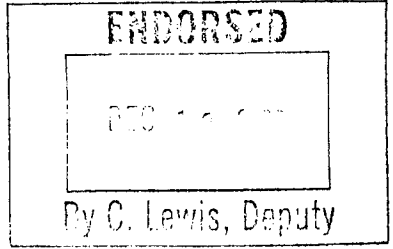


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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO

13 FORT MOJAVE INDIAN TRIBE, a federally
14 recognized Indian Tribe,
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16 Petitioner and Plaintiff,
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18 v.
19 DEPARTMENT OF TOXICS SUBSTANCES
20 CONTROL, a state agency; METROPOLITAN
21 WATER DISTRICT of SOUTHERN
22 CALIFORNIA, a public corporation; and DOES
23 1 through 10, inclusive,
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25 Respondents and Defendants,

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Case No. 05CS00437

**STIPULATION AND ~~PROPOSED~~
ORDER TO RETAIN JURISDICTION TO
ENFORCE SETTLEMENT BETWEEN
TRIBE AND DTSC PURSUANT TO
CODE OF CIVIL PROCEDURE § 664.6
AND TO DISMISS ACTION**

Dept.: 11
Judge: The Honorable Gail D. Ohanesian
Action Filed: April 04, 2005



1 Petitioner Fort Mojave Indian Tribe ("Tribe") and Respondent and Defendant Department
2 of Toxic Substances Control ("DTSC") (collectively, "Parties") have reached a settlement
3 agreement ("Tribe/DTSC Agreement") (attached hereto as Exhibit A) that resolves the issues as to
4 DTSC raised by this matter.

5 The Tribe also has reached separate settlements with Respondent and Defendant
6 Metropolitan Water District of Southern California ("MWD") and Real Party in Interest Pacific
7 Gas and Electric ("PG&E") filed concurrently herewith that will be entered as judgments of the
8 Court as to the Tribe, MWD and PG&E. Pursuant to Section V.C of the Tribe/DTSC Agreement:


9 Except as expressly provided [in the Tribe/DTSC Agreement], nothing in this
10 Agreement shall be construed to limit DTSC's authority to take or to require corrective
11 actions or response actions relating to the Topock Site, or to enforce laws, regulations
12 and requirements, including, but not limited to, the [Hazardous Waste Control Law] and
13 the Corrective Action Consent Agreement, with respect to PG&E or any other party.
14 This Agreement does not settle or otherwise affect any claim which may be made or any
15 action which may be taken against PG&E or MWD by DTSC or any other state agency,
16 department or entity.

17 Neither the provisions of the Tribe's separate agreements with MWD or PG&E, nor any
18 future actions by the Tribe to enforce the provisions of those agreements, shall be
19 binding on DTSC. DTSC retains all authority and reserves all rights to take or to require
20 PG&E to perform any and all response actions or corrective actions authorized by law.

21 Pursuant to Code of Civil Procedure § 664.6, the Parties, through their respective
22 attorneys, hereby stipulate and request that the Court retain jurisdiction of the Court to enforce the
23 Tribe/DTSC Agreement, including without limitation any determination of any right to attorneys'
24 fees and costs related to this action, until full performance of the terms thereof, and dismiss this
25 action following entry of judgments regarding the Tribe, MWD and PG&E.

26 **IT IS SO STIPULATED.**

27 DATED: Nov. 7, 2006 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

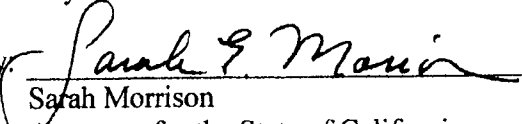
28 By: 
Steven P. McDonald
Attorneys for the Fort Mojave Indian Tribe

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DATED: Nov. 2, 2006

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

BILL LOCKYER
Attorney General of the State of the California

By: 
Sarah Morrison
Attorneys for the State of California,
Department of Toxic Substances Control

THEREFORE, IT IS ORDERED THAT:

1. The Court will retain jurisdiction to enforce the attached Tribe/DTSC Agreement, including any determination of any right to attorneys' fees and costs related to this action, until performance in full of the terms therein; and

2. The action is dismissed with prejudice following entry of judgments as to the Tribe, MWD and PG&E.

GAIL D. OHANESIAN

DATED: DEC 18 2006

Hon. Gail D. Ohanesian
Judge of the Superior Court

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EXHIBIT A

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

FORT MOJAVE INDIAN TRIBE, a
federally recognized Indian
Tribe,

) Case No.: 05CS00437
)
)
) **SETTLEMENT AGREEMENT BETWEEN**
) **FORT MOJAVE INDIAN TRIBE AND**
) **DTSC**
)

Petitioner and
Plaintiff,

v.

