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 DEPUTY
 RATHY CARDONA
 DEPUTY
 SUPERIOR COURT
 COUNTY OF STANISLAUS

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 19 COUNTY OF STANISLAUS

21 **PEOPLE OF THE STATE OF**
CALIFORNIA ex rel. BARBARA A. LEE,
 22 **DIRECTOR, CALIFORNIA**
DEPARTMENT OF TOXIC
 23 **SUBSTANCES CONTROL,**
 24
 Plaintiff,
 25
 v.
 26 **UNITED STATES ARMY,**
 27
 Defendant.

Case No. 2011608

**STIPULATION FOR ENTRY OF
 FINAL JUDGMENT ON CONSENT**

1 This Stipulation for Entry of Final Judgment on Consent (“Stipulation”) is entered into by
2 and between, Plaintiff People of the State of California, ex rel. Barbara A. Lee, Director,
3 California Department of Toxic Substances Control (“DTSC”) and Defendant United States
4 Army (“Army”), an agency of the United States of America. DTSC and the Army, collectively
5 “the Parties,” have agreed to settle this matter without further litigation on the terms set forth
6 below.

7 **A. JURISDICTION AND VENUE**

8 DTSC and the Army stipulate and agree that for purposes of resolving the matters in the
9 Complaint the Superior Court of the State of California for the County of Stanislaus (the “Court”)
10 has subject matter jurisdiction over the matters alleged in the Complaint and personal jurisdiction
11 over the Parties, and that venue in this Court is proper.

12 The Army waives its right to a hearing and appeal in this matter.

13 **B. SETTLEMENT OF DISPUTED CLAIMS**

14 DTSC and the Army enter into this Stipulation pursuant to a compromise and settlement of
15 disputed claims for purposes of furthering the public interest. DTSC believes that the resolution
16 embodied in this Stipulation is fair and reasonable and fulfills DTSC’s enforcement objectives;
17 that except as provided in this Stipulation, no further action is warranted concerning the
18 allegations contained in the Complaint; and that entry of the Final Judgment pursuant to this
19 Stipulation as provided in this Stipulation is in the best interest of the public. Without any
20 admission or finding of fault or liability as to any allegations for any purpose, the Army agrees
21 that this Stipulation and the Final Judgment entered thereon, a copy of which is attached as
22 Exhibit A, were negotiated in good faith and are a fair and reasonable compromise resolution of
23 the matters alleged in the Complaint.

24 **C. DEFINITIONS**

25 Except where otherwise expressly defined herein, all terms in this Stipulation and Final
26 Judgment shall be interpreted consistent with Chapter 6.5 of Division 20 of the Health and Safety
27 Code and the regulations promulgated under this chapter, Health & Safety Code sections 25100 et
28 seq. and Cal. Code of Reg., tit. 22, section 66000 et seq.

- 1 1. "The Riverbank Facility" means the Riverbank Army Ammunition Plant at 5300
2 Claus Road, Riverbank, in the County of Stanislaus, State of California.
- 3 2. "Hazardous Material," as used herein, means "hazardous material" as that term is
4 defined in Health and Safety Code section 25501(n).
- 5 3. "Hazardous Waste," as used herein, shall have the definition as provided for in Health
6 and Safety Code section 25117.
- 7 4. "Hazardous Waste Management," and "management" as used herein, shall have the
8 definition as provided for in Health and Safety Code section 25117.2.
- 9 5. "Day" shall mean a calendar day. In computing any period of time under this
10 Settlement Agreement, where the last day would fall on a Saturday, Sunday or
11 federal holiday, the period shall run until the close of the next business day.
- 12 6. "Effective Date" means the date as of which this Settlement Agreement is signed on
13 behalf of both the Army and the DTSC.

14 **D. CIVIL SETTLEMENT PAYMENT**

15 The Army agrees to pay to DTSC a total of three hundred twenty thousand one hundred
16 sixty dollars (\$320,160) in civil penalties in full settlement of all claims made by the DTSC in its
17 Complaint.

