

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA)
and the STATE OF TEXAS,)

Plaintiffs,)

v.)

Civil Action No. 4:13-cv-00151

GB BIOSCIENCES CORPORATION,)
ISK MAGNETICS, INC., AND)
OCCIDENTAL CHEMICAL)
CORPORATION,)

Defendants.)

ORDER

WHEREFORE, in consideration of the unopposed United States’ Motion for Entry of Consent Decree (Doc 5) and the Memorandum submitted by the United States in support thereof (Doc 5-1), and finding that the proposed settlement among the Parties of the claims of the United States and the State of Texas for injuries to natural resources pursuant to Section 107(a)(4)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a)(4)(C), and the Texas Water Code (“TWC”) §§ 26.261 *et seq.*, is fair, reasonable, and consistent with the public objectives sought to be attained by CERCLA and the TWC, this Court hereby ORDERS that the proposed Consent Decree (Doc 2-1) is APPROVED and ENTERED on this 3rd day of April, 2013.


HONORABLE VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE

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Civil Action No.

CONSENT DECREE ADDRESSING NATURAL RESOURCE DAMAGES

This Consent Decree is made and entered into by and between the United States of America ("United States"), on behalf of the Secretary of the United States Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA") on behalf of the Department of Commerce, and the State of Texas, on behalf of the Texas Commission on Environmental Quality ("TCEQ") and the Texas Parks and Wildlife Department ("TPWD"), (collectively, "the Trustees"), and GB Biosciences Corporation ("GB Biosciences"), ISK Magnetis, Inc.

("ISK") and Occidental Chemical Corporation ("OCC"), (collectively, "Settling Defendants").

BACKGROUND

A. Contemporaneously with the lodging of this Consent Decree, the United States, on behalf of DOI and NOAA, and the State of Texas, on behalf of TCEQ and TPWD, filed a Complaint in this matter against Settling Defendants pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, and the Texas Water Code ("TWC") §§ 26.261 et seq. In the Complaint, the United States and the State of Texas seek (1) Natural Resource Damages, as defined herein, for the injury, loss or destruction of natural resources, including the interim loss of the services or use of such resources, resulting from the release of hazardous substances at or from the Greens Bayou Site ("Site"); (2) past costs incurred by the Trustees in assessing these Natural Resource Damages based on the release of hazardous substances at or from the Site; and (3) future restoration costs to be incurred by the Trustees in overseeing and monitoring the Restoration Project(s), as defined herein, to be undertaken by Settling Defendants as outlined in this Consent Decree.

B. The Greens Bayou Site covers an area of approximately 217 acres and is located at 2239 Haden Road in the City of Houston in Harris County, Texas. The Site consists of industrial facilities owned and operated by GB Biosciences and ISK Magnetics, surrounding industrial and undeveloped properties, the Harris County Flood Control Ditch, and Greens Bayou in Houston, Texas. The facility was

historically owned and operated by Diamond Shamrock Chemicals Company, subsequently merged into OCC. Haden Road roughly divides the site into two parcels consisting of the operating facilities (approximately 134 acres) and a largely undeveloped tract of land (approximately 83 acres). Historical operations have resulted in releases of hazardous substances at or from the Site, such as DDT.

C. In 2007, Settling Defendants entered into a Memorandum of Agreement ("MOA") with the Trustees to perform a cooperative, restoration-based assessment to address potential natural resource injuries at the Site. After completing the cooperative assessment, the Trustees determined that hazardous substances released at or from the Site injured or potentially injured benthic sediment habitat and organisms, aquatic habitats and organisms, terrestrial wildlife, and other resources.

D. The Trustees' assessment of these injuries to natural resources, including their estimates of interim losses and the restoration projects proposed to compensate for those losses, are identified in the Final Damages Assessment and Restoration Plan/Environmental Assessment ("DARP/EA") for the Site, dated December 14, 2008, Appendix A, which is incorporated herein by reference.

E. The DARP/EA specifies the restoration project(s) to be implemented by the Settling Defendants to restore natural resources injured by the release of hazardous substances at the Site. The restoration projects include (1) the construction of a minimum of 10.89 acres of intertidal wetlands within the Baytown Nature Center in Baytown, Harris County, Texas ("BNC Wetlands Restoration

Project"); and (2) the preservation of a 100.17 acre tract of riparian and bottomland hardwood habitat adjacent to Spring Creek, in Montgomery County, Texas through the execution of a Conservation Easement, Appendix B, which is incorporated herein by reference, that protects the conservation values of the property according to the terms of the Conservation Easement ("Spring Creek Bend Preservation Project"). When timely and successfully completed, the BNC Wetlands Restoration Project and the Spring Creek Bend Preservation Project will compensate for the loss of natural resources or natural resource services, allegedly injured, destroyed, or lost as a result of releases of hazardous substances at or from the Site.

F. During development of the DARP/EA, the Trustees provided opportunities for public participation, including through a formal public review and comment period on the proposed DARP/EA, in accordance with 43 C.F.R. §§ 11.32 and 11.81, 42 U.S.C. §§ 9607(f) and 9611(I), and the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, et seq.; 33 Tex. Reg. 8664 (Oct. 17, 2008.)

G. This Consent Decree is a settlement of a contested matter, and neither payment nor the acceptance of any consideration represents an admission of liability or responsibility by any Party. Nothing contained in this Consent Decree shall be considered an admission by the Settling Defendants, or a finding of any fault, fact, wrong doing or liability by any Party. The Settling Defendants agree to the Court's jurisdiction to enter and enforce this Consent Decree, and agree in any such enforcement proceeding not to challenge the terms of this Decree. This

Consent Decree has been voluntarily entered by the Parties and constitutes a document evidencing settlement of litigated claims pursuant to state and federal rules of evidence.

H. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and implementation of this Consent Decree will expedite the restoration of natural resources, and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b). Solely for the purposes of this Consent Decree, the Parties waive all objections and defenses that they may have to the personal jurisdiction of the Court, to venue in this District, and to service of process.

II. SETTLING DEFENDANTS

2. The Settling Defendants are identified as follows:
 - (a) GB Biosciences, a Texas corporation which conducts, or formerly

conducted, business in the State of Texas;

(b) ISK, a Delaware corporation which conducts, or formerly conducted, business in the State of Texas; and

(c) OCC, a New York corporation which conducts, or formerly conducted, business in the State of Texas.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA, 42 U.S.C. § 9601 et seq., or in regulations promulgated under CERCLA, 43 C.F.R. Part 11 and 40 C.F.R. Part 300, shall have the meaning assigned to them in CERCLA or in such regulations.

Whenever terms listed below are used in this Consent Decree or in the attachments hereto and incorporated hereunder, the following definitions shall apply:

(a) "Acquisition Property" means "Spring Creek Bend Preserve," a 100.17 acre portion of land located in Spring Creek Greenway Project, north of Houston, Texas, on which a Conservation Easement was granted to a Holder, Legacy Land Trust, currently known as Bayou Land Conservancy, and which is more fully described in Appendix B of this Agreement.

(b) "BNC Wetlands Restoration Project" means the construction of a minimum of 10.89 acres of intertidal marsh habitat within the Baytown Nature Center, in Baytown, Texas.

(c) "Consent Decree" means this document entitled "Consent

Decree," all attachments hereto, any modifications to the Consent Decree or the attachments agreed upon by the Parties in accordance with Section XXII ("Modification"), and all items approved by the Trustees pursuant to Section V ("Natural Resource Damage Restoration Requirements").

(d) "Conservation Easement" means the legal document attached hereto as Appendix B, after it is signed by the Grantor, the Holder, and TCEQ, TPWD, and DOI as third parties with the right to enforce the terms of the Conservation Easement.

