

FILED

MAY 10 2002

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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4 Attorneys for Plaintiffs

United States District Court for the
Eastern District of California

RECORDED

MAY - 8 2002

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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8 RURAL ALLIANCE FOR MILITARY)
ACCOUNTABILITY, PYRAMID LAKE PAIUTE)
9 TRIBE, JOHN PASTOR, PAUL BEACH, KIM)
RAMOS, and RESIDENTS AGAINST)
10 MUNITIONS,)
11 Plaintiffs,)
12 v.)
13 UNITED STATES DEPARTMENT OF THE)
ARMY,)
14 Defendant.)
15

No: CIV. S-00-804 GEB JFM
**PLAINTIFFS' NOTICE OF
SETTLEMENT AND
UNOPPOSED MOTION TO
ENTER SETTLEMENT
AGREEMENT AND
[PROPOSED] ORDER OF
DISMISSAL**

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17 Pursuant to U.S. Eastern District Local Rule 16-160, Plaintiffs hereby notify the Court
18 that this matter has been settled in accordance with the terms of the attached Settlement
19 Agreement and [Proposed] Order of Dismissal (the "Order").

20 Additionally, Plaintiffs hereby respectfully move this Court to sign the attached Order and
21 enter said Order in this case. Counsel for the Defendants has notified the undersigned that the
22 Defendants do not object to this motion.

23 Respectfully submitted,

24 Dated: May 7, 2002

COX & MOYER

26 By: 

SCOTT J. ALLEN
Attorneys for Plaintiffs

27 Sierra084.Motion to enter settlement agreement.wpd

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United States District Court for the
Eastern District of California

RURAL ALLIANCE FOR MILITARY)
ACCOUNTABILITY, PYRAMID LAKE PAIUTE)
TRIBE, JOHN PASTOR, PAUL BEACH, KIM)
RAMOS, RESIDENTS AGAINST MUNITIONS,)
and CALIFORNIA PUBLIC INTEREST)
RESEARCH GROUP,)

Plaintiffs,)

v.)

UNITED STATES DEPARTMENT OF THE)
ARMY,)

Defendant.)
_____)

No: CIV S 00 804 GEB JFM

**SETTLEMENT
AGREEMENT AND
[PROPOSED] ORDER OF
DISMISSAL**

WHEREAS, Plaintiffs Rural Alliance for Military Accountability, Pyramid Lake Paiute Tribe, John Pastor, Paul Beach, Kim Ramos, Residents Against Munitions, and California Public Interest Research Group (collectively "Plaintiffs") brought suit against the United States Department of the Army ("Defendant") for certain activities at Sierra Army Depot under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Clean Air Act, the California Health and Safety Code, the California Business and Professions Code, the National Environmental Policy Act, and the Endangered Species Act in their First Amended Complaint;

WHEREAS, the Army ceased the open burning or open detonation (OB/OD) activities at Sierra Army Depot pursuant to a memorandum transmitted on or about September 26, 2001, signed by Larry Gulledge, Deputy to the Commander, Operational Support Command, Department of the Army;

WHEREAS, the parties believe that it is in the interest of the public and judicial economy to resolve all claims (including claims for attorneys' fees and costs) without protracted litigation; and

WHEREAS, the parties have reached a settlement which they consider to be a just, fair, adequate and equitable resolution of all claims.

NOW, THEREFORE, the Parties hereby stipulate as follows:

(1) Defendant will not conduct OB/OD of munitions or propellants (including rocket motors) at Sierra Army Depot, except where such action is necessary (1) for national security reasons as permitted by law or (2) to address an emergency situation as permitted by law.

(2) Within 45 days of the Court's Order of Dismissal pursuant to this Settlement Agreement, Defendant will submit an amendment of its Resource Conservation and Recovery Act Part B permit application for the Sierra Army Depot to the relevant regulatory authority to ensure that the application does not seek permission to conduct OB/OD at Sierra Army Depot in any manner inconsistent with Paragraph 1, above.

(3) Within 90 days of the Court's Order of Dismissal pursuant to this Settlement Agreement, Defendant shall pay Plaintiffs \$360,000 to settle claims for attorneys' fees and costs related to the above-captioned matter by Fed Wire Electronic Funds Transfer. Payment shall be divided as follows: \$163,971.87 to Cox & Moyer, P.A.; and \$196,028.13 to the National Environmental Law Center. Plaintiffs agree to accept payment of \$360,000 in full satisfaction of any and all claims for attorney's fees and costs in the above-captioned matter.

