BENICIA CITY COUNCIL
SPECIAL MEETING AGENDA

Council Chambers
November 22, 2010
8:00 PM

Times set forth for the agenda items are estimates.
Items may be heard before or after the times designated.

I. CALL TO ORDER (8:00 PM):

II. CONVENE OPEN SESSION:

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

III. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

A. ANNOUNCEMENTS

1. Announcement of action taken at Closed Session, if any.

2. Openings on Boards and Commissions:

Sky Valley Open Space Committee: Four full terms to January 31, 2015

Civil Service Commission: Two full terms to January 31, 2015

Planning Commission: Two full terms to January 31, 2015

Parks, Recreation and Cemetery Commission: Two full terms to January 31, 2015

3. **Mayor's Office Hours:**
   Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

B. APPOINTMENTS

C. PRESENTATIONS

D. PROCLAMATIONS

IV. ADOPTION OF AGENDA:

V. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN COMMENT

B. PUBLIC COMMENT

VI. ACTION ITEMS (8:15 PM):

A. REPORT FROM THE ARSENAL SUBCOMMITTEE AND RECOMMENDATION FOR AWARD OF AN AGREEMENT FOR CONSULTING SERVICES FOR THE BENICIA ARSENAL PROJECT AWARD OF AN AGREEMENT FOR CONSULTING SERVICES FOR THE BENICIA ARSENAL PROJECT

With the recent notification from the state Department of Toxic Substances Control that further investigation and remediation is needed for the Benicia Arsenal, the City issued a Request for Qualifications from legal and technical firms to provide the City support on the project. After interviewing the 7 finalists, the team headed by ERS emerged as

the group best suited for the City's needs on the Arsenal Project. The Council Subcommittee recommends that an initial agreement be awarded to the team with a not to exceed of $10,000 for out of pocket expenses.

Recommendation:

(1) Adopt the Resolution approving an agreement with ERS Corporation for consulting services for the Benicia Arsenal investigation and potential cleanup project and authorizing the City Attorney to sign the contract on behalf of the City; and

(2) Place a standing item on the Council's agenda for a report on the Arsenal.

VII. ADJOURNMENT (10:00 PM):

Public Participation

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Anne Cardwell, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description

of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerks Office.

AGENDA ITEM
CITY COUNCIL MEETING DATE - NOVEMBER 22, 2010
ACTION ITEMS

DATE : November 17, 2010

TO : City Council

FROM : City Attorney

SUBJECT : **REPORT FROM THE ARSENAL SUBCOMMITTEE AND RECOMMENDATION FOR AWARD OF AN AGREEMENT FOR CONSULTING SERVICES FOR THE BENICIA ARSENAL PROJECT AWARD OF AN AGREEMENT FOR CONSULTING SERVICES FOR THE BENICIA ARSENAL PROJECT**

RECOMMENDATION:
(1) Adopt the Resolution approving an agreement with ERS Corporation for consulting services for the Benicia Arsenal investigation and potential cleanup project and authorizing the City Attorney to sign the contract on behalf of the City; and
(2) Place a standing item on the Council's agenda for a report on the Arsenal.

EXECUTIVE SUMMARY:
With the recent notification from the state Department of Toxic Substances Control that further investigation and remediation is needed for the Benicia Arsenal, the City issued a Request for Qualifications from legal and technical firms to provide the City support on the project. After interviewing the 7 finalists, the team headed by ERS emerged as the group best suited for the City's needs on the Arsenal Project. The Council Subcommittee recommends that an initial agreement be awarded to the team with a not to exceed of $10,000 for out of pocket expenses.

BUDGET:
There are sufficient funds to cover the $10,000 for expenses in the City Attorney's budget. It is anticipated that some or all of this may be reimbursed at a future date.

GENERAL PLAN:
Relevant General Plan Goals and Policies include:

- Goal 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the

City and the community while maintaining health, safety, and quality of life

- Goal 4.7: Ensure that existing and future neighborhoods are safe from risks to public health that could result from exposure to hazardous materials.
  - Policy 4.7.3: Protect existing and future development from contaminated sites, hazardous landfill waste and debris, chemical spills, and other hazards including unexploded ordnance and explosive waste.
  - Policy 4.7.5: Require that all sites known or suspected to have unexploded ordnance and/or a toxic history be tested and remediated before any development can occur.

STRATEGIC PLAN:
Relevant Strategic Plan Goal:

- Strategic Issue #1: Protecting Community Health and Safety

BACKGROUND:
On October 25, 2010, the City issued a Request for Qualification for legal and technical support for the Benicia Arsenal project. A total of 16 firms responded. The firms were:

- Musick, Peeler & Garrett, LLP;
- Richards, Watson & Gershon;
- Brownshein Hyatt Farber, Schreck;
- Best, Best & Krieger;
- Paladin Law Group, LLP, teamed up with Amec;
- Hanson Bridgett, LLP;
- Thomas White Law;
- Farella Braun & Martel, LLP, with a team consisting of Marten Law, and Daniel Stephens & Associates, Inc.;
- Brooks-Street, with a team consisting of Northgate Environmental Management, Keadjian Associates, Holland and Knight and retired General Elvin Heiberg, III;
- Cox, Castle & Nicholson, LLP, teamed up with Erler & Kalinowski, Inc.;
- Wendel Rosen, teamed up with Baseline;
- Meyers Nave;
- Allen Matkins teamed up with ERM;
- ERS, teamed up with Briscoe, Ivester & Brazel LLP, Garrett & Knisely, Dongell Lawrence Finney LLP, Engineering/Remediation Resources Group;
- CDM and;
- Geosyntec teamed up with Downey Brand.

Copies of the proposals are available on line at www.ci.benicia.ca.us/arsenal .

The Council Subcommittee met on November 8 and reviewed the proposals and selected 7 firms to interview. Interviews were conducted on November 10 and 11. All of the firms, both those interviewed and those not interviewed, have excellent qualifications.

Based on the interviews, the proposal and the qualifications of the team members, it is recommended that an agreement be awarded to the ERS team. ERS has a background in environmental engineering and scientific background as well as an insurance division. The team includes Briscoe, Ivester & Brazel LLP, Garrett & Knisely, Dongell Lawrence Finney LLP, Engineering/Remediation Resources Group so a full range of services is available. A summary of the team members is available in their proposal beginning on their page 15 of 23. The team has the capacity to provide the necessary services to assist the City in assessing and managing the potential liabilities and risks associated with the state Department of Toxic Substances Control ("DTSC") proposed action. While the firm is not a registered lobbyist they can assist the City in lobbying and supporting legislative solutions. The firm is a registered insurance broker and can assist with purchasing insurance as well as reviewing past insurance.

Because the ERS team is confident that the necessary work can be done with very little cash spent by the City, the initial contract is for $10,000. The $10,000 will be used for expenses and out of pocket costs incurred by ERS. The ERS team will look to insurance, indemnity agreements and other potential arrangements to cover the full cost of their work. Their work will include reviewing existing documents, tracking down other funding sources, representing the City at meetings as well as providing public information and participation services. Of course, the contingency arrangement agreed to by ERS is not without bounds: any remedial work ERS does will not exceed the cost of any funds we obtain. If we have not obtained a cost cap policy and have exceeded any funds we have found, we will have to find funds for the work.

One of the options for financing characterization and remediation as well as public outreach and other financing needs mentioned by most of the firms submitting proposals was insurance. Although the City is currently self-insured, in the past the City purchased general insurance. It may be that the City's old policies will provide coverage for the investigation and any remediation of City facilities. We already have much of the necessary insurance documents available since they were also used for the Acme Landfill case of a decade ago. The consultant team will receive the insurance policies and make the necessary tenders to the insurance companies to get access to the insurance funding. The consultant will research to locate other items of evidence of insurance coverage such as non-traditional evidence e.g. leases or other items mentioning possible responsibility of a party.

The City's affirmative duty and primary goal is to protect public health and safety and ensure efficient and effective cleanup of the Arsenal without adverse impacts on economic activities and businesses. With these principles in mind it appears that a collaborative approach, working with other Potentially Responsible Parties and the regulators like the State Department of Toxic Substances Control, will lead to the best result of protecting public health and safety and minimizing disruption to businesses. The ERS team proposes a collaborative approach that will protect the City from liability to the extent possible while working with and providing support to property owners who may not have access to the resources the City has. ERS's has a focus on projects that are military sites and cleanup and they have developed creative and innovative strategies for achieving clean up needs while avoiding costs to local jurisdictions and unnecessary expense to current property owners.

A draft scope of work is attached to the proposed agreement. The scope mentions the Polanco Act as being a potential route to cleaning up the properties. The California Polanco Redevelopment Act applies to redevelopment areas to allow cleanup agreements. It also provides extensive immunities and cost recovery programs that may be worth investigation. Similarly, the CERCLA 120 (f) requires the Department of Defense to allow the city to participate in the planning and selecting of the remedial plan. We will develop a definition sheet for these laws and acronyms similar to what we did with the Tourtelot project to help assist the Council and public.

To assist with the public participation efforts, the City's website already has a page devoted to this project. As noted above the location of the Arsenal page is www.ci.benicia.ca.us/arsenal. On this page, people may not only access reports and documents related to the project but may also sign up to be alerted when information is added. Other documents of interest will be added as time goes on. In addition, if approved by the City Council, a regular report will be added to the City Council's regular meetings to provide the subcommittee with an opportunity to update the public on items related to the project.

It is anticipated that the standard city contract terms will be used with modifications to address the contingency arrangement and other special terms. For example, case law requires the City Attorney to retain (1) complete control over the course and conduct of the case; (2) a veto power over any decisions made by outside counsel; and (3) must be personally involved in overseeing the litigation. A draft agreement is attached, but it has not yet been reviewed by ERS. If significant deviations from the standard contract are desired, the agreement will be brought back to the City Council.

Attachments:

- Resolution

- ERS Proposal
- Draft Agreement

VI.A.6

RESOLUTION NO. 10 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AWARDING THE CONSULTANT AGREEMENT TO ERS CORPORATION FOR THE BENICIA ARSENAL CLEANUP PROJECT AND AUTHORIZING THE CITY ATTORNEY TO SIGN THE CONTRACT ON BEHALF OF THE CITY

WHEREAS, the City issued a Request for Proposals for legal and technical support for the Benicia Arsenal Project and 16 responses were received; and

WHEREAS, seven firms were interviewed; and

WHEREAS, the Council Subcommittee recommends that the agreement be awarded to ERS Corporation.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby awards the agreement to ERS Corporation and authorizes the City Attorney to execute the agreement subject to minor changes.

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On motion of Council Member _____ and seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 22th day of November, 2010 and adopted by the following vote.

Ayes:

Noes:

Absent:

_____
Elizabeth Patterson, Mayor

Attest:

_____
Lisa Wolfe, City Clerk

VI.A.8

November 4, 2010

Heather McLaughlin
City of Benicia
City Attorney
250 East L Street
Benicia, CA 94510

RE: Request for Qualifications – October 25, 2010
Proposal for Project Management and Legal Services
Benicia Arsenal Investigation and Cleanup Project

Dear Ms. McLaughlin,

ERS prepared this proposal in response to your RFQ to assist the City of Benicia in meeting its goals and objectives at the Benicia Arsenal. Based on our understanding and experience with the issues, and our relationships with senior members of the stakeholders, we offer a comprehensive strategy to reach an agreement with all the relevant parties – the City of Benicia and the private property owners, the United States Army Corps of Engineers, and the California Department of Toxic Substances Control. Our strategy is focused on obtaining a voluntary cleanup agreement and provides alternatives that could also be pursued in parallel. Our goal is to provide the City with services that will result in the successful funding to remediate environmental liabilities at the Arsenal in a timely manner.

This Proposal is structured in accordance with the RFQ's Sections III and IV, and includes an Appendix containing additional detail on the firms and key personnel that comprise our team. This Proposal also attempts to adhere to the RFQ's request for brevity and, consequently, we do not recite what is known technically about the various environmental conditions at the Arsenal. Rather, this proposal briefly describes the bigger picture issues that provide the basis for the strategy we present. This proposal also constitutes just that—a proposal. We would welcome the opportunity to work with the City to better define our goals and objections, and to refine the team so as to best meet those goals and objectives.

Our Team is located strategically near the key stakeholders and decision makers affecting this project. The Project Manager and two legal firms are located near the City of Benicia and Sacramento for USACE and the regulatory agencies, and one legal team is located near the Pentagon in Washington, DC. The key personnel within the ERS Team are proposed as follows:

- Mark O'Brien and Steven Michelson with *ERS Corporation* in Walnut Creek, California
  - Extensive relations and experience with USACE (District and Division level), DoD, and DTSC
  - Program and project management, technical services evaluating and allocating environmental impacts and remediation costs, negotiations
- John Briscoe and Larry Bazel with *Briscoe Ivester & Bazel LLP* in San Francisco, California
  - Extensive relations and experience with USACE (Division and District level), DTSC, and DOJ

- Provide legal services and negotiations on regulatory matters and environmental liabilities and compliance

- David Knisely with Garrity & Knisely in Boston, Massachusetts
  - Extensive relations and experience with DoD (Pentagon level) and DTSC
  - Provide legal services and settlement negotiations with DOJ and USACE
- Tim Swickard with Dongell Lawrence Finney LLP in Sacramento, California
  - Extensive relations and experience with DTSC and DOJ
  - Provide legal services and settlement negotiations with DTSC and DOJ
- Mark O'Brien with QRS Corporation in Walnut Creek, California
  - Extensive relations and experience with the Pentagon and DTSC
  - Broker environmental insurance to transfer risk and bring cost certainty to stakeholders
- Brad Hall with Engineering/Remediation Resources Group, Inc. in Martinez, California
  - Provide technical services regarding UXO and MEC

Key personnel within ERS and Garrity & Knisely (not the larger corporate resume) have all played leadership roles in more than 50 negotiations with the Department of Defense that have resulted in the successful transfer of real property and sufficient federal funds to cover the cost of remediation. These negotiations required concurrence with local governments, DTSC, the Regional Water Quality Control Board, CalEPA, the California governor's office, and the public. While your project does not involve the transfer of real property (which occurred in the 1960s), it involves very similar environmental issues and, with the exception of the Base Realignment and Closure program (BRAC), it involves the same regulations, policies, and government personnel. Key personnel within Briscoe Ivester & Bazel have also played key roles in advising the City and in negotiations on military base transfers and with the California environmental regulatory community.

We look forward to working with you.

Regards,
ERS Corporation

Mark O'Brien
CEO

Steven Michelson, PG
Principal Consultant

Attachment

VI.A.10

PROPOSAL

Project Management and Legal Services

Investigation and Cleanup Project

Benicia Arsenal

November 4, 2010

ers

THE CITY OF BENICIA CALIFORNIA

VI.A.11

INTRODUCTION

The nearly 3000 acre Benicia Arsenal was operated by the US military for nearly 100 years and was transferred to the City of Benicia in the 1960s. Typical of military bases, significant environmental contamination, both chemical and unexploded ordnance (UXO, including munitions of environmental concern or MEC) were released at the Arsenal. To date, nearly 400 environmental sites have been identified and the US Army Corps of Engineers (USACE) has implemented several environmental investigations, some limited remediation, and a munitions cleanup program. The California Department of Toxic Substances Control (DTSC) considers many of the investigations to be incomplete and that the significant environmental impacts remaining at the Arsenal warrant further remediation.

USACE has implemented its environmental program to date in accordance with the Formerly Used Defense Sites (FUDS) policy. Based on this policy and the environmental conditions, USACE asserts that it is no longer responsible for implementing additional work at the Arsenal. Because the City of Benicia and private entities now own the land that comprised the Arsenal, the DTSC is pressuring the current land owners to investigate and remediate the existing environmental conditions at the Arsenal, including those caused by the military.

In response, the City of Benicia seeks assistance to reach an agreement with the US Army and DTSC "for characterization and standards for clean up and implementations." We have interpreted this goal to have two discrete, yet fundamentally related elements, wherein the agreement will:

- Require the US Army to fund the completion of investigation and remediation activities of environmental impacts due to military activities and to implement this effort without delay,
- Establish cleanup levels with the DTSC.

Reaching these goals should provide some certainty to the City of Benicia and those owning land (City) at the Arsenal because the City will not bear the burden of remediating DoD environmental liabilities and all parties will be held to the same, known, cleanup levels.

APPROACH and SCOPE OF WORK

The ERS Team has developed the following approach based on our understanding of:

- City of Benicia and other stakeholder goals and objectives
- FUDS policy and its effect on the USACE
- USEPA and CalEPA regulations, including those of DTSC and the Regional Water Quality Control Board
- Legal liabilities and remedies
- Insurance options

- Experience of the ERS Team.

We have identified two different approaches or tracks, one that seeks an Agreement with the USACE, and one that seeks recovery from insurance policies that the City, its tenants, or buyers of Arsenal property might maintain. Both tracks rely heavily on a thorough technical evaluation of the environmental conditions. If only partial insurance coverage is available, then the Agreement track with USACE may also be invoked. Under this scenario, with partial insurance coverage, the USACE may be more willing to negotiate because of the reduced cost.

The interrelationships between, and the key decision points within, the insurance, agreement and technical tracks are summarized in a flow chart at the end of this section.

SOLUTION ORIENTED APPROACH

ERS and its Team members have a proven track record to reaching win-win agreements between municipalities, the DoD, and state regulatory agencies. Key elements of our solution oriented approach are:

- Develop low cost remedies that the military has available to them because of efficiencies and creative scientific/engineering solutions in the private sector
- Obtain Insurance to transfer risk and cap remediation costs and environmental liabilities. This provides a high level of assurance to the regulatory agencies that sufficient funds will be available to address known and unknown contaminants, and provides the military and City with cost certainty.
- Make claim against prior insurance policies to cover some remediation efforts to reduce DoD, City, tenant, or owner costs.
- Prepare Special Legislation to compel the USACE to cooperate, which requires coordination with local, state, and federal representatives to create.
- Our high level of trust with senior members of the military will be key to negotiating successful agreements.
- Based on past transactions with the military, ERS has successfully recovered our client's transaction costs, including technical, legal, and insurance premium costs.

We also have experience obtaining alternative sources of federal funding to remediate properties encumbered with legacy military environmental liabilities. In addition to the insurance option that we detail below, options for federal funds beyond the USACE FUDS program include special legislation, Pentagon operating budget, and the mothball facility budget.

TECHNICAL TRACK

The Technical Track will support both the Agreement Track and the Insurance Track and has two overall goals:

- Allocate the environmental liability and remediation costs between the USACE, the City, and private owners or tenants.
- Obtain agreement from the DTSC and the USACE defining cleanup levels for contaminants at the Arsenal.

Fulfilling these two technical goals will bring certainty to negotiations with the USACE, DTSC, and the insurance companies.

Allocation of Liabilities

The technical effort to allocate liability will:

- Identify the remaining environmental impacts and risks associated with the military's activities at the Arsenal,
- Separate the military's liabilities from those caused by the City (if any) or private land owners,
- Estimate the cost to remediate and achieve closure of the military's environmental impacts.

We have found in the past that the military's assessment of its environmental liabilities has not been comprehensive and typically underestimate the risk and cost to remediate significantly. For example, on behalf of the City of Concord, ERS evaluated original military documents and third party reports (e.g. newspaper articles, magazine articles, books, interviews, etc.) to independently identify potential issues of environmental concern at the Concord Naval Weapons Station. We then compared our findings with those identified by the Navy and found the military's list to be severely lacking.

Based on our experience, we propose a similar effort at the Arsenal.

- First, we would review information describing the history of operations at the Arsenal to identify all potential environmental liabilities. This review would encompass all documents made available from the military, and review of records in libraries and museums, including newspapers and independent research.
- Second, we would compare our findings with those published by the military. It is quite likely that this comparison will show many potential sites not evaluated to date by the USACE.
- Third, we would identify significant data gaps, and estimate potential risks posed by these sites.
- Fourth, we would estimate the cost to remediate those sites already known to the DTSC. Estimated costs will be provided for all sites that will require remedial action, including all those that the USACE (and its contractor Brown and Caldwell) deemed as no further action. Between

the third and fourth steps, we may recommend that data be collected in the field to determine if the potential site actually poses a risk, but these costs are excluded from this proposal.

The allocated liabilities and estimated remediation costs from step four above, perhaps coupled with an insurance product to transfer the risk of cost overruns away from the City, private landowners, and the USACE, would be the basis for a VCA and possibly an ESCA with the military. The insurance would also give the DTSC confidence that sufficient funding would be available to remediate the Arsenal in the event of cost overruns or discovery of currently unknown contamination (or other contingencies). This information will also inform the effort to bring public pressure to bear upon the military and USACE.

The environmental insurance coverage would include:

- Pollution Legal Liability Coverage: This policy would protect all of the stakeholders against liabilities associated with unknown contamination.
- Remediation Cost Cap Coverage: This policy would provide coverage for cost over-runs associated with known contamination.
- Other benefits associated with these policies include coverage for MEC conditions, business interruption, 1st and 3rd party liability, property damage, off-site impacts, regulatory re-openers, and non-owned locations.
- Based on our experience, environmental liability coverage has been the *key* to assure protection for all stakeholders (including regulatory agencies) against any liabilities associated with environmental conditions. It allows all parties to cap their environmental liabilities.

Low Cost and Faster Implementation of Environmental Remedies

ERS has considerable experience developing creative solutions that provide significantly lower remediation costs than could be obtained by the military. In addition to the considerable efficiencies that the private sector can provide in comparison to federally managed environmental remedies, our creative approaches to reduce remediation costs, have included:

- Establish Land Use Covenants restricting use to commercial or industrial operations
- Design the remediation effort in concert with any redevelopment plans, such as locating a pavement feature where a remedial cap would be constructed.
- Consolidate waste onsite to reduce remediation costs and eliminating multiple sites that require similar long term monitoring and maintenance
- Establish natural background concentrations of chemicals to provide framework for evaluating risk and a sensible cleanup standard for metals and some typical prevalent organic compounds
- Alter the zoning to reduce remediation costs by relocating residential and schools away from significant contamination.