(e) "DARP/EA" means the plan entitled Final Damage Assessment and Restoration Plan/Environmental Assessment for Greens Bayou, Harris County, Houston, Texas, dated December 14, 2008 and attached as Appendix A to this Consent Decree, which is incorporated herein by reference.

(f) "Date of Entry" means the date on which either this Consent Decree or an order entering this Consent Decree is filed with the Clerk of Court, after the United States and State of Texas have moved for entry and the District Judge has signed the Consent Decree.

(g) "Date of Lodging" means the date on which this Consent Decree is lodged with the Clerk of Court.

(h) "Design Plan" means the approved Design Plan for the BNC Wetlands Restoration Project, to be developed in accordance with

Section V, Paragraph 13(a)(2) and to be attached hereto as Appendix D and incorporated herein by reference.

(i) "Federal Trustees" means DOI and NOAA.

(j) "Future Costs" means the reasonable direct and indirect costs which the United States and the State of Texas have incurred or will incur on or after January 1, 2011 until such time as the Settling Defendants are issued a Certificate of Restoration Project Completion, in connection with planning for restoration actions to compensate for such injuries and losses, and the implementation, monitoring, and completion of the Restoration Project(s) contemplated by this Consent Decree. Such costs shall include reasonable administrative costs and other costs or expenses which are incurred to provide for, carry out, or support the activities or responsibilities of the United States and the State of Texas in overseeing completion of the Restoration Project(s).

(k) "Holder" means a person or entity qualified under Chapter 183 of the Texas Natural Resources Code ("TNRC") that is approved by the Trustees to hold the Conservation Easement. Prior to the lodging of this Decree, the Trustees approved Legacy Land Trust, currently known as Bayou Land Conservancy, as the Holder of the Conservation Easement.

(l) "Implementation Plan" means the approved Implementation Plan for Greens Bayou Restoration Project, attached hereto as Appendix C,

which is incorporated herein by reference.

(m) "Natural Resource Damages" means civil compensatory relief or damages, including the reasonable costs of assessing such damages, recoverable pursuant to Section 107 (a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), and Tex. Water Code § 26.265, by the Trustees on behalf of the public for injury to, destruction of, loss of, or loss of use of the natural resources or resource services resulting from the release of hazardous substances at or from the Site, or from the cleanup of hazardous substances at the Site.

(n) "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral.

(o) "Parties" or "Party" (as applicable in the singular) means the United States, the State of Texas, and the Settling Defendants.

(p) "Past Costs" means the reasonable direct and indirect costs incurred by the United States and the State of Texas through December 31, 2010 that have not been previously reimbursed or satisfied by the Settling Defendants, in assessing the natural resources actually or potentially injured, destroyed, or lost as a result of releases of hazardous substances at or from the Site, and in identifying and planning for restoration actions to compensate for such injuries and losses. Such costs include reasonable administrative costs and other costs or expenses associated with providing for public participation

which are incurred incident to or in support of the assessment and restoration planning process.

(q) "Project Review Group" means a group comprised of (1) one representative from NOAA, USFWS, TCEQ and TPWD as voting members; and (2) one representative from each Settling Defendant to include GB Biosciences, ISK and OCC, each as non-voting members.

(r) "Restoration Project(s)" means the restoration actions comprised of the BNC Wetlands Restoration Project, as outlined in Appendix A and Appendix C and the recording of a Conservation Easement on the Acquisition Property in accordance with the terms set forth herein and in Appendix B.

(s) "Section" means a portion of this Consent Decree identified by an uppercase Roman numeral.

(t) "Settling Defendants" means GB Biosciences, ISK and OCC.

(u) "Site" means the Greens Bayou Site consisting of approximately 217 acres which is located at 2239 Haden Road in the City of Houston, in Harris County, Texas.

(v) "Spring Creek Restoration Project" means preservation of a 100.17 acre tract of riparian and bottomland hardwood habitat adjacent to Spring Creek, in Montgomery County, Texas through the execution of a Conservation Easement, Appendix B, that protects the conservation values of the property according to the terms of the

Conservation Easement.

(w) "State" means the State of Texas and its political subdivisions, departments and agencies, by and through the TCEQ and TPWD, as Texas Natural Resource Trustees.

(x) "State Trustees" means TCEQ and TPWD.

(y) "Trustees" means the Federal Trustees and State Trustees.

(z) "The United States" means the United States of America, including its departments, agencies and instrumentalities.

IV. APPLICABILITY OF CONSENT DECREE

4. This Consent Decree applies to and is binding upon the United States and the State of Texas and upon Settling Defendants and their successors and assigns. No change in ownership or corporate status of Settling Defendants including, but not limited to, any transfer of assets or real or personal property, shall in any way alter Settling Defendants' responsibilities under this Consent Decree.

5. Settling Defendants shall provide a copy of this Consent Decree to each person representing them with respect to the Restoration Projects and to all contractors and subcontractors hired to perform any portion of the Restoration Projects required by the Consent Decree, and to the Holder and any other private enforcers of the Conservation Easement of which Settling Defendants are, or may become, aware.

6. Consent Decree Not a Permit. This Consent Decree is not, and

shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation. The United States and the State do not, by signing this Consent Decree, warrant or aver in any manner that Settling Defendants' compliance with this Consent Decree will constitute or result in compliance with the requirements of any Federal, State, and local laws and regulations that may be applicable to the implementation of the Restoration Projects or other activities required by the terms of this Consent Decree.

7. Commitments by the Settling Defendants. The obligations of the Settling Defendants to implement the requirements of this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more of the Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

8. Responsibility for Compliance. Notwithstanding any action by the United States and the State, including, without limitation, their issuance of the DARP/EA or the review and approval of any design, plan, report, or other information or action formulated by Settling Defendants under this Consent Decree, Settling Defendants are and shall remain solely responsible for compliance with all terms and requirements of this Consent Decree, including those related to success criteria.

9. The United States and/or the State may take any and all legal or administrative actions necessary to enforce Settling Defendants' compliance with the terms of this Consent Decree. In the event that the United States and/or the

State take legal or administrative actions to enforce this Consent Decree and such action is successful, Settling Defendants shall pay all reasonable costs incurred by the United States and/or the State related to this action including, but not limited to, enforcement costs, attorneys' fees and interest accruing on any balance unpaid by Settling Defendants.

V. NATURAL RESOURCE DAMAGE RESTORATION REQUIREMENTS

10. This Consent Decree provides the terms upon which the United States, the State of Texas, and Settling Defendants agree to settle the claims of the United States and the State pursuant to CERCLA, and the TWC concerning alleged Natural Resource Damages which purportedly resulted from releases of hazardous substances into the environment at or from the Site. The objectives of the Parties in entering into this Consent Decree are to compensate the Trustees, on behalf of the public, for alleged Natural Resource Damages and to provide for the restoration, replacement, or acquisition of the equivalent of the allegedly injured, destroyed, or lost natural resources.