18 1. The payment by the United States on behalf of the Army shall be made by check,
19 payable to "the Department of Toxic Substances Control," and mailed to:

20 a. Cashier
21 Department of Toxic Substances Control
22 Accounting Office
23 P.O. Box 806
24 Sacramento, CA 95812-0806

25 2. The check to the DTSC on behalf of the Army shall bear the name of the case,
26 "People v. United States Army" and the court case number.

27 3. An electronic (i.e., pdf) copy of the check shall be sent to each of the following
28 persons:

Keith Kihara, Chief

1 Enforcement and Emergency Response Division
2 Hazardous Waste Management Program
3 Department of Toxic Substances Control
4 1001 I Street
5 Sacramento, CA 95814

6 Jamie Jefferson
7 Deputy Attorney General
8 1515 Clay Street, 20th Floor
9 Oakland, CA 94612-0550

10 4. In the event, and to the extent, that the required payment required by this Paragraph is
11 not made within ninety (90) days of the Effective Date, interest on the unpaid amount shall be
12 paid at the rate established pursuant to California Health and Safety Code Section 25360.1,
13 commencing on the 91st day and accruing through the date of payment.

14 5. All obligations by the United States hereunder are subject to the availability of
15 appropriated funds applicable for that purpose. No provision of this Stipulation or the Final
16 Judgment shall be interpreted as or constitute a commitment or requirement that the United States
17 obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1344, and
18 1511-1519, or any other applicable provision of law.

19 6. In consideration of the promises made and obligations assumed by the Army in this
20 Stipulation, this Stipulation and the Final Judgment entered in this matter is a final and binding
21 resolution and settlement of all hazardous waste management claims, violations, and causes of
22 action alleged by DTSC against the Army in the Complaint for violations of State law occurring
23 as a result of operations at the Riverbank Facility based on observations or conditions at the
24 Facility on the following inspection dates: February 17 and 28, 2011, June 27, 2012, September
25 17, 2013, May 1, 2014, and June 29, 2015. The matters described in the previous sentence are
26 "Covered Matters." DTSC reserves the right to pursue any claim, alleged violation, or cause of
27 action that is not a Covered Matter ("Reserved Claims"). These covenants and agreements will
28 become effective upon the Effective Date of this Stipulation .

E. INJUNCTIVE RELIEF

ARMY FACILITY POST-CLOSURE REQUIREMENTS

1 The Army shall comply with and remains subject to the 2015 Riverbank Facility Closure
2 Plan, the June 2015 Permit Extension, and the requirements of the August 1, 2016 DTSC Closure
3 Certification. This Agreement does not modify or expand the terms of those documents.

4 The Army shall comply with all applicable closure and post-closure requirements as set
5 forth in California Code of Regulations, Title 22, Article 7.

6 **F. ENFORCEMENT OF FINAL JUDGMENT**

7 1. DTSC has the right to enforce the Final Judgment as provided herein and pursuant to
8 applicable law.

9 2. Before pursuing any action to enforce any of the terms of the Final Judgment, DTSC
10 shall meet and confer with the Army in a good faith attempt to resolve the issue without judicial
11 intervention. To ensure that the meet and confer process is as productive as possible, DTSC will
12 identify, at least ten (10) days in advance of the meet and confer, as specifically as the available
13 information allows, the grounds for its enforcement action, the actions that DTSC believe the
14 Army must take to remedy its alleged non-compliance, and the specific relief, if any, proposed by
15 DTSC.

16 3. The Army reserves all of its rights to oppose any motion brought by DTSC to enforce
17 any provisions of the Final Judgment.

18 4. Nothing in this Stipulation is intended to or shall be construed to limit DTSC's
19 exercise of its regulatory authority or to take additional enforcement action.

20 **G. EFFECT OF FINAL JUDGMENT**

21 Other than "Covered Matters" as defined in Paragraph D.5. above, nothing herein is
22 intended, nor shall it be construed, to preclude DTSC, or any state, county, or local agency,
23 department, board, or entity from exercising its authority under any law, statute, or regulation.

