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18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**
 20 **WESTERN DIVISION**

CV 18-00234-AB (FFMx)

20 UNITED STATES OF AMERICA) CIV. NO. ~~2:18-cv-234-ODW-JEM~~
 21 and CALIFORNIA)
 22 DEPARTMENT OF TOXIC)
 SUBSTANCES CONTROL,) CONSENT DECREE
 23)
 24 Plaintiffs,)
 25 v.)
 26 JERVIS B. WEBB COMPANY and)
 JERVIS B. WEBB COMPANY OF)
 27 CALIFORNIA,)
 28 Defendants.)

TABLE OF CONTENTS

1			
2			
3	I.	BACKGROUND	1
4	II.	JURISDICTION	4
5	III.	PARTIES BOUND	4
6	IV.	DEFINITIONS	4
7	V.	PAYMENTS FOR RESPONSE COSTS	7
8	VI.	FAILURE TO COMPLY WITH CONSENT DECREE.....	8
9	VII.	COVENANT NOT TO SUE BY UNITED STATES.....	9
10	VIII.	RESERVATION OF RIGHTS BY UNITED STATES	9
11	IX.	COVENANT NOT TO SUE BY DTSC	10
12	X.	RESERVATION OF RIGHTS BY DTSC	10
13	XI.	COVENANT NOT TO SUE BY SETTLING DEFENDANTS	11
14	XII.	EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION	12
15	XIII.	ACCESS TO INFORMATION.....	14
16	XIV.	RETENTION OF RECORDS	15
17	XV.	NOTICES AND SUBMISSIONS	17
18	XVI.	RETENTION OF JURISDICTION	18
19	XVII.	APPENDICES	19
20	XVIII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	19
21	XIX.	SIGNATORIES/SERVICE	19
22	XX.	FINAL JUDGMENT	20
23			
24			
25			
26			
27			
28			

1 **I. BACKGROUND**

2 A. The United States of America (“United States”), on behalf of the
3 Administrator of the United States Environmental Protection Agency (“EPA”), and
4 the California Department of Toxic Substances Control (“DTSC”), filed a
5 complaint (“Complaint”) in this matter against Jervis B. Webb Company (“JBW”)
6 and Jervis B. Webb Company of California (“Webb-Cal”) (collectively “Settling
7 Defendants”). In the Complaint, the United States alleged claims against Webb-
8 Cal pursuant to Sections 106 and 107(a) of the Comprehensive Environmental
9 Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606 and
10 9607(a), seeking injunctive relief and reimbursement of response costs incurred or
11 to be incurred at the Jervis B. Webb Superfund Site in South Gate, Los Angeles
12 County, California (the “Site”), and alleged a claim against JBW seeking to avoid
13 certain transfers of assets from Webb-Cal to JBW under the Federal Debt
14 Collection Procedures Act, 28 U.S.C. § 3001 *et seq.* (“FDCPA”). DTSC
15 separately alleged claims in the Complaint against Webb-Cal that it is liable to
16 DTSC under Section 107 of CERCLA, 42 U.S.C. § 9607 and/or applicable state
17 laws, for reimbursement of costs it has incurred for response actions at the Site.

18 B. The Settling Defendants do not admit any liability to the United States
19 or to DTSC arising out of the transactions or occurrences alleged in the Complaint.

20 C. JBW is a Michigan corporation with its principal place of business in
21 Farmington Hills, Michigan.

22 D. Webb-Cal was a California corporation from 1949 until its dissolution
23 in 2003. JBW was a shareholder in Webb-Cal from the time of Webb-Cal’s
24 incorporation until its dissolution. From 1992 until the dissolution of Webb-Cal,
25 JBW owned 100% of the shares of Webb-Cal, and Webb-Cal was a wholly owned
26 subsidiary of JBW.

27 E. The Site is approximately 3.82 acres in size and contains two adjacent
28

1 parcels of land. The Site is depicted on the map attached as Appendix A.

2 F. From approximately 1953 to 2003, Webb-Cal owned and operated
3 portions of or the whole of the Site. At various times during its ownership and
4 occupancy, Webb-Cal manufactured cranes and conveyors on the Site. From
5 approximately 1975 to 1984, Webb-Cal leased a portion of the Site to Blake Rivet
6 Company (“Blake”). Blake manufactured aircraft rivets on a portion of the Site
7 from the 1950s until approximately 1984. Blake has ceased doing business and is
8 insolvent.

