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FILED
DEC 13 1985
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

| | | |
|----------------------------------|---|--------------------------|
| COUNTY OF ORANGE, |) | No. CV 85-1542 TJH (MCx) |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| AIR CALIFORNIA, et al. |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |
| CITY OF NEWPORT BEACH, |) | |
| |) | |
| Counterclaimant, |) | |
| |) | |
| v. |) | |
| |) | |
| COUNTY OF ORANGE; ORANGE COUNTY |) | |
| BOARD OF SUPERVISORS; and DOES 1 |) | |
| through 1,000, Inclusive, |) | |
| |) | |
| Counterdefendants. |) | |
| _____ |) | |
| AND RELATED COUNTERCLAIMS. |) | |
| _____ |) | |

STIPULATION FOR ENTRY OF FINAL
JUDGMENT BY CERTAIN SETTLING PARTIES

175

1 I. BASIS FOR STIPULATION

2 1. The County of Orange ("County"), the City of
3 Newport Beach ("City"), Stop Polluting Our Newport ("SPON"), and
4 the Airport Working Group of Orange County, Inc. ("AWG") (herein-
5 after collective referred to as "the settling parties"), by their
6 respective counsel of record, enter into this stipulation to
7 implement the settlement of the longstanding dispute between the
8 settling parties concerning the development and operation of John
9 Wayne Airport ("JWA"). The Judgment to be entered pursuant to
10 this stipulation would (1) adjudicate that EIR 508/EIS is legally
11 adequate for the "EIR 508/EIS Project" (as that term is hereafter
12 defined) under the California Environmental Quality Act, the
13 National Environmental Policy Act, and all relevant state and
14 federal implementing regulations; and (2) provide for enforcement
15 of certain specific aspects of the settlement agreement of the
16 parties in respect of, or related to the controversies among them
17 regarding the development and operation of JWA (and agreed upon
18 limitations regarding such development and operation) through
19 the year 2005.

20
21 2. The compromise settlement reached by the settling
22 parties reflects, under all of the circumstances, the individual
23 judgments of the settling parties regarding an appropriate or
24 acceptable balance between demand for air travel services in
25 Orange County and any adverse environmental effects associated
26 with the operation of JWA. Recognizing that JWA is incapable of
27 satisfying the demand for air travel in Orange County, this
28 settlement is also designed to permit studies regarding the

1 possible future development of an additional airport to serve
2 Orange County. The settling parties acknowledge that, without
3 this settlement and Judgment, protracted litigation would
4 continue and create a continuing risk both of impeding or
5 preventing the County's development of JWA, and its ability to
6 create additional access opportunities for commercial operators
7 desiring to use JWA.

8
9 3. Other provisions of the settling parties' agree-
10 ment will not be embodied in the Judgment. Those provisions
11 include the actions undertaken by the County in connection with
12 the adoption of Resolution Nos. 85-1231, 85-1232 and 85-1233
13 concerning certification of EIR 508, adoption of additional
14 mitigation measures, and additional airport site studies in
15 Orange County, and the parties' dismissal of other litigation
16 concerning JWA. These provisions also include a resolution of
17 the City of Newport Beach (Resolution 85-67). The parties
18 acknowledge that each of the undertakings in the referenced
19 resolutions represent a material part of the consideration
20 pertaining to this settlement.

21
22 4. In reaching this settlement, the settling parties
23 have considered operational and other factors applicable to John
24 Wayne Airport which may not be applicable to any other airport.
25 This stipulation is site specific to JWA, premised upon its
26 unique history, operational characteristics and limitations, and
27 shall not be deemed applicable to any other airport.

28

1 5. Not all of the parties to this litigation have
2 agreed to the terms of this settlement. Pursuant to Rule 54(b)
3 of the Federal Rules of Civil Procedure, the judgment to be
4 entered pursuant to this Stipulation is a final judgment only as
5 to the claims between the settling parties.

6
7 6. This stipulation and judgment is not intended to,
8 and shall not, create any rights in favor of any persons other
9 than the settling parties.

10
11 II. DEFINITIONS

12 For purposes of this Stipulation and Judgment, the terms
13 below are defined as follows:

14
15 7. "ADD" means "average daily departure," which is
16 computed on an annual basis, from April 1 of each year to March
17 31 of the following year ("the Plan Year"). One ADD is equal to
18 365 departures by Class A or Class AA aircraft during each
19 Plan Year (or 366 departures in any "leap year"), subject to any
20 adjustments which may result from the implementation or enforce-
21 ment of any County regulation for JWA or this Judgment (except
22 that no ADD shall consist of more departures in a Plan Year than
23 there are days in that year). "ADD" includes all Class A or
24 Class AA departures, except emergency or mercy flights, depar-
25 tures resulting from mechanical failures, emergency or weather
26 diversions to JWA necessary to reposition an aircraft into its
27 normal scheduling rotation, the repositioning of aircraft to
28 another airport in connection with a published change in the

1 previous schedule of operations of the airline, test or demon-
2 stration flights authorized in advance by the airport manager, or
3 charter flights by persons not engaged in regularly scheduled
4 commercial service at JWA.

