

1 LOIS J. SCHIFFER
 Assistant Attorney General
 Environment and Natural Resources Division
 2 ROBERT D. BROOK
 Environmental Enforcement Section
 Environment and Natural Resources Division
 3 United States Department of Justice
 P.O. Box 7611
 4 Washington, D.C. 20044
 (202) 514-2738
 5 NORA M. MANELLA
 United States Attorney
 6 LEON WEIDMAN
 Chief, Civil Division
 7 KURT ZIMMERMAN
 Assistant U.S. Attorney
 8 300 N. Los Angeles Street
 Los Angeles, California 90012
 9 (213) 897-5709
 10

FILED
 CLERK, U.S. DISTRICT COURT
 MAR 27 1996
 FILED
 CLERK, U.S. DISTRICT COURT OF CALIFORNIA
 MAR 25 1996
 DEPUTY

LODGED
 CLERK, U.S. DISTRICT COURT
 MAR 21 1996
 CENTRAL DISTRICT OF CALIFORNIA
 DEPUTY

11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,)
 15 Plaintiff,)
 16 v.)
 17 UNION OIL COMPANY OF CALIFORNIA,)
 18 Defendant.)
 19

No. CV 96-1997-RAP(RNBx)

CONSENT DECREE

20 This Consent Decree ("Decree") is entered into by the
 21 United States of America ("United States"), and Union Oil Company
 22 of California ("Unocal").

23 INTRODUCTION

24 This action arose out of the rupture of a Unocal
 25 pipeline on August 3, 1992, in Avila Beach, California, which
 26 caused the discharge of San Joaquin Valley crude oil onto nearby
 27 lands and water.

DEPARTMENT OF JUSTICE
 APR 17 1996
 LANDS DIVISION
 CENT RECORD 42

28

1 Plaintiff has alleged that approximately 600 barrels of
2 crude oil were spilled. The spilled oil flowed from the pipeline
3 rupture along a gully, down a cliff face and into a small cove
4 and then reached marine waters.

5 The discharge resulted in injury to terrestrial
6 vegetation, intertidal and subtidal sediments and biota,
7 fisheries, birds, marine mammals, and other valuable resources in
8 and about Avila Beach, Olde Port Beach, and Pirates Cove Beach.

9 The United States and the State of California are co-
10 equal joint trustees over some or all of the resources affected
11 by the oil spill.

12 The State of California has filed a separate action
13 against Unocal in Superior Court. That action is resolved by a
14 Settlement Agreement (copy attached hereto as Attachment 1). The
15 Settlement Agreement largely parallels this Decree and provides
16 for resolution of the State's claims, and sets forth the
17 structure for payment of natural resource damages, as well as
18 other payments, to the State. The Settlement Agreement provides
19 for performance of the same Restoration projects as set forth in
20 this Decree.

21 The United States and California (collectively, the
22 "Governments") have proposed certain Restoration Projects to
23 Restore Natural Resources injured as a direct result of the oil
24 spill. The Governments deem the proposed projects reasonable and
25 necessary measures to Restore these Natural Resources.

1 otherwise controlled by the United States or the State of
2 California and its agencies.

3 (b) "Natural Resource Trustees" or "Trustees"
4 means those federal and state agencies designated or
5 authorized pursuant to the Oil Pollution Act of 1990, and
6 state law to act on behalf of the public as Trustees for the
7 natural resources belonging to, managed by, controlled by or
8 appertaining to the United States or State of California.
9 Specifically, as used in this Decree the Trustees are the
10 United States Department of the Interior, acting through the
11 U.S. Fish and Wildlife Service, the California Department of
12 Fish and Game, and the State Lands Commission.

13 (c) "Party" or "Parties" mean Unocal and the
14 United States, including its Departments, Agencies, and
15 subdivisions.

16 (d) "Restore" or "Restoration" mean any action to
17 restore to its pre-spill condition any Natural Resource
18 injured, lost, or destroyed as a result of the Oil Spill and
19 the services provided by that Natural Resource, or any
20 action which restores, replaces, rehabilitates, or acquires
21 the equivalent of, the injured, lost, or destroyed Natural
22 Resource and affected services.

23 (e) "Natural Resources Damages" means civil
24 compensatory and remedial relief recoverable by the
25 Governments in their capacities as Trustees on behalf of the
26 public for injury to, destruction of, or loss of any or all
27 Natural Resources resulting from the Oil Spill, including
28

1 (1) costs of damage assessment, (2) compensation for loss,
2 injury, impairment, damage or destruction of Natural
3 Resources, whether temporary or permanent, or for loss of
4 use value (active and passive), consumer surplus, economic
5 rent, or any other similar value of Natural Resources, and
6 (3) costs of restoration, rehabilitation, or replacement of
7 injured Natural Resources or the acquisition of equivalent
8 resources.

9 (f) "Oil Spill" means the discharge of San
10 Joaquin Valley crude oil through a ruptured Unocal pipeline
11 on August 3, 1992 at the Unocal Avila Beach Tank Farm in
12 Avila Beach and the resulting oil spill onto lands and
13 marine waters.

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

18 SETTLEMENT PAYMENT BY UNOCAL

19 4. Unocal shall pay to the Governments the sum of
20 \$1,619,919.90 in the manner set forth in paragraphs 5, 6, 7, and
21 8 of this Decree.

22 5. Within fifteen (15) days of the date of notice to
23 Unocal that all signatories have executed this Consent Decree and
24 the Superior Court Settlement Agreement, Unocal shall pay \$1.6
25 million into the Unocal Settlement Escrow Account as described in
26 paragraph 6 of this Decree.