11. Project Review Group

(a) A Project Review Group has been established. The Trustee representatives have been identified in Paragraph 15. The representative of the Settling Defendants identified in Paragraph 16, shall serve as a non-voting, ex-officio member of the Project Review Group. The Trustee members of the Project Review Group shall act on

behalf of the Trustees on all matters related to the BNC Wetlands Restoration Project to ensure compliance with the Implementation Plan, Appendix C and the Design Plan, Appendix D, under the terms of this Consent Decree, including, but not limited to the following:

- (1) overseeing the implementation of the BNC Wetlands Restoration Project;
 - (2) certifying appropriate construction of the BNC Wetlands Restoration Project;
 - (3) certifying appropriate implementation of the BNC Wetlands Restoration Project's planting phase;
 - (4) monitoring the BNC Wetlands Restoration Project in the post-construction phase;
 - (5) determining appropriate action(s) to ensure that success criteria of the BNC Wetlands Restoration Project are met;
 - (6) certifying the completion of the BNC Wetlands Restoration Project; and
 - (7) undertaking any other actions necessary to ensure the Settling Defendants' compliance with the implementation of the BNC Wetlands Restoration Project as required by the Consent Decree.
- (b) Review of Plans and Schedules by the Project Review

Group. The following procedures apply to review and development of the plans and schedule for the BNC Wetlands Restoration Project:

(1) The Project Review Group will review the plans and schedules for the construction and planting phases of the BNC Wetlands Restoration Project. The Project Review Group will either approve plans and schedules, or disapprove them with comments, in a writing provided to Settling Defendants. The Project Review Group may approve or disapprove one plan/schedule without approving or disapproving the other;

(2) If the Project Review Group disapproves a plan or schedule, within sixty (60) days after receipt of the Project Review Group's written comments, the Settling Defendants, in accordance with the Project Review Group's comments, shall submit a revised plan or schedule to the Project Review Group. The Project Review Group shall review the revised plan or schedule as provided in this Paragraph. If the Project Review Group does not approve the revised plan or schedule, the Settling Defendants shall, within thirty (30) days of receipt of notice of disapproval, submit additional

information or a modification in accordance with the Project Review Group's comments as to the need for such additional information or modification. Such process shall be repeated until the submittal is approved by the Project Review Group, the Settling Defendants are declared in violation of the Consent Decree requirements, or the Settling Defendants invoke the Dispute Resolution provisions of Section X of this Consent Decree; and

(3) Upon approval by the Project Review Group, the plans and schedules shall become final and shall be implemented by the Settling Defendants according to the construction schedule identified therein.

12. Restoration Projects Implementation.

(a) The Settling Defendants shall fund, perform and complete all work and other activities as required to implement the Restoration Projects in accordance with (1) the DARP/EA, Appendix A; (2) requirements set forth in the Implementation Plan, Appendix C; (3) requirements specified in other plans approved by the Trustees; (4) the procedures, schedules and terms set forth in this Consent Decree; and (5) all applicable laws and permits. The Restoration Projects consist of (1) the BNC Wetlands Restoration Project which requires construction of a minimum of 10.89 acres of intertidal marsh habitat

within the Baytown Nature Center, in Baytown, Texas; and (2) the Spring Creek Bend Preservation Project which requires preservation of a 100.17 acre tract of riparian and bottomland hardwood habitat adjacent to Spring Creek, in Montgomery County, Texas through the execution of a Conservation Easement, Appendix B, that protects the conservation values of the property according to the terms of the Conservation Easement.

(b) All permits, right of ways, access agreements, and other documents necessary to implement the Restoration Projects shall be obtained by Settling Defendants at their expense, and Settling Defendants shall comply with all applicable Federal, State, and local laws in implementing the Restoration Projects.

13. BNC Wetlands Restoration Project.

The BNC Wetlands Restoration Project shall be implemented in four phases: (1) the Project Planning and Approval Phase; (2) the Project Construction Phase; (3) the Project Planting Phase; and (4) the Project Monitoring Phase, as described in detail below:

(a) Project Planning and Approval Phase. Not later than thirty (30) days after the Date of Entry, the Settling Defendants shall submit to the Project Review Group an Implementation Plan (to be attached and incorporated herein upon completion and approval by the Project Review Group as Appendix C) and a Design Plan (to be attached and

incorporated herein upon completion and approval by the Project Review Group as Appendix D) as described in greater detail below.

(1) Implementation Plan. Not later than thirty (30) days after the Date of Entry, the Settling Defendants shall submit to the Project Review Group for review and approval a draft, detailed Implementation Plan, that describes plans for implementing the Construction, Planting and Monitoring phases of the BNC Wetlands Restoration Project. Upon approval, the Implementation Plan shall be incorporated herein by reference as Appendix C. The Implementation Plan shall meet the following requirements:

- (i) be consistent with the DARP/EA;
- (ii) identify success criteria, and parameters for measurement of such success criteria, for evaluating completion of the construction and planting phases of the BNC Wetlands Restoration Project. Such success criteria and success measurement parameters shall be consistent with the criteria specified in the Consent Decree; and
- (iii) propose, consistent with the success criteria and the success measurement parameters, a

Monitoring Plan for monitoring and assessing the performance of the BNC Wetlands Restoration Project as constructed.

(2) Design Plan. Not later than thirty (30) days after the Date of Entry, the Settling Defendants shall submit to the Project Review Group for review and approval a draft detailed Design Plan. Upon approval, the Design Plan shall be incorporated herein by reference as Appendix D.

The Design Plan, shall meet the following requirements:

- (i) be consistent with the Implementation Plan;
- (ii) identify any Federal, State, or local permits required to implement the BNC Wetlands Restoration Project and document consistency with the requirements of such permits;
- (iii) identify a schedule for construction of the BNC Wetlands Restoration Project, including proposed dates to begin construction activities, planting activities, and anticipated dates of completion of construction and planting;
- (iv) identify the slope of surface to be achieved through the site contouring, and the elevational contours to be established across the project

including a description of the upper and lower boundaries of tidal influence; and

(v) identify the upper and lower boundaries of the areas to be planted and the species to be planted within the range of the elevations proposed.

(3) The Project Review Group shall review and approve or disapprove of the detailed Implementation Plan and Design Plan in accordance with the requirements in Paragraph 11(b).

(4) Once the Project Review Group grants approval of the Implementation Plan and Design Plan, the Settling Defendants shall complete the Project Construction Phase, Project Planting Phase, and Project Monitoring Phase of the BNC Wetlands Restoration Project in accordance with the Implementation Plan and Design Plan.

(b) Project Construction Phase.

(1) The completion of the Project Construction Phase of the BNC Wetlands Restoration Project will be in accordance with the Implementation Plan, Appendix C, and the Design Plan, Appendix D.

(2) Within thirty (30) days of completion of the construction phase of the BNC Wetlands Restoration Project, the Settling

Defendants shall notify the Project Review Group that the construction phase is complete. Settling Defendants shall also provide, within thirty (30) days of completion of the construction phase of the BNC Wetlands Restoration Project, an as-built survey of the completed construction phase, including drawings showing the elevations of the completed construction phase of the BNC Wetlands Restoration Project and the location of significant features thereof.

(c) Inspection and Certification of Completion of the Construction Phase of the BNC Wetlands Restoration Project. The following procedures will apply to the Project Review Group or its designees' inspection and certification of the Construction Phase of the BNC Wetlands Restoration Project:

(1) Upon notification by the Settling Defendants that they have completed all work associated with the construction phase of the BNC Wetlands Restoration Project as detailed in the Implementation and Design Plans, the Project Review Group will inspect the BNC Wetlands Restoration Project and review information provided by the Settling Defendants to determine whether construction of the BNC Wetlands Restoration Project was completed in accordance with the Implementation Plan and Design Plan within fourteen (14) days;

(2) If the Project Review Group determines that construction of the BNC Wetlands Restoration Project was completed in accordance with the Implementation Plan and Design Plan, it shall so notify the Settling Defendants by issuing a dated written statement certifying that the project construction is complete ("Certificate of Construction Completion for the Restoration Project"); and

(3) In the event the Project Review Group determines that the construction was not completed in accordance with the Implementation Plan and Design Plan, the Project Review Group shall so notify the Settling Defendants and provide written comments stating what remains to be completed. Within sixty (60) days after receipt of the Project Review Group's comments, the Settling Defendants shall modify the BNC Wetlands Restoration Project in accordance with the Project Review Group's comments and shall notify the Project Review Group once the Settling Defendants have completed the modifications. The Project Review Group or its designees will then re-inspect the BNC Wetlands Restoration Project noticed as complete and review information provided by the Settling Defendants. If the Project Review Group does not approve the BNC Wetlands Restoration Project noticed as complete, the Settling Defendants

shall, within thirty (30) days of receipt of notice of disapproval, submit additional information, modify the construction or invoke the Dispute Resolution provisions of Section X of this Consent Decree. Such process shall be repeated until the submittal is approved by the Project Review Group or the Settling Defendants invoke the Dispute Resolution provisions of Section X of this Consent Decree.