24 **H. MATTERS COVERED AND RESERVED CLAIMS**

25 1. As set forth in Paragraph D. 5 above, any claims, violations, or causes of action that
26 arise after the Effective Date are not Covered Matters, and are not resolved, settled, or covered by
27 this Stipulation and the Final Judgment.

28

1 2. Notwithstanding any other provision of the Final Judgment, Reserved Claims
2 include, but are not limited to, any claims or causes of action for: a) performance of corrective
3 action, response action, or recovery of costs of response actions, concerning or arising out of
4 future releases, spills, leaks, discharges, or disposal of hazardous materials, hazardous wastes,
5 and/or hazardous substances; and b) claims or causes of action relating to future investigation and
6 cleanup or disposal of hazardous materials, hazardous wastes, and/or hazardous substances.

7 3. In any subsequent action that may be brought in the name of DTSC based on any
8 Reserved Claims, the Army agrees that it will not assert that the failure to pursue the Reserved
9 Claims as part of this action constitutes claim-splitting or laches or is otherwise inequitable
10 because of this asserted failure. This Paragraph does not bar the Army from asserting any statute
11 of limitations that may be applicable to any Reserved Claims or from asserting any other defense.

12 4. The Army covenants not to pursue any civil or administrative claims against DTSC
13 or against any governmental unit of the State of California, any counties or municipalities in the
14 State of California, or against their officers, employees, representatives, agents, or attorneys for
15 actions taken against the Army arising out of or related to Covered Matters.

16 **I. NOTICE**

17 1. All submissions and notices required by this Stipulation shall be sent to:

18 a. For Plaintiff:

19 Keith Kihara, Chief

20 Enforcement and Emergency Response Division
21 Hazardous Waste Management Program
22 Department of Toxic Substances Control
23 1001 I Street
24 Sacramento, CA 95814

25 With a copy to:

26 Sonia Wills
27 Office of Legal Counsel
28 Department of Toxic Substances Control
29 700 Heinz Avenue
30 Berkeley, CA 94710

31 Jamie Jefferson
32 Deputy Attorney General

1 California Department of Justice
2 1515 Clay Street, Suite 2000
3 Oakland, CA 94612-0550

4 b. For the Army:

5 Chief, Litigation Branch
6 Environmental Law Division
7 U.S. Army Legal Services Agency
8 Environmental Law Division
9 9275 Gunston Road, Suite 4311
10 Fort Belvoir, VA 22060

11 With a copy to:

12 Chief, Environmental Defense Section
13 Environment & Natural Resources Division
14 United States Department of Justice
15 P.O. Box 7611
16 Washington, D.C. 20044

17 Any party may change its notice and name and address by informing the other parties in
18 writing by certified mail. The change shall be effective upon receipt of the certified mail.

19 1. All notices and communications required or permitted under this Stipulation and the
20 Final Judgment that are properly addressed as provided in this section are effective upon delivery
21 if delivered personally or by overnight delivery, or are effective five (5) days following deposit in
22 the United States mail, postage prepaid, if delivered by mail, or are effective the next court day
23 that electronic mail is sent before 5 p.m. (PST) to the electronic mail addresses of the designated
24 recipient for notice concurrent with sending the notice by United States mail.

25 **J. NECESSITY FOR WRITTEN APPROVALS**

26 All notices, approvals, and decisions of DTSC under the terms of this Stipulation or the
27 Final Judgment shall be communicated to the Army in writing. No oral advice, guidance,
28 suggestions, or comments by employees or officials of DTSC regarding submissions or notices
shall be construed to relieve the Army of its obligations to obtain any written approval required
by this Stipulation or the Final Judgment.