5
6 8. "Class A Aircraft" means aircraft which:

7 (a) are used in regularly scheduled commercial
8 service at JWA; and

9 (b) generate actual energy average SENEL levels,
10 averaged during each Noise Compliance Period, as measured at the
11 Criterion Monitoring Stations, which are not greater than the
12 following values:

13
14 M1: 98.5 dB SENEL

15 M6: 100.0 dB SENEL

16 M7: 100.0 dB SENEL
17

18 In determining whether an aircraft is a Class A
19 aircraft, its noise performance at the Criterion Noise Monitoring
20 Stations shall be determined at each individual station. An
21 aircraft must meet each of the monitoring station criteria,
22 without "trade-offs," in order to qualify as a Class A aircraft.
23 The existing Departure Noise Monitoring Stations will be kept in
24 operation and in good repair during the Project Period, and
25 test procedures for determination of Class A, Class AA, and
26 Exempt Aircraft shall be no less stringent than those provided
27 for in the County's commercial airline access plan in effect
28 on August 1, 1985. During the Project Period, quarterly noise

1 reports and all test data concerning aircraft classification
2 qualification tests at JWA shall be prepared and maintained as
3 public records.

4
5 9. "Class AA Aircraft" means aircraft, other than
6 Exempt Aircraft, which:

7 (a) are used in regularly scheduled commercial
8 service at JWA; and

9 (b) generate actual energy averaged SENEL levels,
10 averaged during each Noise Compliance Period, which are not
11 greater than 89.5 dB SENEL at any Departure Noise Monitoring
12 Station.

13 In determining whether an aircraft is a Class AA
14 aircraft, its noise performance at the Departure Noise Monitoring
15 Stations shall be determined at each individual station. An
16 aircraft must meet each of the Departure Noise Monitoring Station
17 criteria, without "trade-offs," in order to qualify as a Class AA
18 aircraft.

19
20 10. "Commercial Air Carrier" means any person which
21 operates regularly scheduled commercial service into and out of
22 JWA for the purpose of carrying passengers or freight, or for any
23 other regularly scheduled commercial purpose.

24
25 11. "Commuter Air Carrier" means any person which
26 operates regularly scheduled commercial service into and out of
27 JWA for the purpose of carrying passengers or freight, or for any
28 other regularly scheduled commercial purpose, with aircraft

1 which, under the definitions and limitations of this stipulation
2 and Judgment, do not require an allocation of ADDs for their
3 operation at JWA (i.e., "Exempt Aircraft").
4

5 12. "Criterion Noise Monitoring Stations" means those
6 noise monitoring stations of the JWA noise monitoring system at
7 the location of monitoring stations M6, M7 and M1 as of August 1,
8 1985.
9

10 13. "Departure Lounge Holding Area" means interior
11 square footage adjacent to an air carrier or commuter gate within
12 a "secure holding area" that is designed to be used as a seating
13 lounge or waiting area in connection with arriving and departing
14 flights. "Departure Lounge Holding Area" does not mean, for
15 purposes of this stipulation and Judgment, any common passage
16 areas in a secure holding area intended to allow the public to
17 achieve access to a Departure Lounge Holding Area, or any other
18 public space in a secure holding area which is devoted to public
19 purposes other than a seating lounge or waiting area.
20

21 14. "Departure Noise Monitoring Stations" means those
22 noise monitoring stations of the JWA noise monitoring system at
23 the location of JWA monitoring stations M6, M7, M1, M2, M3 and M8
24 as of August 1, 1985.
25

26 15. "EIR 508/EIS Project" means that certain "project"
27 including related plans for development, activities and other
28 related elements and approvals which are collectively defined and

1 mitigated by County EIR 508, Board of Supervisors' Resolutions
2 85-255 through 85-258 and the related resolutions 85-259 and
3 85-260, all adopted on February 26, 1985, Board of Supervisors'
4 Resolution 85-387 (March 20, 1985), and Board of Supervisors'
5 Resolutions 85-1231 through 85-1233. It also includes all
6 processing and approvals, and contemplated activities considered
7 by the Federal Aviation Administration in its consideration and
8 approval of the EIR 508 documentation as an Environmental Impact
9 Statement prepared, circulated, considered and approved under the
10 National Environmental Policy Act. The term also includes the
11 terms of this stipulation and the Stipulated Judgment.

12

13 16. "Exempt Aircraft" means any aircraft used in
14 regularly scheduled commercial service at JWA which, when
15 measured by actual energy averaged SENEL levels during any
16 Noise Compliance Period, does not exceed 86.0 dB SENEL on
17 departure at any of the Departure Monitoring Stations.