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL, a state agency;
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA, a public
corporation; and DOES 1 through
10, inclusive,

Respondents and
Defendants.

PACIFIC GAS & ELECTRIC COMPANY,
a corporation,

Real Party in
Interest.

1 IT IS HEREBY STIPULATED AND AGREED by and between
2 Petitioner/Plaintiff, the Fort Mojave Indian Tribe ("Tribe") and
3 Respondent/Defendant, the State of California Department of Toxic
4 Substances Control ("DTSC"), (collectively, the "Parties") as
5 follows:

6 **I. RECITALS**

7 **A.** The Tribe filed a petition for writ of mandate and a
8 complaint in *Fort Mojave Indian Tribe v. Department of Toxic*
9 *Substances Control, et. al.*, Sacramento Superior Court Case No.
10 05CS00437 (the "Action"), to challenge, among other things, the
11 legal basis for (1) DTSC's approval of an interim measure
12 authorizing the construction by Pacific Gas & Electric Company
13 ("PG&E") of a treatment plant, related wells and other facilities
14 ("IM-3") on private and public lands (hereinafter referred to as
15 the "IM-3 Site"); and (2) the sale by the Metropolitan Water
16 District of Southern California ("MWD") to PG&E of certain land
17 (the "Former MWD Property") on which portions of IM-3 are
18 located.

19 **B.** DTSC denies the material allegations of the Action.

20 **C.** DTSC alleges, but the Tribe does not admit, that IM-3
21 was necessary to address hazardous waste contamination, including
22 hexavalent chromium, detected in the soil and groundwater in the
23 vicinity of PG&E's Topock Gas Compressor Station near Needles,
24 California ("Topock Site"), and to prevent the Topock Site
25 contamination from reaching the Colorado River.

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1 **II. SETTLEMENT**

2 **A. Scope of Settlement**

3 1. This Settlement Agreement between the Parties
4 ("Agreement") is entered to resolve all issues between the Parties
5 arising in the Action. The Parties enter into this Agreement
6 pursuant to a compromise and settlement of disputed claims
7 negotiated by the Parties in good faith to avoid complicated
8 litigation and to further the public interest. This Agreement
9 resolves the Tribe's claims against DTSC alleged in the Action,
10 and constitutes a full and final settlement and satisfaction of
11 the Tribe's claims against DTSC alleged in the Action.

12 2. Nothing in this Agreement is intended or shall be
13 construed as an admission by DTSC of any allegation or violation
14 alleged in the Action.

15 3. The Tribe expects to reach separate agreements with MWD
16 and PG&E settling disputes among themselves related to the Action.

17 **B. Consent to Jurisdiction.**

18 For purposes of this Agreement only, the Parties stipulate
19 that this Court has jurisdiction over the Action and personal
20 jurisdiction over the Parties as to the acts alleged in the
21 Action, that venue is proper in the County of Sacramento, and that
22 this Court has jurisdiction to enter this Agreement and to enforce
23 the provisions thereof.

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1 **III. DTSC OBLIGATIONS**

2 **A. Removal of IM-3**

3 If PG&E submits a proposal or proposals for an alternative
4 locations for the IM-3 treatment plant, related wells, and/or
5 other IM-3 equipment or installations, DTSC shall promptly
6 evaluate PG&E's proposal(s) in accordance with applicable laws,
7 regulations, and requirements, including, but not limited to, the
8 Hazardous Waste Control Law ("HWCL"), Health and Safety Code
9 section 25100 et seq., and the California Environmental Quality
10 Act ("CEQA"). If DTSC determines, in its discretion, that PG&E's
11 proposal(s) for an alternative location for the IM-3 treatment
12 plant, the related wells, and/or other IM-3 equipment or
13 installations, (a) is in compliance with applicable laws and
14 regulations, including, but not limited to, the HWCL and CEQA, and
15 (b) is consistent with effectively remediating the contamination
16 from the Topock Site, DTSC will, within the confines of the law
17 and consistent with protection of public health and safety and the
18 environment, authorize PG&E to move the IM-3 treatment plant,
19 related wells, and/or other IM-3 facilities from the IM-3 Site,
20 subject to any conditions imposed by DTSC, as expeditiously as
21 practicable.