9 G. Hazardous substances, such as the volatile organic compounds
10 perchloroethene and trichloroethene, were detected in Site soils and groundwater in
11 sampling performed pursuant to directives of the California Regional Water
12 Quality Control Board between 1997 and 2005.

13 H. In April of 2006, the California Regional Water Quality Control
14 Board transferred oversight of the Site to DTSC.

15 I. On October 23, 2008, DTSC sent a letter to the “Jervis Webb
16 Company of California,” which transmitted a draft Imminent and Substantial
17 Endangerment Determination and draft Consent Order.

18 J. On February 2, 2010, DTSC issued an Imminent and Substantial
19 Endangerment Order to JBW and the current owners of the Rayo and Firestone
20 properties.

21 K. On January 18, 2011, DTSC referred the Site to EPA to assume lead
22 oversight responsibilities. In performing the response actions at the Site, DTSC
23 has incurred response costs and may incur additional response costs in the future.

24 L. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed
25 the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B,
26 by publication in the Federal Register on May 5, 2012, 77 Fed. Reg. 27,368.

27 M. EPA has undertaken a Remedial Investigation (“RI”) of the Site
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1 pursuant to 40 C.F.R. § 300.430. The RI commenced in 2014 and is ongoing at the
2 time of the lodging of this Consent Decree. In performing this response action at
3 the Site, EPA has incurred response costs and will incur additional response costs
4 in the future.

5 N. The United States and DTSC allege in the claim against Webb-Cal
6 that, from its commencement in the 1950s to its cessation in the 1980s,
7 manufacturing operations at the Site released hazardous substances such as
8 trichloroethene and perchloroethene to the soils and groundwater at and beneath
9 the Site and have caused the United States to incur costs of response at the Site.
10 The United States and DTSC further allege in the Complaint that Webb-Cal is
11 liable for all past and future costs of response to hazardous substances at the Site
12 pursuant to section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Webb-Cal
13 does not admit any liability to the United States under CERCLA.

14 O. The United States alleges in the claim against JBW that:

15 1) At the time of its dissolution, Webb-Cal transferred to JBW and
16 JBW received from Webb-Cal all of Webb-Cal's remaining assets in an amount
17 exceeding \$2.7 million.

18 2) At the time of its dissolution, Webb-Cal was indebted to the
19 United States for the costs incurred and to be incurred in response to the hazardous
20 substances released at and from the Site.

21 3) The transfer of all its assets to JBW by Webb-Cal at the time of
22 its dissolution rendered Webb-Cal insolvent.

23 4) The transfer of assets from Webb-Cal to JBW was made with
24 the intent to hinder, delay, or defraud the United States as creditor of Webb-Cal.

25 5) On the basis of the allegations in O(1) – (4), *supra*, the United
26 States alleges that JBW is liable to the United States for the value of the assets
27 received by JBW from Webb-Cal pursuant to the provisions of sections 3304 and
28 3306 of the FDICPA, 28 U.S.C. §§ 3304 and 3306. Settling Defendant JBW does

1 not admit any liability to the United States under the FDCPA.

2 P. The United States, DTSC, and Settling Defendants agree, and this
3 Court by entering this Consent Decree finds, that this Consent Decree has been
4 negotiated by the Parties in good faith, that settlement of this matter will avoid
5 prolonged and complicated litigation among the Parties, and that this Consent
6 Decree is fair, reasonable, and in the public interest.

7 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

8 **II. JURISDICTION**

9 1. This Court has jurisdiction over the subject matter of this action
10 pursuant to 28 U.S.C. §§ 1331, 1345, and 3306 and 42 U.S.C. §§ 9607 and 9613(b)
11 and supplemental jurisdiction over claims arising under the laws of the State of
12 California pursuant to 28 U.S.C. § 1367(a), and also has personal jurisdiction over
13 Settling Defendants. Solely for the purposes of this Consent Decree and the
14 underlying Complaint, Settling Defendants waive all objections and defenses that
15 they may have to jurisdiction of the Court or to venue in this District. Settling
16 Defendants shall not challenge the terms of this Consent Decree or this Court's
17 jurisdiction to enter and enforce this Consent Decree.

18 **III. PARTIES BOUND**

19 2. This Consent Decree applies to and is binding upon the United States,
20 DTSC and upon Settling Defendants and their heirs, successors and assigns. Any
21 change in ownership or corporate status of a Settling Defendant, including, but not
22 limited to, any transfer of assets or real or personal property, shall in no way alter
23 such Settling Defendant's responsibilities under this Consent Decree.