18

19 17. "MAP" means million annual passengers, consisting
20 of the sum of actual deplaning and enplaning passengers served by
21 all Commercial and Commuter Air Carriers at JWA during each Plan
22 Year.

23

24 18. "Noise Compliance Period" means each calendar
25 quarter during the Project Period.

26

27 19. "Phase I" means the period from February 26, 1985,
28 to the date on which Phase II begins.

1 20. "Phase II" means the period that begins on April
2 1, 1990, or the date on which the County records a notice of
3 completion on the new commercial passenger terminal, whichever is
4 later, and ends on December 31, 2005.

5
6 21. "Plan Year" means each period during the Project
7 Period, from April 1 of one year to March 31 of the following
8 year.

9
10 22. "Project Period" means the period from February
11 26, 1985 to December 31, 2005.

12
13 23. "Regulated ADDs" means average daily departures
14 during a Plan Year by Class A and Class AA aircraft operated by
15 Commercial Air Carriers.

16
17 III. STIPULATION FOR ENTRY OF JUDGMENT

18 In recognition and consideration of the foregoing recitals
19 and definitions, the settling parties stipulate to the entry of
20 Judgment that contains the terms stated below.

21
22 A. Adequacy of EIR 508/EIS

23
24 24. Judgment may be entered by the Court on the
25 County's First Amended Complaint for Declaratory and Injunctive
26 Relief, and the Counterclaims of the City, SPON, and AWG,
27 adjudicating that EIR 508/EIS is legally adequate and complete
28 under the California Environmental Quality Act ("CEQA") (Cal-

1 fornia Public Resources Code Section 21000 et seq.), the State
2 CEQA Guidelines (14 Cal.Admin.Code Section 15000 et seq.), the
3 National Environmental Policy Act ("NEPA") (42 U.S.C. Section
4 4321 et seq.) and all relevant federal implementing regulations
5 with respect to the EIR 508/EIS Project, including, but not
6 limited to, implementation of the physical facilities improve-
7 ments, airport layout plan, land use plans, and aircraft operat-
8 ions and MAP levels permitted by the project. To the extent that
9 the County's First Amended Complaint, or the counterclaims in
10 this action by the City, SPON and the AWG, raise any controver-
11 sies other than the adequacy of EIR 508/EIS under the provisions
12 of CEQA, NEPA and all relevant implementing regulations, such
13 claims and controversies shall be dismissed without prejudice.

14
15 25. Each settling party shall bear its own costs and
16 attorneys' fees in connection with this litigation.

17
18 B. Flight and MAP Limits

19
20 26. During Phase I, there shall be a maximum of 55
21 ADDs by Class A and Class AA aircraft (regardless of whether or
22 not the County has specifically allocated any such ADDs to any
23 Commercial Air Carrier). No aircraft generating noise levels
24 greater than that permitted for Class A aircraft shall be permit-
25 ted to engage in regularly scheduled commercial service at JWA.
26 Of the 55 ADDs permitted during Phase I, no more than 39 ADDs may
27 be by Class A aircraft.

1 27. During Phase I, JWA shall serve no more than 4.75
2 MAP during any Plan Year.

3
4 28. During Phase II, there shall be a maximum of 73
5 ADDs by Class A and Class AA aircraft (regardless of whether or
6 not the County has specifically allocated any such ADDs to any
7 Commercial Air Carrier). No aircraft generating noise levels
8 greater than that permitted for Class A aircraft shall be permit-
9 ted to engage in regularly scheduled commercial service at JWA.
10 Of the 73 ADDs permitted during Phase II, no more than 39 ADDs
11 may be by Class A aircraft.

12
13 29. During Phase II, JWA shall serve no more than 8.4
14 MAP during any Plan Year.

15
16 C. Facilities Constraints

17
18 30. Paragraphs 31 through 35, below, contain agree-
19 ments of the County on the maximum permissible size of certain
20 facilities improvements related to the proposed commercial
21 passenger terminal to be developed as part of the EIR 508/EIS
22 Project (and reducing the capacity of certain other related
23 facilities) that can be made at JWA through the end of Phase
24 II.

25
26 31. During the Project Period, John Wayne Airport
27 shall have a commercial passenger terminal with a maximum
28 interior floor space consisting of areas which are leaseable to

1 tenants, or common areas available for public use and access, of
2 not more than 271,000 square feet. This interior floor space
3 restriction does not include, and does not apply to space
4 utilized for airport administration areas, "mechanical/electrical
5 areas," "structural areas," or "terminal curb areas." The total
6 terminal size, including the "mechanical/electrical areas" and
7 "structural areas", but excluding any "terminal curb area," may
8 not exceed 337,900 square feet.

9
10 32. During Phase II, no building at JWA, other than
11 the commercial passenger terminal, or buildings leased to Fixed
12 Based Operators with limited commuter operations, shall be used
13 by Commercial or Commuter Air Carriers for passenger or baggage
14 handling activities.