1 6. Unocal shall establish or cause to be established
2 an escrow account at a federally-chartered bank (the "Unocal
3 Settlement Escrow Account") to receive and hold the \$1.6 million
4 and all interest accumulated on that amount pending entry of this
5 Decree and the entry of Judgment in the Superior Court for the
6 County of San Luis Obispo on the complaint for damages arising
7 out of the Oil Spill. The Unocal Settlement Escrow Account shall
8 earn a rate of interest not less than the rate on 90-day Treasury
9 Bills, and all interest earned thereon shall be for the benefit
10 of and paid to the Governments, except that if the \$1.6 million
11 is returned to Unocal as a result of termination of this Decree,
12 all interest thereon shall be for the benefit of and paid to
13 Unocal.

14 7. Within 15 days of receipt by Unocal of written
15 instructions from the United States following entry of this
16 Decree and entry of Judgment in the Superior Court on the
17 complaint for damages arising out of the Oil Spill, Unocal shall
18 instruct the escrow holder to transfer \$100,000, plus the
19 interest accrued thereon, from the Unocal Settlement Escrow
20 Account to the United States Department of the Interior's Natural
21 Resource Damage Assessment and Restoration Fund on the next
22 maturity date of the 90-day Treasury Bills in which the escrow
23 funds are currently invested. The Settlement Agreement provides
24 that in settlement of State natural resource damage claims,
25 Unocal shall transfer from the Unocal Settlement Escrow Account
26 into the Avila Beach Trust, which is to be established by Unocal
27 through the Settlement Agreement with The National Fish and
28

1 Wildlife Foundation, \$950,000 plus the interest accrued thereon.

2 The Avila Beach Trust will be used by the State to
3 implement the following Restoration projects, as further
4 described in Attachment 3 to this Decree:

5 (a) The sum of \$275,000, plus the interest
6 thereon, for estuarine habitat enhancement;

7 (b) The sum of \$425,000, plus the interest
8 thereon, for riparian corridor revegetation;
9 and

10 (c) The sum of \$250,000, plus the interest
11 thereon, for fish barrier removal along San
12 Luis Creek.

13 The \$100,000 payment, plus the interest thereon, to the
14 Natural Resource Damage Assessment and Restoration Fund shall be
15 used by the United States for sea otter enhancement, as further
16 described in Attachment 2 to this Decree. The performance of all
17 Restoration projects is governed by a Memorandum of Understanding
18 entered into between the State and Federal natural resource
19 trustees.

20 8. Within fifteen (15) days of the later of entry of this
21 Decree and entry of Judgment in the Superior Court on the
22 complaint for damages arising out of the Oil Spill, Unocal shall
23 instruct the escrow holder holding the Unocal Settlement Escrow
24 Account to irrevocably transfer the following sums to the
25 specified designees on the next maturity date of the 90-day
26 Treasury Bills in which the escrow funds are currently invested:

27
28

1 (a) The sum of \$25,000 plus the interest thereon
2 for civil penalties pursuant to Section 11 of
3 the Endangered Species Act, 16 U.S.C. § 1540,
4 by certified check or money order made
5 payable to "U.S. Fish and Wildlife Service",
6 certified mail to:

7 The U.S. Fish and Wildlife Service
8 c/o Office of the Solicitor
9 600 Harrison Street, Suite 545
10 San Francisco, California 94107-1373

11 (b) The sum of \$200,000, plus the interest
12 thereon, to monitor and oversee performance
13 on the Restoration projects and monitor
14 residual oil in Boulder Cove, to the
15 California Department of Fish and Game, as
16 set forth in the Settlement Agreement;

17 (c) The sum of \$50,000, plus the interest thereon
18 to F & G for civil penalties to the
19 "Environmental Enhancement Fund" created
20 pursuant to Government Code § 670.70, as set
21 forth in the Settlement Agreement;

22 (d) The sum of \$125,000, plus the interest
23 thereon, for restitution, to F & G's
24 Administration Fund, as set forth in the
25 Settlement Agreement; and

26 (e) The sum of \$150,000, plus the interest
27 thereon, to the Port San Luis Harbor
28 District, for Port Area/Beaches enhancement.

1 Unocal has previously reimbursed the State Lands Commission the
2 sum of \$19,919.90, for State Lands Commission response costs.

3 9. The Trustees commit to the expenditure of the funds set
4 forth in paragraph 7 above, for the design, implementation,
5 permitting, and monitoring of Restoration projects. The Trustees
6 retain the ultimate authority and responsibility to determine the
7 use of funds received for Natural Resource Damages in accordance
8 with the provisions of the Oil Pollution Act, 33 U.S.C. § 2701 et
9 seq., other relevant federal or state law, and the regulations
10 governing use of recoveries for Natural Resource Damages. If, in
11 applying the provisions of the Oil Pollution Act and other
12 applicable federal and state law, and examining the scientific
13 and engineering objectives of the planned Restoration projects,
14 and taking into account the available funds, the Trustees
15 determine to expend funds in a manner different from that
16 described in paragraph 7 or in Attachment 2, the Trustees will
17 proceed with other Restoration projects that the Trustees deem to
18 be reasonable and necessary to restore Natural Resources directly
19 impacted by the Oil Spill.

20 RELEASES AND COVENANTS NOT TO SUE

21 10. In consideration of Unocal's payments to the State
22 of \$1.1 million and to the United States of \$100,000, for natural
23 resource damages, and its other payments pursuant to paragraph 8
24 and the Settlement Agreement, effective upon entry of the Decree
25 and Unocal's payment of the Settlement Amount in the manner
26 prescribed in paragraphs 5, 6, 7, and 8 of this Decree, the
27 United States releases Unocal from, and covenants not to sue or
28

1 take any other civil or administrative action against Unocal for,
2 any and all civil claims alleged in the Complaint in this action
3 and all claims for damages for injury to, loss of, or destruction
4 of Natural Resources arising out of the Oil Spill, regardless of
5 how the Trustees may determine to expend the funds designated for
6 the natural resource damage restoration projects set forth in
7 paragraph 7 and Attachment 2.