24 **IV. DEFINITIONS**

25 3. Unless otherwise expressly provided herein, terms used in this
26 Consent Decree that are defined in CERCLA or the FDCPA or in regulations
27 promulgated thereunder shall have the meaning assigned to them in CERCLA or
28 the FDCPA or in such regulations. Whenever terms listed below are used in this

1 Consent Decree or in any appendix attached hereto, the following definitions shall
2 apply solely for purposes of this Consent Decree:

3 a. "CERCLA" shall mean the Comprehensive Environmental
4 Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

5 b. "Consent Decree" shall mean this Consent Decree and all
6 appendices attached hereto. In the event of conflict between this Consent Decree
7 and any appendix, this Consent Decree shall control.

8 c. "Day" shall mean a calendar day unless expressly stated to be a
9 working day. The term "working day" shall mean a day other than a Saturday,
10 Sunday, or federal or state holiday. In computing any period of time under this
11 Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or
12 state holiday, the period shall run until the close of business of the next working
13 day.

14 d. "DOJ" shall mean the United States Department of Justice and
15 its successor departments, agencies, or instrumentalities.

16 e. "DTSC" shall mean the California Department of Toxic
17 Substances Control, and its successor departments, agencies, or instrumentalities.

18 f. "Effective Date" shall mean the date upon which this Consent
19 Decree is entered by the Court as recorded on the Court docket, or, if the Court
20 instead issues an order approving the Consent Decree, the date such order is
21 recorded on the Court docket.

22 g. "EPA" shall mean the United States Environmental Protection
23 Agency and its successor departments, agencies or instrumentalities.

24 h. "EPA Hazardous Substance Superfund" shall mean the
25 Hazardous Substance Superfund established by the Internal Revenue Code, 26
26 U.S.C. § 9507.

27 i. "FDCPA" shall mean the Federal Debt Collection Procedure
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1 Act, 28 U.S.C. § 3001 *et. seq.*

2 j. "Interest" shall mean interest at the rate specified for interest on
3 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.
4 § 9507, compounded annually on October 1 of each year, in accordance with 42
5 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the
6 time the interest accrues. The rate of interest is subject to change on October 1 of
7 each year.

8 k. "Paragraph" shall mean a portion of this Consent Decree
9 identified by an Arabic numeral or an upper or lower case letter.

10 l. "Parties" shall mean the United States, DTSC, and Settling
11 Defendants.

12 m. "Plaintiffs" shall mean the United States and DTSC.

13 n. "Response Costs" shall mean all costs at or in connection with
14 the Site not inconsistent with the National Contingency Plan incurred or to be
15 incurred by the United States or DTSC.

16 o. "Section" shall mean a portion of this Consent Decree
17 identified by a Roman numeral.

18 p. "Settling Defendants" shall mean Jervis B. Webb Company and
19 Jervis B. Webb Company of California and their respective past and present
20 officers, directors, shareholders, corporate successors, and trustees.

21 q. "Site" shall mean the Jervis B. Webb Superfund Site, in South
22 Gate, Los Angeles County, California, depicted generally on the map attached as
23 Appendix A and the areal extent of hazardous substances released at or from the
24 Site.

25 r. "State" shall mean the State of California.

26 s. "Transfer" shall mean the transfer of not less than \$2.7 million
27 from Webb-Cal to JBW in connection with the corporate dissolution of Webb-Cal.
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1 t. "United States" shall mean the United States of America and
2 each department, agency and instrumentality of the United States, including EPA.

3 **V. PAYMENTS FOR RESPONSE COSTS**

4 4. Payment by the Settling Defendants

5 a. Within 30 days after the Effective Date, Settling Defendants
6 shall pay to EPA \$3,450,000.00 (Three Million, Four Hundred and Fifty Thousand
7 Dollars) in payment for Response Costs and in avoidance of the Transfer and
8 \$50,000.00 (Fifty Thousand Dollars) to DTSC for Response Costs.

9 b. The total amount to be paid by Settling Defendants to EPA
10 pursuant to Paragraph 4(a) shall be deposited by EPA in the Jervis B. Webb
11 Special Account to be retained and used to conduct or finance response actions at
12 or in connection with the Site or to be transferred by EPA to the EPA Hazardous
13 Substance Superfund.