- Implement the remedy as part of the redevelopment construction.

Development of Cleanup Levels

DoD typically performs very costly and detailed human health risk assessments (HHRA) and ecological risk assessments (ERA) to evaluate risk and establish appropriate cleanup levels for a site. These assessments are typically loaded with assumptions, controversial, and fraught with costly debate between consultants and regulators. Instead, there already exist well-established chemical specific concentrations that are widely used to screen risks:

- USEPA's Regional Screening Levels (RSLs), formerly called Preliminary Remediation Goals (PRGs), address concentrations in soil, air, and water.
- DTSC's California Human Health Screening Levels (CHHSLs) address concentrations in soil, though these are not consistently applied by DTSC and some staff prefer the RSLs.
- Regional Water Board's Environmental Screening Levels (ESLs) address concentrations in soil and ground water.
- OSHA and the USEPA have also established indoor air quality standards, which can be predicted based on soil gas concentrations.

While none of the above standards are formal remediation cleanup levels, in practice they are widely used as such because exceeding these concentrations is an indication of a potentially significant risk. Thus, concentrations below these levels would be indicative of no potentially significant risk. It is important to note that because risks can be compounded among multiple chemicals, use of these screening levels becomes somewhat more complicated when there are several chemicals at or near the screening level. Nonetheless, in general it is far simpler and cost effective to abide by these levels when designing a remedial action. In those cases where a chemical does not have a screening level, though not common can happen, then an HHRA and ERA may be necessary, depending on the proposed land use.

In addition to using established screening levels, we would also characterize background concentrations for some common inorganic and organic compounds that are at the Arsenal, such as lead, arsenic, and polynuclear aromatic hydrocarbons (PAHs, sometimes called PNAs). Finally, ERS has routinely and successfully developed background concentrations at many former military sites in California and environmental regulations cannot compel remediation to a concentration below background.

We note that nearly all metals and some radionuclides have a natural background concentration because they are associated with geologic materials. Some PAHs have a natural background concentration because they are a consequence of fire. There are many areas of California where natural background concentrations exceed screening levels. Therefore, establishing background concentrations at a remediation site is a critical early step in developing site specific cleanup levels. There are many chemicals that are considered unnatural and without a background concentration, which would then default directly to the established screening levels.

AGREEMENT TRACK

Our approach is centered on developing a **Voluntary Cleanup Agreement** (VCA) with the City, USACE (including the US Army), and DTSC. In the event the USACE is reluctant to directly engage in a VCA, we recommend pursuing the related **PRP Process** available within the FUDS policy, which requires US Department of Justice (DOJ) involvement. These approaches are similar in their technical needs, and with the exception of the DOJ, involve the same parties and most of the strategic elements. The main difference is likely to be the additional time and transactional costs associated with the more formal PRP Process.

The ERS Team has the experience and relationships to pursue the VCA or PRP Process with the USACE. Furthermore, we have successfully negotiated similar agreements with the military. Almost all of these agreements required us to implement the following steps to motivate all parties to approve and sign:

- Creative approaches that reduce remediation costs, for example:
  - Implement Land Use Covenants restricting use to commercial or industrial operations
  - Coordinate the remediation effort to the redevelopment plan, such as locating a pavement feature where a remedial cap would be constructed
  - Consolidate waste onsite to reduce remediation costs and eliminating multiple sites that require similar long term monitoring and maintenance
  - Establish natural background concentrations of chemicals to provide framework for evaluating risk and a sensible cleanup standard for metals and some typical prevalent organic compounds
  - Alter the zoning to reduce remediation costs by relocating residential and schools away from significant contamination
  - In practice, investigation and remediation costs performed by the private sector are significantly lower than when performed by the federal government, including USACE. Furthermore, the overall cost to remediate contamination caused by military and non-military activities in a single design, implementation, and documentation effort would be much lower than if performed separately. For these reasons we have routinely been successful in receiving federal funds to implement a lower cost, more efficient, and faster tracked remediation effort.
- Acquire federal funds for remediation
  - We have successfully negotiated many Environmental Services Cooperative Agreements (ESCA) that transfer funds from the Pentagon and cover remediation costs
  - All of our agreements to date have included sufficient funds to reimburse our client's upfront transaction costs, including environmental consulting, legal support, and insurance

The City is under increasing pressure from the DTSC to remediate the Arsenal, and from those owning land and/or seeking to develop land in the Arsenal to obtain an agreement for federal funding. Alleviating the environmental impacts at the Arsenal would remove a significant obstacle to redevelopment, which is in the economic interest of the City.

DTSC

Remedial Investigations have identified significant widespread environmental impacts and risks at the Arsenal. Consequently, the DTSC has been increasing its pressure upon the City, and to some extent USACE, to compel remedial action. According to USACE, DTSC understands the USACE position with regard to the FUDS policy (see below), and believes that the PRP option, with support from the United States Department of Justice (DOJ), is more likely to obtain some federal funding of the remedy.

USACE

USACE asserts that under FUDS, they are not responsible for the remaining chemical contamination at the Arsenal that is also co-incident with contamination sourced after the facility was transferred in the 1960s, even if that contamination is due to historical military activities. The USACE also concludes that most, if not all, of the remaining contamination due solely to military activities and not co-incident with post-transfer activities does not rise to the level of significant risk and does not warrant remediation. DTSC does not agree with this USACE conclusion. The USACE states the cleanup of munitions (UXO, MEC) at the Arsenal is complete, which is consistent with the limited additional UXO (reportedly 3 or 4 items) that have been identified in the last few years. Discovery of UXO at this rate is similar to what is found at the Presidio in San Francisco and does not rise to the level of a significant UXO or MEC site. As required, the USACE will continue to respond and remove UXO as it is encountered.

FUDS Policy

Put simply, the FUDS Policy requires the USACE to clean up environmental impacts that are:

- Due solely to military activities
- Not comingled with non-military activities, which is described as "Beneficial Use"
- The contaminants have applicable preliminary remediation goals (PRGs) or maximum contaminant levels (MCLs)
- UXO and MEC, without exception.

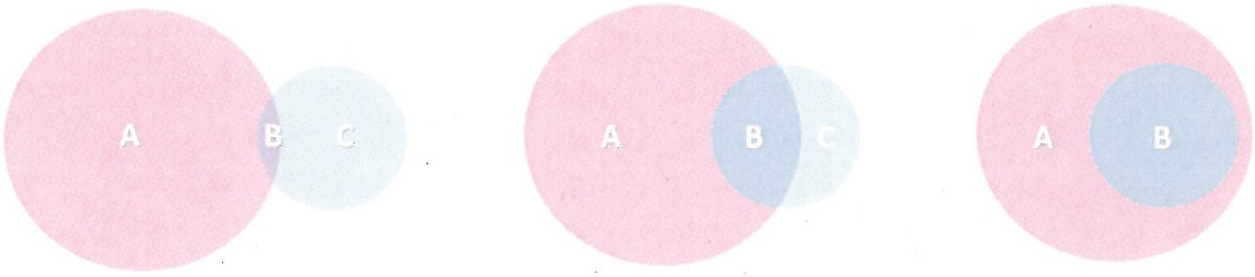
Put another way, the FUDS policy allows the USACE to avoid responsibility for environmental impacts due to military activities where those impacts are comingled with contamination caused by non-military activities.

For those sites with comingled contamination, the FUDS policy provides the PRP Process with the primary goal to "resolve DoD liability in a DOJ coordinated settlement providing DoD a complete release from all claims" (FUDS Policy, 2004). At its core, the PRP Process allocates the comingled environmental impact between the various responsible parties and requires the USACE to clean up the allocated share

of environmental impacts due to military activities. This process can be formalized in a Consent Decree between the Army, USACE, and the private parties. The Consent Decree also could be extended to include the DTSC, which would likely reduce transaction costs and restrict the DTSC to require cleanup in strict accordance with the PRP Process agreement.

Either approach, VCA or PRP Project, will rely heavily on a technically-based allocation of environmental impacts between the military and non-military activities. Below is a schematic of some possible findings from the technical evaluation of environmental conditions at the Arsenal.

Possible Allocation of Responsibility for Environmental Contamination



A = Contamination sourced solely from military operations at the Arsenal

B = Contamination comingled from both the Arsenal and City of Benicia, including private land owners

C = Contamination sourced solely from the City of Benicia, including private land owners

A + B + C = All of the contamination at the Arsenal

At a minimum, the VCA and the PRP Process will formalize the allocation of responsibility within the B area, which represents comingled contamination. As represented above, the amount of contamination due solely to the military, solely to the City and private sector, or comingled, is not currently well understood. Due to comingling, we note that the USACE identified 23 No DoD Action Indicated (NDAI) sites (Area B) in the 2004 Site Investigation Report. There is considerable disagreement between the USACE and the DTSC at 32 non-comingled sites (Area A) regarding the need for further action. Continued delay towards closure of these liabilities hampers the redevelopment of the Arsenal and economic conditions of the City.

Legal Issues and Strategies to Consider

The environmental impacts at the Arsenal, the transfer of the property to the City, the sale of some property to private parties, and the slow pace of environmental cleanup all pose potential legal liabilities and economic impact to the City. We suggest that the City should consider addressing these in the overall project, some which could be addressed in the agreement. These issues and approaches are listed according to the sources of contamination, represented as Areas A, B, and C above.

<u>Area A Issues and Strategies</u>

- Under FUDS, all environmental liabilities are the responsibility of the USACE to remedy. However, disagreements continue between the USACE and DTSC as whether or not the sites

require further action. Without formal DTSC closure of these liabilities, the sites are unlikely to be developed, which could impact the City's economy. The City's options to consider:

- Include requirements in the Agreement that compels the USACE to prioritize funding to promptly obtain closure with DTSC.
- Pursue legal remedy against USACE due to the transfer of contaminated property, associated environmental risks, economic impacts, etc.
- Utilize the Anti-Deficiency Act (ADA) to demonstrate that the USACE spent money for the wrong purpose by not prioritizing the environmental cleanup at the Arsenal, and thereby compel the USACE to prioritize cleanup at the Arsenal.
- Review the documents that transferred the Arsenal to the City to identify environmental obligations of the Army. If the Army retained obligations then those could be pursued.
- Review the City's insurance policies in place at the time of the transfer of the Arsenal for environmental exclusions. If there are no exclusions then environmental issues are considered included, and the City could pursue the policy to cleanup environmental impacts, including those due solely to military activities.

- Technical evaluation would characterize the environmental impact and estimate the cost to remediate.
- The City may be vulnerable to legal claims and remedies for selling or leasing contaminated property to a private party, which include diminution of property value and/or significant human health risks due to exposure.
  - Agreements from the VCA or PRP Process should preclude such claims.
  - Review sales and lease agreements between the City and private buyers and lessors and associated insurance policies and certificates for environmental obligations. These policies may provide opportunities to the City to cover remediation costs and protection from environmental claims.

<u>Area B Issues and Strategies</u>

- All of the issues associated with Area A apply to Area B, plus the following.
- Under FUDS, the PRP Process is used to address the DoD's liabilities for comingled environmental impacts.
  - We recommend pursuing a VCA before deciding to implement the PRP Process
- Technical evaluation will characterize all environmental impacts and allocate the impact between the military, the City and/or the private entity that leased or purchased the property. Costs to remediate all contamination will be estimated.

Area C Issues and Strategies

- Review sales and lease agreements between the City and tenants and associated insurance policies and certificates for environmental obligations. These policies may provide opportunities to the City to cover remediation costs and protection from environmental claims.

Legal Approach

The attorneys could begin negotiations immediately with their counterparts at the USACE, Pentagon, and DTSC.

- The objective of discussions with the USACE is to better understand their legal position, identify paths toward the VCA, and to make the USACE aware of the claims the City and property owners could file to recover damages for injury and remediation costs incurred to cleanup military environmental liabilities.

- The objective of discussions with the Pentagon is to make them aware of the remaining environmental issues at the Arsenal and to utilize existing relationships to bring pressure on the USACE to sign a VCA.

- The objective of discussions with the DTSC is to calm the delay orders and/or fines pending an agreement and source of funding. Making the DTSC aware of some of the general approach may be necessary in order to gain their support.

In the case the preferred voluntary agreement process is found to be infeasible, the legal team would pursue the USDOJ PRP Project approach. Here, the USDOJ gets involved to allocate the comingled liability between the DoD/USACE and current landowners, which are both PRPs. The allocation becomes the basis for a settlement that requires the DoD/USACE to cover their share of the remediation costs. These allocations are usually formalized in a USDOJ Consent Decree, which in rare cases includes DTSC in a Fed/State Joint Consent Decree, that we would negotiate for the City.

Following the transfer of the Arsenal to the City, the City sold or leased portions of the Arsenal to private parties. It is possible that these parties could claim damages against the City for receiving contaminated property and/or being exposed to chemicals that pose(d) a human health risk. At the discretion of the City, the legal team could begin to formulate strategies to protect the City from such claims. These protections could also include the insurance policies the City has or had in place at the time.

We recommend that the City consider delaying the start of VCA discussions with USACE until the first steps in the insurance and technical tracks are completed. This delayed start would allow the City to be better informed regarding the extent of the comingled contamination and the possibility for insurance to cover some or all of the remediation costs without involving the USACE. Assuming insurance is available to cover some portion of the environmental remediation, the likely effect would be to reduce cost to the federal government and encourage USACE to support the VCA.

The Role of Insurance to Support Agreements with DoD and DTSC

Insurance has played a *critical role* in many of the base transfers and liabilities associated with environmental conditions. It gives all parties a level of protection against costs and liabilities associated with both known and unknown pollution conditions.

Insurance allows DoD to cap their costs associated with both their known and unknown environmental liabilities. It provides them with the comfort that they will not have to return to the site due to ongoing unfunded environmental liabilities.

Insurance also provides DTSC with the assurance that adequate funds will be available to clean-up the site, even if the money provided by USACE is not sufficient, or if other stakeholders were to declare bankruptcy.

The Role of Public Relations

We propose to work closely with the City to inform the public and private property owners of the legacy environmental impacts associated with the military's use of the Arsenal. We also suggest that these efforts be oriented to organize and encourage the public to bring pressure on the military to assume proper responsibility for their historical actions. With a compelling technical argument, sufficient public pressure, the prudent legal actions, the USACE could be compelled to simply "do the right thing" and either take on the remedy themselves or use an ESCA to fund the remedy by the City.

The Role of the Team's Relationships

Successful implementation of the above strategy will rely on the strength of our team's relationships with decision-makers within the Pentagon, USACE, DOJ, and DTSC. Reaching a final agreement with the various parties will require extensive negotiation and trust among all parties. Our team offers established relationships with all key stakeholders, with the exception of the private landowners and public. The following table highlights those relationships.

Stakeholder		Team Member
City of Benicia	Mayor and Attorney	John Briscoe, Mark O'Brien
USACE – Sacramento District	Engineering and Environmental Section Chief and Technical Manager (Bruce Handel)	Steven Michelson
USACE – South Pacific Division	General Rock Donahue	John Briscoe, Mark O'Brien
	Sr Aides: Paul Robershotte and Pat Oyabe	John Briscoe
	Environmental Chief (Bruce Handel – as of Dec 2010)	Steven Michelson
Pentagon	US Army Attorneys and General	David Knisely, Mark O'Brien

US Department of Justice	Various Attorneys	David Knisely, Mark O'Brien John Brisoe, Larry Bazel, Tim Swickard,
CA DTSC	Attorneys, Senior Management, and Staff	Mark O'Brien, Steven Michelson David Knisely, Tim Swickard
Regional Water Board	Attorneys, Senior Management, and Staff	Mark O'Brien, Steven Michelson Larry Bazel, David Knisely

INSURANCE TRACK

Based on review of Arsenal transfer documents, sales and lease agreements and current and former insurance policies, (including the City's and former and current land owners' and tenants' policies) we would determine if the environmental liabilities could be reimbursed by making a claim against *non pollution exclusion policies*.

Page 14 has been omitted from this document.

DESCRIPTION OF ORGANIZATION, MANAGEMENT and TEAM MEMBERS

ERS has assembled a team of firms offering relevant, successful, and highly experienced technical and legal services. This section summarizes our team and the appendix contains a detailed Statement of Qualifications for each firm. The ERS Team consists of:

Company	Primary Role	Sr Key Personnel	Services
Environmental Risk Services (ERS)	Prime	Mark O'Brien Steven Michelson	Program Management Project Management Technical environmental services
Briscoe Ivester & Bazel	Legal	Tom Briscoe Larry Bazel Christian Marsh	Negotiations with USACE and DOJ Defense from third party claims Environmental Compliance
Garrity & Knisely	Legal	David Knisely	Access to the Pentagon Negotiations with USACE, DTSC, DOJ
Dongell Lawrence Finney	Legal	Tom Swickard	Negotiations with USACE, DOJ, DTSC
Quantitative Risk Services (QRS)	Insurance	Mark O'Brien	Evaluating existing policies Brokering new environmental policies
Engineering/Remediation Resources Group (ERRG)	UXO/MEC	Brad Hall	UXO/MEC evaluation and remediation cost estimates

SUMMARY OF TEAM MEMBERS

Environmental Risk Services (ERS)

By design, ERS combines high-level environmental consulting services with insurance brokerage services to identify, manage, and resolve risk. We help our clients minimize risk and maximize opportunities with strategic management and resolution of environmental liabilities. It is imperative to fully understand the Benicia Arsenal's environmental conditions (such as Munitions and Explosives of Concern (MEC), Unexploded Ordinance (UXO), Hazardous, Toxic and Radioactive Waste (HTRW), Chemical Warfare Material (CWM)) in order to allocate risks and liabilities, determine environmental management options, and ultimately develop an engineering cost estimate the City's ability to negotiate a *Voluntary Consent Agreement* will be compromised. Therefore, we see our responsibility as to provide the City with the necessary information that is needed to successfully negotiate a *Voluntary Consent Agreement*, or another structured solution that allows the City to manage risks, and begin cleanup and redevelopment in a timely fashion.

In several cases, the Department of Defense (DoD) has recommended that ERS assist various parties, such as regulators, cities, military and developers in resolving technical issues in order to find environmental solutions. These failing efforts were the result of others making unrealistic and

uncoordinated assumptions about the site conditions, risks, liabilities, the military's willingness to negotiate and fund cleanup, land use plans, and developer flexibility. A profound lack of coordination of the various interests, or deferring too much leadership to the development community can pose significant, and at times insurmountable, obstacles to successful negotiations.

Briscoe, Ivester & Bazel

Attorneys at Briscoe Ivester & Bazel LLP are expert in remediation of contaminated soil and groundwater, hazardous waste, toxic torts, and liabilities under the Resource Conservation & Recovery Act, the Comprehensive Environmental Response, Compensation & Liability Act ("Superfund"), California hazardous waste law, and California Hazardous Substance Account Act. They regularly assist clients on environmental remediation matters, from initial environmental due diligence on a particular property to developing and negotiating strategies for remediation of contaminated sites. The firm's attorneys have successfully resolved contamination issues at dozens of properties since the 1980s by developing assessment and remediation strategies, negotiating with potentially responsible parties or state and federal agencies, by helping clients assess the risks posed by contamination, or, when necessary, by defending enforcement actions and litigating responsibility issues. This experience has included advising the cities of Vallejo and San Diego on the transfer and reuse of the Mare Island Naval Shipyard and Naval Training Center at San Diego.

Attorneys at the firm know the regulatory and permitting agencies at all levels, including the USACE, DTSC, USDOJ, the Regional Water Quality Control Board, and the US Environmental Protection Agency. The firm has developed good working relationships with these agencies, which helps us develop creative solutions and to advocate for its clients.

Garrity & Knisely

The law firm of Garrity and Knisely has developed extensive expertise in negotiating the transfer of military bases scheduled to be closed or realigned, and in the implementation of base reuse plans. Garrity and Knisely has provided legal services to public agencies and local redevelopment authorities all in support of negotiating the transfer of military bases along with ESCAs that would fund the cleanup of legacy environmental liabilities. These negotiations are complex and require federal approval at the highest levels of the Pentagon and State. David Knisely has routinely met with high ranking officials at the Pentagon, including the Army, USDOJ, DTSC, and the Regional Water Board. He is very well known and highly regarded in this arena and has strong positive relations will be critical to the success of this project.

Dongell, Lawrence, Finney

Dongell Lawrence Finney has substantial experience in representing various clients in matters involving state and federal Superfund (HSAA and CERCLA). These matters typically involve both defending against such claims, as well as pursuing cost allocation against those responsible for the contamination at issue. Tim Swickard was selected to join our team because of his tenure as a Senior DTSC attorney and has knowledge of negotiating successful agreements with the USACE, DTSC, and USDOJ.

Quantitative Risk Services (QRS)

Unlike all other environmental consulting firms, ERS has a sister company, Quantitative Risk and Insurance Services (QRS), which is a licensed and bonded environmental insurance brokerage company (#0D87970). Together, ERS and QRS provide our clients a coordinated blend of environmental engineering, scientific, and risk analysis services, coupled with specialized insurance brokerage services. In short, we reduce risk by adding certainty.

Our risk analysis integrates our expert knowledge of the environmental conditions and the needs of the transfer and supporting agreements with knowledge of the insurance marketplace and our clients' tolerance for risk. Modeling environmental risk scenarios allows more informed decisions about costs, benefits, risk management options, and negotiating the remedial costs. As a result, our clients receive superior representation in the underwriting process and the most favorable insurance policy terms, conditions, and premiums. While insurance may not always be a complete solution for our clients, it is a powerful tool to manage exposure to environmental liabilities.