K. NO LIABILITY OF DTSC

1 DTSC shall not be liable for any injury or damage to persons or property resulting from acts
2 or omissions by the Army or its officers, directors, employees, agents, representatives,
3 contractors, successors, or assigns, in carrying out activities pursuant to the Final Judgment, nor
4 shall DTSC be held as a party to or guarantor of any contract entered into by the Army or its
5 officers, directors, employees, agents, representatives, contractors, successors, or assigns, in
6 carrying out the requirements of this Stipulation or the Final Judgment.

7 **L. NO WAIVER OF RIGHT TO ENFORCE**

8 The failure of DTSC to enforce any provision of this Stipulation or the Final Judgment shall
9 neither be deemed a waiver of such provision, nor in any way affect the validity of this
10 Stipulation or the Final Judgment. The failure of DTSC to enforce any such provision shall not
11 preclude it from later enforcing the same or other provisions of this Stipulation or the Final
12 Judgment or taking a separate action against the Army. No oral advice, guidance, suggestions, or
13 comments by employees or officials of DTSC or the Army, or people or entities acting on behalf
14 of the Army, regarding matters covered in this Stipulation or the Final Judgment, shall be
15 construed to relieve the Army of its obligations under this Stipulation or the Final Judgment.

16 **M. FUTURE REGULATORY CHANGES**

17 Nothing in this Stipulation or the Final Judgment shall excuse the Army from meeting any
18 more stringent requirements that may be imposed by changes in applicable law.

19 **N. APPLICATION OF FINAL JUDGMENT**

20 This Stipulation and the Final Judgment shall apply to and be binding upon DTSC and upon
21 the Army, and upon their respective officers, managers, employees, agents, contractors,
22 successors, and assigns.

23 **O. AUTHORITY TO ENTER INTO STIPULATION**

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

27 **P. CONTINUING JURISDICTION**

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1 The Parties agree that this Court has continuing jurisdiction to interpret and enforce this
2 Stipulation and the Final Judgment. The Court shall retain continuing jurisdiction to enforce the
3 terms of this Stipulation and the Final Judgment and to address any other matters arising out of or
4 regarding this Stipulation and the Final Judgment.

5 **Q. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

6 The Army shall permit any duly authorized representative of DTSC, upon reasonable prior
7 notice, to inspect and copy the Army's relevant records and documents to determine whether the
8 Army is in compliance with the terms of this Stipulation and the Final Judgment. Nothing in this
9 Paragraph is intended to require access to or production of any privileged documents.

10 **R. INTERPRETATION OF STIPULATION AND FINAL JUDGMENT**

11 This Stipulation and the Final Judgment were drafted equally by the signatories hereto. The
12 signatories agree that the rule of construction holding that ambiguity is construed against the
13 drafting party shall not apply to the interpretation of this Stipulation and the Final Judgment.

14 **S. COUNTERPART SIGNATURES**

15 This Stipulation may be executed in duplicate with counterpart signatures.

16 **T. INTEGRATION**

17 This Stipulation and the Final Judgment constitutes the entire agreement between DTSC
18 and Army with respect to the matters specifically alleged in the Complaint and may not be
19 amended or supplemented except as provided for in this Stipulation or the Final Judgment.

20 **U. MODIFICATION OF FINAL JUDGMENT**

21 The Final Judgment may be modified by express written agreement of the Parties, with the
22 approval of the Court, or by an order of the Court in accordance with law.

23 **V. COSTS AND ATTORNEYS' FEES**

24 Each Party to this Stipulation and Final Judgment shall bear its own costs and attorneys'
25 fees in this case.

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27 **IT IS SO STIPULATED.**

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**Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. Barbara A. Lee, Director,
California Department of Toxic Substances Control**

Dated: 9/27/16

~~BY: Keith Kihara, Chief~~
Enforcement and Emergency Response
Division

original signed by Keith Kihara

Plaintiff People of the State of California, ex
rel. Barbara A. Lee, Director, California
Department of Toxic Substances Control

Defendant, THE UNITED STATES ARMY

Dated: 9/27/2016

JOHN C. CRUDEN
Assistant Attorney General
~~LEWIS M. BARR~~
Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
Attorneys for the United States Army

original signed by Lewis Barr

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