22 **B. Schedule for Final Remedy**

23 DTSC will utilize its best efforts to provide an expedited
24 time frame for a decision on a final remedy for the Topock Site to
25 the maximum extent possible under the HWCL and CEQA. To the
26 extent that it may be necessary for PG&E to obtain certain local,
27 state or federal government approvals or permits to implement the

28

1 final remedy for the Topock Site, it is the responsibility of
2 PG&E, not DTSC, to request and obtain such approvals or permits.

3 **C. Initiation of Environmental Review**

4 DTSC will immediately initiate CEQA studies on the proposed
5 final remedy for the Topock Site according to a process that will
6 recognize the Tribe's interests. In the event that the proposed
7 final remedy for the Topock Site includes locating or retaining
8 any equipment or installation on the IM-3 Site, DTSC will, in
9 exercising its discretion regarding any such equipment or
10 installation, and in compliance with applicable laws and
11 regulations, including but not limited to CEQA, evaluate the
12 significant environmental effects on cultural and biological
13 resources on the IM-3 Site based upon the environmental setting as
14 of January 2004, to the maximum extent permitted by CEQA.

15 **D. Communication Process**

16 1. Topock Site.

17 To the extent allowable by law, including but not limited to
18 the HWCL, DTSC will promptly commence efforts to develop and adopt
19 a specific and effective communication process, including the
20 consideration of consultation, between DTSC and the Tribe,
21 relating to remediation and restoration of the Topock Site. DTSC
22 will also arrange meetings between representatives of the Tribe
23 and DTSC, including DTSC's Director and the Tribe's
24 Chairperson, to engage in dialogues regarding cultural resources
25 information and the phases of the remediation process. The
26 communication process shall include provisions for direct working
27 level communication and the opportunity for discussion with the
28 Tribe on all significant project activities, as determined by

1 DTSC. The communication process shall include a process for
2 timely determining whether an activity may have the potential for
3 a significant impact to the spiritual or cultural interests of the
4 Tribe.

5 2. General Policy.

6 To the extent it is within DTSC's authority and allowable by
7 law, DTSC will develop and adopt a general policy for timely and
8 meaningful communication, including the consideration of
9 consultation, regarding heritage resources, including sacred
10 places, between DTSC and Indian tribes with cultural ties to such
11 heritage resources that are located in California. The definition
12 of "heritage resources," "sacred places" and "Indian tribes with
13 cultural ties" will be the result of good faith dialogues between
14 DTSC and tribes as part of the development of this policy. This
15 commitment may be fulfilled by the adoption of such a State
16 policy, regulation or law that is applicable to DTSC.

17 **E. Statement.**

18 DTSC understands that members of the Fort Mojave Tribe view
19 the development of the IM-3 Site as a desecration of the cultural
20 and spiritual nature of the larger area. DTSC regrets the
21 spiritual consequences to the Tribe that have occurred in
22 association with regulatory actions to avoid contamination of the
23 Colorado River. Although DTSC relied in good faith on the counsel
24 and expertise of other government agencies with specific
25 responsibilities and authorities for protecting the Tribe's sacred
26 sites, DTSC now recognizes that it should have taken a more active
27 role in these matters regarding the cultural and spiritual beliefs
28 of the Tribe. DTSC commits to communicate and plan its future

1 actions in a manner that will respect those beliefs as it
2 continues to work with the Tribe to protect the Colorado River and
3 its spiritual resources.

4 **F. Tribe's Access to Sacred Places.**

5 To the extent it is within DTSC's authority and allowable by
6 law, DTSC will make good faith efforts to improve the Tribe's
7 access to the cultural resources and sacred places identified by
8 the Tribe within the expanded Area of Potential Effects ("APE")
9 depicted on the map attached hereto as Exhibit "A" and as expanded
10 from time to time by agreement of the parties. DTSC will also
11 support efforts that seek to heighten protections within the
12 expanded APE to protect cultural resources and sacred places, to
13 the extent that it is within DTSC's authority and allowable by
14 law, and to the extent such efforts do not unreasonably conflict
15 with the remediation of the Topock Site. The Tribe does not
16 consider the foregoing locations as defining the full extent of
17 areas of cultural sensitivity to the Tribe.