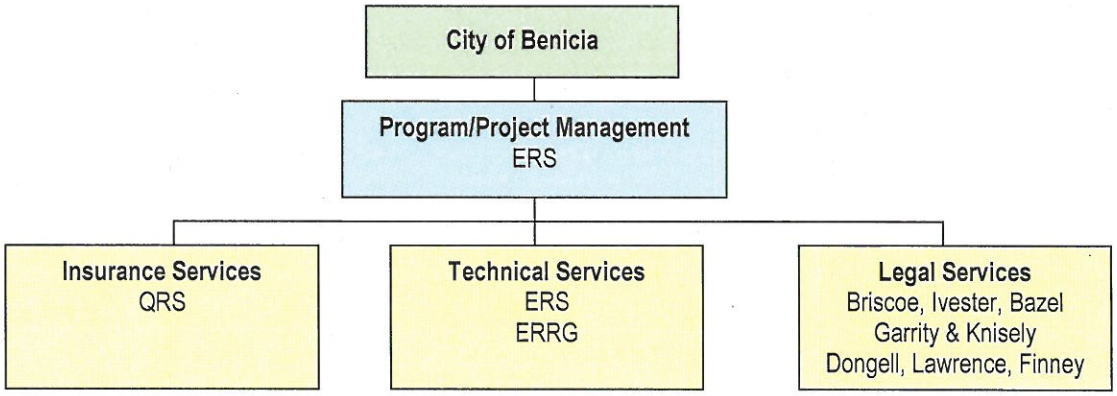
QRS core services include:

- Environmental liability management, Finite liability transfer,
- Insurance brokerage and policy negotiations on such products as pollution liability, remediation cost cap, and blended insurance programs,
- Insurance placement, policy maintenance, and claims representation and support.

Engineering/Remediation Resources Group (ERRG)

During ERRG 's time in the MEC industry they have compiled an exceptional record of accomplishments. ERRG has completed assessment and investigation projects for both public and private entitles under varying terrain, vegetation, and weather conditions. They fully understand that every site is unique and planned MEC operations will be dependent on its historical use, physical features, intended end use, state of available technologies and budgetary limitations. Through their extensive planning and execution of "end-use" driven remediation projects, they have developed innovative, unique and cost effective techniques that benefit all parties involved in the current and future usage of the site. They believe that the integration of different disciplines often times provide opportunities for gains in efficiency helping to reduce the overall time and cost required of a project. ERRG currently employs the senior UXO/MEC specialists, formerly with NGEM, that were responsible for the success remediation of the Tourtelot Site.

ORGANIZATIONAL CHART



SUMMARY OF KEY SENIOR PERSONNEL

Mark O'Brien (ERS, QRS)

Mr. O'Brien brings over 20 years' experience assessing and managing risks associated with major port operations, dredging, Brownfields, and DoD facilities for Base Realignment and Closure (BRAC) projects involving chemical and radioactive contamination. He advises the Institute for Defense Analysis (IDA) and Chaired the committee dealing with contaminated military properties. Mark was responsible for the nation's first early transfer of contaminated property to the private sector. Mark also is an environmental insurance broker.

Steven Michelson (ERS)

Mr. Michelson brings over 20 years of experience applying technical, economic, and regulatory analysis to the management and closure of environmental liabilities at industrial, port, mining, and military facilities, including BRAC sites. He has addressed environmental liabilities including chemical, radiation, and UXO/MEC contamination. He has particular expertise with NRDA and assessing hydrogeologic conditions and the interaction between ground water and surface water, including coastal aquifers.

John Briscoe (Briscoe, Ivester, Bazel, LLP)

Beginning with his time in the California Attorney General's Office, John has successfully litigated land use, environmental, and natural-resources cases for over thirty-eight years. In addition, John has represented clients in hundreds of matters before administrative agencies such as the USACE, USEPA, DTSC, and State and Regional Water Resources Control Boards. He represented the cities of Vallejo and San Diego in the closure and transfer of the former Mare Island Naval Shipyard and Naval Training Center at San Diego.

Larry Bazel (Briscoe, Ivester, Bazel, LLP)

Larry is a nationwide expert in Clean Water Act issues related to water quality and wastewater discharges, and has years of experience in negotiating and resolving contaminated properties issues under CERCLA, RCRA, and California hazardous waste laws. In the 1970s, before he began practicing law, he spent eight years as a hydrologist specializing in water pollution control, and as a consultant to the Environmental Protection Agency and the National Science Foundation. He litigates cases involving contaminated property and related environmental issues. He has litigated, negotiated with regulatory agencies, and advised potential buyers and lenders about dozens of contaminated properties.

Christian Marsh (Briscoe, Ivestor, Bazel)

Christian has been practicing land-use and natural-resources law for more than ten years. Before law school, he spent five years at the U.S. Department of the Interior and the White House Office on Environmental Policy, where he had occasion to work with USACE and DoD on flood management and base transfer issues at Alameda Naval Air Station. He was also responsible for assisting John Briscoe in representing the cities of Vallejo and San Diego on the transfer of the former Mare Island Naval Shipyard and the Naval Training Center at San Diego. Christian counsels clients on contaminated property matters, and he is responsible for ensuring compliance with the California Environmental Quality Act and the National Environmental Policy Act.

David Knisely (Garrity & Knisely)

Mr. Knisely is a nationally recognized expert regarding the completion of property transfers at closing and realigning military installations. He has a great deal of experience in matters related to managing the risks associated with the environmental clean-up at closing and realigning installations. He has been involved in coordinating clean-up and redevelopment priorities, and has successfully negotiated consent agreements, covenants not to sue, findings of suitability to transfer, environmental services cooperative agreements and related documents with federal and state environmental agencies and military departments. He has also completed the negotiation of clean-up privatization and early transfer agreements at closing Army, Air Force and Navy installations.

Tim Swickard (Dongell, Lawrence, Finney)

Mr. Swickard, in his former positions as Chief Counsel and later Director of Cal/EPA Department of Toxic Substances Control, oversaw the negotiation of the Voluntary Cleanup Agreements, Redevelopment Agreements, Cleanup Orders and cleanup criteria associated with the Brownfield redevelopment of former DoD bases including Fort Ord Army Base, Tustin Naval Air Station and Mare Island Naval Base, defense contractor facilities including Whittaker Bermite Santa Clarita and large and small contaminated properties including BKK Hazardous Waste Landfill, with Cal/EPA DTSC and USEPA, USDOJ and other governmental and private entities. Mr. Swickard negotiated the final model Joint Consent Decree language between the State of California and the USEPA and USDOJ for joint federal/state superfund sites.

Brad Hall (ERRG)

Mr. Hall is a Sr. Program Manager with more than 20 years of expert Environmental Remediation Services and Site Assessment experience. He offers substantial expertise concerning military installations and has overseen the investigation, remedial design, and implementation of UXO/MEC programs at several military installations. ERRG is respected by USACE Sacramento and the former NGEM employees that implemented the UXO remedy at Tourtelot now report to Mr. Hall.

ORGANIZATION QUALIFICATIONS

The ERS Team commits to provide the City with the resources necessary to competently implement this project. The Appendix lists the senior ERS staff for this project. ERS has been involved in the development, quantification, negotiation, and implementation of many transfers of military installations. ERS's primary role at these sites has been to represent the interest of the property recipient, such as developers and the Local Reuse Agency (LRA). ERS has served both as the Program Manager and Advisor to several LRAs and developers negotiating the voluntary consent agreements to support the transfer of military installations and associated funding for the remediation of environmental contamination. In all cases where ERS has served as the Program Manager and or Technical Advisor, the military base has successfully transferred, with the necessary funding to complete

Military Installation (sample list)	ERS Role	Early Transfer Status
Fleet Industrial Supply Center Oakland	Program/Technical Manager	Transferred *with Remedial Compensation*
Louisville Naval Ordnance Station	Program/Technical Manager	Transferred *with Remedial Compensation*
Naval Communications Center (INS) Stockton	Program/Technical Manager	Transferred *with Remedial Compensation*
Oakland Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Point Molate Naval Fuel Depot	Program/Technical Advisor	Transferred *with Remedial Compensation*
Rough and Ready Island Navy Supply Center	Program/Technical Manager	Transferred *with Remedial Compensation*
Selfridge Air Force Base (Sebille Manor)	Program/Technical Manager	Transferred *with Remedial Compensation*
Badger Military Badger Military Ammunition Plant	Program Advisor	Transfer pending
Camp Bonneville Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Concord Naval Weapons Stations	Technical Advisor	Transfer pending
Fitzsimmons Military Medical Center	Technical Advisor	Transferred *with Remedial Compensation*
Ft. McClellan Military Base	Technical Advisor	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Legacy Partners	Program Manager	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Weston Solutions	Program Manager	Transferred *with Remedial Compensation*
Presidio Army Base	Advisor	Transferred *with Remedial Compensation*

PROPOSED PROJECT SCHEDULE

Our proposed approach and scope of work contains two paths for the City to consider, and each path contains several critical decision points that will be based upon information that has not yet been developed. It is also very likely that new information will be revealed that will require the technical, legal, and insurance approaches and scopes of work to be modified. Consequently, it is premature to provide the City with a comprehensive schedule through to the Agreement.

While this may appear to be a process fraught with considerable uncertainty of success, it is not. The ERS Team has successfully implemented more than 50 similarly complicated projects involving the DoD, state regulatory agencies, municipalities, and insurance companies. Simply, it is critically important to remain flexible and to adapt to new information as it becomes available.

With that said, we can offer the following general schedule for the initial steps, assuming the necessary information is readily available. We expect that during the contracting phase that the City will determine with track or tracks they wish our team to follow. First, we will meet with DTSC to delay, if not eliminate, the issuance of the Imminent and Substantial Endangerment letter.

Insurance Track

We estimate that approximately 2 to 3 months will be required to evaluate documents transferring the Arsenal to the City, the insurance policies available to the City, and the lease and sale agreements and supporting insurance policies between the City, tenants, and private property owners. At the conclusion of this first step, we will advise the City as to the viability of pursuing insurance policies as a remedy for cleanup.

Technical Track

We estimate approximately 2 to 3 months will be required to evaluate the environmental history of the Arsenal and to review existing data describing environmental impacts that may have occurred after the Arsenal was transferred. This effort will first review the adequacy of the 1998 Records Research Report that identified 389 sites, many of which were dismissed in the 2004 Preliminary Assessment. This effort will also involve a review of files at the regulatory agencies to evaluate non-military impacts.

If we conclude that the military's effort was inadequate, we may recommend an independent review of the available records, as described above, to identify potential sites, which will likely require another 2 to 3 months. We would then compare our findings with those of the military to identify critical data gaps, which would require approximately 1 to 2 months.

If there are no critical data gaps, we would then begin to assess comingled contamination and allocation of environmental liability, and this effort could require approximately 2 to 3 months. If there are critical data gaps, we would provide recommended options on the next steps.

Agreement Track

We could begin discussions with the USACE concurrent with the above tracks. However, we suggest delaying the start of these discussions until the first steps of the insurance and technical tracks are completed. Information obtained from these two tracks will help the City to decide on the best course of action, insurance or agreement, or both in the event that adequate insurance is not available for all sites.

PROPOSED BUDGET

Similar to the above caveats on the project, it is premature to provide the City with a proposed budget until the City decides on the course of action it chooses to prioritize. In addition, the RFP is unclear on the payment mechanism, be it performance based, or time and materials as indicated in the contract. Performance based payments may also have options, that would provide payment upon completing interim milestones, partial payment until completion, financing, etc.

REFERENCES, RELATED EXPERIENCE and EXAMPLES OF WORK

The following lists relevant references for ERS. Many more references can be provided for our team members.

- Charles Foster - Former Executive Director, Port of Oakland 925.997.0185
- Richard Ascheris - Executive Director, Port of Stockton 209.946.0246
- Isabella Alasti – Senior Legal Counsel DTSC 714.484.5405
- Michael Waters –Senior Legal Counsel Department of the Navy 619.532.2312
- Ted Mankowski - Engineering Manager, Lawrence Livermore Laboratory 510.495.2012
- Jose Salcedo-Office of Military Facilities DTSC 916.255.3741
- Dr. Phillip Giovinnini-Senior Scientist RWQCB 916.464.4812
- David Knisley - BRAC Legal Counsel 617.367.3990
- Wayne Arny - Former Deputy Assistant Secretary of the Navy 703.697.6811
- Bill Baron - City Manager Clark County 360.397.2000
- William Cassidy - Former Deputy Assistant Secretary of the Navy, 202.255.2273
- Robert Davenport - Former Army Office of Legal Counsel 703.693.3665
- Howard Kelsey - Former Director of Navy Real Estate 202.685.9198
- Gordon Palmer - City Manager, City of Stockton 290.937.8212
- Miki Schneider - Director of Joint Powers Authority, Fort McClellan 256.236.2011
- Harry Zimmerman - Former Navy Director of BRAC 571.216.6716

APPENDIX

STATEMENT OF QUALIFICATIONS

RESUMES OF KEY PERSONNEL

ENVIRONMENTAL RISK SERVICES EXPERIENCE

1. DESCRIPTION OF ORGANIZATION, MANAGEMENT AND TEAM MEMBERS

ENVIRONMENTAL RISK SERVICES CORPORATION (ERS)

By design, ERS combines high-level environmental consulting services with insurance brokerage services to identify, manage, and resolve risk. We help our clients minimize risk and maximize opportunities with strategic management and resolution of environmental liabilities. It is imperative to fully understand the Benicia Arsenal's environmental conditions ((such as Munitions and Explosives of Concern (MEC), Unexploded Ordinance (UXO), Hazardous, Toxic and Radioactive Waste (HTRW), Chemical Warfare Material (CWM)) in order to allocate risks and liabilities, determine environmental management options, and ultimately develop an engineering cost estimate the Cities ability to negotiate a *Voluntary Consent Agreement* will be compromised. Therefore, we see our responsibility to provide the City with the necessary information that is needed to successfully negotiate a *Voluntary Consent Agreement*, or another structured solution that allows the City to manage risks, and begin cleanup and redevelopment in a timely fashion.

In several cases, the Department of Defense (DoD) has recommended that ERS assist with assisting various parties, such as regulators, cities, military and developers in resolving technical issues in order to find an environmental solutions. These failing efforts were the result of others making unrealistic and uncoordinated assumptions about the site conditions, risks, liabilities, the military's willingness to negotiate and fund cleanup, land use plans, and developer flexibility. A profound lack of coordination of the various interests, or deferring too much leadership to the development community can pose significant, and at times insurmountable, obstacles to successful negotiations.

We know there are several ways to solve a problem and that our clients constantly manage coordinated as well as competing goals and interests that are inherent in a high-profile public project. By working closely with our clients, we help the project to proceed and evolve as needed to optimize economic and political success. We provide our clients with technical environmental services and major asset redevelopment services throughout the United States. Our clients include industry, municipalities, real estate developers, attorneys, government, and quasi-governmental organizations such as ports.

The following is a list of key management and technical personnel at ERS:

Mark J. O'Brien - M.Sc., President

PROGRAM MANAGER AND RISK ANALYSIS MANAGER:

Mr. O'Brien brings over 20 years' experience assessing and managing risks associated with major port operations, dredging, Brownfields, and DoD facilities for Base Realignment and Closure (BRAC) projects involving chemical and radioactive contamination. He advises the Institute for Defense Analysis (IDA) and Chaired the committee dealing with contaminated military properties. Mark was responsible for

the nation's first early transfer of contaminated property to the private sector. Mark also is an environmental insurance broker.

Sydney University of Technology: B.A. Physiology
University of California-Berkeley: MSc. Human Bio-dynamics
U.C. Berkeley: U.C. Santa Barbara: Ph.D. (candidate) Env. Science/Nuclear Engineering

Steven I. Michelson, R.G. - Principal Geologist:

TECHNICAL PROJECT MANAGER:

Mr. Michelson brings over 20 years experiences applying technical, economic, and regulatory analysis to the management and closure of environmental liabilities at industrial, port, mining, and military facilities, including BRAC sites. He has addressed environmental liabilities including chemical, radiation, and UXO/MEC contamination. He has particular expertise with NRDA and assessing hydrogeologic conditions and the interaction between ground water and surface water, including coastal aquifers.

Lehigh University: B.S. Geology and B.S. Civil Engineering

Peter D. Weiler, Ph.D., Senior Geophysicist

MEC/UXO INVESTIGATION MANAGER:

Dr. Weiler brings over 15 years applying geophysical techniques to environmental and energy problems around the world. He investigates hydrogeological and geophysical conditions at BRAC, CERCLA, Brownfields, landfills, and industrial facilities. His experience includes investigating radiation contamination. His geophysical training and experience has proven to be well adapted to the identification and location of UXO/ MEC.

University of California-Santa Cruz: Ph.D. Earth Sciences,

James F. Durkin, CHg., Senior Hydrogeologist

SOIL AND GROUND WATER INVESTIGATION MANAGER

Mr. Durkin has over 20 years' experience managing soil and ground water investigations and remediation at sites in Northern California and Hawaii. Mr. Durkin conducts aquifer tests, analyzes ground water basins, and prepares and manages monitoring plans. Mr. Durkin has also planned and completed remedial actions at dozens of sites including former fuel facilities and chemical plants.

Cornell University: BA Geological Science

Dan Holmes, M.L.I.S., Senior Geographer and Research Librarian

INFORMATION MANAGER:

Mr. Holmes has substantial experience with library management and planning, information research, and environmental analysis. He brings a diversity of experience in hydrology, water resources, geomorphology, city planning, and historical geography. He has performed many literature and archive research projects, with emphasis on interpreting aerial photographs, public records research, and developing digital and web-based libraries. M.A. University of California – Berkeley, Geography

University of California-Berkeley: M.L.I.S. Library & Information Studies

2. ORGANIZATION QUALIFICATIONS

ERS QUALIFICATIONS:

ERS has been involved in the development, quantification, negotiation, and implementation of many transfers of military installations. ERS's primary role at these sites has been to represent the interest of the property recipient such as developers and the Local Reuse Agency (LRA). ERS has served both as the Program Manager and Advisor to several LRAs and developers negotiating the voluntary consent agreements to support the transfer of military installations and associated funding for the remediation of environmental contamination. ERS has participated at various levels in the transfer and remediation of many military installations. In all cases where ERS has served as the Program Manager and or Technical Advisor, the military base has successfully transferred, with the necessary funding to complete the remediation of

Military Installation	ERS Role	Early Transfer Status
Fleet Industrial Supply Center Oakland	Program/Technical Manager	Transferred *with Remedial Compensation*
Louisville Naval Ordnance Station	Program/Technical Manager	Transferred *with Remedial Compensation*
Naval Communications Center (INS) Stockton	Program/Technical Manager	Transferred *with Remedial Compensation*
Oakland Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Point Molate Naval Fuel Depot	Program/Technical Advisor	Transferred *with Remedial Compensation*
Rough and Ready Island Navy Supply Center	Program/Technical Manager	Transferred *with Remedial Compensation*
Selfridge Air Force Base (Sebille Manor)	Program/Technical Manager	Transferred *with Remedial Compensation*
Badger Military Badger Military Ammunition Plant	Program Advisor	Transfer pending
Camp Bonneville Army Base	Program/Technical Manager	Transferred *with Remedial Compensation*
Concord Naval Weapons Stations	Technical Advisor	Transfer pending
Fitzsimmons Military Medical Center	Technical Advisor	Transferred *with Remedial Compensation*
Ft. McClellan Military Base	Technical Advisor	Transferred *with Remedial Compensation*
Guam Naval Base	Technical Advisor	Transferred *with Remedial Compensation*
Hunters Point Naval Shipyard	Technical Advisor	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Legacy Partners	Program Manager	Transferred *with Remedial Compensation*
Mare Island Naval Shipyard Weston Solutions	Program Manager	Transferred *with Remedial Compensation*
Presidio Army Base	Advisor	Transferred *with Remedial Compensation*
Stockton Army Base	Advisor	Transferred *with Remedial Compensation*

the military's contamination.

Following the successful transfers identified above, ERS has served as the program manager implementing the privatized cleanup funded by voluntary consent agreements at the following early transfer installations:

- **Fleet Industrial Supply Center**

  Mr. Mark O'Brien led the LRA for the Port of Oakland for the early transfer of FISC, managed the privatized cleanup, and brought the installation to complete closure with the state and federal regulatory agencies. Not only was FISC-Oakland the first early transfer of a military installation, it is also the first early transfer where all of the environmental costs were paid for by the military within a voluntary consent agreement. All of the installation restoration sites have been remediated and reached regulatory closure. Development of the entire base has been completed. This facility was closed on schedule and under budget.

- **Rough and Ready Island Navy Supply Center**

  ERS served as the Program manager representing the LRA throughout the negotiation of the early transfer of the Rough and Ready Island Navy Supply Center, which was formerly a Navy Ordnance Depot. The property, consisting of an entire island, is currently valued at approximately one billion dollars. Our role included evaluating the environmental liabilities, quantifying risks, negotiating the voluntary consent agreements, developing the remedial funding agreements, such as and Environmental Service Cooperative Agreement (ESCA) with the military, negotiating remediation approaches with the regulatory agencies, representing the transaction to the Governor's office, preparing the various transaction documents, negotiating the various land use covenants and institutional controls, and securing appropriate insurance that transferred risk away from the LRA.

  Following the negotiation of the ESCA, ERS has continued as Program Manager responsible for the privatized cleanup of the property and complying with all Navy and insurance reporting requirements. In addition, we continue to support the LRA with a variety issues related to redevelopment and infrastructure improvements. To date, all remedial sites have been closed well ahead of schedule and well below budget.

- **Naval Communications Center Firing Range**

  ERS was the Program manager representing the Port of Stockton for the early transfer of the INS property, which is owned by the military. Our role includes evaluating the environmental liabilities, quantifying risks, negotiating the voluntary consent agreements with the military, negotiating remediation approaches with the regulatory agencies, representing the transaction to the Governor's office, preparing the necessary transaction documents, negotiating the various land use covenants and institutional controls, and securing the appropriate level of insurance. As the Program Manager; ERS is responsible for the privatized cleanup of the property and complying with all military and insurance reporting requirements.