8 11. Effective upon entry of the Decree, Unocal
9 releases the United States from, and covenants not to sue or to
10 take any other civil or administrative action against the United
11 States for any and all civil claims that arise from, or are based
12 on, the Oil Spill. Unocal waives the requirements of 50 C.F.R.
13 Part 11, with regard to the civil penalty pursuant to the
14 Endangered Species Act.

15 RESERVATION OF RIGHTS

16 12. Nothing in this Decree creates, nor shall it be
17 construed as creating, any claim in favor of any person not a
18 party to this Decree.

19 13. The covenants not to sue in paragraph 10 above
20 shall apply only to matters expressly set forth in paragraph 10
21 and shall not apply to the following claims:

22 (a) Claims based on a failure of Unocal to
23 satisfy the requirements of this Decree, and

24 (b) Claims for criminal liability brought by the
25 United States.

1 NOTICES AND SUBMITTALS

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

8
9 Notice to the United States:

10 Chief, Environmental Enforcement Section
11 Environment and Natural Resources Division
12 U.S. Department of Justice
13 P.O. Box 7611
14 Ben Franklin Station
15 Washington, D.C. 20044

16
17 Notice to Unocal:

18 Ellen A. Whelan
19 Assistant Counsel
20 Unocal Corporation
21 1201 West 5th Street, Rm. 502
22 Los Angeles, California 90051
23

24 TERMINATION

25 15. In the event this Consent Decree is not approved,
26 Unocal shall have right to terminate this Decree and obtain
27 release of the Escrow Funds, together with the interest thereon,
28 to its own account.

29 REPRESENTATIVES

30 16. Each undersigned representative of Unocal and the
31 Acting Assistant Attorney General certifies that he or she is
32 fully authorized to enter into the terms and conditions of this
33

1 Decree and to execute and legally bind the parties to this
2 Decree.

3 MODIFICATION

4 17. Minor modifications not materially altering this
5 Decree may be effected by the written agreement of the Parties.
6 No other modifications of this Decree may be made unless the
7 Parties agree in writing to the modification and the Court
8 approves of the requested modification. Nothing in this
9 paragraph shall be deemed to limit the Court's power to supervise
10 or modify this Consent Decree.

11 Dated and entered this _____ day of MAR 22 1996, 1996.

12 RICHARD A. PAEZ
13 UNITED STATES DISTRICT JUDGE

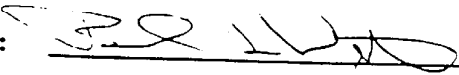
14
15 WE HEREBY CONSENT to the entry of this Decree:

16
17 FOR THE UNITED STATES OF AMERICA:

18
19 By: *LJ Schiffer* Date: *Mar 7 1996*
20 LOIS J. SCHIFFER
21 Assistant Attorney General
22 Environment and Natural Resources Division
23 United States Department of Justice

24 BY: *Robert D. Brook* Date: *3/14/96*
25 ROBERT D. BROOK
26 Environmental Enforcement Section
27 Environment and Natural Resources Division
28 United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

1 | FOR UNION OIL COMPANY OF CALIFORNIA:
2 |

3 | By: 
4 | President/Vice President
5 |

Date: 1/27/96

6 |
7 |
8 |
9 |
10 |
11 |
12 |
13 |
14 |
15 |
16 |
17 |
18 |
19 |
20 |
21 |
22 |
23 |
24 |
25 |
26 |
27 |
28 |

ATTACHMENT 1

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by the State of California ex. rel. the California Department of Fish and Game ("F & G"), and the State Lands Commission (collectively referred to as "State Trustees"), on the one hand and Union Oil Company of California ("UNOCAL"), on the other hand.

DEFINITIONS

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

(a) "Natural Resource" or "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801 et seq.) and the State of California and its agencies.

(b) "Natural Resources Damages" means civil compensatory and remedial relief recoverable by the Governments in their capacity as Trustees on behalf of the public for injury to, destruction of, or loss of Natural Resources arising from or caused by the Oil Spill, including (1) compensation for loss, injury, damage or destruction of Natural Resources, whether temporary or permanent, or for loss of use value (active and passive) consumer surplus, economic rent, or any other similar value of Natural Resources, and (2) costs of restoration, rehabilitation or replacement of injured Natural Resources or the acquisition of equivalent resources, and (3) costs of damage assessment.

(c) "Oil Spill" means the discharge of San Joaquin Valley crude oil through a ruptured UNOCAL pipeline on August 3, 1992 at the UNOCAL Avila Beach Tank Farm in Avila Beach and the resulting oil spill onto lands and marine water.

(d) "Party" or "Parties" means the signatories to this Settlement Agreement.

(e) "Restore" or "Restoration" means any action to restore to its pre-spill condition any Natural Resource injured, lost, or destroyed as a result of the Oil Spill and the services provided by that Natural Resource, or any

action which restores, replaces, rehabilitates, or acquires the equivalent of, the injured, lost or destroyed Natural Resource and affected services.

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

INTRODUCTION

2. This Agreement is made between UNOCAL and the State Trustees. A separate Consent Decree, which parallels this Agreement, is made between UNOCAL and Federal Trustees and is attached as exhibit 1. The Federal Trustees are the Department of Interior acting by and through the United States Fish and Wildlife Service (The State and Federal Trustees are collectively referred to as "Trustees").

3. On August 3, 1992, the rupture of a UNOCAL pipeline at the UNOCAL Avila Beach Tank Farm in Avila Beach, California caused a discharge of San Joaquin Valley crude oil onto lands and waters.

4. The Trustees believe that approximately 600 barrels of crude oil were spilled. The exact amount of oil spilled is disputed. The oil flowed along a gully, down a cliff face into a small cove and reached marine waters.

5. The discharge resulted in injury to terrestrial vegetation, intertidal and subtidal sediments and biota, fisheries, birds, marine mammals, and other valuable resources in and about Avila Beach, Olde Port Beach, and Pirates Cove Beach.