15
16 33. Any Departure Lounge Holding Area designed to
17 serve a loading bridge in the terminal shall be designed for
18 use in connection with only one loading bridge. Each such
19 Departure Lounge Holding Area shall have a physical separation
20 from any other such Departure Lounge Holding Area with a perman-
21 ent fixture barrier not less than 36 inches high. The commercial
22 passenger terminal shall contain a maximum of 37,000 interior
23 square feet for all Departure Lounge Holding Areas.

24
25 34. There may be a maximum of fourteen (14) loading
26 bridges, of which no more than nine (9) may be sized for aircraft
27 as large as the Boeing-767. The remaining five (5) loading
28 bridges shall be designed for aircraft no larger than the Boeing

1 757 aircraft. Each loading bridge may serve no more than one
2 flight at a time.

3
4 35. There may be a maximum of 8,400 parking spaces,
5 not including spaces contained in the existing North Clear Zone
6 Parking Facility. The terminal parking structure may have no
7 more than four levels. Space devoted to parking may not be
8 converted to other terminal uses.

9
10 D. Other Stipulated Provisions

11
12 36. Consistent with its existing or to be assumed
13 obligations under contractual agreements with the United States
14 of America under provisions of the Airport and Airway Develop-
15 ment Act of 1970 (as amended) (former 49 U.S.C. Section 1701 et
16 seq.) or the Airport and Airway Improvement Act of 1982 (49
17 U.S.C. Section 2201 et seq.), the County shall establish and
18 maintain a rate and fee structure which will ensure that the
19 operation of JWA will be self-supporting during the Project
20 Period. Except for short-term borrowing in order to alleviate
21 temporary cash flow problems, or other emergency needs, the
22 County will not use its general funds to subsidize directly the
23 construction or routine operation of JWA. (This limitation
24 recognizes that in the ordinary course of the County's business,
25 certain County staff and personnel engage in activities supported
26 by general funds which may indirectly relate to the operation of
27 JWA. It is not the purpose or effect of this stipulation to
28 preclude the County from continuing such general fund supported

1 activities which are incidental to the routine operation of the
2 airport.) Nothing in this paragraph, or this stipulation, is
3 intended to, nor shall it be construed as, making the settling
4 parties (other than the County), or any other person, parties
5 to, or third party beneficiaries of, any contractual agreements
6 between the County, as airport proprietor of JWA, and the United
7 States of America (or any of its agencies).

8
9 37. The existing curfew regulations and hours for JWA,
10 contained in County Ordinance 3505, and the provisions of
11 paragraph 4 at page 62 of Board of Supervisor's Resolution 85-255
12 (February 26, 1985), reducing the curfew exemption threshold to
13 86.0 dB SENEL, shall remain in effect during the Project Period;
14 except that the County shall retain its full discretion to extend
15 the curfew hours. Nothing in this paragraph precludes or
16 prevents the JWA Airport Manager, his designated representative,
17 or some other person designated by the Board of Supervisors from
18 exercising reasonable discretion in authorizing a regularly
19 scheduled commercial departure or landing during the curfew hours
20 where: (1) such arrival or departure was scheduled to occur
21 outside of the curfew hours; and (2) the arrival or departure has
22 been delayed because of mechanical problems, weather or air
23 traffic control delays, or other reasons beyond the control of
24 the commercial operator. In addition, this paragraph does not
25 prohibit authorization of bona fide emergency or mercy flights
26 during the curfew hours by aircraft which would otherwise be
27 regulated by the curfew provisions and limitations.

28

1 38. In mitigation of the EIR 508/EIS Project, and for
2 other reasons, the County has adopted a "General Aviation Noise
3 Ordinance" ("GANO") (County Ordinance 3505). The principal
4 policy objective of the GANO is to exclude from operations at JWA
5 general aviation aircraft which generate noise levels greater
6 than the noise levels permitted for aircraft used by Commercial
7 Air Carriers. During the Project Period, the County shall
8 maintain in effect an ordinance which meets this basic policy
9 objective. Nothing in this stipulation precludes the County from
10 amending the GANO to enhance or facilitate its reasonable
11 achievement of its principal purpose, or the effective enforce-
12 ment of its provisions.

13
14 39. During the Project Period, the City, SPON, AWG,
15 their agents, attorneys, officers, elected officials and employ-
16 ees agree that they will not challenge, impede or contest, by or
17 in connection with litigation, or any adjudicatory administrative
18 proceedings, or other action, the funding, implementation or
19 operation of the EIR 508/EIS Project by the County and the United
20 States; nor will they urge other persons to do so, or cooperate
21 in any such efforts by other parties except as may be expressly
22 required by law. Nothing in this paragraph prohibits the
23 settling parties from submitting comments or presenting testimony
24 upon any future environmental documentation which may be prepared
25 by the County; or from challenging any project which is not part
26 of the EIR 508/EIS Project.