ERS personnel bring a wealth of experience characterizing and remediating environmental liabilities at many other military installations. These installations posed environmental liabilities associated with flight-line contamination with petroleum hydrocarbons and chlorinated solvents, landfills, perchlorate contamination in ground water, radiation, UXO/MEC, and chemical and biological warfare agents. These military facilities include:

- Riverbank Army Ammunition Plant
- Stockton Army Ordnance Depot
- Sharp Army Depot
- Umatilla Army Ordnance Depot
- Castle Air Force Base
- Edwards Air Force Base
- Hamilton Air Force Base
- Luke Air Force Base
- Mather Air Force Base
- McClellan Air Force Base
- Norton Air Force Base
- Otis Air Force Base
- Pease Air Force Base
- Point Arena Naval Air Station
- Travis Air Force Base
- Westover Air Force Base
- Mare Island Naval Shipyard

Overall, ERS offers significant experience characterizing, remediating, and transferring a wide range of environmental liabilities at over 35 Army, Navy, Air Force, and Marine bases.

Due to the nature of the operations at military installations, many of the environmental liabilities must be managed under RCRA Corrective Action protocols. For example, underground storage tanks and landfills (solid waste management units) must be investigated, remediated, and closed pursuant to RCRA. ERS offers considerable experience with RCRA at industrial and military facilities.

ERS offers significant program management and hands-on investigation and remediation experience from a variety of CERCLA and RCRA sites with HTRW liabilities in Texas and around the country. We have investigated, remediated, supported the assessments of human health and ecological risks, evaluated short and long term risks and liabilities and associated risk-transfer mechanisms. An example timeline of investigation, remediation, and closure of an HTRW site at an early transfer military installation is attached

We understand that RCRA and CERCLA sites typically involve increased public scrutiny and media exposure. We have investigated and/or remediated a variety of CERCLA and RCRA sites, including U.S. military installations (Army, Navy, Air Force) with chemical, radiation, and MEC/UXO contamination, U.S. DOE facilities with radiation contamination, industrial facilities (manufacturing, petrochemical, wood-treating, high-tech, plating, etc.) with chemical contamination, and mines (gold, uranium), and landfills (industrial, military, and municipal). We have addressed chemicals of concern ranging from organics (e.g., chlorinated solvents and pesticides), to metals (e.g., mercury, lead, arsenic, hexavalent chromium), to radioactive substances (e.g., alpha, beta, gamma emitters), to residues from chemical warfare agents and unexploded ordinance (UXO).

We also bring experience characterizing UXO/MEC environmental liabilities, evaluating risk and associated risk transfer mechanisms, and/or providing planning for UXO/MEC removal at Ft. McClellan, Riverbank Army Ammunition Plant, Sharp Army Depot, Umatilla Army Ordnance Depot, Stockton Army Ordnance Depot, Naval Communications Center Firing Range, Rough and Ready Island, and Travis, Castle, Edwards, Mather, and Luke Air Force Bases.

At all facilities, ERS offers the expected suite of site characterization experience and services, ranging from investigation work plan preparation and implementation, drilling, sampling, monitor well construction, surface water and ground water sampling, data QA/QC, data evaluation, and technical report preparation.

ERS Capabilities:

ERS is a multidisciplinary environmental science and engineering consulting company specializing precisely in the requested scope of services with experience unsurpassed in the environmental consulting marketplace. We provide expert technical and strategic services to public and private entities seeking to identify, evaluate, manage, reduce, and/or leverage environmental risks and liabilities, including those associated with the early transfer of BRAC military installations. We bring the full range of expertise needed to expertly and effectively manage the transfer, voluntary consent agreements and privatized cleanup process.

The skills necessary to meet the needs of our clients in the development and negotiation of voluntary consent agreements, transfer and privatized remediation process can be generally categorized as technical, management, risk analysis, and strategic. We know that all these skills require careful, accurate, direct, clear, and routine written and oral communications with a wide variety of people, including the responsible parties, attorneys, military, insurance company, regulators, and the public.

Our experience continues to be successfully applied to a variety of projects, including:

- Early transfer of Base Realignment and Closure (BRAC) military installations
- Superfund investigations, remediation, and liability closure (CERCLA)
- RCRA corrective actions and closure
- Real estate transaction and redevelopment (e.g., Brownfields)
- Ecological assessments
- Permitting
- Risk analysis, management, and transfer
- Land use planning and water resource planning
- Natural resource damage assessment (NRDA) and resource equivalency analysis (REA)
- Aquifer storage and recovery (ASR)

The relevance of our skills begins with the academic training of our staff, continues with the professional technical experience obtained at numerous military and industrial facilities, and is directed by senior project and program managers with experience at several large military

installations. The average environmental consulting experience offered by senior members of ERS is approximately 25 years.

ERS personnel bring considerable experience working on state and federal Superfund and RCRA sites across the country. We have performed, supported, and/or produced remedial investigation and feasibility studies (RI/FS), human and ecological risk assessments, remedial action plans (RAP), records of decision (ROD), remedial design plans, and remediation completion reports. ERS routinely prepares National Contingency Plan (NCP)-consistent documents for the investigation, remediation, and closure of BRAC military installations and industrial sites.

ERS Technical Capability:

In addition to the fundamental in-depth knowledge and extensive experience we have with military installations, we also bring extensive technical, management, and risk analysis expertise that is needed to resolve the variety of environmental liabilities. Our experience with these liabilities ranges from petroleum hydrocarbons released from underground tanks and associated pipelines, to refueling facilities along runways, maintenance facilities, to fire training areas and burn pits, to ammunition manufacturing facilities, to munitions bunkers, and to landfills with UXO/MEC, industrial, and radioactive wastes.

These projects require a wide variety technical expertise and professional experience that can be distilled into a few general core services, including:

- Investigation and remediation of contaminated soil and ground water
- Environmental liability identification and resolution
- Risk assessment, transfer, and insurance acquisition support
- Regulatory negotiations, public representation, and permitting
- Remediation engineering and construction management

ERS technical skills include the relevant scientific, engineering, and economic arenas. Our technical services and skills encompass:

- Hydrology, Geography
- Geophysics, Geochemistry
- Hydrogeology
- Ecology and biology and wetlands
- Ecological risk assessment support
- Human health risk assessment
- Resource equivalency analysis
- Bench scale and pilot scale testing
- Remediation engineering
- Construction management
- Ground water modeling
- Surface water modeling
- Geochemistry modeling
- Water resource planning support
- Land use planning support
- Public communications
- Expert witness and testimony
- Graphic Information Systems (GIS)
- Database design and management
- Web-based electronic library

Scientifically, ERS offers geologists with experience in hydrogeology, hydrology, inorganic and organic geochemistry, soil chemistry, geophysics, and structural geology. These skill sets

extend to geochemical modeling, ground water modeling, chemical fate and transport modeling, radiation wastes, isotope chemistry, and geophysical investigations designed specifically to identify MEC and UXO. We have particular expertise identifying munition residues and evaluating their short and long term fate and transport and risks.

Our engineering skills cover a breadth of remediation design needs, ranging from simple monitoring and straightforward excavation and removal efforts, to vapor recovery systems, to enhanced biological attenuation, to in situ technologies such as biological fixation of hexavalent chromium in ground water or chemical fixation of heavy metals in soil, to hazardous and radiation waste removal, to landfill caps.

Our engineers and scientists also bring considerable experience to facility demolition projects. Prior to demolition, the integrity of the facility must be assessed and the wastes streams to be generated must be identified. These waste streams include asbestos and lead based paint, PCBs, associated with the building materials, and tanks, pipelines, transformers, and ballasts associated with building infrastructure. Appropriate waste management, handling, transport, and disposal plans are prepared to support the identification of appropriate subcontractors. Our construction management expertise is readily applicable to demolition management.

Economic analysis is critical to the decision-making, selection, and management process, as well as to the design and scaling of mitigation actions, if required. We are fully versed and experienced with cost estimation, financial modeling, present and future engineering cost analysis, the selection of appropriate metrics when evaluating mitigation alternatives.

ERS Management Capability

ERS management skills include program management, project management, technical management, information management, and subcontractor management.

- **Program Management**

  Program management is a skill set and experience well represented by ERS and the project team assembled for the Benicia Arsenal. The role of the Program Manager is to coordinate all the various voluntary consent agreements in a manner consistent with the strategic needs, scheduling limitations, and financial constraints of the client. The program Manager must also be able to develop appropriate remedial strategies and resulting financial impacts with respect to remediation. Additionally the Program Manager must integrate and communicate well and routinely with the client, legal counsel, technical and project managers, regulators, the public, and the military. This role is critical to the development of the numerous documents and agreements and to the success of the early transfer process.

  We bring considerable program management expertise derived from our high level involvement at several military installations (see above lists). Unlike other firms, we also bring hands-on knowledge of the program management effort from the perspective of the LRA, because the ERS program manager previously lead an LRA. Finally, we bring comprehensive program management experience obtained from other complex projects,

such as Superfund/CERCLA, natural resource damage assessment programs at large industrial facilities, and aquifer storage and recovery feasibility studies.

- **Project Management**

  Project management begins with the scoping of the project's goals, purpose, objectives, and discrete elements, tasks, or steps required through completion. The project management responsibilities continue directly to team creation, organization, direction, scheduling, resource loading, and cost accounting. Assembling the team with necessary technical and communication skills is critical to the overall success of the project. Our scheduling and accounting systems routinely track in near real time the costs versus percent complete to assure timely project completion and to identify potential cost/schedule overruns.

- **Technical Management**

  Technical Management runs in parallel with Project Management, to assure that the end product meets all required technical objectives, and data quantity and quality objectives. We place only senior individuals with the right mix of technical experience, maturity, and people management skills needed to meet the objectives of the project, and with the strategic experience required to meet the goals of the program.

- **Information Management**

  Information management is an increasingly vital technical skill requiring rigorous quality assurance and quality control tasks, data base design and management, and implementation of internal and public information management systems. ERS brings specific expertise in this regard ranging from public information research and analysis, aerial photo interpretation, data compilation, and electronic data management, interface, key-word search, and presentation systems using such vectors as geographical information systems (GIS), web-based file transfer protocols (ftp), and electronic libraries.

- **Subcontractor Management**

  Subcontractor management begins with the scoping of the project's goals, purpose, and objectives, continues through the request for qualifications/proposal stage, through contracting, insurance verification, and subcontractor performance monitoring. We have considerable experience working with and directly managing subcontractors performing services such as laboratory analysis, drilling, excavation, construction, remediation, and hazardous waste transport and disposal. Our accounting systems are designed to track subcontractor costs versus percent complete to assure timely project completion and to identify potential cost/schedule overruns.

ERS Risk Analysis Capability

Once the environmental liabilities are characterized to facilitate transfer and or voluntary consent agreements, we will analyze the suite of risks posed by the environmental issues at the Benicia Arsenal. Risk analysis is critical to identify appropriate risk management mechanisms that will reduce the client's exposure, address concerns expressed by the government and

military, and add certainty to the entire early transfer process and subsequent privatized cleanup.

Unlike all other environmental consulting firms, ERS has a sister company, Quantitative Risk and Insurance Services (QRS), which is a licensed and bonded environmental insurance brokerage company (#0D87970). Together, ERS and QRS provide our clients a coordinated blend of environmental engineering, scientific, and risk analysis services coupled with specialized insurance brokerage services. In short, we reduce risk by adding certainty.

Our risk analysis integrates our expert knowledge of the environmental conditions and the needs of the transfer and supporting agreements with knowledge of the insurance marketplace and our client's tolerance for risk. Modeling environmental risk scenarios allows more informed decisions about costs, benefits, risk management options, and negotiating the remedial costs. As a result, our clients receive superior representation in the underwriting process and the most favorable insurance policy terms, conditions, and premiums. While insurance may not always be a complete solution for our clients, it is a powerful tool to manage exposure to environmental liabilities.

QRS core services include:

- Environmental liability management, Finite liability transfer,
- Insurance brokerage and policy negotiations on such products as pollution liability, remediation cost cap, and blended insurance programs,
- Insurance placement, policy maintenance, and claims representation and support.

3. REFERENCES, RELATED EXPERIENCE AND EXAMPLES OF WORK

ERS has supported the development and implementation of many voluntary consent agreements at military installations. Our primary role is always to represent the interests of our client. Depending on the property, our services ranged from overall program management, environmental and engineering assessment, remedial cost development, advisory and strategic, risk analysis, and insurance brokerage. Our involvement with military bases has included characterization and risk assessment, strategy development, structuring various agreements between multiple parties, site transfer, and continued through cost negotiations, privatized cleanup, closure, and redevelopment. The following briefly describes our role in some military properties.

- **Fleet Industrial Supply Center**
  ERS served as the Program Manager and lead the LRA for the Port of Oakland throughout the early transfer process, funding negotiation, risk analysis, insurance acquisition, privatized cleanup, and redevelopment. The property has been successfully transferred.
- **Louisville Naval Ordnance Station**
  ERS served as the Program Manager for the LRA throughout the site characterization, transfer, financial negotiations and agreements, risk analysis, and insurance acquisition. The property has successfully transferred.

- **Oakland Army Base**
  ERS served as the Program Manager for the Port of Oakland throughout the early transfer process, financial negotiations, risk analysis, insurance acquisition, and privatized cleanup. The property has successfully transferred.

  Rough and Ready Island Navy Supply Annex
  ERS served as the Program Manager for the Port of Stockton throughout the transfer process, financial quantification and negotiation, risk analysis, and insurance acquisition. We are currently implementing the cleanup and assisting with the redevelopment of the property. The property has been successfully transferred.

- **Concord Naval Weapons Stations**
  ERS assessed the Cities environmental liabilities through the investigation of the site. Our role was to assist the City develop a risk analysis associated with environmental liabilities.

- **Stockton INS**
  ERS served as the Program Manager for the Port of Stockton throughout the characterization, voluntary consent agreement development, early transfer process, financial quantification and negotiation, risk analysis, and insurance options. ERS will also manage the privatized cleanup and assist with redevelopment.

- **Fitzsimmons Army Medical Center, Camp Bonneville – Army, Presidio Army Base, Badger Army Ammunition Plant Hunters Point Naval Shipyard, El Toro Marine Corps Air Station**
  ERS advised the LRA on risk management and provided liability insurance placement. These properties have been successfully transferred.

- **Mare Island Naval Shipyard**
  ERS advised the developers throughout the characterization, voluntary consent agreement development, early transfer process, financial quantification and negotiation, risk analysis, and insurance options. The property has successfully transferred.

4. REFERENCES, RELATED EXPERIENCE AND EXAMPLES OF WORK

The following lists relevant references for ERS.

Charles Foster - Former Executive Director, Port of Oakland	925.997.0185
Richard Ascheris - Executive Director, Port of Stockton	209.946.0246
Isabella Alasti – Senior Legal Counsel DTSC	714.484.5405
Michael Waters –Senior Legal Counsel Department of the Navy	619.532.2312
Ted Mankowski - Engineering Manager, Lawrence Livermore Laboratory	510.495.2012
Jose Salcedo-Office of Military Facilities DTSC	916.255.3741
Dr. Phillip Giovinnini-Senior Scientist RWQCB	916.464.4812
David Knisley - BRAC Legal Counsel	617.367.3990

▪ John Briscoe - Briscoe Ivestor & Bazel LLP	415.402.2700
▪ Wayne Arny - Former Deputy Assistant Secretary of the Navy	703.697.6811
▪ Bill Baron - City Manager Clark County	360.397.2000
▪ William Cassidy - Former Deputy Assistant Secretary of the Navy,	202.255.2273
▪ Robert Davenport - Former Army Office of Legal Counsel	703.693.3665
▪ Howard Kelsey - Former Director of Navy Real Estate	202.685.9198
▪ Gordon Palmer - City Manager, City of Stockton	290.937.8212
▪ Miki Schneider - Director of Joint Powers Authority, Fort McClellan	256.236.2011
▪ Harry Zimmerman - Former Navy Director of BRAC	571.216.6716

Mark J. O'Brien

CEO

Mr. O'Brien is the Chief Executive Officer (CEO) of *Environmental Risk Services Corporation Inc.* (ERS; Inc.) ERS; Inc. specializes in engineering and environmental consulting to both government and private entities. ERS; Inc. consults in multiple disciplines including geology, geophysics, hydrology, engineering, toxicology and physiology. ERS; Inc. also provides brokerage services for environmentally impaired property and risk based transactions and holds both surplus lines and special lines licenses. ERS; Inc. is *unique* in its ability to provide its clients with fully integrated solutions to assessing and quantifying risk. ERS; Inc. provides program management, legal support; engineering, environmental, transactional and insurance consulting services to support our clients.

Mr. O'Brien has extensive experience resolving risk-based issues at military properties around the country and the world. He has served as a consultant to local governments and Fortune 500 companies. Mr. O'Brien has been an advisor to the Institute for Defense Analysis (IDA) through the Department of Defense (DOD) and has served as Chairman.

Mr. O'Brien was responsible for the development of a compartmentalized fugacity model based upon mass balance mathematical quantification to determine risk, which has resulted in supporting conveyance of transactional risk. Mr. O'Brien also serves as an advisor to both private industry and government entities including airports, maritime ports and military facilities around the country.

Mr. O'Brien was Senior Vice President for Marsh & McClennan and specialized in the modeling, quantification, and transfer of liabilities associated with transactional risk. Mr. O'Brien also worked with the National Economic Research Associates (NERA). Mr. O'Brien has also served as a manager for major U.S. Ports. As such, Mr. O'Brien was responsible for supporting a $1 billion capital development program, merger and acquisitions, and significant real estate transactions.

PROFESSIONAL WORK HISTORY

Environmental Risk Services, Inc., Chief Executive Officer
Marsh & McClennan, Senior Vice President
National Economic Research Associates, Senior Vice President
Port of Oakland, Manager Environmental Science
Continental Corporation, Director Environmental Science

EDUCATION and CERTIFICATION:

University of California - Berkeley/Santa Barbara: PhD (candidate)
University of California - Berkeley: Master's Degree
Sydney University of Technology; Bachelor's Degree
Licensed California Broker –Special lines, Surplus Lines, Property & Casualty

PRESENTATIONS:

Mr. O'Brien has made a number of presentations concerning transferring contaminated properties including:

- Department of Energy International Conference
- Environmental Super Conference
- Pacific Coast Association of Port Authorities
- National Association of Installation Developers
- Office of the Secretary of Defense Community Conference
- American Association of Port Authorities
- Defense/State Memorandum of Agreement Conference
- Association of Defense Communities

NEWSPAPER, JOURNAL ARTICLES:

A number of journals and newspaper articles have featured Mr. O'Brien's work. They include:

- Stockton Record, August 17, 2010
- Contra Costa Times, April, 2010
- San Francisco Chronicle September 13, 2003
- Stockton Record, August 2003
- National Association of Installation Developers (NAID), 2000
- EPA Superfund Report, Vol. XIII, No. 15, July 21, 1999
- The Oakland Tribune, February 20, 1999
- San Francisco Sunday Examiner and Chronicle, July 11, 1999
- The Oakland Tribune, July 9, 1999.

Mr. O'Brien has also written a number of papers and contributed to a number of published articles in the area of contaminated properties and risks associated with environmental contamination.

RELEVENT BASE CLOSURE EXPERIENCE

Mr. O'Brien has advised (cities, counties, developers, DOD, port authorities, LRAs, attorneys) on many base closures throughout the country and world. Some of these bases include:

- Oakland Army Base
- Hunters Point Naval Base
- Bonneville Army Base
- Fleet Industrial Supply Center Oakland
- Point Molate Naval Base
- Naval Ordnance Station-Louisville
- Mare Island Naval Base
- El Torro Marine Base
- Badger Army Ammunition Base
- Fort McClellan Army Base
- Rough & Ready Naval Base
- Stockton INS Base

Steven I. Michelson, R.G.

Principal Geologist

Mr. Michelson applies technical, economic, and regulatory analysis to assist clients in the cost effective management and closure of environmental liabilities. Mr. Michelson characterizes hydrogeologic conditions; contaminant sources, extent, transport, and fate; and evaluates remediation alternatives. He has particular expertise in the assessment of coastal aquifers, the migration of ground water to the ocean, and interactions between ground water and surface water. He routinely designs and implements investigations that are NCP consistent, enables assessments of human and ecological risk, and supports evaluations of remedial alternatives. He offers solutions to liabilities that comprehensively address regulatory, public, stakeholder, technical, and financial concerns.

SELECTED PROJECT EXPERIENCE:

- Rough & Ready Island, California:
  Lead the technical evaluations supporting the transfer and supporting insurance policy of this former Navy installation. Designed and implement investigations of contaminated sites. Assessed data and authored remedial investigation and closure reports. Assisted with the risk analysis and transfer of 1,500 acres of former military property.
- INS Parcel, California:
  Lead the technical evaluations supporting the transfer of this Immigration and Naturalization Service parcel. Designed and implement investigations of contaminated sites. Assessed data and authored remedial investigation and pending closure reports.
- Alameda Naval Air Station, San Francisco Bay, California:
  Assessed the migration and discharge of ground water from a landfill to ponds, wetlands, and sediments and water in the San Francisco Bay. Conclusions are used in assessing ecological risks and screening remedial actions.
- Department of Defense and Department of Energy, Arizona, California, New England:
  Prepared and implemented Remedial Investigations and Feasibility Studies at several installations, including Riverbank Army Ammunition Plant; Sharp Army Depot; and Mather, Castle, Edwards, Hamilton, Norton, Travis, Luke, Pease, Westover, and Otis Air Force Bases.
- Port of Stockton, Stockton, California:
  Principal Scientist directing the investigation of environmental issues related to dredging activities, upland placement of dredge sediments, reuse of dredge sediments, and related potential impacts to surface and ground waters.