6. Prior to the oil spill, the rocky coast of California in the Avila Beach area existed in a relatively natural condition, however, UNOCAL contends that natural seeps of oil are known to exist in the area.

7. The Trustees have proposed certain Restoration projects to Restore Natural Resources injured as a direct result of the Oil Spill.

8. The parties desire to avoid the costs and risks of litigation and believe that resolution of this dispute without litigation to be in the best interests of the public.

/

D:\Avila\Settlement.Agr
Dated 10/11/94

SETTLEMENT PAYMENTS BY UNOCAL

9. In consideration of the covenants contained herein, UNOCAL agrees to pay the following amounts and complete the following undertakings in the manner set forth below in paragraph eleven (11):

a). The sum of \$1,200,000.00 for injury or damage to natural resources;

b). The sum of \$19,919.90 for response costs of the State Lands Commission to be paid directly to the Commission within 30 days of UNOCAL's receipt of the Commission's invoice;

c). The sum of \$125,000.00 for restitution and the sum of \$50,000.00 for penalties to the Department of Fish & Game;

d). The sum of \$200,000.00 to monitor and oversee performance on the Restoration projects and to monitor residual oil in Boulder Cove;

e). Completion of work on the "Joint Plan for Restoration of Terrestrial Resources Injured by the Avila Beach Oil Spill " and the posting of a performance bond guaranteeing said completion. A copy of the Joint Plan and the accompanying performance bond are attached as Exhibit 2.

10. In addition to the consideration UNOCAL has agreed to pay under paragraph 9 above, UNOCAL has previously paid the sum of \$187,100.90 for response and natural resource damage assessment costs of the Department of Fish & Game.

11. Within 15 days of the date of notice to UNOCAL that all parties have executed this Agreement, UNOCAL shall deposit the funds described in paragraph 9 (a) - (d) above into an interest bearing escrow account. The funds in said account shall hereinafter be referred to as "Escrow Funds". Within 15 days of the entry of Judgment in the Superior Court for the County of San Luis Obispo on the complaint for damages arising out of the Oil Spill, filed concurrently herewith by the State Trustees against UNOCAL, and entry of the Consent Decree in Central District Court, UNOCAL shall cause the escrow holder to deposit the Escrow Funds, together with interest accrued on said Funds, into the Avila Beach Trust with The National Fish and Wildlife Foundation as set forth in paragraph 7 of the Consent Decree, attached hereto as Exhibit 1 and incorporated by reference.

/

/

/

D:\Avila\Settlement.Agr
Dated 10/11/94

FUND DISBURSEMENT

12. The Trustees shall designate an interest bearing account to receive and distribute the Escrow Funds, plus the interest thereon. After deposit of said sums, the Trustees shall allocate and disburse said sums as follows:

(a). The sum of \$1,200,000.00, plus the interest thereon, shall be dedicated to Restore Natural Resources injured by the Oil Spill. The Trustees plan to use said funds for the following projects:

(1) The sum of \$275,000.00, plus the interest thereon, for estuarine habitat enhancement;

(2) The sum of \$425,000.00, plus the interest thereon, for riparian corridor revegetation;

(3) The sum of \$250,000.00, plus the interest thereon, for fish barrier removal along San Luis Creek;

(4) The sum of \$100,000.00, plus the interest thereon, for sea otter enhancement; and

(5) The sum of \$150,000.00, plus the interest thereon, for Port Area/Beaches enhancement to the Port San Luis Harbor District.

A more detailed description of the foregoing projects is attached as Exhibit 3.

(b). The sum of \$200,000.00, plus the interest thereon, to monitor and oversee performance on the Restoration projects and to monitor residual oil in Boulder Cove, shall be deposited in the "Oil Spill Prevention and Administration Fund" created pursuant to Government Code §8670.38 ("Administration Fund").

(c). The sum of \$50,000.00, plus the interest thereon, to F & G for civil penalties shall be deposited in the "Environmental Enhancement Fund" created pursuant to Government Code § 8670.70.

(d). The sum of \$125,000.00, plus the interest thereon, for restitution shall be deposited into F & G's Administration Fund.

/

Dr. Avila Settlement Agr
Dated 10/11/94

(e). The sum of \$25,000 plus the interest thereon for civil penalties pursuant to Section 11 of the Endangered Species Act, 16 U.S.C. § 1540.

13. The State Trustees commit to the expenditure of the funds set forth in paragraph 9 (a) above for the design, implementation, and permitting of Restoration projects. The Trustees retain the ultimate authority and responsibility to determine the use of funds received for Natural Resources Damages in accordance with the provisions of the Oil Pollution Act, 33 U.S.C § 2701 et. seq., other relevant federal or state law, and the regulations governing use of recoveries for Natural Resources Damages.

TERMINATION

14. In the event this Settlement Agreement or the Consent Decree is not approved by the respective courts, UNOCAL shall have a right to terminate this Agreement and obtain release of the Escrow Funds, together with the interest thereon, to its own account.

RELEASES AND COVENANTS NOT TO SUE

15. Upon payment of the Escrow Funds, together with the interest thereon, to an account designated by the Trustees, the State Trustees release UNOCAL from, and covenant not to sue or take any other civil or administrative action against UNOCAL for any and all civil claims that arise from, or are based on, the Oil Spill.

16. Upon payment of the Escrow Funds, together with the interest thereon, to an account designated by the Trustees, UNOCAL releases each of the State Trustees, and covenants not to sue or to take any other civil or administrative action against the State Trustees, or any of them, for any and all civil claims that arise from, or are based on, the Oil Spill.

RESERVATION OF RIGHTS

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

18. The covenants not to sue in paragraph 15 of this Agreement shall apply only to matters in said paragraph 15 and shall not apply to claims based on a failure to satisfy the requirements of this Agreement.