18 **G. Training of DTSC Employees and Agents**

19 To the extent allowable by law and collective bargaining
20 agreements, DTSC will require the training of DTSC's management,
21 employees, workers, contractors, and consultants involved with the
22 remediation and/or restoration of the Topock Site about the
23 importance of the Tribe's cultural resources and sacred places.
24 DTSC will provide the Tribe with the opportunity to review,
25 comment upon, and discuss DTSC's proposed training plan pursuant
26 to this paragraph. DTSC shall provide the Tribe with an
27 opportunity to provide a portion of such training.

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H. Facilitation of Other Efforts

To the extent it is within DTSC's authority and allowable by law, DTSC will facilitate the implementation of the following items by PG&E and/or PG&E's employees, consultants, contractors, or agents in order to better inform decisions on impacts to cultural resources and mitigation:

1. Title Search. A detailed title search conducted for the parcels identified as Site No. CA-SBr-219A, B, and C, that contain some or all of the original physical Topock Maze, plus a radius of one mile beyond the physical perimeter of Site No. CA-SBr-219A, B, and C.

2. Cultural Report and Archives. A cultural report and archives provided for Tribal use. As part of National Historic Preservation Act Section 106 consultation, DTSC understands that PG&E and the Tribe will be preparing an ethnographic study. This study and other related materials, such as, but not limited to, interview tapes and photos, will be archived with the Tribe or other tribes participating in the ethnographic study.

3. GPS/GIS Mapping. A detailed Geographic Positioning System/Geographic Information System (GPS/GIS) mapping conducted of the cultural resources within the parcels identified as Site No. CA-SBr-219A, B, and C, that contain some or all of the original physical Topock Maze, plus a radius of one mile beyond the physical perimeter of Site No. CA-SBr-219A, B, and C.

The Tribe does not consider the foregoing locations as defining the full extent of areas of cultural sensitivity to the Tribe.

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1 **I. Management Control or Ownership**

2 Within its authority, DTSC will support the Tribe's efforts
3 to obtain control, ownership and/or heightened protections of the
4 properties containing and surrounding the Topock Maze, to the
5 extent that such efforts do not unreasonably conflict with
6 remediation of the Topock Site.

7 **J. Memorandum of Agreement**

8 DTSC will evaluate and consider becoming a party to a
9 Memorandum of Agreement with the State Historic Preservation
10 Office on activities arising from the Topock Site cleanup, and
11 will meet with the Tribe to review the effectiveness of the
12 cultural resource management plan.

13 **K. Transfer of Former MWD Property**

14 1. DTSC will not interfere with, or object to, the transfer
15 to ownership of the Tribe of the Former MWD Property.

16 2. In the event the Tribe obtains ownership of the Former
17 MWD Property, the Tribe agrees, subject to the Communications
18 Process established under paragraph III.D above, that:

19 a. Access.

20 The Tribe will not object to DTSC and its authorized
21 representatives otherwise exercising its authority to enter and
22 move safely about the Former MWD Property at all reasonable times
23 for purposes of ensuring compliance with laws, regulations and
24 requirements, including but not limited to, the Corrective Action
25 Consent Agreement and the HWCL. DTSC's authority under this
26 paragraph shall include, but not be limited to: inspecting
27 records, operating logs, sampling and analytic data, and contracts
28 relating to the Topock Site; reviewing the progress of the PG&E in

1 carrying out the terms of the Corrective Action Consent Agreement;
2 and verifying the data submitted to DTSC by PG&E. Nothing in this
3 Agreement is intended or shall be construed to limit in any way
4 the right of entry or inspection that DTSC or any other agency may
5 otherwise have by operation of any law.

6 b. Use of Former MWD Property.

7 Until PG&E's receipt of a written determination by DTSC that
8 remediation-related facilities will no longer be required on the
9 IM-3 Site or unless otherwise agreed by DTSC, the Tribe shall not
10 operate facilities on the Former MWD Property at which hazardous
11 substances are located.
12

13 c. Tribe's Liability Arising Solely from the Ownership of
14 the Former MWD Property.