14 5. Payment Instructions for Settling Defendants

15 a. All payments to the United States shall be made at
16 <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with
17 instructions provided to Settling Defendants by the Financial Litigation Unit
18 ("FLU") of the United States Attorney's Office for the Central District of
19 California, Western Division. The payment instructions provided by the FLU shall
20 include a Consolidated Debt Collection System ("CDCS") number, which shall be
21 used to identify all payments required to be made by this Consent Decree.

22 b. All payments made under Paragraph 5(a) shall reference the
23 CDCS Number, Site/Spill ID Number 09WR, and DOJ case Number 90-11-3-
24 10965. At the time of any payment required to be made in accordance with
25 Paragraph 5(a), Settling Defendants shall send notice that payment has been made
26 to the United States and to EPA, in accordance with Section XV (Notices and
27 Submissions) and to the EPA Cincinnati Finance Office by email at
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1 acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive,
2 Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number,
3 Site/Spill ID Number, and DOJ Case Number.

4 c. Within 30 days after the Effective Date, Settling Defendants
5 shall pay to DTSC \$50,000 by official bank check(s) made payable to California
6 Department of Toxic Substances Control. Settling Defendants shall send the bank
7 check(s) to Accounting, California Department of Toxic Substances Control, 1001
8 "I" Street, 21st Floor, P.O. Box 806, Sacramento, CA 95812-0806.

9 **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

10 6. Interest on Late Payments. In the event that any payment required
11 under Paragraph 4(a) is not made by the date required, Settling Defendants shall
12 pay Interest to EPA and/or DTSC on the unpaid balance. The Interest to be paid
13 on late payment under this Paragraph shall begin to accrue on the date due. The
14 Interest shall accrue through the date of Settling Defendants' payment.

15 7. Stipulated Penalty.

16 a. If any amounts due under Paragraph 4 are not paid by the
17 required due date, Settling Defendants shall be in violation of this Consent Decree,
18 and shall pay to EPA and/or DTSC as a stipulated penalty, in addition to the
19 Interest required by Paragraph 6, \$1,000 per day that any payment is late.

20 b. Stipulated penalties are due and payable within 30 days of the
21 date of the demand for payment by EPA and or/DTSC. All payments to EPA
22 and/or DTSC under this Paragraph shall be identified as "Stipulated Penalties." All
23 payments to EPA and/or DTSC under this Paragraph shall be made pursuant to the
24 instructions in Paragraph 5 (Payment Instructions for Settling Defendants).

25 c. Penalties shall accrue as provided in this Paragraph regardless
26 of whether EPA and/or DTSC has notified Settling Defendants of the violation or
27 made a demand for payment, but need only be paid upon demand. All penalties
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1 shall begin to accrue on the day after payment is due and shall accrue through the
2 date of payment.

3 8. Payments made under this Section shall be in addition to any other
4 remedies or sanctions available to the United States and/or DTSC by virtue of
5 Settling Defendants' failure to comply with the requirements of this Consent
6 Decree.

7 9. Notwithstanding any other provision of this Section, the United States
8 and/or DTSC may, in their unreviewable discretion, waive payment of any portion
9 of the stipulated penalties due to EPA or DTSC that have accrued pursuant to this
10 Consent Decree.

11 **VII. COVENANT NOT TO SUE BY UNITED STATES**

12 10. In consideration of the payments that will be made by Settling
13 Defendants under this Consent Decree, and except as specifically provided in this
14 Paragraph and in Paragraph 11 (Reservations of Rights by United States), the
15 United States covenants not to sue or to take administrative action against Settling
16 Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606
17 and 9607(a), with regard to all response actions taken or to be taken at the Site and
18 all Response Costs incurred or to be incurred at the Site, or to sue or take
19 administrative action against Settling Defendants pursuant to Sections 3304 and
20 3306 of the FDCPA, 28 U.S.C. §§ 3304 and 3306, for claims relating to or arising
21 from the Transfer. These covenants are conditioned upon the satisfactory
22 performance by Settling Defendants of their obligations under this Consent Decree.
23 These covenants not to sue extend only to Settling Defendants and do not extend to
24 any other person.

