 filing an Enforcement Motion, the State Water Board will meet and confer in good faith with the
20 Settling Defendant to attempt to resolve the matter without judicial intervention. Notwithstanding
21 any other provisions in the Stipulation or this Final Judgment, the State Water Board may take
22 immediate action as authorized by law in order to respond to an immediate threat to human health
23 or the environment.

24 21.2. The Court has the authority to enjoin any violation of the Final Judgment. On the
25 State Water Board's Enforcement Motion and the Court's determination that State Water Board
26 has met its burden of proof as required by Paragraph 4.5, if applicable, the payment amounts as
27 provided in those Paragraphs shall be binding on the Settling Defendant, subject to Settling
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1 Defendant's right to seek appellate review of the Court's determination. The Court retains, in
2 addition, its power to enforce the Final Judgment through contempt. Except as to Covered
3 Matters, nothing in this Final Judgment or the Stipulation shall restrict the authority of any state
4 or local agency to seek criminal or civil penalties and injunctive relief as provided by law.

5 **22. FORCE MAJEURE EVENT**

6 22.1. It is not a breach of the Settling Defendant's obligations under Paragraphs 5 and 6
7 if the Settling Defendant is unable to perform due to a *Force Majeure Event*. Any event due to
8 acts of God, acts of war or circumstances beyond the control of the Settling Defendant that
9 prevents the performance of such an obligation despite the Settling Defendant's timely and
10 diligent efforts to fulfill the obligation is a *Force Majeure Event*. A *Force Majeure Event* does
11 not include financial inability to fund or complete any work, any failure by the Settling
12 Defendant's suppliers, contractors, subcontractors or other persons contracted to perform the
13 work for or on behalf of the Settling Defendant (unless their failure to do so is itself due to a
14 *Force Majeure Event*), nor does it include circumstances which could have been avoided if the
15 Settling Defendant had complied with preventative requirements imposed by law, regulation or
16 ordinance.

17 22.2. If the Settling Defendant claims a *Force Majeure Event*, it shall notify the State
18 Water Board in writing within five (5) business days of when the Settling Defendant learns that
19 the event will prevent performance of an obligation in Paragraph 5. Within fourteen (14)
20 calendar days thereafter, the Settling Defendant shall provide the State Water Board a written
21 explanation and description of the reasons for the prevention of performance, all actions taken or
22 to be taken to prevent or mitigate the nonperformance, the anticipated date for performance, and
23 explanation of why the event is a *Force Majeure Event*, and any documentation to support the
24 Settling Defendant's explanation. Within fourteen (14) calendar days of receipt of such
25 explanation, the State Water Board will notify the Settling Defendant in writing whether the State
26 Water Board agreed or disagrees with the Settling Defendant's assertion of a *Force Majeure*
27 *Event*. If the Parties do not agree that a particular delay or lack of performance is attributable to a
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1 *Force Majeure Event*, either Party may petition the Court to resolve the dispute. If either Party
2 petitions the Court to resolve the dispute, it will neither prejudice nor preclude the State Water
3 Board from bringing a motion to enforce any of the provisions of Paragraph 5 and 6 against the
4 Settling Defendant as provided in Paragraph 22.4, below.

5 22.3. The time for performance of the obligations under Paragraphs 5 and 6 of the
6 Stipulation that are affected by a *Force Majeure Event* will be extended for such time as is
7 necessary to complete those obligations. An extension of time for performance of the obligations
8 affected by the *Force Majeure Event* shall not, of itself, extend the time for performance of any
9 other obligation.

10 22.4. If the State Water Board decides to enforce the Provisions of Paragraphs 5 and 6
11 against the Settling Defendant for the failure to perform in spite of the Settling Defendant's claim
12 of a *Force Majeure Event*, the Settling Defendant may raise the claimed *Force Majeure Event* as
13 a defense to such an action and shall have the burden of proof to demonstrate the *Force Majeure*
14 *Event*.

15 **23. NO WAIVER OF RIGHT TO ENFORCE**

16 The failure of the State Water Board to enforce any provision of the Final Judgment shall
17 neither be deemed a waiver of such provision nor in any way affect the validity of the Final
18 Judgment. The failure of the State Water Board to enforce any such provision shall not preclude
19 it from later enforcing the same or any other provision of the Final Judgment. Except as
20 expressly provided in the Final Judgment, the Settling Defendant retains all defenses allowed by
21 law to any such later enforcement. No oral advice, guidance, suggestions or comments by
22 employees or officials of any Party regarding matters covered in the Final Judgment shall be
23 construed to relieve any Party of its obligations under the Final Judgment.

24 **24. NECESSITY FOR WRITTEN APPROVALS**

25 All approvals and decisions of the State Water Board under the terms of the Final
26 Judgment shall be communicated to the Settling Defendant in writing. No oral advice, guidance,
27 suggestions or comments by employees of or officials of the State Water Board regarding
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submissions or notices shall be construed to relieve the Settling Defendant of its obligation to obtain any final written approval required by the Final Judgment.

25. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS

The Settling Defendant shall permit any duly authorized representative of the State Water Board to inspect and copy the Settling Defendant's records and documents, and to enter and inspect the Settling Defendant's Covered USTs to determine whether the Settling Defendant is in compliance with the terms of the Final Judgment. Such documents include, but are not limited to, the Settling Defendant's designated operator reports. Nothing in this Paragraph is intended to require access to or production of any documents that are protected from production or disclosure by the attorney-client privilege, attorney work product doctrine or any other applicable privilege afforded to the Settling Defendant under law.

26. RETENTION OF JURISDICTION

26.1 This Court has jurisdiction to interpret and enforce the Final Judgment. The Court shall retain continuing jurisdiction to enforce the terms of this Final Judgment and to address any other matters arising out of or regarding this Final Judgment.

26.2 This Final Judgment shall go into effect immediately upon entry thereof. Entry is authorized by Stipulation of the Parties upon filing.

IT IS SO ORDERED, ADJUDICATED AND DECREED

Dated: _____, 2015

Judge of the Superior Court
County of Alameda