15 DTSC covenants not to sue or take any civil, judicial or
16 administrative action, to pursue any claim, enter any order or
17 make any demand against the Tribe under any applicable laws,
18 regulations or civil, judicial or administrative authorities,
19 including, but not limited to, Section 107 of CERCLA, 42 U.S.C. §
20 9607; section 7003 of the Resource Conservation and Recovery Act;
21 42 U.S.C. § 6973; or division 20 of the Health and Safety Code,
22 solely (i) with respect to the Existing Contamination at the
23 Topock Site, as defined in the Corrective Action Consent
24 Agreement, or any portion thereof, and (ii) arising from the
25 Tribe's acquisition of fee title ownership of the Former MWD
26 Property, or any portion thereof. Existing Contamination for
27 purposes of this paragraph shall mean any contamination arising
28 out of any hazardous substances, pollutants or contaminants,
present or existing at, on, or under (including the groundwater

1 beneath) the Topock Site as of the date upon which the Tribe takes
2 ownership of the Former MWD Property. This covenant shall inure
3 to the benefit of, and pass with each and every portion of the
4 Former MWD Property and shall benefit the Tribe and any successors
5 and assignees thereof.

6 d. Transfer into Trust.

7 Until PG&E's receipt of a written determination by DTSC that
8 remediation-related facilities will no longer be required on the
9 IM-3 Site or unless otherwise agreed by DTSC, the Tribe shall not
10 transfer the Former MWD Property into trust by the federal
11 government pursuant to 25 U.S.C. section 465.

12 **IV. TRIBE'S RELEASE AND COVENANT NOT TO SUE**

13 The Tribe releases and covenants not to sue DTSC, its
14 employees, representatives and agents, as to any and all claims
15 relating to (i) the allegations in the Action, (ii) IM-3, or (iii)
16 the IM-3 Site, as of the time of the execution by the Tribe of
17 this Agreement, that were or could have been asserted by the Tribe
18 in the Action or in federal court, under the Comprehensive
19 Environmental Response, Compensation and Liability Act, 42 U.S.C.
20 section 9601 et seq., the Resource Conservation and Recovery Act,
21 42 U.S.C. section 6901 et seq., and the National Historic
22 Preservation Act, 16 U.S.C. section 470 et seq., excluding,
23 however, any federal action in which DTSC may be an indispensable
24 party to achieve relief against a federal agency.

25 **V. GENERAL PROVISIONS**

26 **A. Costs.**

1 Nothing in this Agreement shall be interpreted as a release
2 or waiver of any right of the Tribe to seek attorneys' fees and
3 costs incurred in connection with the Action. Nothing in this
4 Agreement shall be interpreted as a release or waiver of any right
5 of DTSC to oppose any action of the Tribe to seek attorneys' fees
6 and costs.

7 **B. Compliance with Applicable Law.**

8 All activities undertaken pursuant to this Agreement shall be
9 undertaken in compliance with the requirements of all applicable
10 federal, state and local laws, regulations, and requirements,
11 including the HWCL, CEQA, and the Corrective Action Consent
12 Agreement related to the Topock Site executed by PG&E on February
13 15, 1996 ("Corrective Action Consent Agreement"). This Agreement
14 shall in no way relieve PG&E of its obligations to comply with
15 such laws, regulations, and requirements applicable to the
16 remediation of the Topock Site. This Agreement is not intended to
17 be, nor shall it be construed as a permit issued pursuant to any
18 federal or state statute or regulation.

19 **C. DTSC Authority**

20 Except as expressly provided herein, nothing in this
21 Agreement shall be construed to limit DTSC's authority to take or
22 to require corrective actions or response actions relating to the
23 Topock Site, or to enforce laws, regulations and requirements,
24 including, but not limited to, the HWCL and the Corrective Action
25 Consent Agreement, with respect to PG&E or any other party. This
26 Agreement does not settle or otherwise affect any claim which may
27 be made or any action which may be taken against PG&E or MWD by
28 DTSC or any other state agency, department or entity.

1 Neither the provisions of the Tribe's separate agreements
2 with MWD or PG&E, nor any future actions by the Tribe to enforce
3 the provisions of those agreements, shall be binding on DTSC. DTSC
4 retains all authority and reserves all rights to take or to
5 require PG&E to perform any and all response actions or corrective
6 actions authorized by law.