25 **VIII. RESERVATION OF RIGHTS BY UNITED STATES**

26 11. The United States reserves, and this Consent Decree is without
27 prejudice to, all rights against Settling Defendants with respect to all matters not
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1 expressly included within the United States' covenants. Notwithstanding any other
2 provision of this Consent Decree, the United States reserves all rights against
3 Settling Defendants with respect to:

4 a. liability for failure of Settling Defendants to meet a requirement
5 of this Consent Decree;

6 b. liability arising from the past, present, or future disposal,
7 release, or threat of release of a hazardous substance, pollutant, or contaminant
8 outside of the Site;

9 c. liability for damages for injury to, destruction of, or loss of
10 natural resources, and for the costs of any natural resource damage assessments;

11 d. liability based on Settling Defendants' transportation,
12 treatment, storage or disposal, or arrangement for transportation, treatment,
13 storage, or disposal of a hazardous substance at or in connection with the Site, after
14 signature of this Consent Decree by the Settling Defendants; and

15 e. criminal liability.

16 **IX. COVENANT NOT TO SUE BY DTSC**

17 12. In consideration of the payments that will be made by Settling
18 Defendants under the terms of this Consent Decree and except as specifically
19 provided in Section X (Reservations of Rights by DTSC), DTSC covenants not to
20 sue or to take administrative action against Settling Defendants pursuant to Section
21 107(a) of CERCLA, 42 U.S.C. § 9607(a), California Health and Safety Code
22 Sections 25323.5, 25355.5, and 25360 relating to Response Costs. These
23 covenants are conditioned upon the satisfactory performance by Settling
24 Defendants of their obligations under this Consent Decree. These covenants not to
25 sue extend only to Settling Defendants and do not extend to any other person.

26 **X. RESERVATION OF RIGHTS BY DTSC**

27 13. DTSC reserves, and this Consent Decree is without prejudice to, all
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1 rights against Settling Defendants with respect to all matters not expressly included
2 within DTSC's covenants. Notwithstanding any other provision of this Consent
3 Decree, DTSC reserves all rights against Settling Defendants with respect to:

4 a. liability for failure of Settling Defendants to meet a requirement
5 of this Consent Decree;

6 b. liability arising from the past, present, or future disposal,
7 release, or threat of release of a hazardous substance, pollutant, or contaminant
8 outside of the Site;

9 c. liability for damages for injury to, destruction of, or loss of
10 natural resources, and for the costs of any natural resource damage assessments;

11 d. liability based on Settling Defendants' transportation,
12 treatment, storage or disposal, or arrangement for transportation, treatment,
13 storage, or disposal of a hazardous substance at or in connection with the Site, after
14 signature of this Consent Decree by the Settling Defendants; and

15 e. criminal liability;

16 f. liability for violations of State law that occur during or after
17 implementation of the Work.

18 **XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

19 14. Settling Defendants covenant not to sue, and agree not to assert any
20 claims or causes of action against, the United States or DTSC with respect to the
21 Site, and this Consent Decree, including, but not limited to:

22 a. any direct or indirect claim for reimbursement from the
23 Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111,
24 112, 113, or any other provision of law;

25 b. any claims under CERCLA Sections 107 or 113, RCRA
26 Section 7002(a), 42 U.S.C § 6972(a), or state law regarding the Site and this
27 Consent Decree; or
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1 c. any claims arising out of response actions at or in connection
2 with the Site, including any claim under the United States Constitution, the
3 California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to
4 Justice Act, 28 U.S.C. § 2412, or at common law.

5 15. Settling Defendants' covenants not to sue shall not apply in the event
6 the United States brings a cause of action or issues an order pursuant to the
7 reservations set out in Paragraph 11, but only to the extent that Settling
8 Defendants' claims arise from the same response action, response costs, or
9 damages that the United States is seeking pursuant to the applicable reservation.

10 16. Settling Defendants' covenants not to sue shall not apply in the event
11 DTSC brings a cause of action or issues an order pursuant to the reservations set
12 out in Paragraph 13, but only to the extent that Settling Defendants' claims arise
13 from the same response action, response costs, or damages that DTSC is seeking
14 pursuant to the applicable reservation.

15 17. Nothing in this Consent Decree shall be deemed to constitute
16 preauthorization of a claim within the meaning of Section 111 of CERCLA,
17 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

18 18. Settling Defendants agree not to assert any claims or causes of action
19 and to waive all claims or causes of action under Sections 107(a) and 113 of
20 CERCLA or equivalent provisions of the California Hazardous Substance Account
21 Act that they may have for response costs relating to or arising from the Site
22 against any person. These waivers shall not apply with respect to any defense,
23 claim, or cause of action that a Settling Defendant may have against any person if
24 such person asserts a claim or cause of action relating to the Site against such
25 Settling Defendant.