(d) Project Planting Phase.

(1) The completion of the Project Planting Phase of BNC Wetlands Restoration Project will be in accordance with the Implementation Plan and Design Plan.

(2) Within thirty (30) days of completion of the planting for the BNC Wetlands Restoration Project, the Settling Defendants shall notify the Project Review Group that the planting is complete and provide drawings showing the location and species of plants as well as other significant features.

(3) Inspection and Certification of Completion of the Planting Phase of the BNC Wetlands Restoration Project. The procedures set forth in Paragraph 13c (1-3) shall also apply to the Project Review Group or its designees' inspection and certification of the Planting Phase of the BNC Wetlands Restoration Project with the substitution of the term planting for construction as appropriate.

Upon satisfactory completion of the Planting Phase of the BNC Wetlands Restoration Project, the Project Review Group will issue a "Certificate of Planting Completion for the Restoration Project" to certify such successful completion of the Planting Phase of the BNC Wetlands Restoration Project.

(e) Project Monitoring Phase.

(1) Upon issuance of the Certificate of Planting Completion for the BNC Wetlands Restoration Project, the Settling Defendants shall initiate the Monitoring Plan for the BNC Wetlands Restoration Project as specified in the Implementation Plan and/or any other monitoring plans approved by the Project Review Group.

(2) The Settling Defendants shall provide the Project Review Group with periodic reports on the condition of the BNC Wetlands Restoration Project as specified in the Implementation Plan.

(3) Project Monitoring will continue for a period of at least three (3) years. If the Project Review Group determines that the success criteria in the Implementation Plan have been achieved and maintained for three (3) years from issuance of the Certificate of Planting Completion, then the Project Review Group shall provide the Settling Defendants with written

statements certifying completion of the Project ("Certificate of Restoration Project Completion".) Said certification shall represent fulfillment of the Settling Defendants' obligations under this Consent Decree relative to the BNC Wetlands Restoration Project.

(f) In the event the Project Review Group determines that the success criteria in the Implementation Plan, Appendix C and the Design Plan, Appendix D, have not been achieved and maintained for three (3) years from issuance of the Certificate of Planting Completion, then

(1) The Project Review Group, in consultation with the Settling Defendants, will determine what corrective measures are necessary or appropriate to achieve the success criteria. The Project Review Group will provide written notice within thirty (30) days to the Settling Defendants of required corrective actions; and

(2) The Settling Defendants shall submit a draft plan within ninety (90) days of notice from the Project Review Group for conducting such corrective measures as specified in the notice to the Project Review Group ("Corrective Action Plan"). The Project Review Group shall review and approve the Corrective Action Plan as provided in Paragraph 11b (1-3). The Settling

Defendants shall complete the actions specified in the approved Corrective Action Plan and notify the Project Review Group no later than thirty (30) days after the Settling Defendants completes these actions. After receipt of this notice, the Project Review Group shall follow the procedures specified in Paragraphs 13c (1-3) regarding inspection and certification. This process shall be repeated until the success criteria have been met, or until any Dispute Resolution procedures have been exhausted in accordance with Section X of this Consent Decree.

(g) Conservation Easement on Acquisition Property.

(1) The Conservation Easement, Appendix B, has been recorded on the Acquisition Property in the deed records of Harris County in favor of the Holder, currently Bayou Land Conservancy, formerly known as Legacy Land Trust, consistent with Chapter 183 of the TNR and enforceable under the laws of the State.

(2) On or before October 28, 2008, Settling Defendants procured for the Trustees a final title insurance policy and a current title commitment. The Conservation Easement has been granted with warranty covenants, free and clear of all prior liens and encumbrances, except as otherwise provided in the Conservation Easement, Appendix B. On October 5, 2009,

Settling Defendants provided the Trustees with a certified copy of the original recorded Conservation Easement, showing the clerk's recording stamps.

(3) Settling Defendants shall ensure that an appropriate entity serves as the "Holder," as defined in Chapter 183 of the TNRC, of the Conservation Easement. The Trustees approved Legacy Land Trust, currently known as Bayou Land Conservancy, as the Holder of the Conservation Easement. In the event that Bayou Land Conservancy is unable to continue to serve as the Holder of the Conservation Easement, Settling Defendants shall ensure that an alternate Holder that is satisfactory to the Trustees is selected in accordance with the Conservation Easement, Appendix B.

(4) Consistent with the terms set forth in the Conservation Easement, Appendix B, it is intended by the parties that the United States, on behalf of the Federal Trustees, and the State shall have access to the Acquisition Property and third party rights of enforcement of the Conservation Easement to prevent any activity on or use of the Acquisition Property that is inconsistent with the Conservation Easement, Appendix B, and to ensure that the intended purpose of this Consent Decree is satisfied.

VI. COSTS REIMBURSEMENT

14. The United States and the State have expended time, funds and resources in assessing damages for the alleged natural resource injuries and losses that resulted from the releases of hazardous substances at or from the Site. Within thirty (30) days of the Effective Date of this Decree, the Settling Defendants shall reimburse the United States and the State for their Past Costs as set forth in this Paragraph 14.

(a) Past Costs.

(1) Past Costs Incurred by the United States. Settling Defendants shall pay the United States' Past Costs incurred by NOAA and the DOI/USFWS, in the manner and amounts described herein. Payment shall be made at <https://www.pay.gov> to the U.S. Department of Justice account. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Texas. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day:

(i) For DOI: The Settling Defendants shall pay \$3,597.73 to reimburse Past Costs incurred by DOI, referencing "DOJ Case Number 90-5-1-1-09071, USAO

File Number [to be provided upon filing of Complaint] and Account Number 14x5198 in the (NRDAR); Site name: Greens Bayou BioSciences Site (account # 0421); location of the Site: Harris County, Texas. The Settling Defendants shall also send notice that such payment has been made to the DOJ and DOI persons listed in Paragraph 15, as well as to:

U.S. Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attention: Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, DC 20240;

Martin Steinmetz
US DOI Office of the Field Solicitor
7906 E. 33rd Street, Suite 100
Tulsa, OK 74145
(918) 669-7730 – phone
(918) 669-7736 - fax

(ii) For NOAA: The Settling Defendants shall pay \$27,461.51 to reimburse Past Costs incurred by NOAA, referencing "DOJ Case Number 90-5-1-1-09071, USAO File Number [to be provided upon filing of Complaint] and Greens Bayou Natural Resource Damages Settlement, Texas -NOAA's DARRF." The Settling Defendants shall also send notice that such payment has been made to the DOJ and NOAA persons listed in Paragraph 15, as well as

to:

Sheila O'Brien
NOAA, Office of the General Counsel, SE
283 13th Ave. S, Suite 177
St. Petersburg, FL 33701
(727) 824-5382 - phone
(727) 824-5357 - fax

NOAA/NOS/OR&R
ATTN: Kathy Salter, DARRF Manager
1305 East West Highway
SSMC4, Room 9331
Silver Spring, MD 20910-3281,

(2) Past Costs Incurred by the State Trustees.