7 **D. Tribe's Reservation of Rights**

8 Except as expressly set forth herein, the Tribe retains all
9 authority and reserves all rights, including without limitation
10 the rights of a sovereign nation, to challenge actions,
11 determinations or decisions of DTSC or other agencies regarding
12 the Topock Site.

13 **E. Governmental Liability**

14 DTSC shall not be liable for any injury or damage to persons
15 or property resulting from acts or omissions by PG&E, MWD, the
16 Tribe, or their respective employees, agents, or representatives
17 in carrying out the obligations pursuant to the Agreement. Nor
18 shall DTSC be held as a party to or guarantor of any contract
19 entered into by PG&E, the Tribe, or their employees, agents, or
20 representatives in carrying out the obligations required pursuant
21 to this Agreement.

22 Nothing in this Agreement or the implementation thereof shall
23 be construed to create any right of damages against the Tribe.

24 **F. No Opposition by Parties**

25 Each Party hereby agrees not to oppose the Court's
26 determination that this Agreement was entered into as a good faith
27 settlement of all Claims by the Parties, and not to challenge any
28 provision of this Agreement.

1 **G. Notices**

2 Whenever, under the terms of this Agreement, written notice
3 is required to be given or a report or other document is required
4 to be sent by one Party to another, it shall be directed to the
5 individuals at the addresses specified below, unless those
6 individuals or their successors give notice of a change to the
7 other Party in writing. All notices and submissions shall be
8 considered effective upon receipt, unless otherwise provided.
9 Written notice as specified herein shall constitute complete
10 satisfaction of any written notice requirement of the Agreement
11 with respect to the Parties.

12 As to the Tribe:
13 Chairwoman Nora McDowell
14 Fort Mojave Indian Tribe
15 500 Merriman Avenue
16 Needles, CA 92363

17 cc to: Courtney Ann Coyle, Esq.
18 1609 Soledad Avenue
19 La Jolla, CA 92037

20 As to DTSC:
21 Leonard Robinson
22 Acting Director
23 Department of Toxic Substances Control - Sacramento HQ
24 P.O. Box 806
25 Sacramento, CA 95812-0806

26 cc to: Nancy Long, Esq.
27 Senior Staff Counsel
28 Office of Legal Counsel
29 Department of Toxic Substances Control -
30 Sacramento HQ
31 P.O. Box 806
32 Sacramento, CA 95812-0806

33 **H. Amendments and Modifications**

34 This Agreement may not be amended or modified except in
35 writing, consented to and signed by duly authorized

1 representatives of the Parties hereto, that states the intent of
2 the Parties to amend or modify this Agreement.

3 **I. Severability**

4 If any term, condition or provision of this Agreement, or the
5 application thereof to any person or circumstance, shall to any
6 extent be held by a court of competent jurisdiction or rendered by
7 the adoption of a statute or regulation by the United States or
8 the State of California invalid, void or unenforceable, the
9 remainder of the terms, covenants, conditions or provisions of
10 this Agreement, or the application thereof to any person or
11 circumstance, shall remain in full force and effect and shall in
12 no way be affected, impaired or invalidated thereby.

13 **J. Construction**

14 This Agreement was negotiated by the Parties with advice of
15 counsel and any ambiguities determined to exist in this Agreement
16 are not to be construed against any Party. The caption headings
17 for the sections of this Agreement are for convenience only and
18 shall not be considered to limit, amplify or define the terms of
19 provisions hereof.

20 **K. Dispute Resolution**

21 In the event that a dispute arises between the Parties with
22 respect to the subject matter of this Agreement, the Parties shall
23 attempt in good faith to resolve any such dispute informally, for
24 a period of time not to exceed thirty (30) days, unless such time
25 period is extended by written agreement of the involved Parties.
26 In the event that a mutually acceptable resolution has not been
27 reached through these discussions, the Parties may pursue any
28 remedy available to them on fifteen (15) days' notice, including

1 seeking redress in the Sacramento County Superior Court. The
2 invocation of the dispute resolution procedures under this Section
3 shall not extend, postpone or affect in any way any obligation of
4 the Parties under this Agreement. Notwithstanding the foregoing,
5 either of the Parties may take actions necessary to address an
6 imminent and/or substantial endangerment, an emergency, or
7 irreparable injury without regard to this paragraph.