(4) Plaintiffs shall immediately withdraw all pending requests for information pursuant to the Freedom of Information Act before any agency or organization in the Department of Defense related to

any issue raised in this litigation, including but not limited to OB/OD and/or alternative technologies.

(5) Defendant's performance of its obligations pursuant to this Settlement Agreement is subject to the Anti-Deficiency Act, 31 U.S.C. §§ 1310, 1341, and 1349-51, and no portion of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act.

(6) Nothing in this Settlement Agreement, nor any negotiations, or discussions conducted herewith, shall constitute an admission of liability on the part of Defendant to any of Plaintiffs' claims. Nor shall this Settlement Agreement or any negotiations or discussions conducted herewith be offered or received in evidence nor used in any proceeding by either party for the purpose of establishing any non-jurisdictional fact alleged in any of Plaintiffs' claims, except that either party may introduce this Settlement Agreement into evidence for the purposes of resolving a dispute under Paragraph 8, below.

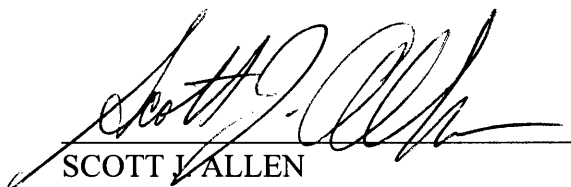
(7) It is hereby expressly understood and agreed that this Settlement Agreement was jointly drafted by the parties. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement. This Settlement Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for the purposes of determining the meaning of any provisions herein in any litigation or other proceeding regarding a dispute over the Agreement.

(8) Except as provided herein, all of Plaintiffs' claims are dismissed with prejudice. In the event of a disagreement between the parties concerning the interpretation or performance of any aspect of this Settlement Agreement, the dissatisfied party shall provide the other party with written notice of

the dispute and a request for negotiations. The parties shall meet and confer in order to attempt to resolve the dispute within 15 days of the written notice, or such time thereafter as is mutually agreed. If the parties are unable to resolve the dispute within 30 days of such meeting, then either party may petition the Court to resolve the dispute, and the Court retains jurisdiction to resolve any such dispute. Neither party waives or limits any defense relating to such litigation. The parties agree that contempt of court is not an available remedy under this Settlement Agreement.

FOR THE PLAINTIFFS:

Dated: 7 MAY 02



SCOTT J. ALLEN

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Dated: 5/7/02



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Dated: 26 April 2002



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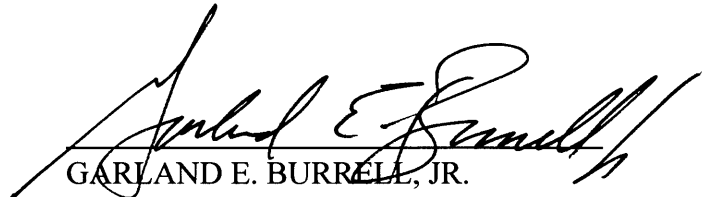
OF COUNSEL:

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United States Department of the Army
Army Environment Law Division
901 North Stuart Street, Suite 400
Arlington, VA 22203-1837
Tel: (703) 696-1596
Fax: (703) 696-2940

IT IS SO ORDERED.

Dated: _____

5/9/02



GARLAND E. BURRELL, JR.
UNITED STATES DISTRICT JUDGE

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PROOF OF SERVICE BY MAIL - FRAP 25(d)

I, the undersigned, declare under penalty of perjury that the following is true and correct:

I am over the age of 18 years and not a party to the within action; by business address is 703 Market Street, Suite 1800, San Francisco, California 94103; I served a true copy of the enclosed:

PLAINTIFFS' NOTICE OF SETTLEMENT AND UNOPPOSED MOTION TO ENTER SETTLEMENT AGREEMENT AND [PROPOSED] ORDER OF DISMISSAL

by mail, by placing same in a sealed envelope with postage thereon fully prepaid, and depositing said envelope in the U.S. Mail at San Francisco, California, on the date below, addressed as follows:

Martha C. Mann, Esq.
U.S. Department of Justice
Environmental Defense Section
P.O. Box 23986
Washington, D.C. 20026-3986

Executed on May 7, 2002, at San Francisco, California.



Bonnie J. Horne

United States District Court
for the
Eastern District of California
May 10, 2002

* * CERTIFICATE OF SERVICE * *

2:00-cv-00804

Rural Alliance

v.

US Dept of the Army

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on May 10, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Scott Jeffrey Allen
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SF/GEB
CF/JFM

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***8/5/02 final pretrial conf VACATED
***11/5/02 jury trial VACATED

Jack L. Wagner, Clerk

BY: *H Carlos*
Deputy Clerk