- Mid-Peninsula Regional Open Space District, South San Francisco Bay:
  Lead technical expert in negotiations with other PRPs and federal and state of California resource trustees. NRDA claim was for alleged environmental injuries to the Guadalupe River and South San Francisco Bay, including surface water, sediments, ground water, fish, and birds from historical mercury mining. Used resource equivalency analysis (REA) models to scale alleged resource injuries to resource service flows.

- Napa Sanitation District
  Completed the initial feasibility studies of an aquifer storage and recovery project using reclaimed water. Successfully received Grant funding from the Department of Water Resources and State Water Resources Control Board.

- Unocal Avila Beach, Central Coast, California:
  Investigated transport and fate of ground water and petroleum discharged into the intertidal, surf, ocean, beach sediments, estuary, and creek. The findings were used to estimate human and ecological risk, and injury to surface water and biological resources. Participated in natural resources damage assessment (NRDA) negotiations with Regional Board and California Fish and Game.

- Unocal Guadalupe Oil Field, Central Coast, California:
  Investigated pathways for contaminated ground water to impact surface waters, pond sediments, and vegetation. Technical Co-Chair of a trustee/PRP group assessing hydrogeologic setting and ground water contamination associated with NRDA claim. Valued ground water injury, impacts to water resources, and scaled a variety of alternative ground water restoration/mitigation projects.

- Petroleum Sites, several states:
  Provided technical and strategic support in the investigation, remediation, restoration, monitoring, emergency response, and closure of sites overseen by regulators operating pursuant to the Clean Water Act and resource trustees operating pursuant to NRDA. Work has been performed throughout the US at gasoline stations, bulk terminals, pipelines, refineries, and production fields. Clients include oil companies, airlines, airports, Ports, and DoD.

PROFESSIONAL WORK HISTORY

Environmental Risk Services, Corp.
Applied Water Resources
Entrix
Roy F. Weston, Inc.

EDUCATION and TRAINING:

Lehigh University: B.S. Geology and B.S. Civil Engineering
UC Berkeley: Haas School of Business, MBA Evening Program, graduate study

University of San Francisco: Hazardous Material Management, MS Program, graduate study
EPA Monitored Natural Attenuation
ASTM Risk Based Corrective Action
Princeton Ground Water Course (NGWA)
Mediating Environmental Agreements (Concur);
UC Berkeley Extension in Statistics, Accounting, Microeconomics, and Macroeconomics.

CERTIFICATION

Registered Geologist; California - 5165
Professional Geologist in Oregon and Delaware
40-hour OSHA Training

ORGANIZATIONS

National Ground Water Association
Groundwater Resources Association
International Association of Hydrogeologists
American Society of Civil Engineers
California Mining Association
Environmental Committee Technical Lead on Abandoned Mines (1997-2000)

PUBLICATIONS and INVITED PRESENTATIONS

Mr. Michelson has prepared numerous technical reports, confidential memorandums, discussion papers, and strategy documents for clients, senior management, and attorneys on a wide range of topics and issues. Topics include site characterization, agency relations, beneficial uses of water, natural resource damage assessments and characterization of injury and damage to water, resource equivalency analysis to scale mitigation, analysis of mitigation alternatives, QA/QC issues, and contaminated ground water as a vector to human health and ecological exposure.

Micheslon, S. I., *Funding Water Resource Projects with Compensatory Restoration, Mitigation, and Resource Equivalency Analysis*; AWRA, November 2003 and AIH, October 2003.

Micheslon, S. I., *Mechanics and Strategies of Water Equivalency Analysis*. Southwest Hydrology Journal, November-December 2002 issue focused on Water NRDAs.

Michelson, S. I., and del Nevo, A., *Resource Equivalency Analysis to Scale Compensatory Mitigation.* Invited presenter at the Annual Conference of the California Mining Association, May 1998.

BRISCOE IVESTER & BAZEL LLP

STATEMENT OF QUALIFICATIONS

I. FIRM PROFILE

Briscoe Ivester & Bazel LLP is devoted to excellence in the practice of land-use, environmental, and natural-resource law, with the goal of providing outstanding client service through expertise, insight, and responsiveness. The firm strives to understand each client's business, interests, and goals and to assemble the best talent, from inside and outside the firm, to achieve the desired results.

Attorneys at the firm are expert in remediation of contaminated soil and groundwater, hazardous waste, toxic torts, and liabilities under the Resource Conservation & Recovery Act, the Comprehensive Environmental Response, Compensation & Liability Act ("Superfund"), California hazardous waste law, and California Hazardous Substance Account Act. They regularly assist clients on environmental remediation matters, from initial environmental due diligence on a particular property to developing and negotiating strategies for remediation of contaminated sites. The firm has successfully resolved contamination issues at dozens of properties since the 1980s by developing assessment and remediation strategies, negotiating with potentially responsible parties or state and federal agencies, by helping clients assess the risks posed by contamination, or, when necessary, by defending enforcement actions and litigating responsibility issues.

Attorneys at the firm know the regulatory and permitting agencies at all levels, including the U.S. Army Corps of Engineers, Department of Toxic Substances Control, and the U.S. Environmental Protection Agency. The firm has developed good working relationships with these agencies, which helps us develop creative solutions and to advocate for its clients.

The firm's more significant redevelopment projects have included the reuse of Mare Island Naval Shipyard, Naval Training Center San Diego, and Alameda Naval Air Station.

Finally, Briscoe Ivester & Bazel has a long history of successfully counseling public agencies and private clients on matters requiring compliance with the California Environmental Quality Act and National Environmental Policy Act. This work has covered a wide variety of projects, including residential, commercial, industrial, utility and water, energy and resource development, port and waterfront, and remediation projects.

Briscoe Ivester & Bazel LLP can help advise the City of Benicia on developing site characterization and remediation strategies, and in assessing risks and negotiating with property owners, potentially responsible parties, and the various federal and state agencies involved. If the matter must ultimately be litigated, the firm can represent the City in administrative enforcement actions or contribution actions brought in federal or state courts to address contamination, remediation, and cleanup responsibility issues.

II. ATTORNEY PROFILES

John Briscoe. Beginning with his time in the California Attorney General's Office, John has successfully litigated land use, condemnation, environmental, and natural-resources cases for over thirty-eight years. In addition, John has represented clients in hundreds of matters before administrative agencies such as the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, the California Department of Toxic Substances Control, and State and Regional Water Resources Control Boards, and various Regional Water Quality Control Boards.

Larry Bazel. Larry is a nationwide expert in Clean Water Act issues related to water quality and wastewater discharges. In the 1970s, before he began practicing law, he spent eight years as a hydrologist specializing in water pollution control, and as a consultant to the Environmental Protection Agency and the National Science Foundation. He litigates cases involving contaminated property and related environmental issues. He has litigated, negotiated with regulatory agencies, and advised potential buyers and lenders about dozens of contaminated properties.

Christian Marsh. Christian has been practicing land-use and natural-resources law for more than ten years. Before law school, he spent five years at the U.S. Department of the Interior and White House Office on Environmental Policy. Christian counsels clients on contaminated property matters, and he is responsible for reviewing a number of the firm's large-scale EIRs and ensuring compliance with the California Environmental Quality Act and the National Environmental Policy Act.

III. REPRESENTATIVE MATTERS

A. Representative Environmental Litigation Matters

Pellegrini v. Technichem, Inc. The firm represents three agencies of the state of California—the Department of Corrections, California Franchise Tax Board, and California Highway Patrol—in litigation relating to contamination of property in Emeryville.

Movassate v. Dudley Ridge Properties, LLC. The firm represented a manufacturer of industrial controls in defense of claims that the manufacturer contaminated the property during its operations. The case involves claims under CERCLA and the California Hazardous Substances Account Act (HSAA), the state equivalent.

Robert Leal v. Regional Water Quality Control Board. The firm represents a former landowner against claims by the Regional Board that the landowner is liable for mercury contamination. The matter is currently pending before the State Water Resources Control Board.

Volvo GM Heavy Truck Corporation v. HM Holdings. The firm represented a property owner in a private cost-recovery action against former owners and chemical manufacturers for property in Oakland contaminated with zinc, other metals, and acids. We creatively resolved the case to client's satisfaction.

Wiegmann & Rose v. NL Industries. The firm represented a former property owner in a private cost-recovery action against previous owners for contaminating 23-acre site in the City of Richmond with lead, toluene, and other solvents. We prevailed on liability issues, and then settled the case to client's satisfaction.

Hewlett Packard v. Aydin. The firm represented a former tenant in defense of claims that it breached its lease by contaminating the property with PCBs and solvents. We resolved the case to the client's satisfaction.

Moore v. Dole Food Company. The firm represented a former owner of real property in defense of claims that it fraudulently failed to disclose presence of underground tank. We successfully negotiated settlement with plaintiff and insurers.

United States v. CTS Printex. The firm represented landowner in CERCLA cost recovery action.

United States v. Lockheed. The firm's attorneys represented solvent-using facility, and convinced the U.S. Department of Justice, representing EPA, not to file a CERCLA cost-recovery action against the client.

B. Representative Environmental Counseling Matters

Henkel Corporation. The firm represents a chemical manufacturer in negotiations with the Regional Water Quality Control Board, San Francisco Bay Region, on investigation and cleanup of former industrial site contaminated with petroleum, metals, and pesticides.

Ross Valley Sanitary District. The firm advised property owner about PCB and metals contamination regulated by DTSC.

CTS Printex. The firm represented electronics manufacturer at federal superfund site. The site was contaminated with chlorinated solvents, including TCE. The Regional Water Quality Control Board, San Francisco Bay Region, was the lead state agency.

E/M Corporation. The firm represented a solvent-using facility in negotiations with the U.S. Environmental Protection Agency and Regional Water Quality Control Board concerning responsibility for, and investigation and cleanup of, groundwater contamination with chlorinated solvents, including TCE and PCE.

E/M Corporation. Attorneys at the firm represented Mountain View solvent-using facility in negotiations with its neighbor about responsibility for soil contamination along the boundary, and for groundwater contamination downgradient. Negotiated satisfactory cleanup program with the Regional Water Quality Control Board, San Francisco Bay Region, and a settlement agreement with the neighbor.

Industrial Waste Processing. The firm's attorneys represented generator in negotiations with the Environmental Protection Agency at a federal superfund site (reprocessing wastes, including petroleum and metals wastes).

Moss Landing Commercial Park. The firm's attorneys represented property owner in Moss Landing in negotiations with Regional Water Quality Control Board, Central Coast Region, about chromium and petroleum contamination.

Purchases and Sales of Contaminated Properties. The firm's attorneys represented buyers, potential buyers, or sellers of contaminated properties in performing due diligence and negotiating purchase and sale agreements, including Fairchild Industries property (TCE and other solvent contamination in Mountain View and Palo Alto); Tenneco property (petroleum contamination in Bakersfield); Santa Fe Pacific Realty (later Catellus) property (review of 100,000+ acres, including Atlas Mine, a former asbestos mine later listed as a Superfund site); and Heavenly Ski Resort property (petroleum contamination in Lake Tahoe Region).

Insurance and Financing of Contaminated Properties. The firm advised insurers and lenders about potential sales of contaminated properties.

C. Base Closure and Reuse Matters

Mare Island Naval Base, Vallejo. Represented city in negotiations with the California State Lands Commission on settlement of State title claims and environmental contamination and remediation liabilities at the former naval base transferred to the city's local reuse authority under the Base Closure and Realignment early-transfer process. Negotiated environmental liability concerns in furtherance of the transfer, cleanup, and settlement of state claims.

Naval Training Center, San Diego. Represented city in negotiations and settlement of title claims by the State of California to lands transferred by the U.S. Navy to the city under the Base Closure and Realignment process.

John Briscoe

Law Practice

John Briscoe has tried cases in state, federal, and international courts, and has argued before the California Supreme Court, the United States Supreme Court, and the Permanent Court of Arbitration in The Hague. In real property and environmental litigation he has represented large real-estate, water, oil, and mining companies, the country's largest title insurers; the California Land Title Association; the States of Alaska, Hawaii, Georgia, and California; the Government of Guam; the Ports of Oakland and Richmond, California; and many city and county governments. In addition he has represented the Federal Democratic Republic of Ethiopia, the Republic of Korea, the State of Kuwait, and the United Nations Compensation Commission (set up to hear the claims against Iraq, particularly the environmental claims, following the Gulf War of 1991).

Between 1981 and 2000, Mr. Briscoe served as special counsel to the State of Alaska in Supreme Court litigation against the United States. The case concerned the limit of American territorial waters off the north coast of Alaska between Icy Cape and the American-Canadian boundary. He served as special counsel to the State of Georgia in its Supreme Court land and maritime boundary dispute with the State of South Carolina. He has been a special assistant attorney general for the State of Hawaii with regard to the State's claim to the resources of the submerged lands of the Hawaiian archipelago, and for matters arising under Hawaii Homes Commission Act of 1920. And he has served as special counsel to the Territory of Guam in litigation against the United States Government seeking recovery of some 23,000 acres of Land.

Between 1972 and 1980, he practiced in the Land Law Section of the California Attorney General's Office, where he was responsible for major litigation including several actions in the original jurisdiction of the United States Supreme Court. Mr. Briscoe has published three books and numerous articles on natural resources, land use, land title and oceans law. He has authored papers and books on other subjects as well.

Prior Experience

Deputy Attorney General, The State of California, San Francisco, California (1972-1980); visiting scholar, University of California, Berkeley, Boalt Hall School of Law, San Francisco, California (1990-2000).

Contact

(415) 402-2701 Direct
(415) 398-5630 Fax
jbriscoe@briscoelaw.net

Education

J.D. cum laude, University of San Francisco Law School, 1972; Law Review

Admissions

State Bar of California

United States District Court for the Northern, Eastern and Central Districts of California

Ninth Circuit Court of Appeals

Supreme Court of the United States

Permanent Court of Arbitration

Selected Professional Activities

Member and past chair, Board of Directors, San Francisco Bay Planning Coalition; president, Historical Society of the Northern District of California; past member, Council of Friends of The Bancroft Library, University of California, Berkeley; chair, Advisory Board of the MFA Program in Creative Writing, St. Mary's College of California; California Sea Grant Program Advisory Board; Advisory Board, Law of The Sea Institute, University of California, Berkeley; American Bar Association; California Bar Association;

Representative Cases

Permanent Court of Arbitration, The Hague

Eritrea-Ethiopia Claims Commission. Represented Ethiopia in this case arising from the war between the two countries between 1998 and 2000.

United States Supreme Court

Friends of the Earth v. Laidlaw Environmental Services, Inc., 528 U.S. 167, 145 L.Ed.2d 610 (2000). Filed amicus curiae brief on behalf of the California Association of Sanitation Agencies.

United States v. Alaska, 521 U.S. 1, 138 L.Ed.2d 231 (1997). Tried lengthy case before Special Master J. Keith Mann in 1984 and 1985, and appeared for defendant State of Alaska before the Supreme Court in 1997. The case concerned the application of international law-of-the-sea conventions to the Arctic coast of Alaska.

United States v. California, 449 U.S. 1028 (1980). Tried case before Special Master Alfred Arraj in 1978 and 1979, and appeared before the Supreme Court on behalf of defendant State of California in 1980. The case concerned the application of international conventions to the coast of California.

Georgia v. South Carolina, 475 U.S. 1115 (1986). Served as special counsel to the State of Georgia during trial proceedings before special master, and before Supreme Court, on the questions of the lateral seaward boundary, initially to 200 nautical miles, between the states of South Carolina and Georgia, under applicable international law.

California v. Arizona and the United States, U.S. Supreme Court (1977-78). Following a decision of the Court, 440 U.S. 59, tried the case before the Court's Special Master Roy W. Harper, which resulted in decree in favor of California, 452 U.S. 431 (1981).

United States v. Louisiana, Alabama and Mississippi Boundary Case, 470 U.S. 93 (1985). Filed brief as amicus curiae on behalf of the State

of Alaska, urging the position of the states.

United States v. Maine, Rhode Island and New York Boundary Case, 469 U.S. 504 (1985). Filed brief as amicus curiae on behalf of State of Alaska, urging the position of the states.

Mr. Briscoe has participated as amicus curiae in numerous other cases in the Supreme Court from 1974 to date.

California Supreme Court

Stockton Citizens for Sensible Planning v. City of Stockton, A.G. Spanos Companies, et al. (review granted; case awaiting oral argument).

Redevelopment Agency v. Gilmore, 38 Cal. 3d 790 (1985). Argued before the California Supreme Court on behalf of property owners in this condemnation case.

People v. Weeren, 26 Cal. 3d 654 (1980). Argued before the California Supreme Court on behalf of State of California in fisheries case.

9th Circuit Court of Appeals

Mr. Briscoe has appeared before the Ninth Circuit Court of Appeals on several occasions. Two recent cases are: *Intertanko v. State of Washington*, 148 F.3d 1053 (9th Cir. 1999), and *Government of Guam v. United States of America*, 179 F.3d 630 (9th Cir. 1999).

California Courts of Appeals

Mr. Briscoe has argued before the California Courts of Appeal on many occasions. Many of the decisions in the cases he has argued have not been published but a number have. Two of the more unusual cases are *People ex rel. State Lands Commission v. Superior Court*, 36 Cal. App. 3d 727 (1973) and *Hitchings v. Del Rio Woods Recreation & Park District*, 55 Cal. App. 3d (1976).

Trial Court Cases

In the federal and state trial courts, Mr. Briscoe has tried condemnation, land-use, environmental, and other property or natural resource cases. In the federal courts, he has represented clients such as the developer of the Squaw Creek Project at North Lake Tahoe, the Vallejo Sanitation and Flood Control District, and First American Title Insurance Company. In state trial courts he has represented such clients as The Grupe Company, Marriott Corporation (in three separate lawsuits regarding the San Francisco Airport Marriott Hotel), the former Leslie Salt Co. (now Cargill, Incorporated), the Sohio Petroleum Company (the final redetermination of interests in the Prudhoe Bay oil field in

Alaska), and W.R. Grace & Company in class action litigation regarding asbestos in California homes.

Administrative Matters

In addition, Mr. Briscoe has represented clients in hundreds of matters before administrative agencies such as the United States Army Corps of Engineers, the San Francisco Bay Conservation and Development Commission, the California Coastal Commission, the Environmental Protection Agency, the California State Lands Commission, the California Water Resources Control Board, and various California Regional Water Quality Control Boards. His clients in these matters have included major real-estate developers, water interests, oil and mining companies, railroads, municipalities, the Ports of Oakland and Richmond, and Oscar winner (Best Actor) Cliff Robertson.

Selected Publications:

Books

- *Tadich Grill: The Story of San Francisco's Oldest Restaurant* (Ten Speed Press, 2002)
- *Surveying the Courtroom* (2d ed., John Wiley & Sons, 1999)
- *Falsework* (1998)
- *Reports of the Special Masters in the Submerged Lands Cases* (Landmark Press, 1993)
- *Surveying the Courtroom* (Landmark Press, 1984)

Articles

- John Briscoe & Peter Prows, *The U.N. Convention on the Law of the Sea Turns 27, and American Ratification Is Not in Sight – Still*, 1 Berkeley J. Int'l L. Publicist 18 (2009)
- *Garret McEnerney: California's Greatest Lawyer?*, 15 The Argonaut – Journal of the San Francisco Museum and Historical Society 1 (Summer 2004)
- *The Aboriginal Land Title of the Native People of Guam*, 26 University of Hawai'i Law Review 1 (Winter 2003)
- *A Life of Law and Letters – Louis F. Claiborne, 1927-1999*, XXIII The Supreme Court Historical Society Quarterly 3 (2002)
- *Iraq's Defilement of the Gulf Environment, and the Damages Awards To Come*, in Proceedings of the Twenty Third

Annual Conference, Current Maritime Issues and the International Maritime Organization, London, England (January 7, 1999)

- *The Division of America's Offshore Zones as Between Nation and State*, presented at Implications of Entry into Force of the Law of the Sea Convention for U.S. Ocean Governance, The Ocean Governance Study Group, University of Hawaii, Honolulu, Hawaii (January 9-11, 1995), and published in Implications of Entry into Force of the Law of the Sea Convention for U.S. Ocean Governance, The Ocean Governance Study Group, University of Hawaii (April 1995)

- *Wetlands and Ex-Wetlands in California: The Perils of Insuring Their Titles*, in *Title Insurance, Real Estate Law and Practice* (Course Handbook Series, No. N-412, 1995)

- *The Clean Water and Endangered Species Acts – Reform is in Sight (But of What Kind?)*, San Francisco Business Times (January 24, 1992)

- *The Effect of President Reagan's 12-Mile Territorial Sea Proclamation on the Boundaries and Extra-Territorial Powers of the Coastal States*, University of California (1991), *reprinted in* 2 Territorial Sea Journal 225 (1992)

- Book Review, *The Juridical Bay* by Gail Westerman, 20 Ocean Development and International Law (1989)

- *America's Offshore Zones*, Western Legislative Conference Ocean Resources Committee, Monterey, California (November 11, 1989)

- *Islands in Maritime Boundary Delimitation*, 7 Ocean Yearbook (1988)

- *The Use of Islands in Maritime Boundary Delimitation*, in *Rights to Oceanic Resources* (Dallmeyer and DeVorsey eds.), Dean Rusk Center for International and Comparative Law, University of Georgia (1989) (based on paper presented at a symposium held at the Center on May 2, 1987)

- *Federal-State Offshore Boundary Disputes: The State Perspective, in the Developing Order of the Oceans*, (Krueger and Riesenfeld eds., Law of the Sea Institute 1985)

- *Seabed Mineral Discoveries Within National Jurisdiction and the Future of the Law of the Sea*, 18 University of San Francisco Law Review 433 (1984)

- *Delimitation Questions in United States v. California (1980)*, 25 Journal of Urban and Contemporary Law 203 (1983)
- *Developing Sites Near Water: Running a Government Gauntlet*, Journal of the Industrial Development Research Council 27 (March/April 1983)
- *The Use of Tidal Datums in the Law*, 43 Surveying and Mapping 115 (1983)
- *An Introduction to Civil Procedure and Evidence for the Land Surveyor*, 73 Bulletin of the American Congress on Surveying and Mapping 27 (1981)
- *Legal Problems of Tidal Marshes*, in San Francisco Bay: The Urbanized Estuary, The Pacific Division of the American Association for the Advancement of Science (1979)
- *Gion After Seven Years: Revolution of Evolution?*, 53 Los Angeles Bar Journal 207 (1977)
- Reidel, *37 Photographs and Luros: The Disinterring of Roth*, 6 University of San Francisco Law Review 399 (1972)

Lawrence S. Bazel

Law Practice

Larry Bazel practices in the areas of environmental litigation and administrative proceedings, including matters related to water quality and wastewater discharges, contaminated soil and groundwater, CEQA, water rights, toxic torts, and Proposition 65. He has represented cities, industries, and public-interest groups, and has lectured on TMDLs, stormwater, and other Clean Water Act issues. Before practicing law, he spent eight years as a hydrologist specializing in water pollution control, and as a consultant to the Environmental Protection Agency, the National Science Foundation, and municipal governments.