(i) Past Costs Incurred by TCEQ. Settling Defendants shall pay \$8,498.29 to TCEQ to reimburse Past Costs incurred for the Site. Payment to TCEQ shall be in the form of a certified check made payable to the "State of Texas (AG# 093101277)." Checks shall be delivered to Chief, Environmental Protection Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711. Settling Defendants shall provide written notice of this payment to the State and TCEQ in accordance with Paragraph 15.

(ii) Past Costs Incurred by TPWD. Settling Defendants shall pay \$4,514.66 to TPWD to reimburse Past Costs

incurred for the Site. Payment to TPWD shall be in the form of a certified check, made payable to the "State of Texas (AG# 062427026)." Checks shall be delivered to Chief, Environmental Protection Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711. Settling Defendants shall provide written notice of this payment to the State and TPWD in accordance with Paragraph 15.

(b) Future Costs.

The United States and the State have incurred and will continue to incur Future Costs in connection with the activities pursuant to this Consent Decree. Settling Defendants shall reimburse each Trustee for its Future Costs within thirty (30) days after receiving a bill from a Trustee for the Future Costs that have been incurred, except as to any disputed portion. The Parties shall use the procedures set forth in Section X ("Dispute Resolution") below to resolve any dispute concerning an invoice.

Bills for reimbursement of Future Costs will be submitted approximately annually by the Trustees and should include summaries of the costs incurred and supporting documentation including copies or summaries of timesheets, travel vouchers, invoices, or other agency documentation as proof of costs. Payment for these Future Costs shall

be made in the manner described below.

(1) Future Costs for the United States.

(ii) Compensation for DOI and NOAA future administrative costs associated with the implementation of the jointly administered natural resource restoration. All payments specified in or cross-referenced to Paragraph 14 of this Consent Decree must be made at <https://www.pay.gov>, to the U.S. Department of Justice account, in accordance with instructions the Settling Defendants may obtain from the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Texas after the Date of Entry of this Decree.

(aa) For DOI: DOI future administrative funds will be held in DOI's Natural Resource Damage Assessment and Restoration Fund ("NARDAR Fund"): Account Number 14X5198 (NARDAR), Site name: Greens bayou, Location of the Site: Houston, Harris County, Texas.

(bb) For NOAA: NOAA future administrative funds will be held in DOI's Natural Resource Damage Assessment and Restoration Fund ("NARDAR

Fund"): Account Number 14X5198 (NARDAR), Site name: Greens Bayou, Location of the Site: Houston, Harris County, Texas.

(2) Future Costs for the State.

Payment to TCEQ shall be in the form of a certified check made payable to the "State of Texas (AG# 093101277)." Payment to TPWD shall be in the form of a certified check made payable to the "State of Texas (AG# 062427026)." Checks shall be delivered to Chief, Environmental Protection Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711.

(3) Interest on Late Payments.

In the event any payment required by this Section is not made when due, interest on the unpaid balance shall be paid commencing on the thirty-first (31st) day after the Effective Date of the Decree for Past Costs and on the thirty-first (31st) day after the due date(s) for payment of Future Costs, accruing through the date of full payment. Interest payments shall be paid in the same manner as the overdue principal amount, and shall be directed to the same fund or account as the overdue principal amount. In accordance with 42 U.S.C. § 9607(a), interest shall accrue at the rate specified for interest on investments of the Hazardous Substance Superfund established

under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year. Interest is in addition to any Stipulated Penalties accruing for late payments under Section XI ("Stipulated Penalties").

VII. TRUSTEE AND DEFENDANT CONTACT PERSONS

15. Each Trustee agency hereby respectively designates the following person(s) as its representative for receipt of information and notices required or occasioned under this Consent Decree, including, but not limited to, notices pertaining to the payment or contest of Future Costs, and notices invoking force majeure or dispute resolution and as its member of the Project Review Group:

(a) For NOAA:

Jessica White
NOAA ORR/ARD
Louisiana State University
Sea Grant Building, Room 124 B
Baton Rouge, LA 70803
Tel: (225) 578-8848

(b) For DOI:

Chip Wood
US FWS c/o TAMU-CC
6300 Ocean Drive
Corpus Christi, TX 78412
Tex: (361) 994-9005
Fax: (361) 994-8262

(c) For TCEQ:

Richard Seiler, MC-225
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-2523

Fax: (512) 239-4814

(d) For TPWD:

Don Pitts
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744
Tel: (512) 389-8754
Fax: (512) 389-8160

(e) For the State:

Jane E. Atwood
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0052

(f) For the United States:

Chief of Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 514-2840
DOJ#90-5-1-1-09071

16. Each Settling Defendant hereby respectively designates the following person(s) as its representative for receipt of information and notices required or occasioned under this Consent Decree and as its ex-officio, non-voting member of the Project Review Group:

(a) For GB Biosciences:

Ken Rike
Remediation Manager
GB Biosciences Corporation
2239 Haden Road

Houston, Texas 77015
Tel: (713) 453-7281
Fax: (713) 450-6339

- (b) For ISK:
Frank H. Rigsby
Vice President
ISK Magnetics, Inc.
2237 Haden Road
Houston, Texas 77015
Tel: (713) 393-3770
Fax: (713) 393-3701

With copies of Information and Notices to:

- (c) ISKM General Counsel:
7474 Auburn Road
Concord, Ohio 44077-9703
- (d) For OCC:
Scott A. King
Vice President and General Counsel
Occidental Chemical Corporation
5005 Lyndon B. Johnson Freeway
Suite 1500
Dallas, Texas 75244
Tel: (972) 404-3840
Fax: (713) 985-1642
- (e) For Tierra Solutions, Inc.:
Enrique Castro
Tierra Solutions, Inc.
2 Tower Center Blvd. Floor 10
East Brunswick, New Jersey 08816
Tel: (732) 246-5852
- David Rabbe
Tierra Solutions, Inc.
2 Tower Center Blvd. Floor 10
East Brunswick, New Jersey 08816
Tel: (732) 246-5848

17. Any Party may change its designated person or address as set

forth in this Section by communicating such changes in writing to the other Parties.

18. All notices and submissions shall be considered effective upon receipt by mail, unless otherwise provided. All notices shall be sent by first class United States mail. Submission of written notice by mail as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Parties.

VIII. INDEMNIFICATION

19. The United States and the State do not assume any liability by entering into this Consent Decree. Settling Defendants shall indemnify, save and hold harmless the United States and the State and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any person acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Further, Settling Defendants agree to reimburse the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the

United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

20. The United States and the State shall give Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 19 and shall consult with Settling Defendants prior to settling such claim.

21. Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between Settling Defendants and any person for performance of the Restoration Project, including, but not limited to, claims on account of delays. In addition, Settling Defendants shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendants and any person for performance of the Restoration Project including, but not limited to, claims on account of delays.

IX. FORCE MAJEURE

22. "Force majeure," for the purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants,

of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation except the obligations to make payments described in Sections VI ("Costs Reimbursement") and XI ("Stipulated Penalties") of this Consent Decree. The requirement that Settling Defendants exercise "best efforts to fulfill the obligation" includes using the best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure, such that the delay is minimized to the greatest extent possible. "Force majeure," does not include changes in the cost of the Restoration Project or financial hardship on the part of Settling Defendants. "Force majeure" does not include the obligations to make Past Cost and Future Cost payments described in this Consent Decree.