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40. The Board of Supervisors shall not arbitrarily withhold approval, endorsement or support of any application by a qualified entity or consortium of entities submitted pursuant to Board of Supervisor's Resolution 85-1231 which seeks a reasonable level of state or federal funding for a study or studies concerning a site for an additional airport to supplement JWA.

41. During the Project Period, the City agrees that it will, at its expense, actively join the County in defending, in any pending or future litigation, the EIR 508/EIS Project or the County's regulations or actions in implementation of, or enforcing limitations upon, the project.

42. It is specifically acknowledged by the parties that the County has received a request by PSA to operate exempt aircraft in regularly scheduled service at JWA, and may receive other such requests in the future. The County intends in the near future to develop amendments to its existing access plan or other airport regulations to provide for a means to allocate exempt aircraft operating opportunities within the MAP level agreed to in this stipulation. The development and implementation of such regulatory mechanisms is expressly acknowledged to be an element of the implementation of the EIR 508/EIS Project, and no additional or further environmental documentation under CEQA or NEPA shall be necessary to allow the County to develop and process such regulations and applications.

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43. Any notices given under this stipulation shall be addressed to the parties as follows:

FOR THE COUNTY:

Adrian Kuyper, County Counsel
Office of the County Counsel
10 Civic Center Plaza
P.O. Box 1379
Santa Ana, California 92702

with a copy to:

Michael Scott Gatzke
Gatzke, Lodge & Mispagel
2890 Pio Pico
P.O. Box 1636
Carlsbad, California, 92008

FOR THE CITY:

City Manager
City of Newport Beach
3300 Newport Beach Blvd.
P.O. Box 1768
Newport Beach, California 92658-8915

with a copy to:

Pierce O'Donnell
O'Donnell & Gordon
619 South Olive, Ste. 300
Los Angeles, California 90014

FOR SPON AND AWG:

E. Clement Shute, Jr.
Shute, Mihaly & Weinberger
396 Hayes Street
San Francisco, California 94102

At any time, any party may change the person designated to receive notices under this stipulation by giving written notice of such change to the other parties.

1 IV. ENFORCEMENT OF THE JUDGMENT

2 44. The stipulations in the other pending state and
3 federal litigation matters pending among the settling parties
4 shall not be filed until the entry of the Stipulated Judgment
5 authorized by this stipulation.

6
7 45. If a dispute arises concerning interpretation
8 of, or a settling party's compliance with, this Judgment, and if
9 no exigent circumstances require immediate court proceedings, any
10 settling party raising such issue of interpretation or compliance
11 shall provide written notice of such dispute to the other
12 settling parties. Within twenty-one (21) days of the sending of
13 such notice, the parties shall meet in person (or by their
14 authorized representatives) and attempt in good faith to resolve
15 the dispute.

16
17 46. If any such dispute has not been resolved within
18 thirty-five (35) days of the sending of written notice, or
19 if exigent circumstances require immediate court proceedings, any
20 settling party may initiate enforcement proceedings in this
21 action. A settling party seeking to compel another settling
22 party to obey the Judgment must file a Motion to Enforce Judg-
23 ment. The settling parties agree not to resort to, request, or
24 initiate proceedings involving the contempt powers of the Court
25 in connection with a Motion to Enforce Judgment.

26
27 47. If the Court determines that a party is not
28 complying with the Judgment, the Court shall issue an order, in

1 the nature of specific performance of the Stipulated Judgment,
2 requiring the defaulting party to comply with the Judgment
3 within a reasonable period of time. If the defaulting party
4 thereafter fails to comply with such an order, the other settling
5 parties may then seek enforcement under any authorized processes
6 of the Court.

7
8 V. TERM OF AGREEMENT
9

10 48. This stipulation is contingent upon the Court's
11 entry of the Judgment pursuant to this stipulation ("the Stipul-
12 ated Judgment"). If the Stipulated Judgment is not entered, this
13 stipulation shall be null and void, and shall not be admissible
14 for any purpose. Unless terminated at an earlier date in the
15 manner described in paragraphs 49-51 below, this stipulation and
16 Stipulated Judgment shall be effective for the Project Period.

17
18 49. The City, SPON or the AWG may file a Motion to
19 Vacate Judgement if, in any action which they have not initiated:

20
21 (a) Any trial court enters a final judgment which
22 determines that the limits on the number of Regulated
23 ADDs, Class A ADDs, the distinction between Class A and
24 Class AA aircraft, MAP levels or facilities improvem-
25 ents contained in this stipulation, the curfew provi-
26 sions of paragraph 37 of this stipulation, or the
27 provisions of paragraph 38 of this stipulation are
28 unenforceable for any reason, and the any of these

1 stipulated limitations are exceeded;

2
3 (b) Any trial court issues a preliminary injunc-
4 tion which has the effect of precluding implementation
5 or enforcement of the limits on the number of Regulated
6 ADDs, Class A ADDs, the distinction between Class A and
7 Class AA aircraft, MAP levels or facilities improve-
8 ments contained in this stipulation, the curfew
9 provisions of paragraph 37 of this stipulation or the
10 provisions of paragraph 38 of this stipulation, based
11 upon a finding of a probability of making at trial any
12 of the determinations described in subparagraph (a)
13 above, and such preliminary injunction remains in
14 effect for a period of one (1) year or more, and any of
15 these stipulated limitations are exceeded; or

16
17 (c) Any appellate court issues a decision or
18 order which makes any of the determinations described
19 in subparagraphs (a) or (b) above, or affirms a trial
20 court ruling based upon such a determination, and any
21 of these stipulated limitations are exceeded.