Prior Experience

Partner, Stoel Rives LLP (2001-2005); Partner, Beveridge & Diamond LLP (1991-2000); Associate, Brobeck, Phleger & Harrison (1984-1991); Consulting Hydrologist (1973-1981).

Representative Cases

Water Quality and Clean Water Act

City of Las Vegas. Assists City of Las Vegas and other Southern Nevada municipalities on environmental issues relating to water quality and wastewater discharges, including TMDLs, mathematical modeling, and NPDES permits.

United States v. City of Eureka. Represented ten property owners in defense of claims that the property owners placed fill on tidal flats without a permit from the Corps of Engineers. Creatively resolved without penalties.

BayKeeper v. Tosco. Represented discharger in citizen suit brought to regulate stormwater discharges and air emissions alleged to be point-source discharges. Obtained dismissal on the ground of mootness. After reversal in the Ninth Circuit, settled to client's satisfaction.

CEQA

Concerned Citizens v. City of Stockton. Defending City of Stockton against claims that hiring company to operate city facilities violated CEQA. Prevailed on interlocutory appeal.

Contact

(415) 402-2711 Direct
(415) 398-5630 Fax
lbazel@briscoelaw.net

Education

J.D. cum laude, Hastings College of the Law, University of California, 1984; Editor, Hastings Law Journal

Admissions

State Bars of California, Nevada, and District of Columbia

United States Supreme Court

United States Courts of Appeals, Ninth and D.C. Circuits

United States District Courts, Northern and Eastern Districts of California, and District of Nevada

Water Rights

Putah Creek Council v. Solano County Water Agency. Represented Putah Creek Council in suit brought to enforce the public trust doctrine and Fish & Game Code section 5937, which requires dam owners to release water to keep fish below the dam in good condition. Prevailed at trial; favorably settled on appeal.

Proposition 65

People v. Ace Hardware. Represented 40 of 95 defendants in defense of claims that the use of power tools on bricks and other masonry products exposes people to crystalline silica and other carcinogenic substances. Resolved to satisfaction of all clients.

Soil and Groundwater Contamination

Volvo GM Heavy Truck Corporation v. HM Holdings. Represented property owner in private cost-recovery action against former owners for contaminating property with zinc, other metals, and acids. Creatively resolved to client's satisfaction.

Wiegmann & Rose v. NL Industries. Represented former property owner in private cost-recovery action against previous owners for contaminating property with lead, toluene, and other solvents. Prevailed on liability issues, and then settled to client's satisfaction.

E/M Corporation. Represented North Hollywood solvent-using facility in negotiations with Environmental Protection Agency about responsibility for groundwater contamination with TCE and PCE. EPA decided not to sue.

Moore v. Dole Food Company. Represented former owner of real property in defense of claims that it fraudulently failed to disclose presence of underground tank. Negotiated satisfactory settlement with plaintiff and insurers.

Hewlett Packard v. Aydin. Represented former tenant in defense of claims that it breached its lease by contaminating the property with PCBs and solvents. Resolved to client's satisfaction.

E/M Corporation. Represented Mountain View solvent-using facility in negotiations with its neighbor about responsibility for soil contamination along the boundary, and for groundwater contamination downgradient. Negotiated satisfactory cleanup program with the California Regional Water Quality Control Board and settlement agreement with neighbor.

Hazardous Waste

People v. SPS Technologies, LLC. Represented industry sued for allegedly storing and treating cyanide waste in violation of hazardous-waste requirements. Settled to client's satisfaction.

Safe Drinking Water Act

Western Coalition of Arid States (WESTCAS) v. U.S. Environmental Protection Agency. Represented association of water and wastewater agencies in suit over arsenic MCL. Settled to client's satisfaction.

Toxic Torts

DeAnnethe v. National Refractories. Successfully defended manufacturer against claims that airborne metals caused cancer in neighboring resident.

Mullen v. Armstrong World Industries. Successfully defended manufacturer of asbestos-containing products against class action by persons owning homes where asbestos-containing products were present. Action dismissed by trial court; affirmed on appeal.

Lectures and Presentations

Frequent lecturer on stormwater, TMDLs, enforcement, and other Clean Water Act issues; invited to testify about water pollution control before the U.S. House of Representatives, Committee on Public Works and Transportation, Subcommittee on Investigations and Review (1978).

The Clean Water Act at Thirty: A Failure After All These Years? 18 Natural Resources & Environment 46 (2003).

Water-Quality Standards, Maximum Loads, and the Clean Water Act: The Need For Judicial Enforcement, 34 Hastings Law Journal 1245 (1983).

Christian L. Marsh

Law Practice

Christian Marsh advises public and private clients on natural resource and land use matters involving the public trust doctrine, water supply and water quality, boundary disputes, endangered species, California planning and zoning law, and the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). Christian conducts trial and appellate-level litigation in each of these areas, as well as in eminent domain proceedings. He regularly represents clients on regulatory and other administrative matters pending before the U.S. Army Corps of Engineers, Fish & Wildlife Service, NOAA Fisheries, Bureau of Reclamation, California Reclamation and Regional Water Quality Control Boards, Department of Fish & Game, State Lands Commission, and local governments.

Before practicing law, Christian served as Special Assistant in the U.S. Department of the Interior, where he advised the Deputy Secretary and the Assistant Secretary for Water & Science on endangered species and water policy, specifically in the Columbia River basin, the California Bay-Delta, and the U.S.-Mexico border region. Christian helped coordinate the Department's implementation of the California Bay-Delta Accord, Central Valley Project Improvement Act, and the North American Free Trade Agreement's Environmental Side Accord.

Prior Experience

Stoel Rives LLP, San Francisco, California (2001-2005); Washburn, Briscoe & McCarthy, San Francisco, California (2000-2001); Semester Intern, Natural Resources Division of the California Attorney General's Office, San Francisco, California (spring 1999); Special Assistant, Offices of the Deputy Secretary and Assistant Secretary for Water & Science, U.S. Department of the Interior, Washington, D.C. (1994-1997); Staff Assistant, White House Office on Environmental Policy, Washington, D.C. (1993-1994).

Representative Cases

Stockton Citizens for Sensible Planning v. City of Stockton. Represent landowner in defense of claim that approval of a shopping center violated CEQA, the California Constitution, and California planning and zoning laws. Prevailed on appeal to the California Supreme Court.

Contact

(415) 402- 2703 Direct
(415) 398-5630 Fax
cmarsh@briscoelaw.net

Education

J.D., Hastings College of the Law, University of California, San Francisco, 2000; Associate Editor, West-Northwest Journal of Environmental Law and Policy (1998-2000); Pace Environmental Moot Court Competition Team Member, Hastings Moot Court Advisory Board (1999-2000)

B.A., Economics & Politics, University of California, Santa Cruz, 1992

Admissions

State Bar of California

United States Court of Appeals, Ninth Circuit

United States District Court, Northern District of California

Morada Area Association v. City of Stockton. Represent developer in defending action under CEQA seeking to halt 2,000-acre subdivision based on alleged impacts associated with groundwater and surface water supplies, including water quality.

Foothill Conservancy v. East Bay Municipal Utility District. Defending against lawsuit brought under CEQA to set aside programmatic Environmental Impact Report (EIR) for long-term water supply management program.

Humboldt Baykeeper v. Union Pacific. Assisted in defense against a citizen suit brought under the federal Clean Water Act and Resource Conservation & Recovery Act (RCRA) to force the clean up and halt the discharge of stormwater from a contaminated site.

Arm v. City of Richmond. Successfully settled CEQA action challenging EIR on major improvement project for the Port of Richmond.

Greenbelt Alliance v. City of Oakley. Represented project applicants in defending a CEQA challenge to approval of the East Cypress Corridor Specific Plan, a residential subdivision proposed in Eastern Contra Costa County.

Santa Cruz Seaside Company v. City of Santa Cruz. Assisted in representing landowner in quiet title action brought concerning ownership of lands that the City and State of California claim are historical tidelands under the equal footing and public trust doctrines.

Robertson v. San Geronimo Valley Planning Group. Successfully settled action to quiet title to appurtenant water rights, including groundwater.

Brentwood Union School District v. Brentwood RE Investors, LLC. Assisted in successful representation of landowner at jury trial in eminent domain proceedings to determine the amount of just compensation under the State and Federal Constitutions.

Bertani v. City of Vacaville. Assisted in defense against CEQA and zoning code challenges to commercial shopping center. Prevailed at trial and on appeal.

Santa Teresa Citizens Action Group v. City of San Jose. Assisted in defense against suit challenging construction of a pipeline for delivery of reclaimed water to a new energy facility brought by a private water company under CEQA, California planning laws, the public trust doctrine, and common law public nuisance. Prevailed at

trial and on appeal.

Representative Projects

Fairfield Station Specific Plan, Fairfield. Represent landowner on mixed-use project. Successfully negotiated a plan for development and preservation of vernal pool habitat for Contra Costa goldfields and California tiger salamander.

Dam Retrofit Project, Contra Costa County. Represent regional utility district on the seismic retrofit of a dam, including issues concerning mitigation for endangered species impacts and 401 water quality certification from the Regional Board.

Sanctuary Master Development Plan, Stockton. Represent private development company on permits and entitlements for a 2,000-acre mixed-use project. Advised the client on all aspects of CEQA compliance and helped evaluate and prepare the EIR and Water Supply Assessment. We are also leading the effort to secure wetlands and endangered species-related permits.

Marina Center Mixed Use Project, Eureka. Represented landowner on 43-acre brownfield mixed-use redevelopment project on permitting and entitlement issues, including certification of the project's EIR. The EIR addressed major issues including climate change, coastal wetlands, site remediation, cultural resources, traffic, and wastewater.

Sutter Pointe Specific Plan, Sutter County. Represented public agency on review and approval of programmatic EIR for a 7,500-acre specific plan, which addressed issues associated with development under a regional multi-species Habitat Conservation Plan (HCP), flood control, water supply, climate change, and regional transportation infrastructure.

East Cypress Corridor Specific Plan, Oakley. Represented developers of a 1,255-acre master-planned community, and lead the efforts to conduct NEPA and CEQA review and to obtain all of the project's federal, state, and local permits associated with surface waters and wetlands, water quality, water supply, and threatened and endangered species (e.g., giant garter snake, delta smelt, Chinook salmon, steelhead, Western burrowing owl, and Swainson's hawk).

Water Diversion Project, Livermore. Represented local agency on negotiations with state and federal wildlife and water quality agencies on renewal of wetland permit, water quality certification, and streambed alteration agreement for in-stream placement of diversion works and diversion of water for a municipal golf course.

Cypress Grove Subdivision, Oakley. Represented a consortium of developers on a residential subdivision project. In addition to assisting with review of the project under CEQA and NEPA, we secured inclusion within the Central Valley Project water contract service area, and concluded necessary consultations with the Service and NOAA Fisheries for several listed species.

Bay Checkerspot Butterfly Habitat, Santa Clara County. Represented a coalition of landowners and developers in the administrative proceedings to designate critical habitat for the bay checkerspot butterfly in Santa Clara County, California, and succeeded in persuading the Service to amend its proposed designation.

Scotts Valley spineflower and polygonum Habitat, Santa Cruz County. Represented landowner in the administrative proceedings to designate critical habitat for the Scotts Valley spineflower and polygonum.

Mare Island Naval Base, Vallejo. Represented city in negotiations with the California State Lands Commission on base closure and reuse and a settlement of State title claims to significant portions of the former naval base under the public trust and equal footing doctrines.

Naval Training Center, San Diego. Represented city on base closure and reuse in negotiations and settlement of title claims by the State of California to former tide and submerged lands.

Professional Activities/Memberships

Member, American Bar Association Section on Environment, Energy & Resources (2000-present); Chair, ABA Endangered Species Committee (2008-present); Member, California Bar Association Section on Environmental Law (2000-present); Associate Member, California Groundwater Resources Association (2006-present); Associate Member, Association of California Water Agencies (2008-present).

Articles

Prairie Dog HCP Upheld: Wildearth Guardians Appeal, ABA Section of Environment, Energy & Resources, Endangered Species Committee Newsletter, Vo1. 12, No. 1 (Jan. 2010); *The Endangered Species Act: It's Time Reasoned Reform*, ABA Trends Newsletter,

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VI.A.72

GARRITY AND KNISELY
OVERVIEW OF MILITARY BASE CONVERSION PRACTICE

Garrity and Knisely is a law firm established in 1990 by David S. Knisely and Robert P. Garrity. Its offices are located in downtown Boston at 21 Merchants Row. The law firm of ***Garrity and Knisely*** has developed extensive expertise in negotiating the transfer of military bases scheduled to be closed or realigned, and in the implementation of base reuse plans. ***Garrity and Knisely*** has provided legal services to public agencies, local redevelopment authorities and, in some cases, developers at the following installations:

- **Lone Star Army Ammunition Plant, Bowie County, Texas**

The Lone Star Army Ammunition Plant was selected for closure in the 2005 round of base closures. Garrity and Knisely was retained by the Red River Redevelopment Authority (the "RRRA"), the designated local redevelopment authority for Lone Star, to provide ongoing legal support to the RRRA on all base closure-related issues. Garrity and Knisely assisted in structuring a "below fair market value" economic development conveyance ("EDC") for an 8700 acre portion of Lone Star, including all infrastructure and utility systems, combined with public sale by the Army of surplus parcels on the Red River Army Depot. Mr. Knisely assisted in the negotiation and preparation of the EDC Memorandum of Agreement ("MOA"), Deed and other conveyance documentation in support of this transaction, which was concluded in September 2010.

Additional services to be provided by Garrity and Knisely will include legal support in the negotiation of an environmental services cooperative agreement with the Army and a companion Cleanup Agreement and Compliance Plan with the Texas Commission on Environmental Quality.

- **Newport Chemical Depot, Vermillion County, Indiana**

The Newport Chemical Depot was selected for closure in the 2005 round of base closures. Garrity and Knisely was selected by the Newport Chemical Depot Reuse Authority ("LRA"), the designated local redevelopment authority for the Depot, to assist in the preparation of the Homeless Assistance Submission for submission to the Department of Housing and Urban Development ("HUD").

Services provided by Garrity and Knisely have included review and oversight of the outreach process for homeless providers and public agencies, preparation, as needed, of legally binding agreements ("LBAs") with homeless providers selected by the LRA, coordination of the approval process with HUD staff and assistance in negotiation with the Army of property disposition methods.

Garrity and Knisely is currently assisting the LRA in the negotiation of a "below fair market value" economic development conveyance ("EDC") for the entire facility, on a

"shared proceeds" basis, including the preparation of an EDC Memorandum of Agreement ("MOA") and all related conveyance documents. It is currently anticipated that the first phase of this transfer will occur in early 2011.

- **Fort Monmouth, Eatontown, Tinton Falls and Oceanport, New Jersey**

Fort Monmouth was selected for closure in the 2005 round of base closures. Garrity and Knisely, in partnership with McManimon and Scotland, was retained by the Fort Monmouth Economic Revitalization Planning Authority ("FMERPA") and the New Jersey Attorney General to provide a broad range of base closure or BRAC-related legal services.

Garrity and Knisely assisted FMERPA in undertaking required outreach in support of the preparation of the FMERPA Application for submission to the Department of Housing and Urban Development ("HUD"), and in the drafting of the Homeless Assistance Submission. Garrity and Knisely also prepared and negotiated legally binding agreements with selected homeless providers. The FMERPA Application, including the Redevelopment Plan and Homeless Assistance Submission, has been submitted to HUD.

Garrity and Knisely is currently assisting the staff of the Fort Monmouth Economic Revitalization Authority ("FMERA"), the implementation LRA and successor to FMERPA, in the development of a property disposition plan to be negotiated with the Army. This plan will include an economic development conveyance ("EDC") for all or portions of the installation.

- **Fort McPherson, Atlanta, Georgia**

Fort McPherson was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Fort McPherson Planning Local Redevelopment Authority ("MPLRA"), the designated local redevelopment authority for Fort McPherson, to provide a wide range of BRAC-related legal services.

Initial services provided by Garrity and Knisely included assistance in the preparation of the MPLRA Application, including the Redevelopment Plan and Homeless Assistance Submission, for submission to the Department of Housing and Urban Development ("HUD"), preparation and negotiation of legally binding agreements ("LBAs") with homeless providers and the development of a property disposition strategy for negotiation with the Army. Garrity and Knisely is currently concluding negotiations with HUD staff as required to secure approval of the MPLRA Homeless Assistance Submission, and will coordinate LBA requirements with elements of the property disposition methods being negotiated with the Army.

The next phase of legal services to be provided by Garrity and Knisely will include assistance in the completion of an economic development conveyance ("EDC") application and negotiation of final EDC terms with the Army. It is currently anticipated that final conveyance terms will include a "below fair market value" EDC for a major portion of the installation, combined with public sale by the Army of certain agreed upon

parcels.

- **Kansas Army Ammunition Plant, Parsons, Kansas**

The Kansas Army Ammunition Plant was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Great Plains Development Authority (the "GPDA"), the designated local redevelopment authority for the Kansas Army Ammunition Plant, to provide ongoing legal support to the GPDA in structuring the early transfer of a major portion of the 13,000 acre facility to the GPDA via an economic development conveyance ("EDC"). The EDC includes necessary equipment, utility systems and rail infrastructure to support the development of the Great Plains Industrial Park, and the EDC Memorandum of Agreement ("MOA") includes a "shared proceeds" provision providing for below fair market value payments over a ten year period as development progresses. The first phase of the transfer was concluded in late 2009.

Services provided by Garrity and Knisely have included legal support in the negotiation of the EDC and the EDC MOA in coordination with the conveyance of other portions of the facility to an ammunition production contractor and the State of Kansas, and in the negotiation of the transfer of environmental permits required for the completion of the environmental cleanup of the entire facility.

- **Fort Monroe, Hampton, Virginia**

Fort Monroe was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Fort Monroe Federal Area Development Authority ("FMFADA"), the designated local redevelopment authority for Fort Monroe, to provide a wide range of BRAC-related legal services.

Services provided by Garrity and Knisely have included assistance in the integration of the state, local and homeless provider screening process into the base reuse planning process and the development of required documentation in support thereof, including the drafting of relevant portions of the FMFADA Application for submission to the Department of Housing and Urban Development ("HUD") and legally binding agreements with homeless providers. Garrity and Knisely has also provided assistance in structuring early transfer and cleanup privatization of the entire facility, including coordination with the Commonwealth of Virginia on the exercise of its reversionary interest in a portion of the property and the structuring of an economic development conveyance ("EDC") for the balance of the installation.

- **Brunswick Naval Air Station, Brunswick, Maine**

Brunswick Naval Air Station ("BNAS") was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Brunswick Local Redevelopment Authority ("BLRA") to provide a wide range of BRAC-related legal services.

Services provided by Garrity and Knisely have included close consultation on the

structuring of the state, local and homeless provider outreach and screening process and integration of screening requirements and the mechanics of the various property disposition methods into the reuse planning process. Assistance was also provided in the preparation of the BLRA Application, including the Redevelopment Plan and Homeless Assistance Submission, for submission to the Department of Housing and Urban Development ("HUD"), the negotiation of legally binding agreements with homeless providers and the selection of property disposition methods in support of the implementation of the Redevelopment Plan. HUD approval of the BNAS Redevelopment Plan and Homeless Assistance Submission was received in 2009, with the concurrence of the Navy.

Garrity and Knisely assisted the Midcoast Regional Redevelopment Authority, successor to the BLRA, in the final selection of property disposition methods and participated in the preparation of the Economic Development Conveyance Application ("EDC") currently under review by the Navy. The initial transfer of property at BNAS is scheduled to take place in November of 2010.

- **Concord Naval Weapons Station, Concord, California**

The Concord Naval Weapons Station was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the City of Concord, the designated local redevelopment authority for the former weapons station, to provide ongoing legal support to the City regarding all aspects of the base closure process. To date, this support has included assistance in negotiations with the Navy in the coordination and resolution of federal screening requests, assistance in structuring the state, local and homeless provider screening process and drafting of legally binding agreements with homeless providers, the development of a property disposition strategy to be negotiated with the Navy, which will include an economic development conveyance and various public benefit conveyances ("PBCs"), and guidance regarding the establishment and focus of the BRAC Cleanup Team, in support of expediting the environmental documentation required for property disposition.