NOTICES AND SUBMITTALS

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

Notice to the State Agencies:

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

Kathy Verrue-Slater
Staff Counsel
Dept. of Fish & Game
Oil Spill Prevention &
Response
1700 "K" Street, Ste. 250
Sacramento, CA 95814

Notice to UNOCAL

Ron L. James
Division Pipeline Manager
Northern California Division
UNOCAL Corporation
P.O. Box 661
San Luis Obispo, CA 93406

INTEGRATION CLAUSE

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

MODIFICATION

21. Minor modifications not materially altering this Agreement may be effected by the written agreement of the Parties. No other modifications of this Agreement may be made unless the Parties agree in writing to the modification.

/
/
/
/
/
/
/
/

D:\Avila\Settlement.Agt.
Dated 10/11/94

22. This Agreement may be executed in several counterparts, all of which when taken together, will constitute one Agreement.

SO STIPULATED

SIGNATURES:

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____ Date: _____
Pete Bontadelli, Administrator
Office of Oil Spill Prevention
and Response
Department of Fish and Game

STATE LANDS COMMISSION

By: _____ Date: _____
Robert C. Hight
Executive Officer
State Lands Commission

UNOCAL CORPORATION

By: _____ Date: _____
Ron L. James
Division Pipeline Manager
Northern California Division
UNOCAL Corporation

AMENDMENT TO SETTLEMENT AGREEMENT

The parties hereby agree to the following modification of the settlement agreement entered into on November 30, 1994 between the California Department of Fish and Game, the State Lands Commission and UNOCAL with regard to the Avila Beach oil spill on August 3, 1992.

Paragraph 1 is modified to provide as follows:

Add the following subsection as sub-paragraph (g):

(g) "designee" shall be any entity approved by the Administrator of the Office of Oil Spill Prevention and Response that is authorized to engage in the restoration, monitoring, and oversight activities required to implement this agreement.

Paragraph 9 is modified to provide as follows:

9. In consideration of the covenants contained herein, UNOCAL agrees to pay to the Trustees the sum of \$1,619,919.90, and complete the following undertakings in the manner set forth in this paragraph and in paragraphs eleven (11) and twelve (12) below:

- a) The sum of \$1,200,000.00 for injury or damage to natural resources;
- b) The sum of \$19,919.90 for response costs of the State Lands Commission to be paid directly to the Commission within 30 days of UNOCAL's receipt of the Commission's invoice;
- c) The sum of \$125,000.00 for restitution and the sum of \$50,000.00 for penalties to the Department of Fish & Game;
- d) The sum of \$200,000.00 to monitor and oversee performance on the Restoration projects and to monitor residual oil in Boulder Cove;
- e) Completion of work on the "Joint Plan for Restoration of Terrestrial resources Injured by the Avila Beach Oil Spill" and the posting of a performance bond guaranteeing said completion. A copy of the Joint Plan and the accompanying performance bond are attached as Exhibit 2.
- f) The sum of \$25,000.00 for civil penalties to the U.S. Fish and Wildlife Service.

SIGNATURES:

Dated: _____

CALIFORNIA DEPARTMENT OF
FISH AND GAME

By: _____
Pete Bontadelli, Administrator
California Department of Fish and Game
Office of Oil Spill Prevention
and Response

Dated: _____

STATE LANDS COMMISSION

By: _____

Robert C. Hight
Executive Officer
State Lands Commission

Dated: _____

Union Oil Company of California

By: _____
President/Vice President

EXHIBIT 4

AVILA BEACH TRUST

This Trust is established with the National Fish and Wildlife Foundation (the "Foundation") by Union Oil Company of California (the "Settlor"), for the benefit of the State Natural Resource Trustees, the California Department of Fish and Game and the California State Lands Commission (the "State").

I. DEFINITIONS

1. The "Court" means the Superior Court of the State of California for the County of San Luis Obispo.
2. The "Foundation" means the National Fish and Wildlife Foundation.
3. The "MOU" means the Memorandum of Understanding entered into in connection with the Avila Beach oil spill by the California Department of Fish and Game, the California State Lands Commission, and the U.S. Fish and Wildlife Service.
4. "Natural Resource" and "Natural Resources" mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State of California.
5. The "Natural Resource Trustees" means the U.S. Department of the Interior (DOI), the California Department of Fish and Game, and the State Lands Commission.
6. The "Natural Resource Trustee Council" or "NRT Council" means the group of representatives of the Natural Resource Trustees selected pursuant to a Memorandum of Understanding entered into by the Natural Resource Trustees.
7. "Restoration Project" means any action to restore or rehabilitate any injured, lost, damaged, or destroyed Natural Resources (and the services provided by that Natural Resources), or any action that replaces or acquires

the equivalent of, the injured, lost, or destroyed Natural Resource and affected services injured, lost, or destroyed as a result of the rupture of a UNOCAL pipeline on August 3, 1992, in Avila Beach, California, which caused the discharge of San Joaquin Valley crude oil onto nearby lands and water.

8. The "Segregated Account" means the account in which the Foundation holds funds subject to the Avila Beach Trust.

9. "Settlement Agreement" means the Settlement Agreement entered into by the State of California and Union Oil Company of California and any amendments thereto, that resolves the action filed by the State in Superior Court regarding the Avila Beach oil spill.

10. "Settlement Funds" means the money paid into this Trust pursuant to a requirement in the Settlement Agreement.

11. The "State" means the California Department of Fish and Game, and the State Lands Commission.

12. The "Trust" means the Avila beach Trust established by this Agreement.

13. The "Trustee" means the trustee of the Avila Beach Trust.

II. PURPOSE

14. The purpose of this Agreement is to establish the Trust and to appoint the foundation as its Trustee. This Agreement outlines the terms under which the Foundation shall exercise this function.