22
23 50. The County may file a Motion to Vacate Judgment if
24 the City fails to comply with the provisions of paragraph 41 of
25 this stipulation, or either the City, SPON or the AWG file or
26 participate in a lawsuit or adjudicatory administrative proceed-
27 ing, or assist another person in any such lawsuit or proceeding,
28 for the purpose, or to the effect of impeding implementation of

1 the EIR 508/EIS Project or otherwise take action in violation of
2 paragraph 39 of this stipulation. This provision shall not apply
3 to activities expressly permitted by paragraph 39 of this
4 stipulation.

5
6 51. Pursuant to Rule 60(b) of the Federal Rules of
7 Civil Procedure, the Court shall, after consideration of a motion
8 to vacate judgment, enter an order vacating the Stipulated
9 Judgment if it determines that any of the conditions described in
10 paragraphs 49 or 50 have occurred. Once vacated, the Judgment
11 and this stipulation shall be null and void, unenforceable and
12 inadmissible for any purpose, and the parties will be deemed to
13 be in the same position that they occupied before the Stipulated
14 Judgment and stipulation was executed and entered in respect of
15 this litigation, and they shall have the full scope of their
16 legislative and administrative prerogatives.

17
18 52. The limitations on Regulated ADDs, Class A ADDs,
19 the distinction between Class A and Class AA aircraft, MAP levels
20 and commercial passenger terminal facilities provided for in this
21 stipulation, the provisions of paragraphs 37 and 38 of this
22 stipulation, and the agreements of the City, SPON and AWG not to
23 contest or impede implementation of the EIR 508/EIS Project
24 (paragraph 39 of this stipulation), are fundamental and essential
25 aspects of this settlement, and were agreed upon with full
26 recognition of the possibility that economic, demographic,
27 technological, operational or legal changes not currently
28 contemplated could occur during the Project Period. It was in

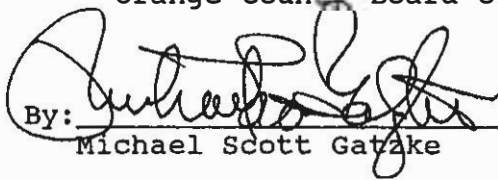
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recognition of these essential aspects of the settlement, and the inability to predict with certainty certain future conditions that the settling parties have agreed to the specific and express provisions of paragraph 49 of this stipulation. The settling parties further acknowledge that this settlement provides for the settling parties to perform undertakings at different times, and that the performance of certain of the undertakings, once accomplished, could not be undone. Accordingly, except as provided herein, the settling parties expressly waive any potential right to seek to modify or vacate the terms of the settlement or the Stipulated Judgment, except by mutual agreement.

Date: 10/11/85

MICHAEL SCOTT GATZKE
MARK J. DILLON
Gatzke, Lodge & Mispagel

Attorneys for Plaintiff and Counterdefendants, the County of Orange and the Orange County Board of Supervisors

By: 
Michael Scott Gatzke

Date: November 18, 1985

PIERCE O'DONNELL*
STEVEN F. PFLAUM
JOSEPHINE E. POWE
O'Donnell & Gordon

*A Professional Corporation

Attorneys for Defendant, Counterclaimant and Crossdefendant, the City of Newport Beach

By: 
Steven F. Pflaum

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[STIPULATION SIGNATURE PAGE CONTINUED]

Date: *November*
18, 1985

E. CLEMENT SHUTE, JR.
Shute, Mihaly & Weinberger

Attorneys for Defendants, Counterclaimants
and Crossdefendants, Stop Polluting
Our Newport and the Airport Working
Group of Orange County, Inc.

By: *E. Clement Shute, Jr.*
E. Clement Shute, Jr.

ORIGINAL

FILED

DEC 13 3 35 PM '85

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
BY HAY

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17 STOP POLLUTING OUR NEWPORT and AIRPORT
WORKING GROUP OF ORANGE COUNTY, INC.

18 UNITED STATES DISTRICT COURT

19 CENTRAL DISTRICT OF CALIFORNIA

20 COUNTY OF ORANGE,)

21 Plaintiff,)

22 v.)

23 AIR CALIFORNIA, et al.,)

24)
25)
26 Defendants.)

27 AND RELATED ACTIONS.)
28)

No. CV 85-1542 TJH (Mcx)

AMENDED PROOF OF SERVICE

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 619 South Olive Street, Suite 300, Los Angeles, California 90014.