23. If any circumstance occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by force majeure, Settling Defendants shall orally notify the Trustees within 48 hours following the time that Settling Defendants first know or should have known that the circumstances might cause a delay. Within five (5) days thereafter, Settling Defendants shall provide in writing to the persons identified in Paragraph 15 a detailed description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or

mitigate the delay; and Settling Defendants' rationale for attributing such a delay to a force majeure if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such circumstances may cause or contribute to an endangerment to public health or the environment. Settling Defendants shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that circumstance for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstances of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

24. If the United States and the State agree that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the United States and the State for such time as necessary to complete the obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If the United States and the State do not agree that the delay or anticipated delay has been or will be caused by a force majeure, the United States and the State shall notify Settling Defendants in writing of their decision. If the United States and the State agree that the delay is

attributable to a force majeure, the United States and the State shall notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

25. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section X ("Dispute Resolution") regarding the United States' and the State's notice under Paragraph 23, it shall do so no later than fifteen (15) days after receipt of the United States' and the State's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraph 23 above. If Settling Defendants carry this burden, the delay at issue shall not be deemed to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to the United States and the State and the Court.

X. DISPUTE RESOLUTION

26. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of Settling Defendants that have not been

disputed in accordance with this Section.

27. Informal Dispute Resolution. Settling Defendants may initiate dispute resolution under this Section by sending a written notice to the United States and the State. The notice shall identify the issue in dispute and Settling Defendants' position on the issue. The Parties shall attempt to resolve the dispute by engaging in good faith informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date the notice is sent, unless this time period is modified by written agreement of the Parties. In the event the Parties are unable to reach agreement during such informal negotiation period, the Trustees, individually or jointly, as applicable, shall provide the Settling Defendants with a written summary of their position regarding the issues in dispute within forty-five (45) days from the end of the informal negotiations.

28. Formal Dispute Resolution.

(a) In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Trustees, individually or jointly, as applicable, shall be considered binding on Settling Defendants unless, within thirty (30) days after Settling Defendants receive the Trustees' written summary pursuant to Paragraph 27, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving the United States and the State with a written Statement of Position on the matter in

dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by Settling Defendants.

(b) Within sixty (60) days after receipt of Settling Defendants' Statement of Position, the United States and/or the State shall serve on Settling Defendants a Statement(s) of Position, including, but not limited to, any factual data, analysis, or opinion supporting each position and all supporting documentation relied upon by the United States and/or the State. Within fifteen (15) days after receipt of the Statement(s) of Position, Settling Defendants may submit a Reply.

(c) An administrative record of the dispute shall be maintained by the United States and/or the State and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the United States and the State may allow submission of supplemental Statements of Position by the Parties to the dispute.

(d) The United States and/or the State shall issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 28c. This decision shall be binding on Settling Defendants, subject only to the right

to seek judicial review pursuant to Paragraph 28e.

(e) Any administrative decision made by the United States and/or the State pursuant to this Paragraph shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all Parties within forty-five (45) days of receipt of the United States' and/or the State's final decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and/or the State may file a response to Settling Defendants' motion.

(f) In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the United States and/or the State is either not in accordance with the requirements of this Consent Decree or otherwise not in accordance with applicable law. Judicial review of the decision of the United States and/or the State shall be on the administrative record compiled pursuant to Paragraph 28c.

(g) The invocation of informal or formal dispute resolution

procedures pursuant to prior Paragraphs shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree that is not directly in dispute, unless the United States and the State or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI ("Stipulated Penalties").

XI. STIPULATED PENALTIES

29. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 30 to the United States and the State for failure to comply with the requirements of this Consent Decree. "Compliance" by Settling Defendants shall include completion of the activities identified in Paragraphs 12 - 14, as well as compliance with access requirements of Sections XVII and XVIII, within the schedules established in the Consent Decree or any modification thereto.

30. The following stipulated penalties shall accrue per violation per day for Settling Defendants' failure to comply with the time schedules established

for the following implementation requirements:

(a) Failure to timely comply with the requirements under Paragraphs 12 and 13 of this document and the Implementation Plan and the Design Plan: \$500 per day per violation; each day of a violation is a separate violation.

(b) Failure to make the payments required by Section VI in a timely manner: \$500 per day, in addition to the interest required by Paragraph 14.

(c) Failure to provide access in accordance with Sections XVII and XVIII in a timely manner: \$500 per day per violation; each day of a violation is a separate violation.

31. All penalties shall begin to accrue on the day after Settling Defendants should have performed an obligation specified in Paragraphs 12 - 14 , or under the access requirements, of this Consent Decree, the Implementation Plan, or the Design Plan, and shall continue to accrue through the day Settling Defendants comply with the obligation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. Notwithstanding any other provision of this Section, the United States and the State, in their unreviewable discretion, may waive any portion of stipulated penalties owed to them that have accrued pursuant to this Consent Decree.

32. Following the determination by the Trustees, individually or jointly, that Settling Defendants failed to comply with one of the requirements of

this Consent Decree listed above, the Trustees may give Settling Defendants written notification of the same and describe the noncompliance. The Trustees may send Settling Defendants a written demand for the payment of penalties. Penalties shall accrue and are due as provided in this Section regardless of whether the Trustees have notified Settling Defendants of a violation. All stipulated penalties due under this Section shall be due and payable within thirty (30) days of Settling Defendants' receipt of a demand for payment from the United States and/or the State, unless Settling Defendants invoke dispute resolution under Section X of this Consent Decree. If Settling Defendants invoke dispute resolution under Section X, then stipulated penalties shall be due at the time specified in Paragraph 33. Stipulated penalties shall be paid 50% to the United States and 50% to the State. Interest shall accrue on unpaid stipulated penalties at the rates set forth in Paragraph 14c (3) beginning on the thirty-first (31) day after Settling Defendants' receipt of the demand for stipulated penalties.

(a) All payments to the United States under this Section shall be paid by certified check made payable to "U.S. Department of Justice." This payment shall be mailed to the U.S. Attorney's Office, Southern District of Texas, P.O. Box 61129, Houston, Texas 77208, referencing "United States and the State of Texas v. GB Biosciences et al., USAO File Number: [to be provided upon filing of Complaint], DOJ Case Number 90-5-1-1-09071" and the name and address of the party making payment.

Copies of the check and notice shall be sent to the Parties as specified in Section VII (Trustee and Settling Defendants' Contact Persons).

(b) All payments made to the State under this Section shall be paid by certified check made payable to the "State of Texas." This payment should be mailed to the Chief, Environmental Protection Division, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711. The check shall bear the identifying number AG# 093101277 and AG# 062427026 ".

33. In the event Settling Defendants fail to pay stipulated penalties when due, the United States and/or the State may institute a legal proceeding to collect such penalties, as well as interest accruing on any unpaid balance, as provided by law. Pursuant to Paragraph 33, however, stipulated penalties continue to accrue during dispute resolution but are not due and payable until there is resolution of the dispute as provided below.

(a) If the dispute is resolved by agreement, accrued penalties agreed to be owed shall be paid to the United States and the State within twenty-five (25) days of the agreement;

(b) If the dispute is appealed to this Court and the Plaintiff(s) prevail in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to the United States and the State within sixty (60) days of receipt of

the Court's decision or order, except as provided by Paragraph 33c below. The Settling Defendants shall not be required to pay any stipulated penalties related to the appealed disputed issue if they prevail upon that disputed issue in Court;

(c) If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States and the State, or Settling Defendants to the extent that they prevail.