15. The purpose of the Trust is to receive, manage and disburse funds, in accordance with the direction of the NRT Council through their designated representative(s), for certain Restoration Projects to Restore Natural Resources injured as a result of an oil spill at Avila Beach, for the benefit of the people of the State of California.

III. SETTLOR

16. The Settlor, Union Oil Company of California, shall fund this Trust pursuant to a requirement in the Settlement Agreement. With the exception of the obligation to establish and fund this Trust, Settlor shall have

no rights, duties, obligations, or fiduciary responsibilities of any kind in connection with this Trust. Without limiting the foregoing, Settlor shall have no rights, duties, obligations, or fiduciary responsibilities with respect to the management of this Trust, the use of funds held in this Trust, property acquired with Trust funds, or Natural Resource Restoration Projects funded by the Trust. This Trust is irrevocable and Settlor retains no interest whatsoever in the corpus or proceeds of this Trust.

IV. TRUSTEE

17. The Foundation shall be Trustee of the Trust.
18. The Court shall have the power to appoint a replacement Trustee if the office of the Trustee becomes vacant.
19. The Court shall have the power to remove the Trustee if at any time it determines that the Trustee is not performing its duties in a manner that is consistent with the purposes of the Trust. The State shall have the right to ask the Court to remove the Trustee or to terminate the Trust.
20. In addition to the powers expressly granted to the Trustee by this Agreement, the Trustee shall have all other powers granted to Trustees under the laws of the State of California, except as otherwise provided in this Agreement.
21. The Foundation submits to the jurisdiction of the Superior Court of the State of California for the County of San Luis Obispo for purposes of enforcement, administration, and supervision of the Trust.
22. Unless otherwise agreed by the NRT Council, the Foundation shall not hold an interest in any real or personal property acquired with Settlement Funds nor shall it acquire, manage or dispose of such property.

V. BENEFICIARIES

23. The people of the State of California are the beneficiaries of the Trust.

VI. DUTIES OF TRUSTEE

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

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

26. The Trustee is authorized and obliged to make disbursements of the funds from the Segregated Account pursuant to paragraphs 33 and 36 below.

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

28. The Trustee shall fund, subject to paragraph 36 below, Restoration Projects as directed by the NRT Council.

29. The Trustee shall solicit bids for implementation of the Restoration Projects as directed by the NRT Council.

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

VII. SELECTION OF AUTHORIZED PROJECTS

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

32. The NRT Council shall appoint a representative ("NRT Council Representative") for purposes of communicating with the Foundation regarding management of the Trust, soliciting bids for the Restoration Projects, and disbursements from the Trust to facilitate Restoration Projects selected by the

NRT Council. The NRT Council shall give the Foundation Representative written notice of the name, address, and telephone number of the NRT Council Representative. Any action taken by the Trustee in strict accordance with this Trust Agreement and instructions from the NRT Council Representative shall be considered authorized by the State.

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

VIII. PAYMENT OF TRUST EXPENSES AND DISBURSEMENT OF FUNDS

34. The Trustee shall receive, at the time funds are transferred to the Trust, an administrative overhead reimbursement equal to three percent (3%) of the total funds transferred to the Segregated Account. The uses of these funds include expenses for day to day management of the Trust, initial bank charges for establishment of the Trust and charges for the first year, and for personnel time for tracking, managing, and making disbursement from the Trust. This reimbursement shall be made against the corpus of the Trust. There shall be no liability for payment by the Settlor beyond the \$950,000, plus interest accrued thereon for restoration of natural resources required to be paid pursuant the Settlement Agreement. The Trustee shall make no charge against the Settlor for the establishment of this Trust, and except as provided in paragraph 35, no additional charges or deductions shall be made against the corpus of the Trust in connection with the administration of the Trust.

35. The Trustee will be reimbursed for all other reasonable and actual expenses incurred in connection with the satisfaction of its obligations under this Agreement, provided however, that such expenses must be approved in writing as reasonable by the NRT Council. Such expenses would generally be for extraordinary expenses not contemplated to be incurred as part of normal management of the Trust, as set forth in paragraph 34. Bank charges for the Trust after the first year may be paid from interest collected on the Trust, and to the extent not covered by accrued interest, shall be paid pursuant to this paragraph.

36. Upon receipt of written approval by the NRT Council to fund Restoration Project(s) pursuant to paragraph 33 above, the Trustee is authorized and obliged to disburse funds in the Segregated Account as directed by the NRT Council Representative.

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

IX. AMENDMENTS

38. This Agreement may be amended only by written agreement of the Foundation and all of the Natural Resource Trustees, and with the approval of the Court.

X. NOTICES

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

40. Notices to the State shall be sent to:

Administrator, California Office of
Oil Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, CA 95814

41. Notices to the Foundation shall be sent to:

Whitney C. Tilt
National Fish and Wildlife Foundation
1120 Connecticut Ave., NW
Washington, DC 20036
Phone: (202) 857-0166
Fax: (202) 857-0162

XI. EFFECTIVE DATE

42. The Trust shall become effective upon transfer of settlement proceeds to the Trustee pursuant to the Settlement Agreement.

XII. TERMINATION

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

XIII. SIGNATURES

Dated: _____

SETTLOR:

Dated: _____

CALIFORNIA
DEPARTMENT OF
FISH AND GAME:

Dated: _____

STATE LANDS
COMMISSION:

Dated: _____

NATIONAL FISH AND
WILDLIFE FOUNDATION

Avila Beach Trust

ATTACHMENT 2

MONTEREY BAY AQUARIUM
SEA OTTER RESEARCH AND CONSERVATION PROGRAM
30 JANUARY 1995

- Primary program goal: To care for orphaned, injured or ill sea otters and, when appropriate, to rehabilitate orphaned pups and reintroduce them back into the California population. Detailed program goals and program guidelines attached in Appendix 1.