On December 12, 1985, I served the within entitled documents described as MEMORANDUM OF POINTS AND AUTHORITIES OF CITY OF NEWPORT BEACH, STOP POLLUTING OUR NEWPORT, AND AIR CALIFORNIA, et al., AIRPORT WORKING GROUP OF ORANGE COUNTY, INC. IN RESPONSE TO OBJECTIONS TO THE PROPOSED STIPULATED JUDGMENT; DECLARATION OF JOSEPHINE E. POWE and APPENDIX OF STATE AUTHORITIES on the interested parties in said action by placing a true copy thereof, enclosed in a sealed envelope, to be delivered by United States Express mail, addressed as follows:

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9 Civil Division
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11 Kenneth Weinstein, Esq.
12 Department of Transportation
Office of General Counsel
13 C-30
Room 4102
14 400 Seventh Street, S.W.
Washington, D.C. 20590

15
16 I declare, under penalty of perjury, that the
17 foregoing is true and correct.

18
19 Executed on December 12, 1985 at Los Angeles,
20 California.

21 
22 Rita A. Greenblatt

23
24
25 *Served by Messenger on the above-referenced date.
26 **Served by Messenger on December 13, 1985.

27
28

1
2
3
4 UNITED STATES DISTRICT COURT
5 CENTRAL DISTRICT OF CALIFORNIA
6

7 COUNTY OF ORANGE,)
8 Plaintiff,)
9 v.)
10 AIR CALIFORNIA, et al.,)
11 Defendants.)

No. CV 85-1542 TJH (MCx)

12 CITY OF NEWPORT BEACH,)
13 Counterclaimant,)
14 v.)

15)
16)
17)
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27)
28)

COUNTY OF ORANGE; ORANGE COUNTY
BOARD OF SUPERVISORS; and DOES
1 through 1,000, Inclusive,
Counterdefendants

AND RELATED COUNTERCLAIMS

FILED
DEC 13 1985
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

ENTERED
DEC 18 1985
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY *JH*

FINAL JUDGMENT ENTERED ON STIPULATION
FOR ENTRY OF JUDGMENT BY CERTAIN SETTLING PARTIES

↙ Docketed
- Mid copy Phys
- Mid Notice Phys
- JS-6

176

1 Pursuant to the stipulation of the parties, and there
2 being no just reason for delaying entry of this Judgment,
3

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:
5
6

7 1. Judgment is hereby entered in favor of the County
8 of Orange and the Orange County Board of Supervisors ("the
9 County"), and against the City of Newport Beach ("the City"), Stop
10 Polluting Our Newport ("SPON"), and the Airport Working Group of
11 Orange County, Inc. ("AWG") on the Fourth, Fifth and Sixth Causes
12 of Action of the County's First Amended Complaint for Declaratory
13 and Injunctive Relief on file in this action, and on the
14 Counterclaims of the City, SPON and AWG against the County as
15 follows:
16
17

18 (a) Orange County Environmental Impact
19 Report 508 and the related Environmental
20 Impact Statement processed by the Federal
21 Aviation Administration are hereby adjudged
22 and decreed to be fully and legally
23 adequate and complete under all provisions
24 of the California Environmental Quality Act
25 ("CEQA") (California Public Resources Code
26 Section 21000 et seq.), the State CEQA
27 Guidelines (14 Cal.Admin.Code Section 15000
28

1 et seq.), the National Environmental Policy
2 Act (42 U.S.C. Section 4321 et seq.), and
3 all relevant or applicable federal
4 implementing regulations for NEPA, for the
5 project described in the EIS and EIR 508,
6 as mitigated by the Board of Supervisors by
7 their Resolutions 85-255, 85-1232, 85-1233,
8 and as further mitigated by the terms and
9 provisions of the parties' stipulation; and
10

11
12 (b) to the extent that the Fourth, Fifth
13 or Sixth Causes of Action of the County's
14 First Amended Complaint, or the
15 counterclaims against the County in this
16 action by the City, SPON and AWG raise any
17 controversies other than the adequacy of
18 EIR 508/EIS under the provisions of CEQA,
19 NEPA and all relevant implementing
20 regulations, such claims and controversies
21 are hereby dismissed without prejudice.
22
23

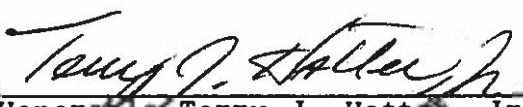
24 2. The provisions of paragraphs 7 through 23, and 26
25 through 52 of the stipulation of the parties consenting to entry
26 of this Judgment are hereby incorporated as part of this Judgment.
27

28 ////

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1 3. The County of Orange, the Orange County Board of
2 Supervisors, the City of Newport Beach, Stop Polluting Our
3 Newport, and the Airport Working Group shall each bear its own
4 costs and attorneys' fees in connection with this litigation and
5 the entry of this Judgment.