XII. COVENANTS NOT TO SUE BY THE UNITED STATES AND THE STATE

34. In consideration of the satisfactory performance by Settling Defendants of all of their obligations under this Consent Decree, and except as specifically provided in Paragraphs 35-39, the United States and the State each hereby covenant not to sue or to take any civil or administrative action against Settling Defendants for Natural Resource Damages. With respect to all obligations under this Consent Decree, these covenants not to sue shall take effect upon Settling Defendants' successful completion of the obligations in Section V (Natural

Resource Damage Restoration Requirements) of this Consent Decree and the receipt by the Trustees of all payments due pursuant to both Section VI (Costs Reimbursement) and (as applicable) Section XI (Stipulated Penalties), whichever occurs last. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants and do not extend to any other person.

**XIII. RESERVATION OF RIGHTS BY THE UNITED STATES
AND THE STATE**

35. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants to reimburse the United States and the State for additional Natural Resource Damages if:

- (a) conditions, including the release of hazardous substances at or from the Site, that previously were unknown to the Trustees are discovered after the Date of Lodging of this Consent Decree and these conditions cause or contribute to new or additional injuries to, losses of, or destruction of natural resources, or new or additional service losses;
- (b) information about the release of hazardous substances at or from the Site that previously was unknown to the Trustees is received,

in whole or in part, after the Date of Lodging of this Consent Decree, and this information together with any other relevant information indicates that there are new or additional injuries to, losses of, or destruction of natural resources, or new or additional service losses. For purposes of this provision, the information and conditions known to the Trustees shall include only the information and the conditions set forth in the administrative record supporting the DARP/EA.

36. Nothing in the Consent Decree is intended to be, nor shall be construed as, a release from liability or a covenant not to sue for any claim or cause of action, administrative or judicial, for the following:

- (a) Settling Defendants' failure to pay the Trustees' Future Costs, to complete the Restoration Projects and related obligations described in Section V (Natural Resource Damage Restoration Requirements), or to comply with any other obligation or requirement of this Consent Decree;
- (b) claims brought on behalf of the United States and the State, including State and Federal agencies, for costs, damages, and expenses of any sort other than for Natural Resource Damages, Past Costs and Future Costs, that are the subject of this Consent Decree;
- (c) liability arising from any past, present, or future releases of hazardous substances other than the releases at or from the Site that are the subject of this Consent Decree;

(d) liability arising from any releases of hazardous substances from any site or location that is not the subject of this Natural Resource Damage Consent Decree, including, but not limited to, any hazardous substance taken from the Site and disposed of at another site or location;

(e) liability for violations of federal and state law that occur during or incident to the implementation and/or monitoring of the Restoration Project;

(f) criminal liability; and

(g) any matter not expressly included in the covenant not to sue for Natural Resource Damages set forth in Section XII (Covenants Not to Sue by the United States and the State) of this Consent Decree.

37. The failure of the Trustees to insist upon strict and prompt performance of any provision of this Consent Decree shall not operate as a waiver of any requirement of this Consent Decree or of the United States' and the State's right to insist on prompt compliance in the future with such provision, and shall not prevent a subsequent action by the United States and the State to enforce such a provision.

38. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants may contest any claims reserved by the United States and the State of Texas in this Consent Decree

and Settling Defendants may claim any defense available to them except that Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claim raised by the United States or the State in subsequent proceedings was or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XII (Covenants Not to Sue by the United States and the State).

39. Except as provided for in this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all action authorized by law.

XIV. COVENANTS BY SETTLING DEFENDANTS

40. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State for any claims arising from or relating to the Restoration Project or any claims arising from or relating to Natural Resource Damages pursuant to any Federal, State, or common law, including but not limited to the following:

- (a) Any direct or indirect claim for reimbursement for Natural Resource Damages from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9607, 9611, 9612, and 9613, or any other provision of State or

Federal law; or

(b) Any claims arising out of activities related to the Restoration Project, including without limitation, claims based on the Trustees' selection of the Restoration Project, oversight of the Restoration Project, and/or approval of plans for such activities.

41. Settling Defendants hereby covenant not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States or the State notifies them in writing that it no longer supports entry of the Consent Decree.

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

43. Notwithstanding any other provision of this Consent Decree, this Consent Decree is without prejudice to all rights of Settling Defendants with respect to all matters other than those expressly specified in the covenants set forth in Paragraphs 40, 41 and 42.

XV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

44. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as otherwise provided herein, each of the Parties expressly

reserves any and all rights (including, but not limited to, any right of contribution against third parties), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to Natural Resource Damages against any person not a Party hereto.

45. The Parties agree, and by entering into this Consent Decree this Court finds, that Settling Defendants are entitled, as of the Date of Entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for the Natural Resource Damages.

XVI. CERTIFICATION

46. Settling Defendants certify that, to the best of their knowledge and belief, they (or as applicable their officers, employees, contractors, agents and/or any person acting on their behalf) have fully and accurately disclosed to the Trustees all information requested by the Trustees regarding potential Natural Resource Damages at the Site which are currently in the possession of Settling Defendants' officers, employees, contractors, agents, and/or any person acting on their behalf, that relate in any way to the releases of hazardous substances at or from the Site.

47. Each undersigned representative of a Party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

XVII. ACCESS

48. The Settling Defendants shall provide to the Trustees and their designated representatives, access at reasonable times to all locations used in implementing the Restoration Projects, including to all areas of the Restoration Projects to the extent under Settling Defendants' control, as well as all vessels used by the Settling Defendants, or their contractors, for any purpose relating to the implementation and oversight of the Restoration Projects, to future monitoring, or to corrective action pertaining to the Restoration Projects, or for the enforcement of this Consent Decree, including but not limited to:

- (a) Interviewing the Settling Defendants' personnel involved in field work conducted pursuant to the Implementation Plan;
- (b) Inspecting records, and/or operating logs related to construction of the BNC Wetlands Restoration Project;
- (c) Reviewing the progress of the Settling Defendants in implementing the BNC Wetlands Restoration Project;
- (d) Conducting such sampling, tests or other actions as the Trustees and/or their representatives deem appropriate for implementation and oversight of the BNC Wetlands Restoration Project, for future monitoring, for corrective action pertaining to the BNC Wetlands Restoration Project, or for the enforcement of this Consent Decree;
- (e) Using a camera, sound recording, or other documentary equipment to make or preserve observations or measurements and

Settling Defendants may utilize their own documentary equipment in addition to any documentary equipment utilized by Trustees; and

(f) Verifying any reports or data that the Settling Defendants submit to the Trustees.

49. Settling Defendants acknowledge the right of the Trustees and their designated representatives to be present at all times that the Settling Defendants, including their contractor(s) or subcontractor(s), are performing any work or activity involved in implementing the Restoration Projects. The Trustees may designate other representatives, including, but not limited to, Federal and State employees, and Federal and State contractors and consultants, to observe, monitor, assess or assist in overseeing the progress of the Restoration Projects.

50. The Settling Defendants and/or their representatives may accompany the Trustees and/or their representatives whenever and wherever they are present at the Restoration Projects but may not delay or impede any access or activities of the Trustees authorized under this Section. If the Trustees conduct any sampling for the purpose of oversight of the Settling Defendants' implementation of the BNC Wetlands Restoration Project or enforcement of this Consent Decree, the Trustees will provide, upon timely request, splits of such samples to Settling Defendants' designated representative. Further, with respect to any samples taken from the BNC Wetlands Restoration Project for the purpose of oversight of the Settling Defendants' implementation of the Restoration Project or enforcement of this Consent Decree, copies of the results of any analyses or tests on such samples

shall be provided to the Trustees and the Settling Defendants' designated representative regardless of which Party collected the samples and conducted, or paid for, the testing or analyses.