- Program resources:

	Non-Salary Costs	Salary Costs	Total
1993	\$28,711	\$97,797	\$126,508
1994	52,475	135,304	187,779
1995	60,714	339,782	400,496

- 1995 resources include the merging of the aquarium's sea otter research and stranding programs into a new program, Sea Otter Research and Conservation.
- 10-year acquisition totals, 1983-1993 (details in Appendix 2):
 - Acquired: 95
 - Released: 32
- 1994 acquisition totals (details in Appendix 3):
 - Acquired: 10
 - Released: 1
 - In Program: 2
- Goals for 1995 and beyond
 - ⇒ Hire Sea Otter Research and Conservation Program Manager to direct new Sea Otter Research and Conservation Program
 - ⇒ Take better advantage of research opportunities provided by our captive sea otters
 - ⇒ Ensure that the knowledge, experience and success of the SORAC program are shared with other institutions and agencies concerned with sea otter conservation.
 - ⇒ Broaden the impact of MBA's sea otter program to larger sea otter conservation issues and efforts
- Use of Avila Beach spill settlement funds: Funds would be used to support the new directions of the Sea Otter Research and Conservation Program at the aquarium. Declining attendance in 1994 and 1995, coupled with increased capital costs and expenses associated with the aquarium's Outer Bay Wing exhibit initiative, require aggressive pursuit of outside funds to maintain current as well as future program goals.

APPENDIX 1

SEA OTTER RESCUE AND CARE PROGRAM
GOALS AND GUIDELINES

SEA OTTER RESCUE AND CARE PROGRAM GOALS AND POLICY

30 DECEMBER 1993

Background

The Sea Otter Rescue and Care (SORAC) Program arose from the aquarium's interest in rehabilitating and returning orphaned and injured California sea otters (*Enhydra lutris nereis*) to their natural habitat and in developing an educational sea otter exhibit and research program. In cooperation with the U.S. Fish and Wildlife Service (USFWS), aquarium staff rescued and nursed back to health stranded and dying orphaned sea otter pups which were then maintained in the aquarium's sea otter exhibit. Once the aquarium had reached its maximum capacity of four sea otters and had developed the skills and knowledge necessary to nurse back to health orphaned sea otter pups, the public as well as the USFWS continued to bring orphaned pups to the aquarium. Because California sea otters are listed as a threatened population under the Endangered Species Act, steps must be taken to return all sea otters removed from the population back into their natural habitat, if feasible. SORAC staff developed techniques to teach the animals the survival skills needed to return to their native habitat. At the present time the Monterey Bay Aquarium is the only institution in the world with the staff expertise, facilities and appropriate geographic location necessary for raising orphaned pups and successfully releasing them back into their natural habitat. The goals of the SORAC program are pursued in cooperation with USFWS, the agency responsible for managing the California sea otter population.

Primary Program Goal

To care for orphaned, injured or ill sea otters and, when appropriate, to rehabilitate orphaned pups and reintroduce them back into the California population.

Additional Program Goals

1. Increase our knowledge and success in rehabilitating, raising and releasing sea otters to insure adequate response in the event of a large-scale environmental catastrophe or decline of the population.
2. Gain basic knowledge of sea otter biology and behavior, and integrate research projects into the SORAC program when possible.
3. Continue to develop veterinary expertise specific to sea otters.
4. Pursue our mission to promote stewardship of all living resources in Monterey Bay.
5. Establish exhibit and/or potential breeding populations at other qualified institutions throughout the world.

6. Determine if captive-born pups can survive when reintroduced into the wild from reserve breeding populations.

SORAC Program Policies and Procedures

Whenever practical, injured, ill or potentially orphaned sea otters should be observed by qualified MBA or USFWS staff to determine if the sea otters would benefit from veterinary care or rehabilitation efforts at the aquarium. Only after such a determination is made and if space and staff are available will sea otters be brought to the MBA. Adult or juvenile sea otters requiring short-term care will be cared for here and released upon recovery. If space and staff are not available to adequately care for adult or juvenile sea otters, the animals will be transferred to another facility qualified to care for sea otters (e.g., the Marine Mammal Rescue Center) if judged transferrable by MBA or USFWS biologists or, in the event of a permanent or terminal medical disability, be euthanized by a veterinarian after receiving permission from the USFWS. Sea otter pups will be cared for at the MBA.

To achieve our primary goal of re-introducing orphaned sea otter pups into the wild population, it is essential that pups develop the skills necessary for foraging and coping with the rigors of the ocean environment. Thus, MBA staff must spend a substantial amount of time helping the pups to develop critical skills, and particularly the ability to forage on their own. These skills are acquired in the aquarium's "raise for release" program.

Pups with a medical disability or impaired development of its survival skills will be considered unsuitable candidates for successful release. These animals will be raised as captive animals and transferred to a qualified institution for exhibit, or in the event of a permanent or terminal medical disability, be euthanized by a veterinarian.

The raise-for-release program requires considerable staff and volunteer time in addition to the availability of nursery facilities, outdoor holding tank space and the tidal basin during various phases of the pup's rehabilitation process. The presence of more than two sea otter pups in the raise-for-release program at any given time will overcrowd our facilities and seriously compromise the goals of the program. In the event that the facilities are at capacity, it will be necessary to remove one or more pups from the program to ensure the success of raising and releasing pups under our care. If a pup cannot be accommodated in the raise-for-release program at the MBA, it will be raised as a captive animal at MBA and transferred to another institution qualified to maintain sea otters. More than two sea otters may be in the program if one or more are near the end of the program and ready for release.

The selection of which pup or pups to remove from the program will be a joint decision between SORAC staff, research staff and the aquarium veterinarian, and requires final approval of the Director of Life Sciences of MBA and the USFWS. The MBA Public Relations Department will be involved in discussions preceding such decisions to insure the provision of factually accurate public information.