- **Buckley Annex, Denver, Colorado**

Buckley Annex at the former Lowry Air Force Base was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by the Lowry Redevelopment Authority ("LRA"), the designated local redevelopment authority for the Buckley Annex, to provide a broad range of BRAC-related legal services.

Initial services provided by Garrity and Knisely included oversight of the outreach process to homeless providers and public agencies in support of the development of the Redevelopment Plan and Housing Assistance Submission for submission to the Department of Housing and Urban Development ("HUD"), drafting and the negotiation of the legally binding agreement ("LBA") with the homeless provider selected by the LRA, coordination of the HUD approval process with HUD staff, and negotiation with the Air Force of final property disposition methods, which will include an economic development conveyance.

- **Muller Army Reserve Center, Bronx, New York**

The Muller Army Reserve Center, a one (1) acre Army reserve center, was selected for closure in the 2005 round of base closures. Garrity and Knisely was retained by the New York City Economic Development Corporation, as a member of the Matrix Design Group Team, to prepare the Redevelopment Plan and Homeless Assistance Submission for submission to the Department of Housing and Urban Development. Additional services to be provided by Garrity and Knisely include the preparation of legally binding agreements ("LBAs") to be negotiated with homeless providers, and the negotiation of property disposition methods with the Army.

- **Brittin Army Reserve Center, Pennsauken Township, New Jersey**

The Brittin Army Reserve Center, a six (6) acre Army reserve center, was selected for closure in the 2005 round of base closures. Garrity and Knisely was retained by Pennsauken Township, the designated local redevelopment authority for the Brittin Army Reserve Center, to design and complete the final stages of the outreach process to homeless providers and public agencies required in the preparation of the Redevelopment Plan and Homeless Assistance Submission, for submission to the Department of Housing and Urban Development ("HUD"). Additional services provided by Garrity and Knisely included the negotiation of a legally binding agreement ("LBA") with the homeless provider selected by the Township, preparation of the revised homeless assistance submission, assistance in the preparation of the application for a public benefit conveyance to the Federal Emergency Management Agency for use of the existing buildings on-site as the headquarters and training facility for the Township Office of Emergency Management and Fire Department, coordination of the approval process with HUD staff and negotiation of final property disposition methods with the Army. HUD approval of the Redevelopment Plan and Housing Assistance Submission was received by the Township in June of 2009, with the concurrence of the Army.

- **Army Garrison – Selfridge, Sebille Manor Housing Area, Chesterfield Township, Michigan**

The Sebille Manor Housing Area was selected for closure in the 2005 round of base closures. Garrity and Knisely has been retained by Chesterfield Township Local Redevelopment Authority to provide a wide range of BRAC-related legal services.

Services provided by Garrity and Knisely have included assistance in structuring the outreach process for homeless providers and potential recipients of public benefit conveyances, initial negotiations with the Department of Housing and Urban Development ("HUD") regarding homeless submission issues and the integration of Army requirements and notices of interest received during the state, local and homeless provider screening process into the reuse and property disposition planning process.

Additional services have included oversight of the preparation of the Chesterfield Township Application, including the Redevelopment Plan and Homeless Assistance Submission, for submission to HUD, including the negotiation of legally binding agreements with homeless providers and the negotiation with the Army of final property disposition methods. HUD approval of the Township Redevelopment Plan and Homeless Assistance submission was received in 2009, with the concurrence of the Army.

- **Lowry Air Force Base, Denver and Aurora, Colorado**

Garrity and Knisely represented the Lowry Economic Redevelopment Authority (the "LRA") in negotiations with the Air Force regarding the restructuring of the EDC agreements that were originally negotiated in 1995. Garrity and Knisely also represented the LRA in negotiating the transfer documents for the first Air Force early transfer combined with the privatization of the environmental clean-up at Lowry. The amount negotiated to complete the clean-up was over thirty-nine million dollars. The required early transfer and privatization documents included an Environmental Services Cooperative Agreement between the Air Force and the LRA and a Consent Agreement with the Colorado Department of Public Health and Environment. Garrity and Knisely also represented the LRA in negotiating the second phase of the privatized clean-up.

- **K.I. Sawyer Air Force Base, Gwinn, Michigan**

Garrity and Knisely represented Marquette County, Michigan (the "County") in the transfer from the Air Force of over 5,000 acres of land, including all buildings and utility systems, at the former K.I. Sawyer Air Force Base in the Upper Peninsula of Michigan. The transfer plan included a public benefit conveyance of the existing airport facility, and a "no-cost" EDC for the remaining land, buildings and utility systems. The County also plans to privatize the telephone, water, wastewater and electric systems.

Services provided by Garrity and Knisely included negotiation of EDC and Airport PBC transfer timetables; review of the environmental clean-up process to ensure transfer timetables were met and transfer parcels are marketable; preparation and negotiation of transfer documents, including the Airport PBC application, the purchase Memorandum of Agreement, lease termination documents, deeds, a Lease in Furtherance of Conveyance, bills of sale and an extended caretaker agreement; and structuring of the privatization plan for the utility systems.

- **Fort Devens, Ayer, Harvard and Shirley, Massachusetts**

Garrity and Knisely represented the Massachusetts Development Finance Agency (the "MDFA") in connection with the acquisition and redevelopment of Fort Devens, an Army installation which was transferred to the MDFA in May of 1996. The transfer of Fort Devens, which was accomplished as an economic development conveyance ("EDC"), is one of the largest transfers under the authority of the Base Realignment and Closure Act ("BRAC") completed by the Department of the Army to date.

Services provided by Garrity and Knisely included negotiation of the final EDC transfer terms; active participation with the BRAC Clean-up Team in targeting the environmental clean-up in order to accelerate deed transfers and to ensure the marketability of transferred parcels; securing findings of suitability to transfer and lease; structuring MDFA input into the NEPA process; oversight of the property screening process and assisting in the negotiation of legally binding agreements with homeless providers and HUD approval of the Redevelopment Plan; preparation of transfer documents including interim leases, the purchase Memorandum of Agreement, deeds and leases in furtherance of conveyance; assisting in the privatization of the utility systems; preparation of transfer documents and legal opinions required for the sale of parcels by the MDFA to private end-users; and drafting of legislation that established a local governance structure for Fort Devens.

More recently, Garrity and Knisely provided legal support to MDFA in the exchange of a parcel of land owned by the Army for construction services provided by the MDFA.

- **Red River Army Depot, Bowie County, Texas**

Garrity and Knisely represented the Red River Redevelopment Authority (the "RRRA") in the transfer from the Army of over 700 acres of land, including buildings and utility systems, at the Red River Army Depot. The transfer of over 500 acres of land, including an early "horizontal" conveyance of a major industrial facility, has been completed. The conveyance and privatization of all utility systems (gas, electric, steam, water, wastewater, industrial wastewater) has also been finalized.

Services provided by Garrity and Knisely included assistance in the final preparation of the Redevelopment Plan; negotiation of the final EDC transfer terms for land, buildings and utility systems; review of the environmental clean-up process and documentation required for transfer to ensure transfer timetables were met and the transferred parcels are marketable; review of the Environmental Assessment; assistance in the preparation of the legal components of the application for an EDC; preparation and final negotiation of transfer documents, including interim leases, the purchase Memorandum of Agreement, sale-leaseback agreements, deeds and service and utility agreements; and structuring of the privatization of the utility systems.

Garrity and Knisely also completed negotiations with the Army under the "no-cost" EDC statute reducing the RRRA's purchase price to zero dollars.

- **Morgan's Point, Bermuda**

Garrity and Knisely served as special counsel to the Bermuda Land Development Company with regard to the environmental clean-up and redevelopment of the former United States Naval Base at Morgan's Point, Bermuda. In this capacity, Garrity and Knisely assisted the Bermuda Land Development Company and the Government of Bermuda in the development of transfer documents and an environmental clean-up and covenant not to sue program for Morgan's Point and three other closed United States and Canadian naval bases in Bermuda.

- **Detroit Arsenal Tank Plant, Warren, Michigan**

Garrity and Knisely represented the City of Warren in the fast-track conveyance of the 153 acre former tank production facility to the City. In this capacity, Garrity and Knisely assisted in the preparation of the City's Redevelopment Plan and EDC application which was submitted to the Army in July of 1997, and concluded EDC negotiations and transfer documentation in November of 1997, allowing the City to meet its conveyance deadline of December 31, 1997. Meeting this deadline enabled the City to maintain the installation's Renaissance Zone status under Michigan Law, ensuring critical development incentives for the site.

Services provided by Garrity and Knisely included negotiation of the accelerated EDC transfer timetable and price, and the preparation of transfer documentation including deeds, the purchase Memorandum of Agreement and a Lease in Furtherance of Conveyance.

- **Seneca Army Depot, Seneca County, New York**

Garrity and Knisely represented the Seneca County Industrial Development Authority (the "IDA") in the transfer of over 10,000 acres of land, including buildings and utility systems, to the IDA and selected state agencies. The transfer plan at Seneca includes the interim lease of the 160 acre North Depot for institutional use, the phased transfer to the IDA, by deed, of housing, industrial facilities and all utility systems, and public benefit conveyances to state agencies for conservation and prison uses.

Services provided by Garrity and Knisely included negotiation of the final "no-cost" rural EDC transfer terms; review of the environmental clean-up process and documentation required for transfer to ensure transfer timetables were met and the transferred parcels are marketable; review of the Environmental Impact Statement; assistance in the preparation of the legal components of the application for a rural EDC; preparation and final negotiation of transfer documents, including interim leases, the purchase Memorandum of Agreement, deeds and service and utility agreements; and structuring of the transfer and privatization of the utility systems.

- **Savanna Army Depot, Savanna, Illinois**

Garrity and Knisely represented the Jo-Carroll Depot Local Redevelopment Authority in the transfer from the Army of over 3,000 acres of land, including buildings, utility systems, and rail infrastructure, at the Savanna Army Depot. The transfer plan at Savanna currently includes the early interim lease of selected industrial and rail-related facilities, and the phased transfer by deed of the entire 3,000-acre parcel.

Services being provided by Garrity and Knisely included assistance in the preparation of the final Redevelopment Plan; the review of the environmental clean-up process and documentation required for transfer to ensure transfer timetables are met and the transferred parcels are marketable; review of the Environmental Impact Statement; preparation of transfer documents, including interim leases, the purchase

Memorandum of Agreement, easement agreements, deeds and service and utility agreements; and structuring of the transfer and privatization of the utility systems.

- **Fleet Industrial Supply Center Oakland, Oakland, California**

Garrity and Knisely represented the Port of Oakland (the "Port") in successfully structuring and implementing the early transfer and privatization of the environmental clean-up of the 531 acre Fleet Industrial Supply Center Oakland ("FISCO"). This early transfer was accomplished in seven months.

Garrity and Knisely negotiated and prepared key transaction documents including the Finding of Suitability for Early Transfer ("FOSET") and the Environmental Services Cooperative Agreement between the Navy and the Port. In addition, Garrity and Knisely prepared and assisted in the negotiation of the Consent Agreement between the Port and the California Department of Toxic Substances Control, which agreement governs the completion by the Port of the environmental clean-up of FISCO.

- **Fort McClellan, Anniston, Alabama**

Garrity and Knisely represented the Anniston-Calhoun County Fort McClellan Development Joint Powers Authority ("JPA") in the transfer from the Army of over 9,000 acres of land, including buildings and improvements. Garrity and Knisely assisted in the preparation of the "no-cost" EDC application and negotiated the purchase Memorandum of Agreement with the Army. Garrity and Knisely negotiated and drafted a Master Lease covering over 2,000 acres of land and 800 buildings.

Garrity and Knisely also represented the JPA in the early transfer and clean-up privatization of 4,800 acres. The funding amount to be provided by the Army for the first phase of the clean-up privatization is forty-eight and one-half million dollars. In addition, this precedent setting clean-up privatization includes significant amounts of unexploded ordnance. The documents required to complete this transaction included an Environmental Services Cooperative Agreement between the Army and the JPA and a Clean-up Agreement between the State of Alabama and the JPA. Garrity and Knisely also played an instrumental role in negotiating environmental insurance policies on behalf of the JPA. Garrity and Knisely will continue to represent the JPA through future phases of the clean-up.

- **Fitzsimons Army Medical Center, Aurora, Colorado**

Garrity and Knisely represented the City of Aurora (the "City") in the structuring and implementing an early transfer and clean-up privatization of a 22 acre parcel at the former Fitzsimons Army Medical Center. This parcel contains three landfills and will be the site of a major access road serving the medical center redevelopment being undertaken by the Fitzsimons Redevelopment Authority. Garrity and Knisely negotiated key transaction documents, including the Environmental Services Cooperative Agreement between the Army and the City and the Consent Agreement between the Colorado Department of Public Health and Environment and the City.

- **Rough and Ready Island, Stockton, California**

Garrity and Knisely represented the Port of Stockton (the "Port") in the successful negotiation of the early transfer, including the privatization of the environmental clean-up, of 500 acres of land critical to the Port's redevelopment plans. The funding amount for the environmental clean-up was over twenty-three million dollars. The disposition authority utilized to accomplish this early transfer was a "Port Facility" public benefit conveyance. Documents required to complete the transaction included an Environmental Services Cooperative Agreement between the Port and the Navy, a Consent Agreement among the Port, the California Department of Toxic Substances Control and the Regional Water Quality Control Board, and a Deed approved by the Navy and the Maritime Administration.

- **Naval Ordnance Station Louisville, Louisville, Kentucky**

Garrity and Knisely represents Titan Research and Development, LLC ("Titan"), the Master Developer selected by the Louisville/Jefferson County Redevelopment Authority ("LJCRA"), to oversee the transfer and redevelopment of the Naval Ordnance Station Louisville. In this capacity, Garrity and Knisely worked closely with the LJCRA in successfully completing the early transfer of the entire 141 acre facility to the LJCRA through "no-cost" EDC authority. Transaction documents included the transfer Memorandum of Agreement, Deed and leaseback to the Port Hueneme Detachment in support of Navy contractors on site.

- **Roosevelt Roads, Commonwealth of Puerto Rico**

Garrity and Knisely currently represents the Commonwealth of Puerto Rico in negotiations with the Navy regarding the environmental clean-up, early transfer and disposition of the entire 8,600 acre facility. The closure of Roosevelt Roads was authorized by special legislation in 2003, and the Navy has touted the closure of Roosevelt Roads as its model for future base closures.

Garrity and Knisely assisted the Commonwealth in the negotiation of a disposition strategy with the Navy that includes a unique combination of public sales, public benefit conveyances, conservation conveyances and the focused use of Economic Development Conveyance authority. Garrity and Knisely worked closely with the Commonwealth, the Navy and EPA in the design of a streamlined RCRA process to govern the remainder of the required environmental clean-up and the implementation of a privatized "early" transfer of the airport and port facilities.

- **Fort Sam Houston, San Antonio, Texas**

Garrity and Knisely represented Orion Partners in the long-term lease and redevelopment of three underutilized buildings on the installation, containing over 450,000 square feet. Garrity and Knisely prepared and negotiated the required long-term master leases under the Army's Enhanced Use Leasing Program, which leases were executed in June of 2001. Garrity and Knisely also prepared and assisted in the negotiation of subleases between Orion and various Army Commands.

In contrast with the above-described projects, Fort Sam Houston is an active Army installation. This long-term leasing action was taken by the Army under the authority of 10 U.S.C. Sec. 2667, and represents the new Enhanced Use Leasing initiative on the part of the Department of Defense to facilitate the private redevelopment of underutilized facilities at active installations.

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Services provided by Garrity and Knisely regarding military base closure and redevelopment include:

(1) preparation of homeless assistance submission documentation and legally binding agreements with homeless providers;

(2) negotiation and drafting of redevelopment plans and transfer documents, including interim leases, leases in furtherance of conveyance, purchase agreements, easement agreements, caretaker agreements, sale-leaseback agreements, findings of suitability to lease and transfer, and deeds;

(3) preparation and negotiation of documents required for "early" transfers and privatization of environmental clean-ups, including findings of suitability for early transfer ("FOSET"), environmental response obligation addendums, consent agreements, and environmental services cooperative agreements;

(4) negotiation of Economic Development Conveyances ("EDCs"), with and without consideration, and negotiation of transfers through other disposition mechanisms, including public and negotiated sales, and public benefit conveyances;

(5) representation of developers in the acquisition of development rights from local redevelopment authorities, and the subsequent redevelopment of the subject facilities;

(6) oversight and strategic advice regarding the various elements of the federal real property screening process;

(7) negotiation of HUD approval of redevelopment plans;

(8) negotiation with the military departments and federal and state regulators on the timing and focus of hazardous waste and unexploded ordnance clean-up to ensure compatibility with community reuse plans, with special expertise in cases where installations are federal superfund sites;

(9) negotiation of the transfer and privatization of utility systems;

(10) strategic advice and analysis of options regarding governing structures for local redevelopment authorities;

(11) oversight and strategic advice regarding the completion of environmental impact statements and environmental assessments under the National Environmental Policy Act ("NEPA"), and integration of state counterparts of NEPA into the NEPA process, in order to ensure timely completion that allows for the implementation of locally-approved reuse plans;

(12) preparation and negotiation of basewide covenants not to sue under federal and state superfund statutes;

(13) negotiation of the transfer of land and buildings at closing and realigned installations to industrial and commercial end-users;

(14) negotiation of leases and subleases under the "Enhanced Use Leasing" program;

(15) negotiation of exchange agreements under military construction and reserve authorities; and

(16) negotiation and implementation of programmatic agreements under Section 106 of the National Historic Preservation Act.

David Knisely
21 Merchants Row – Suite 3B
Boston, Massachusetts 02109
Telephone: (617)-367-3990
Fax: (617) 523-8779
Cell Phone (617) 413-1411
E-mail address: garrityknisely@aol.com

List of References

Jack C. Sprott, Executive Director
McPherson Planning Local Redevelopment Authority
86 Pryor Street, SW
Suite 300
Atlanta, GA 30303-3131
404 -614-8333 T
404 - 589-8707 F
404 - 558-2041 C
Email: sprott@mcphersonredevelopment.com

Frank C. Cosentino, Executive Director
Fort Monmouth Economic Revitalization
Authority
2-12 Corbett Way
Eatontowm, NJ 07724
932-935-5966
frank.cosentino@fmerpa.state.nj.us

Bill Cork, Executive Director
Red River Redevelopment Authority
107 Chapel Lane
New Boston, TX 75570
903-223-9841
bill.cork@rrcp.org

Bill Laubernds, Executive Director
Newport Chemical Depot
Reuse Authority
259 Vine Street
Clinton, IN 47842
765-832-3870
w.laubernds@necdra.com

DAVID S. KNISELY **Background Information**

David S. Knisely is a partner in the law firm of Garrity and Knisely. He serves as lead counsel for the firm in the representation of municipalities, lenders, developers, utility providers and local redevelopment authorities at military installations scheduled to be closed or realigned.

Mr. Knisely is a nationally recognized expert regarding the completion of property transfers at closing and realigning military installations. He has expedited the negotiation of economic development conveyance, public sale and public benefit conveyance terms, and prepared transfer documents, at closing Army, Air Force and Navy installations. He has also negotiated ground-breaking enhanced use leases and exchange agreements with the Army at operating installations.

Mr. Knisely has a great deal of experience in matters related to managing the risks associated with the environmental clean-up at closing and realigning installations. He has been involved in coordinating clean-up and redevelopment priorities, and has successfully negotiated consent agreements, covenants not to sue, findings of suitability to transfer, environmental services cooperative agreements and related documents with federal and state environmental agencies and military departments. He has also completed the negotiation of clean-up privatization and early transfer agreements at closing Army, Air Force and Navy installations.

Mr. Knisely has made numerous presentations to groups and professional associations regarding the transfer, environmental clean-up and utility privatization at military installations scheduled to be closed or realigned.

Mr. Knisely is a member of the Massachusetts Bar Association, the Massachusetts Conveyancers Association and the Association of Defense Communities.

Mr. Knisely obtained his Bachelor of Arts degree, magna cum laude, from Case Western Reserve University in 1972 and a Masters degree in Public Administration from Harvard University in 1974. He obtained his Juris Doctor degree from Suffolk University and was admitted to the Massachusetts Bar in 1981.

Dongell Lawrence Finney LLP

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Dongell Lawrence Finney is a mid-sized firm with twenty-nine (29) attorneys and sixteen (16) additional support staff. The Firm's strong litigation, government regulatory and transactional law practices service small, emerging growth and large public entities and businesses. The Firm has offices in Los Angeles, Sacramento, Las Vegas and Washington DC.

The Firm has substantial experience in representing various clients in matters involving state and federal Superfund (HSAA and CERCLA). These matters typically involve both defending against such claims, as well as pursuing cost allocation against those responsible for the contamination at issue. Below are several cost recovery actions the Firm is currently negotiating or has recently handled:

- The Firm currently represents a Northern California County in connection with a multi-party CERCLA suit brought by the United States concerning a former municipal landfill site which operated from the early 1950's to the early 1970's. Experts retained by the Firm have conducted extensive investigation at the site in order to develop a cost effective remedial plan. This case is currently being mediated.

- The Firm currently represents an international aerospace and defense systems company and a stainless steel tubing manufacturer in connection with claims brought by a Southern California Water District for response costs and damages pursuant to the California Superfund Act for alleged releases of volatile organic compounds from its facilities to groundwater. This District is in the early stages of implementing an approximate $100 million remediation and containment plan to address groundwater contamination over an approximate 11 square mile area in the cities of Fullerton and Anaheim.

- The Firm, on behalf of a large manufacturer of high-temperature alloys and titanium metals, is currently pursuing a cost recovery action against several PRPs for their alleged involvement in the contamination of certain property located in Los Angeles, California. Specifically, the Firm's client is seeking reimbursement of its response costs from several historical PRPs, including prior owners and operators, such as Burlington Northern Railroad and United Pacific Railroad in connection with their spur track operations where releases of contamination took place.