26 **XII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION**

27 19. Except as provided in Paragraph 15, nothing in this Consent Decree
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1 shall be construed to create any rights in, or grant any cause of action to, any
2 person not a Party to this Consent Decree. Nothing in this Consent Decree
3 diminishes the right of the United States or DTSC, pursuant to Section 113(f)(2)
4 and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to
5 obtain additional response costs or response action and to enter into settlements
6 that give rise to contribution protection pursuant to Section 113(f)(2).

7 20. The Parties agree, and by entering this Consent Decree this Court
8 finds, that this Consent Decree constitutes a judicially approved settlement for
9 purposes of Section 113(f)(2) of CERCLA, 42 U.S.C § 9613(f)(2), and that
10 Settling Defendants are each entitled, as of the Effective Date, to protection from
11 contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as
12 may be otherwise provided by federal or state law, for “matters addressed” in this
13 Consent Decree. The “matters addressed” in this Consent Decree are all claims for
14 Response Costs incurred or to be incurred at or in connection with the Site by the
15 United States, DTSC, or by any other party and all claims under the FDCPA in
16 connection with CERCLA liability for the Site relating to transfers of assets
17 between Settling Defendants at the dissolution of Webb-Cal. The “matters
18 addressed” in this Consent Decree do not include those response costs or response
19 actions as to which the United States or DTSC has reserved its rights under the
20 Consent Decree (except for claims for failure to comply with this Consent Decree)
21 in the event that the United States or DTSC asserts rights against Settling
22 Defendants coming within the scope of such reservations.

23 21. Each Settling Defendant shall, with respect to any suit or claim
24 brought by it for matters related to this Consent Decree, notify the United States
25 and DTSC in writing no later than 60 days prior to the initiation of such suit or
26 claim.

27 22. Each Settling Defendant shall, with respect to any suit or claim
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1 brought against it for matters related to this Consent Decree, notify in writing the
2 United States and DTSC within ten days after service of the complaint on such
3 Settling Defendant. In addition, each Settling Defendant shall notify the United
4 States and DTSC within ten days after service or receipt of any Motion for
5 Summary Judgment and within ten days after receipt of any order from a court
6 setting a case for trial for matters related to this Consent Decree.

7 23. In any subsequent administrative or judicial proceeding initiated by
8 the United States or DTSC for injunctive relief, recovery of response costs, or
9 other relief relating to the Site, Settling Defendants shall not assert, and may not
10 maintain, any defense or claim based upon the principles of waiver, res judicata,
11 collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon
12 any contention that the claims raised by the United States or DTSC in the
13 subsequent proceeding were or should have been brought in the instant case;
14 provided, however, that nothing in this Paragraph affects the enforceability of the
15 covenants not to sue set forth in Section VII (Covenant by United States Not to
16 Sue) and Section IX (Covenant by DTSC Not to Sue).

17 **XIII. ACCESS TO INFORMATION**

18 24. Settling Defendants shall provide to EPA and DTSC, upon request,
19 access to copies of all records, reports, documents and other information (including
20 records, reports, documents, and other information in electronic form) (hereinafter
21 referred to as "Records") within their possession or control or that of their
22 contractors or agents relating to activities at the Site, including, but not limited to,
23 sampling, analysis, chain of custody records, manifests, trucking logs, receipts,
24 reports, sample traffic routing, correspondence, or other documents or information
25 related to the Work.

26 25. Business Confidential and Privileged Documents.

27 a. Settling Defendants may assert business confidentiality claims
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1 covering part or all of the Records submitted to the United States and/or DTSC
2 under this Consent Decree to the extent permitted by and in accordance with
3 Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b),
4 or as to DTSC, state law. Records determined to be confidential by EPA will be
5 afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
6 confidentiality accompanies Records when they are submitted to EPA and/or
7 DTSC, or if EPA has notified Settling Defendants that the Records are not
8 confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R.
9 Part 2, Subpart B, the public may be given access to such Records without further
10 notice to Settling Defendants.

11 b. Settling Defendants may assert that certain Records are
12 privileged under the attorney-client privilege or any other privilege recognized by
13 federal law or, as to DTSC, state law. If Settling Defendants assert such a
14 privilege in lieu of providing Records, they shall provide the United States and/or
15 DTSC with the following: (1) the title of the Record; (2) the date of the Record;
16 (3) the name, title, affiliation (e.g., company or firm), and address of the author of
17 the Record; (4) the name and title of each addressee and recipient; (5) a description
18 of the contents of the Record; and (6) the privilege asserted by Settling Defendants.
19 No Records created or generated pursuant to the requirements of this Consent
20 Decree shall be withheld from the United States or DTSC on the grounds that they
21 are privileged or confidential.