Sea otters are social animals and many otters may suffer stress when kept alone in captivity. Therefore, if it becomes necessary to permanently transfer a sea otter from our program to another aquarium, we will require that the receiving aquarium obtain at least one other sea otter as a companion for the transferred sea otter, either from their own collection or from existing collections at other institutions. In the event that no

other options exist for obtaining a companion animal, MBA will transfer to the receiving institution the next available sea otter that is unreleasable.

Once a sea otter has been transferred to another institution, it is the responsibility of that institution to provide adequate holding facilities and medical care to ensure the health and well-being of the animal.

(SEA OTTER PROGRAM\SORACI.DOC)

ATTACHMENT 3

PROPOSED RESTORATION PROJECTS FOR SAN LUIS OBISPO CREEK

EXHIBIT 3

The following is a list of projects that have been evaluated by the trustees for suitability in the overall restoration scheme. Each project has a title and brief description. The trustees believe that all of these projects must be completed to compensate for the types and levels of services that were lost as a result of the Unocal oil spill at Avila Beach.

The trustees reserve the right to adjust priorities or fund similar restoration projects designed to provide comparable types and levels of services if new cost or feasibility information warrants such action.

1. ESTUARY FLATS

Total Area: 1.5 acres

The objective of this project is to revegetate a stretch of shoreline approximately 1,000' long with a width of 65'. We propose to restore and improve this vegetation in a crescent-shaped region along the shoreline to provide shade over the creek and nesting habitat and cover for birds.

2. GOLF NARROWS

Total Area: 1.9 acres

The project has two components related to two contiguous parcels of land. The objective is to revegetate both parcels and additionally to stabilize the shoreline along the narrows where banks succumb to constant erosion.

WEST END "POCKET" - 1 acre. The shoreline in front of this section is about 450' long. The objective is to plant shrubs and trees to create a transition zone between the nearby hills and the wetland bordering the creek. The landowner, has agreed to relocate the golf cart washing station and the golf cart path away from this parcel to eliminate direct wash runoff into the wetlands/pocket area and to reduce the disturbance to wildlife caused by golf cart traffic.

NARROWS BANK STABILIZATION - 750' of creek bank. The first objective of this project will be to design and implement a mechanism for preventing further erosion of the creek bank. After the shoreline stabilization project is installed, the top of the bank will need to be revegetated and the golf cart path relocated away from the bank. The landowner has agreed to move the pathway along the 17th fairway and regrade a strip of land about 50' wide (totaling about 0.9 acres) bordering the creek to improve drainage before

planting. Financial assurances for project completion are similar to those for the West End Pocket.

3. BIG BEND

Total area: 1.8 acres

The objective of this project is to stabilize a rapidly eroding bank along the south side of the creek for a distance of 800'. Following bank stabilization, an area approximately 100' wide, extending between the shoreline and the golf cart path, will be replanted.

4. FLOODWAY

Total area: 3.0 acres

For various reasons, we have focused the project to revegetation along one section that is considered to be degraded and in need of restoration/revegetation. We believe that the landowner will allow a conservation easement and is in favor of restoring the riparian corridor through vegetation and cattle exclusion (fencing).

5. HIGUERA STREET BRIDGE

Total Area: 13 acres

The objective of this project is to revegetate the bank along 3,900' of creek, with both sides of the creek needing restoration. This project can be divided into two parts based on the need for more extensive revegetation along one stretch of 3,300' and limited revegetation along a second stretch of 600'. The scope of this project is contingent upon details of acquiring a conservation easement.

The first and lower reach, about 3,300' long, extends from the Higuera Street Bridge (near the northbound on ramp to Highway 101) to the old, abandoned bridge.

The second and upper reach, about 600' long, extends from the old bridge to the city limits. This reach has recovered well during the last few years and only needs limited restoration at selected sites. This would primarily

include the introduction of large trees within the existing understory. This would not involve a wide area for restoration (the area extent is based on an estimate of a 25' width).

6. FISH BARRIERS

-44-

The objective of this project is to

of the San Luis Creek and its tributaries to fish for spawning and rearing (nursery). Additional details are available for each of the barrier sub-projects. For purposes of this document, information is restricted to barrier locations. The cost of modifying or removing each of these barriers would include expenses for engineering and design, permitting, construction, and oversight of work. Two barriers, Prefumo Creek at Highway 101 and the Marre Dam, are more substantial than the others and are likely to require more engineering design and materials.

- 1) Marre Dam (modification to fish ladder)
- 2) Prefumo Creek (at Highway 101)
- 3) Stenner Creek (upstream of railroad trestle)
- 4) Prefumo Creek (Dalidio Agricultural Crossing)
- 5) Prefumo Creek (check dams and upstream rip rap above Laguna Lake)
- 6) Stenner Creek (between Stenner Glen and Mustang Village)
- 7) Stenner Creek (behind Woodside Apartments)
- 8) Stenner Creek (CalPoly Agricultural Dam)
- 9) Stenner Creek (CalPoly Agricultural concrete apron under bridge)
- 10) San Luis Obispo Creek (at Cuesta Park)

7. **SEA OTTER ENHANCEMENT**

The objective of this project is to provide funds to the Monterey Bay Aquarium to raise stranded sea otter pups and monitor the health of these otters including disease and immune system functioning.

8. **RECREATION/PORT AREA AND BEACH ENHANCEMENT**

The objective of this project is to alleviate the sand shoaling problem that exists at the Port San Luis shoreline facilities near Harford Pier and to replenish nearby beaches.

D:\Avila\exhibit.3

SERVICE LIST

1
2
3 Ellen A. Whelan
4 Assistant Counsel
5 Unocal Corporation
6 1201 West 5th Street
7 P.O. Box 7600
8 Los Angeles, CA 90051
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
William A. Shaffer
Manager, Environmental Affairs
Unocal
201 S. Broadway
Orcutt, CA- 93455