8 **L. Compromise and Settlement; Arms-Length Negotiations**

9 This Agreement represents a compromise and settlement of a
10 pending dispute between the Parties and is the product of
11 arms-length negotiation. The Parties have read this Agreement
12 carefully and completely, have had the advice and assistance of
13 legal counsel, and have not been influenced to any extent
14 whatsoever by any representations or statements of fact or opinion
15 made by any Party or its agents other than those contained in this
16 Agreement. The Parties further agree that this Agreement has been
17 negotiated and executed in good faith and without improper
18 influence by any person.

19 **M. Entire Agreement**

20 This Agreement constitutes the entire agreement of the
21 Parties. No promises, inducements, or considerations have been
22 offered and accepted or given except as herein set forth. This
23 Agreement supersedes all prior oral or written agreements,
24 negotiations, discussions, understandings and representations
25 between the Parties hereto and/or their respective counsel with
26 respect to the Tribe's claims in this Action.

27 **N. Authority**

28

1 Each person signing this Agreement in a representative
2 capacity hereby expressly warrants that he or she has express
3 authority to legally bind his or her principal and signs this
4 Agreement in such representative capacity on behalf of his or her
5 principal.

6 **O. Retention Of Jurisdiction**

7 The Parties will jointly request that the Court shall retain
8 jurisdiction over this matter for the duration of the performance
9 of the terms and provisions of this Agreement to interpret, modify
10 and enforce the terms and conditions of this Agreement, including
11 any determination of any right to attorneys' fees and costs
12 related to the Action.

13 **P. Dismissal**

14 The Tribe will file a request for dismissal with prejudice of
15 the Action as to DTSC, within fifteen (15) days of notice of entry
16 of the Court's order retaining jurisdiction to enforce the terms
17 of this Agreement.

18 **Q. Waiver of Appeal Right; Reservation of Right to Appeal**
19 **Collateral Order**

20 The parties agree to waive their right to appeal from this
21 Agreement. Nothing in this Agreement shall be construed as a
22 waiver of any party's right to appeal from an order that arises
23 from an action to enforce the terms of this Agreement.

24 **R. Counterparts**

25 This Agreement may be executed in counterparts, with each
26 copy deemed an original, and all such counterparts taken together
27 shall constitute on and the same agreement.

28 **S. Effective Date**

1 The effective date of this Agreement shall be the date that
2 it is executed by both Parties.

3 **T. No Third Party Beneficiaries**

4 This Agreement is made for the sole benefit of the Parties,
5 and no other person or entity shall have any rights or remedies
6 under or by reason of this Agreement, unless otherwise expressly
7 provided for herein.

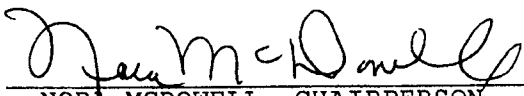
8 **U. Survival**

9 All representations and warranties expressly set forth in
10 this Agreement shall survive the execution of this Agreement and
11 the transactions contemplated hereunder, and are material and have
12 been or will be relied upon by the parties hereto.

13 **SO STIPULATED AND AGREED:**

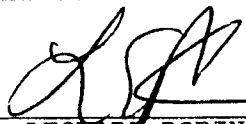
14 FORT MOJAVE INDIAN TRIBE

15
16 Dated: 12/28/05

17 By: 
18 NORA MCDOWELL, CHAIRPERSON
19 FORT MOJAVE INDIAN TRIBE

20 DEPARTMENT OF TOXIC SUBSTANCES CONTROL .


21 Dated: 12/20/05

22 By: 
23 LEONARD ROBINSON, ACTING DIRECTOR
24 DEPARTMENT OF TOXIC SUBSTANCES
25 CONTROL

26 APPROVED AS TO FORM:

27 LUCE, FORWARD, HAMILTON & SCRIPPS, LLP

28 Dated: 1/10/06

By: 
STEVEN P. McDONALD
Attorneys for Fort Mojave Indian
Tribe

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DEPARTMENT OF TOXIC SUBSTANCES CONTROL

BILL LOCKYER
Attorney General of the State of
California

Dated: 1/30/06

By: *Sarah E. Morrison*
SARAH E. MORRISON
Attorneys for State of California,
Department of Toxic Substances Control