22 **XIV. RETENTION OF RECORDS**

23 26. Until five years after entry of this Consent Decree, each Settling
24 Defendant shall preserve and retain all non-identical copies of records (including
25 records in electronic form) now in its possession or control or that come into its
26 possession or control that relate in any manner to its liability under CERCLA with
27 respect to the Site, regardless of any corporate retention policy to the contrary.
28

1 27. At the conclusion of the record retention period, Settling Defendants
2 shall notify the United States and DTSC at least 30 days prior to the destruction of
3 any such records, and, upon request by the United States or DTSC, Settling
4 Defendants shall promptly deliver any such records to EPA and/or DTSC. Settling
5 Defendants may assert that certain records are privileged under the attorney-client
6 privilege or any other privilege recognized by federal or, as to DTSC, state law. If
7 Settling Defendants assert such a privilege, they shall provide the United States
8 and DTSC with the following: (a) the title of the record; (b) the date of the record;
9 (c) the name, title, affiliation (e.g., company or firm), and address of the author of
10 the record; (d) the name and title of each addressee and recipient; (e) a description
11 of the subject of the record; and (f) the privilege asserted by Settling Defendants.
12 If a claim of privilege applies only to a portion of a record, the record shall be
13 provided to the United States and DTSC in redacted form to mask the privileged
14 portion only. Settling Defendants shall retain all records that they claim to be
15 privileged until the United States and/or DTSC has had a reasonable opportunity to
16 dispute the privilege claim and any such dispute has been resolved in Settling
17 Defendants' favor. However, no records created or generated pursuant to the
18 requirements of this Consent Decree shall be withheld on the grounds that they are
19 privileged or confidential.

20 28. Each Settling Defendant certifies individually that, to the best of its
21 knowledge and belief, after thorough inquiry, it has not altered, mutilated,
22 discarded, destroyed, or otherwise disposed of any records (other than identical
23 copies) relating to its potential liability regarding the Site since notification of
24 potential liability by the United States, and that it has fully complied with any and
25 all EPA requests for information regarding the Site pursuant to Sections 104(e) and
26 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).
27
28

1 **XV. NOTICES AND SUBMISSIONS**

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

11 As to the United States:

12 Chief, Environmental Enforcement Section
13 Environment and Natural Resources Division
14 U.S. Department of Justice
15 P.O. Box 7611
16 Washington, D.C. 20044-7611
17 Re: DJ # 90-11-3-10965

18 As to EPA:

19 Karen Jurist
20 EPA Project Coordinator
21 United States Environmental Protection Agency
22 Region IX
23 75 Hawthorne St.
24 San Francisco, CA 94105

25 Re: Jervis B. Webb Superfund Site

26 As to DTSC – California Attorney General:

27 Olivia W. Karlin
28 Deputy Attorney General
California Department of Justice

1 300 South Spring Street
2 Los Angeles, California 90013

3
4 As to DTSC Office of Legal Counsel:

5
6 Larry McDaniel
7 Senior Attorney
8 Department of Toxic Substances Control
9 P.O. Box 806
10 Sacramento, California 95812-0806

11 As to DTSC:

12 Dot Lofstrom, PG
13 Division Chief
14 Brownfields and Environmental Restoration Program
15 P.O. Box 806
16 Sacramento, California 95812-0806

17 As to Settling Defendants:

18 General Counsel
19 Jervis B. Webb Company
20 34375 W. Twelve Mile Road
21 Farmington Hills, MI 48331-5624

22 with a copy to:

23 Michael Scott Feeley, Esq.
24 John C. Heintz, Esq.
25 Latham & Watkins LLP
26 355 S. Grand Ave.
27 Los Angeles, CA 90071, Suite 100

28 **XVI. RETENTION OF JURISDICTION**

30. This Court shall retain jurisdiction over this the matter for the purpose

1 of interpreting and enforcing the terms of this Consent Decree.

2 **XVII. APPENDICES**

3 31. The following appendices are incorporated into this Consent Decree:

4 "Appendix A" is the map of the Site.

5 **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

6 32. This Consent Decree shall be lodged with the Court for a period of not
7 less than 30 days for public notice and comment in accordance with Section
8 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United
9 States and DTSC each reserve the right to withdraw or withhold its consent if the
10 comments regarding the Consent Decree disclose facts or considerations which
11 indicate that the Consent Decree is inappropriate, improper, or inadequate.
12 Settling Defendants consent to the entry of this Consent Decree without further
13 notice.