51. When requested and upon reasonable notice by the Trustees, the Settling Defendants shall make available to the Trustees, at an appropriate location, any of their employees, agents, or representatives with knowledge of material facts concerning the implementation of the Restoration Projects for purposes of investigations, information gathering, or interviews by the Trustees.

XVIII. ACCESS TO INFORMATION

52. Until 3 (three) years after the issuance of the Certificate of Restoration Project Completion by the Trustees, subject to Paragraphs 54 and 55, Settling Defendants, including their contractors, agents, and representatives, shall retain copies of any records, documents, data, or information, whether in written or electronic form, related to any work or activity undertaken in implementing any portion of the Restoration Project. Until 3 (three) years after the issuance of the Certificate of Restoration Project Completion by the Trustees, subject to Paragraphs 54 and 55, and excepting records, documents, and other information prepared in anticipation of litigation, protected by the attorney-client privilege or any other privilege recognized by federal or state law, Settling Defendants shall make available to the Trustees, or their representatives, within thirty (30) days of a written request by the Trustees, copies of any records, documents, data or information, whether in written or electronic form, maintained by or in the

possession of Settling Defendants, their contractors, agents or representatives, which relate to any work or activity undertaken in implementing any portion of the Restoration Project that is reasonably requested by the Trustees or their representatives under this Decree.

53. Any record, document, data and other information that Settling Defendants are required by this Consent Decree to provide directly to the Trustees, or their representatives, shall be considered a public record and shall not be withheld or protected from release. No claim of privilege or confidentiality shall be made with respect to any sampling, analytical, monitoring, hydrologic, hydrogeologic, scientific, chemical, or engineering data generated through any work or activity undertaken in implementing any portion of the Restoration Project pursuant to this Consent Decree. Such non-privileged records, documents, data and other information includes those used in surveying, design, construction, analysis of data, chain of custody records, receipts, final reports, correspondence, or other records or materials related to the Restoration Project.

54. Except as provided in Paragraph 53 above, Settling Defendants may assert that certain records, documents or other information provided to the Trustees include or constitute confidential business information that is subject to legal protection under federal or state law ("CBI"). Whenever Settling Defendants submit a record, document or other information to the Trustees which Settling Defendants assert includes or constitutes CBI, Settling Defendants shall identify the record, document or information, or portion thereof, which is asserted to be CBI

with particularity and demonstrate a proper basis in fact and law why the information is considered to be CBI. Records, documents or information, or portions thereof, that the Trustees determine to be CBI under applicable federal or state laws or regulations will be protected from further release to the extent and in the manner afforded by such laws. If CBI is not identified by Settling Defendants at the time a record, document or information is submitted to the Trustees, or if the Trustees notify Settling Defendants that the record, document or information is not determined to be CBI under applicable federal or state laws or regulations, the public may be given access to such documents or information without further notice to Settling Defendants.

55. In the event the Settling Defendants believe that information, data, or other material accessible to the Trustees and/or their representatives under this Consent Decree is privileged, the Settling Defendants may assert that claim by providing to the Trustees within thirty (30) days after the request the following information for each item as to which a privilege is claimed:

- (a) A description of the information, data, or other material which contains sufficient information to allow the District Court to determine whether the claimed privilege applies. If the material at issue is a document, the Settling Defendants shall, at a minimum, provide the following information in as much detail as possible without revealing any information claimed privileged: (1) the title of the document; (2) the date of the document; (3) the name and title of the author of the

document; (4) the name and title of each addressee and recipient; and
(5) a description of the contents of the document; and

(b) A statement of the specific privilege(s) claimed and the basis for the claim. If a Settling Defendant fails without good cause to timely provide the information required by this Subparagraph, it waives any claim of privilege with respect to the specific information, data, or other material for which it failed to timely provide the information. If the Trustees object to the Settling Defendant's claim that the information, data, or other material is privileged, Plaintiff(s) may file a motion with the Court to compel access to the material.

56. Settling Defendants' employees, contractors, agents, or representatives with knowledge of facts relating to the performance of any work or activity undertaken to implement the Restoration Project under this Consent Decree shall be available to provide information to the Trustees, including their representatives under this Decree, with regard to any investigation, information gathering, dispute resolution or other proceeding concerning the Restoration Project performed under this Consent Decree.

XIX. VOIDABILITY

57. If for any reason the District Court should decline to approve entry of this Consent Decree in the form presented, this Consent Decree and the settlement embodied herein shall be voidable by written notice to the other Parties at the sole discretion of any Party to this Consent Decree, and the terms hereof

may not be used as evidence in any litigation.

XX. COMPLIANCE WITH OTHER LAWS

58. This Consent Decree shall not be construed in any way to relieve Settling Defendants or any other person or entity from the obligation to comply with any Federal, State, or local law.

XXI. RETENTION OF JURISDICTION

59. The Court shall retain jurisdiction of this matter for the purpose of entering such further order, direction, or relief as may be necessary or appropriate for the construction, implementation, resolution of disputes, or enforcement of this Consent Decree.

XXII. MODIFICATION

60. Any modification to the Consent Decree, including the attachments thereto, that does not materially alter the Restoration Project may be made by written agreement between the Trustees and Settling Defendants. Any modification that materially alters the Restoration Project may be made by written agreement between the United States, the State, and Settling Defendants and shall take effect upon filing notice with the Court.

XXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

61. The Parties agree and acknowledge that final approval by the United States and the State and entry of this Consent Decree is subject to a thirty-day (30) period for public notice and comment in accordance with Section 122 of

CERCLA, 42 U.S.C. § 9622 (d) (2) (B), U.S. Department of Justice policy and Texas Water Code Section 7.110. The United States and the State reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent, to the entry of this Consent Decree without the need for further approval.

XXIV. SIGNATORIES/SERVICE

62. Settling Defendants 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 its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby 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 rules of this Court, including, but not limited to, service of a summons. Settling Defendants shall not be required to file an answer to the complaint in this action unless and until the Court expressly declines to enter this Consent Decree.

63. This Consent Decree may be executed in any number of counterparts and, as executed, shall constitute one agreement, binding on all of the Parties hereto, even though all of the Parties do not sign the original or the same counterpart.

XXV. APPENDIX

64. The following appendices are attached to and incorporated into

this Consent Decree:

"Appendix A" is the DARP/EA;
"Appendix B" is the Conservation Easement;
"Appendix C" is the Implementation Plan; and
"Appendix D" is the Design Plan.

XXVI. FINAL JUDGMENT

65. This Consent Decree and its Attachments constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those contained expressly in this Consent Decree.

66. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State, and Settling Defendants.

SO ORDERED THIS _____ DAY OF _____, 20_____.

United States District Judge

FOR THE UNITED STATES OF AMERICA:


ROBERT MAHER
Acting Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530


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s/Keith Edward Wyatt

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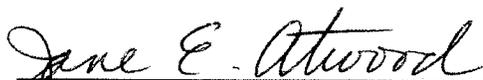
FOR THE PLAINTIFF STATE:

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN B. SCOTT
Deputy Attorney General for Civil Litigation

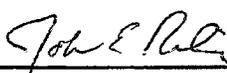
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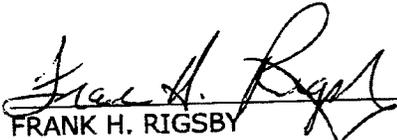
FOR GB BIOSCIENCES CORPORATION:



JOHN RILEY
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*Legal approval
as to form
Eddie Lewis*

FOR ISK MAGNETICS, INC.

 11/8/2012

FRANK H. RIGSBY
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FOR OCCIDENTAL CHEMICAL CORPORATION:

A handwritten signature in black ink, appearing to read "Dennis F. Blake", written over a horizontal line.

DENNIS F. BLAKE
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