6
7
8 DATED: 12/13/85


Honorable Terry J. Hatter, Jr.
United States District Judge

ORIGINAL

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2 Assistant Attorney General
3 Civil Division

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19 Attorneys for the United States of America

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA

22 LODGED
23 DEC 13 3 35 PM '85
24 CLERK U.S. DISTRICT COURT
25 CENTRAL DIST. OF CALIF.
26 BY

27 COUNTY OF ORANGE,
28 Plaintiff,
29 v.
30 AIR CALIFORNIA, et al.,
31 Defendants.

32 UNITED STATES OF AMERICA,
33 Cross-Claimant,

34 v.
35 CITY OF NEWPORT BEACH,
36 STOP POLLUTING OUR NEWPORT,
37 and AIRPORT WORKING GROUP,
38 Cross-Claim Defendants.

Civil Action No.
85-1542 TJH (Gx)

STIPULATION OF
DISMISSAL OF
CROSS-CLAIM BY
THE UNITED STATES
OF AMERICA

ENTERED
DEC 17 1985
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

DEC 16 1985
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

17 DEC 1985
173 0027

Docketed
Mid copy
Mid Notice Pys
12.6

1 1. The United States of America, as the real party federal
2 defendant and cross-claimant, has been advised that the County
3 of Orange (County), on the one hand, and the City of Newport
4 Beach (City), Stop Polluting Our Newport (SPON), and the Airport
5 Working Group of Orange County, Inc. (AWG), on the other hand,
6 have executed a stipulation to implement the settlement of all
7 controversies between them concerning the development and
8 operation of John Wayne Airport (JWA).

9 2. As part of the aforementioned settlement, the City,
10 SPON, and AWG have agreed to dismiss all claims, in both federal
and state courts, and to refrain from bringing any future
claims, that the County violated the California Environmental
Quality Act (CEQA) with respect to various JWA-related projects.

11 3. The foregoing settlement has eliminated the need for
12 this Court to resolve the issues raised in the cross-claim filed
13 by the United States against the City, SPON and AWG.

14 4. Therefore, the undersigned parties agree that, upon the
15 Court's approval of the settlement between the County and the
16 City, SPON, and AWG, the cross-claim of the United States will
17 be dismissed without prejudice, each party to bear its own costs
18 and attorney's fees.

19
20
21
22 PIERCE O'DONNELL
23 STEVEN F. PFLAUM
24 JOSEPHINE E. POWE
25 O'Donnell & Gordon

26 Attorneys for Defendant and
27 Cross-defendant, the City of
28 Newport Beach

Date: Dec. 13, 1985

By: Josephine E. Powe
JOSEPHINE E. POWE

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E. CLEMENT SHUTE, JR.
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Attorneys for Defendants and
Cross-defendants, Stop Polluting
Our Newport and the Airport Working
Group of Orange County, Inc.

Date: December 13, 1985

By: E. Clement Shute Jr. (by JEP)
E. CLEMENT SHUTE, JR.

RICHARD K. WILLARD
Assistant Attorney General
Civil Division

ROBERT C. BONNER
United States Attorney

SURELL BRADY
RAYMOND M. LARIZZA
United States Department of Justice

Attorneys for Defendant and
Cross-claimant, the United States
of America

Date: December 12, 1985

By: Raymond M. Larizza
RAYMOND M. LARIZZA

SO ORDERED, this 16th day of December, 1985

Terrell J. Hatter, Jr.
TERRELL J. HATTER, JR.
United States District Judge

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4
5 I am employed in the county aforesaid; I am over the
6 age of eighteen years and not a party to the within entitled
7 action; my business address is: 619 South Olive Street, Suite
8 300, Los Angeles, California 90014.

9
10 On December 13, 1985, I served the within entitled
11 documents described as STIPULATION OF DISMISSAL OF CROSS-CLAIM BY
12 THE UNITED STATES OF AMERICA on the interested parties in said
13 action by placing a true copy thereof, enclosed in a sealed
14 envelope, to be delivered by United States Express mail, addressed
15 as follows:

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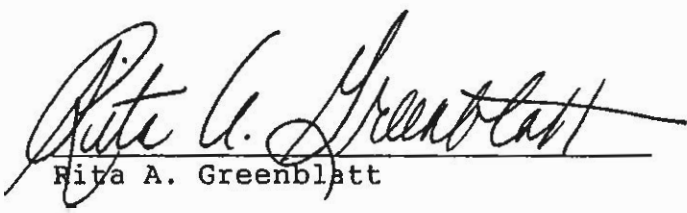
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13 C-30
Room 4102
14 400 Seventh Street, S.W.
Washington, D.C. 20590

15
16 I declare, under penalty of perjury, that the
17 foregoing is true and correct.

18
19 Executed on December 13, 1985 at Los Angeles,
20 California.

21
22 
23 Rita A. Greenblatt

24
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