14 33. If for any reason the Court should decline to approve this Consent
15 Decree in the form presented, this agreement is voidable at the sole discretion of
16 any Party, and the terms of the agreement may not be used as evidence in any
17 litigation between the Parties.

18 **XIX. SIGNATORIES/SERVICE**

19 34. Each undersigned representative of a Settling Defendant to this
20 Consent Decree, the Assistant Attorney General for the Environment and Natural
21 Resources Division of the Department of Justice, and DTSC certifies that he or she
22 is fully authorized to enter into the terms and conditions of this Consent Decree
23 and to execute and legally bind such Party to this document.

24 35. Each Settling Defendant agrees not to oppose entry of this Consent
25 Decree by this Court or to challenge any provision of this Consent Decree unless
26 the United States or DTSC has notified Settling Defendants in writing that it no
27 longer supports entry of the Consent Decree.
28

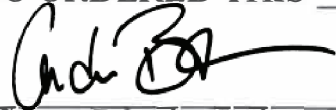
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36. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XX. FINAL JUDGMENT

37. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, DTSC and Settling Defendants. The Court finds that there is no just reason for delay, and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 24TH DAY OF June, 2018.



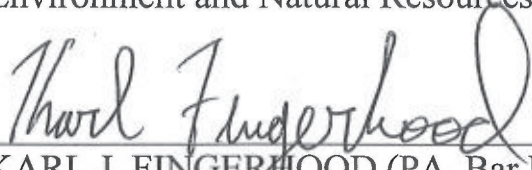
United States District Judge

1 FOR UNITED STATES OF AMERICA

2
3
4 DATE: 1/9/18



5
6 ELLEN M. MAHAN
7 Deputy Chief,
8 Environmental Enforcement Section
9 U.S. Department of Justice
10 Environment and Natural Resources Division



11 KARL J. FINGERHOOD (PA. Bar ID No. 63260)
12 Senior Counsel,
13 Environmental Enforcement Section
14 U.S. Department of Justice
15 Environment & Natural Resources Division
16 P.O. Box 7611
17 Washington, D.C. 20044-7611

18 Telephone: (202) 514-7519
19 Telefax: (202) 514-0097

20 e-mail: karl.fingerhood@usdoj.gov

21 Of Counsel:

22 JIM COLLINS
23 Assistant Regional Counsel
24 U.S. Environmental Protection Agency, Region 9
25 75 Hawthorne Street
26 San Francisco, CA 94105

27 Telephone: (415) 972-3894

28 e-mail: collins.jim@epa.gov

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FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: November 9, 2017

Enrique Manzanilla

ENRIQUE MANZANILLA
Director, Superfund Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

1 FOR THE STATE OF CALIFORNIA DEPARTMENT OF TOXIC
2 SUBSTANCES CONTROL
3

4
5 DATE: 11-1-17



6 Dot Lofstrom, PG
7 Division Chief,
8 Brownfields & Environmental
9 Restoration Program
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FOR SETTLING DEFENDANT JERVIS B. WEBB COMPANY

DATE: _____

Timothy Hund, President


Authorized Agent for Service of Process Pursuant to Paragraph 36:

Michael Scott Feeley, Esq.
John C. Heintz, Esq.
Latham & Watkins LLP
355 S. Grand Ave.
Los Angeles, CA 90071, Suite 100

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FOR SETTLING DEFENDANT JERVIS B. WEBB COMPANY

DATE: Sep. 1, 2017



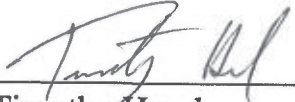
Timothy Hund, President

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Michael Scott Feeley, Esq.
John C. Heintz, Esq.
Latham & Watkins LLP
355 S. Grand Ave.
Los Angeles, CA 90071, Suite 100

1 FOR SETTLING DEFENDANT JERVIS B. WEBB COMPANY OF
2 CALIFORNIA
3

4
5 DATE: Sep. 1, 2017


6 Timothy Hund
7 President, Jervis B. Webb Company,
8 as Former Shareholder of
9 Jervis B. Webb Company of California

10 Authorized Agent for Service of Process Pursuant to Paragraph 36:
11

12 Michael Scott Feeley, Esq.
13 John C. Heintz, Esq.
14 Latham & Watkins LLP
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