- The Firm, on behalf of a large broker and processor of ferrous and nonferrous scrap metals, stainless steel, and high-temperature alloys, recently prosecuted a cost recovery action against several PRPs responsible for historical PCB contamination of property. Locating the former employee and developing his testimony proved vital to proving our client's case, which led to the recovery of $2.8 million from these PRPs – an amount sufficient to cover this client's total cleanup costs. Significantly, this was one of only two environmental cases featured in *Settlement & Verdicts*, Year-in-Review edition, a publication of the *Los Angeles Daily Journal*. Notably, we were recognized for our creativity and persistence in investigating and developing evidence of contamination activities that occurred over 50 years ago.

- The Firm recently represented historical operators of a bulk loading facility at the Port of Los Angeles against environmental cleanup claims brought by an environmental non-profit group and the Port of Los Angeles. The Port claimed that its cleanup costs for dredging the contamination allegedly caused, in part, by our client were in excess of $50 million. By successfully challenging the remedial approach and aggressively prosecuting historical PRPs, the Firm was able to reach a settlement that only required our client's insurers to make a $1 million contribution despite that our client was the Port's main target for cost recovery.

- The Firm recently represented a former San Diego Unified Port District ("Port") tenant in connection with a cost recovery action brought by the Port relating to the remediation of copper contamination. This matter was successfully mediated for a small percentage of the Port's claimed remediation costs.

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Timothy J. Swickard

Partner
770 L St., Suite 950
Sacramento, CA 95814
Direct: 916-449-3999
Cell: 530-574-6108
tswickard@dlflawyers.com

Environmental Law Practice

As an Attorney with Dongell Lawrence Finney LLP, Mr. Swickard serves clients in all aspects of his nationwide practice of real estate and environmental law, including an extensive record of the Brownfields redevelopment of former DOD bases, defense contractor facilities and large and small contaminated properties through successfully negotiating agreements, orders and cleanup criteria with Cal/EPA DTSC and USEPA, USDOJ and other governmental and private entities, and environmental regulatory compliance/enforcement defense in the areas of chemicals, pesticides, toxics and hazardous waste, air quality and greenhouse gas emissions, water rights/quality and legislative and regulatory advocacy. Mr. Swickard's clients include FedEx Ground, AIG/Chartis, AMB Properties, Tremont Fertilizer Group, United Alloys, Agri-Chem, and Whittaker Bermite.

Office of Chief Counsel/Director Cal/EPA DTSC

Appointed by Governor Schwarzenegger in 2004 as Chief Counsel of the Department of Toxic Substances Control, and in 2006 as Department Director, Mr. Swickard oversaw the Department's Office of Legal Counsel of 24 attorneys and numerous support staff, the Criminal Investigation Branch of 10 Peace Officers, a Forensic Investigation unit, and the Department's CEQA and Regulations unit. As Chief Counsel, in addition providing ongoing legal advice to the Director and Department programs, Mr. Swickard negotiated Voluntary Cleanup Agreements and Redevelopment Agreements associated with the Cleanup of Fort Ord Army Base, Tustin Naval Air Station, Mare Island Naval Base, BKK Hazardous Waste Landfill etc. He also implemented the Governor's AB 389 Brownfields Remediation Program jointly with the SWRCB to facilitate remediation and reuse of brownfields sites. Mr. Swickard negotiated the final model Joint Consent Decree language between the State of California and the USEPA and USDOJ for joint federal/state superfund sites.

Judicial Externships

Before commencing his legal practice, Mr. Swickard served as a Judicial Extern for the Honorable Edward C. Reed Jr., Senior Judge, United States District Court, District Of Nevada, and for the Honorable Gregory G. Hollows, Chief Magistrate Judge, United States District Court, E.D. Cal.

Education

Mr. Swickard received his Juris Doctor *Cum Laude* from the University of the Pacific, McGeorge School of Law, where he received the Traynor Honor Society Award for Academic Excellence. Mr. Swickard double majored in Agricultural Business Management and Biochemistry in receiving his Bachelor of Science Degree from the University of California, Davis, where he also received the Regents Scholarship Award for Academic Excellence.

Client Work Undertaken (Partial Listing)

Real Estate/Brownfield Redevelopment

- Brownfield redevelopment of former DOD bases including Fort Ord Army Base, Tustin Naval Air Station and Mare Island Naval Base, defense contractor facilities including Whittaker Bermite Santa Clarita and large and small contaminated properties including BKK Hazardous Waste Landfill, through successfully negotiating agreements, orders and cleanup criteria with Cal/EPA DTSC and USEPA, USDOJ and other governmental and private entities;
- Negotiated multiple Dept. of Defense Materials Base Cleanup cost allocation settlements with US DOD;
- Negotiated Cal/EPA AB 389 Immunity Agreements, Voluntary Cleanup Agreements and Land Use Covenants for redevelopers with USEPA, USDOJ, DTSC and Regional Water Quality Control Boards on Redevelopment projects throughout California;
- Provided Legal Due Diligence Analysis for sale of potentially contaminated properties.

Environmental Regulatory Compliance and Litigation

- Provide defense to local, state DTSC, RWQCB, CARB and federal USEPA, USDOT government enforcement actions and Notices of Violation of environmental laws for FedEx Ground, Pool Corp., SCP Distributors LLC, Sierra Chemical and CPT Transport Inc., etc.;
- Provided legal counsel oversight to the cleanup of USEPA Superfund sites, DTSC and RWQCB California sites as well as contaminated sites in Hawaii, Montana, Oklahoma, Nevada, Oregon, Washington and the Nation of Bermuda etc.;
- Provided government regulatory compliance counsel for businesses producing chemicals, fertilizers, pesticides, toxics and hazardous wastes;
- Provided government regulatory counsel for CWA, EPA and Federal and State mining, timber harvesting and livestock grazing compliance;
- Provided legal oversight for challenge of EPA Superfund RI/FS on Sulpher Bank Mercury Mine;
- Negotiated Settlement with USEPA over CWA violation in Kanehoe, Hawaii and provided legal oversight of site remediation and restoration;
- Provided legal assistance for removal and cleanup of multiple UST's and obtained reimbursement from California's UST Fund for cleanup costs;
- Provided defense trial counsel for complex environmental, business and regulatory cases.

Energy Resource Development and Regulatory Compliance

- Provided counsel for geothermal, hydropower and natural gas generating facility project siting;
- Drafted FERC Licensing Application for PacifiCorp Klamath Project;
- Lead Counsel for Power Contract Dispute litigation;
- Provided Counsel for Renewable energy source permitting and licensing.

Mining Regulation and Remediation

- Served as Arbitration Panelist Judge for large Northern California mining contract dispute between Landowner and Mining company;
- Negotiated contracts for split-estate mineral rights access and development between landowners and mining companies.

Litigation

- Federal Administrative Bench Trial on NEPA, FLPMA, NFMA claims;
- Lead Counsel for two CCP 806 State Court Contract Validation Bench Trials;
- Extensive Motion Practice including Drafting and Hearings for Motion for Summary Judgments;
- Extensive Deposition Practice
- Multiple Administrative Hearings before various Federal and State ALJ's and the SWRCB;

Water Quality and Quantity

- CWA 401 Water Quality Certifications;
- Administrative Appeals of WDR's, CAO's and ACL's before the SWRCB;
- Stormwater Discharge Permitting; NPDES Permitting;
- Water rights determinations for Surface streams, Riparian River rights, Groundwater rights,
- Drafted Complaint to SWRCB for Waste and Unreasonable Use of Water,
- Determine Groundwater Banking and Groundwater Recharge Rights and negotiate agreements.

Endangered Species/Wetlands

- Negotiated US Army Corps of Engineers section 404 Dredge and Fill Permits;
- Negotiated mitigation for Endangered Species etc. for developers under NEPA and CEQA;
- Authored Draft comments on Listing and assist client with Habitat Conservation Plan and comments for Federal Listing process; Applications for Streambed Alteration Permits.

Transactional Contract Drafting/Negotiation

- MID Root Creek, Multi-Public Agency Agreement;
- Lewis Homes Drainage Improvement Agreement with Bureau of Reclamation;
- Multiple Real Estate Purchase and Sale Agreements;
- Multiple Commercial Retail and Office Lease Agreements;
- Multiple Litigation Settlement/Release Agreements;
- Multiple Environmental Cleanup Cost Allocation Agreements

Presentations (Partial Listing)

1. Moderator and speaker at Cal/EPA Public Stakeholder meetings implementing the 2004 California Land Reuse and Revitalization Act (AB 389). 2004-2006.

2. Speaker, California Unified Program Agencies Annual Convention regarding Regulatory Policy in CUPA Enforcement and Brownfields Cleanup Oversight. February 2005.

3. Speaker, California Bar Association, Hazardous Waste Roundtable, on Public Policy and Regulatory Issues in California. April 2005, April 2006.

4. Speaker, Parker Milliken Hazardous Waste Seminar, on DTSC Enforcement and Brownfields Redevelopment policies. May 2005 and May 2006.

5. Speaker, Arcadis Brownfields Redevelopment Seminar, on New Regulatory Developments in Contaminated Property Prospective Purchaser Liability Immunity. September 2005.

6. Speaker, California County Counsels Assn. Annual Convention, on Implementation of DTSC Corrective Action Regulations by Local Government. October 2005.

7. Speaker, California Bar CEB Environmental Law Seminar, on California Land Reuse and Revitalization Act (AB 389), Is It Useful? January 2006

8. Speaker, Groundwater Rights, Regulation and Use Seminar on Protection of Groundwater in DTSC Lead Brownfield Cleanups. September 2006.

9. Speaker, 22nd Annual International Conference on Soils, Sediments and Water, on Regulatory Incentives to Promote Private Sector Brownfield Remediation and Reuse. October 2006.

10. Seminar Organizer and Speaker, West Virginia Department of Environmental Protection Regulatory Incentives to Promote Private Sector Brownfield Remediation and Reuse, November 2006.

11. Speaker, Sacramento County Bar Association, Real Estate Section, Buying Contaminated Property. What You Need to Know. June 2007

12. Speaker, National Brownfields Conference, How to Build and Maintain Confidence for Brownfield Projects. November 2007.

13. Speaker, AIG Nationwide Environmental Forum, California's Complex Environmental Regulatory Scheme, January 2008.

14. Peer reviewed Article Regulatory Incentives to Promote Private Sector Brownfield Remediation and Reuse, published in the *International Journal of Soil and Sediment Contamination*, March/April 2008 issue, vol 17, no. 3.

15. Seminar Organizer and Speaker, Nation of Bermuda, Department of Environment and Public Works regarding Regulatory Incentives to Promote Private Sector Brownfield Remediation and Reuse, May 2008.

16. Speaker, 2008 State Bar of California Annual Conference, How to Navigate California's Complex Environmental Regulatory Scheme, September 2008.

17. Keynote Speaker, National Association of Chemical Distributors Annual Meeting regarding Legislative and Regulatory issues facing the Chemical Industry, April 2009.

18. Keynote Speaker, California Trucking Association Annual Conference, Recent Cal/EPA and CUPA Enforcement against the Motor Carrier Industry, Nov. 2010.

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REPRESENTATIVE PROJECT EXPERIENCE

During ERRG's time in the MEC industry we have compiled an exceptional record of accomplishments. ERRG has completed assessment and investigation projects for both public and private entitles under varying terrain, vegetation, and weather conditions. We fully understand that every site is unique and planned MEC operations will be dependent on its historical use, physical features, intended end use, state of available technologies and budgetary limitations. Through our extensive planning and execution of "end-use" driven remediation projects, we have developed innovative, unique and cost effective techniques that benefit all parties involved in the current and future usage of the site. We believe that the integration of different disciplines often times provide opportunities for gains in efficiency helping to reduce the overall time and cost required of a project.

A portion of the work ERRG has performed to date has been located within the state of California, such as our MEC Support to MARRS Services for the Remedial Investigation Study of Mojave Gunnery Range, the MEC Construction Support and Munitions Disposal project supporting MWH Constructors, Inc. at the Former Hamilton Army Airfield, our Time Critical Removal Action at the former Camp San Luis Obispo performed for the U.S. Army Corps of Engineers, and MEC construction support services provided for Taber Construction, Battelle, Vanguard Construction, and Romero Construction at the former Concord Naval Weapons Station. These projects have familiarized us with the unique set of additional regulations that the MEC industry is subject to, and that must followed from the planning phase up through completion on any projects awarded within the State of California.

Projects we have performed outside of California such as the Camp Navajo MEC Clearance have demonstrated the growing level of environmental awareness by the State of Arizona. Other projects such as the Range Clearance and Target Removal/Replacement project at Yodaville Training Range and Range Clearance and Target Placement Activities at Range 10 North have given us an understanding of the many changing needs of a federal client and has allowed us to be responsive and fluid to those needs while still ensuring that the proper protocols and procedures are followed. We present a brief sampling of ongoing and completed ERRG MEC projects as follows for your review. Additional information can be provided should you wish to explore a more in depth review of any of these projects.

REPRESENTATIVE ERRG MEC PROJECTS

Project 1

Contract: **MEC Construction Support and Munitions Disposal**
Contracting Organization: **MWH Constructors, Inc.**
Location: **North Antenna Field, Former Hamilton Army Airfield**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
January 2010	On Going	$76K	$76K

ERRG was awarded a contract with MWH Constructors, Inc., for MEC Support Services at former Hamilton Army Airfield. Under this tasking, ERRG performed a surface clearance of the project site in advance of vegetation grubbing subcontractors. Additionally ERRG was tasked with performing UXO clearance of excavated soils and demolition of materials documented as explosively hazardous and materials potentially possessing an explosive hazard. ERRG's support to MWH under this contract has been performed during multiple mobilizations according the scheduling requirements of the prime contractor or as dictated by availability of laboratory results for soils potentially contaminated by lead due to the past usage of this former military site.

Project 2

Contract: **N62473-07-G-8201-0001, Navy QA Contract**
Contracting Organization: **U.S Navy – BRAC PMO West**
Location: **Concord Naval Weapons Station, Mare Island, MCAS El Toro**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
December 2006	June 2011	$476K	$476K

ERRG has been awarded a quality assurance contract with the Base Realignment and Closure Program Management West Office. Under this contract ERRG performs quality assurance services on Navy projects to document the activities and performance of companies tasked with performing MEC support services and to ensure that the these contractors comply with the requirements of project documents such as work plans, explosive safety submissions, accident prevention plans, etc..

Initially awarded as a one year contract, to date ERRG has performed these services for Navy BRAC PMO West at Concord Naval Weapons Station, Mare Island Naval Station, Marine Corps Air Station El Toro, and Hunter's Point Shipyard, under the base contract scope and 14 separate modifications to the contract for time and site locations.

Additional taskings on the contract involve providing MEC Support Services, such as construction support and MEC escort of various Navy environmental support contractors.

Contract: **Range Sustainment and Remediation Environmental Multiple Award Contract (EMAC)**

Project 3

Contracting Organization: **U.S Navy - NAVFAC Southwest**

Location: **MCAS Yuma, Chocolate Mountains and Barry M. Goldwater Bombing Ranges**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
March 2009	March 2014	$100M	$8.8M

ERRG has been awarded contract tasks at Marine Corps Air Station Yuma under the RSREMAC contract with NAVFAC SW. Under these awards ERRG has performed range clearance and target renovation/replacement efforts at five range sites within the MCAS Yuma bombing ranges, and is set to begin another site in early November 2010. Contract objectives involve the implementation of surface and subsurface range sweeps on active firing ranges during scheduled range closure windows. ERRG performs road maintenance and

renovation on these range sites to allow for military and civilian contractor vehicle and equipment transport to and from each range to the range entrances and frequently used routes in-between. One component of the tasks under these contracts involve the removal and replacement of existing range targets with replacement targets prepared by ERRG to simulate realistic targets in active military theaters.

Additionally, ERRG has been tasked with the UXO clearance and renovation of simulated airfields to appear realistic for military aviators for training and firing practice operations.

Contract: **RI/FS Borrego Springs, Borrego, CA**

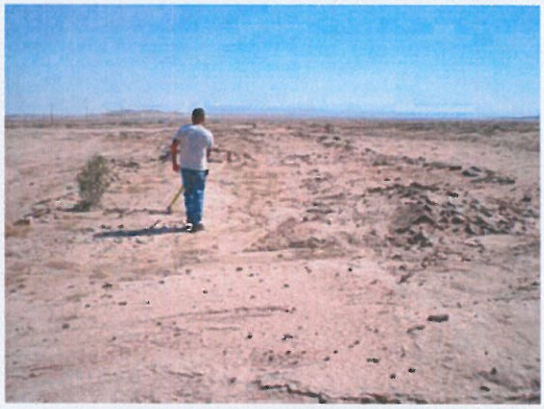
Project 4

Contracting Organization: **U.S Army Corps of Engineers, Los Angeles District**

Location: **Winona Target**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
February 2007	**On Going**	**$1.4M**	**$1.4M**

Borrego Springs is a Formerly Used Defense Site (FUDS) located in San Diego and Imperial Counties, California. Its primary use was an aircraft bombing range and troop maneuver area during the post WWII era. This site will eventually be released to the public for parks and recreation use.



ERRG was awarded a sole source $1.4M Task Order from the USACE Los Angeles District to conduct a remedial investigation/feasibility study (RI/FS) of approximately 3,211 acres of an identified munitions response area (MRA). Initial tasks included site visit, development of RI/FS work plan, finalization of the conceptual site model, and setup of a project website. RI/FS field activities will include geophysical survey of the area, data/target interpretation and selection and intrusive investigation of selected anomalies. ERRG will mobilize three-four person UXO/Geophysical teams that will be conducting all of the aforementioned activities.

Additionally, ERRG is responsible for the collection, classification, certification, demolition, and disposal of all MEC/MPPEH/MD and scrap recovered during the intrusive field investigation activities. ERRG will also have a scientific team on site during the field activities to provide support on cultural and biological resources management and mitigation. ERRG's subcontractors for this project include InDepth Corporation and CH2M Hill. Other tasks under this task order include the preparation and submission of the RI/FS report, decision documents, and the proposed plan for remediation.

Contract: **RI/FS Mojave Gunnery Range, Mojave CA**

Project 5

Contracting Organization: **U.S Army Corps of Engineers, Los Angeles District**

Location: **Former Mojave Gunnery Range, California City, California**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
February 2008	July 2008	$195K	$195K

Mojave Gunnery Range "C" is a Formerly Used Defense Site located in Kern County, California. It was primarily used as an aircraft bombing range and will be released to the public as a parks and recreation area. Below is a summary of the work that ERRG conducted on this project:

MARRS GeoServices was contracted by the USACE Los Angeles District to conduct an RI/FS of the Munitions Response Area (MRA). MARRS, strictly a geophysical company, does not possess a Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) license; therefore cannot conduct explosive/demolition operations.

MARRS subcontracted ERRG to assist in the remedial investigation phase of the RI/FS. Tasks under this contract included assistance in developing the Explosive Siting Plan and Demolition SOP. Field tasks included providing a UXO team to conduct anomaly investigation of selected targets. ERRG was also responsible for the collection, classification, certification, demolition, and disposal of all MEC/MPPEH/MD and scrap recovered during the intrusive field investigation activities. Field activities for this project were completed in July 2008.

Contract: **Surface Clearance and Mechanical Soil Sieving Camp Navajo Army Depot** ***Project 6***

Contracting Organization: **CH2M HILL Corporation**

Location: **Camp Navajo Army National Guard Depot, OB/OD Area**

Award Date:	Completion Date:	Contract Value:	Total Awarded Value:
December 2008	June 2010	$2.6M	$2.6M

ERRG was tasked by CH2M HILL Corporation to perform three contracts at Camp Navajo Army Depot. Under the first contract, ERRG was responsible for conducting a 100 percent surface clearance of MRS A2, MRS B and NAAD 09; which total approximately 361 acres. The tasks included transportation of MEC items to an explosive storage magazine, identification of munitions debris and performing blow in place (BIP) procedures on ordnance items that were deemed unsafe to move.

The second and third contracts issued to ERRG were for the performance of a mechanical soil sieving contract of soils from Navajo Army Depot (NAAD) 02 and NAAD 09C soils. This project involved the mechanical sieving of 15,000 cubic yards of soil, and the separation, segregation, inspection and certification of 450 cubic yards of metals extracted from the NAAD 02 and NAAD 09C soils with an additional portion of existing metals from previous MEC investigation performed at the project site by other UXO contractors.

Introduction to Key Personnel

ERRG has assembled a team of personnel available to support this contract.

The personnel herein were chosen for their respective experience in the roles assigned to this contract.

ERRG's program management approach enables Brad Hall, our Program Manager, and key personnel under his management to access and assign the resources necessary to perform all work safely, complete the work on schedule, and with the highest quality. Our management strategy also establishes accountability with each position. With that accountability comes authority to make decisions or to take actions as necessary to ensure ultimate success of the contract.

Bradley S. Hall, PG	Proposed Job Title: **Program Manager**
Mr. Hall's Qualifications:	▪ 14 years as Program Manager for environmental restoration and remedial action contracts; 18 years as a Senior Manager working with environmental restoration studies and remedial action projects, and more than 20 years total requisite experience ▪ (they want exp executing MMR actions for DoD)
Education	▪ M.S., Geological Sciences, University of California Riverside, 1989 ▪ B.S., Geology, Beloit College, 1987
Special Qualifications	▪ Register Professional Geologist, California, No. 6207
Experience	▪ ERRG, Inc. (5/04 - Present) ▪ Ziggurat LLC (2/02 – 5/04) ▪ Tetra Tech, Inc. (6/93 - 2/02) ▪ Roux Associates (1/91 – 5/93)

Mr. Hall is a Sr. Program Manager with more than 20 years of expert Environmental Remediation Services and Site Assessment experience. He is an excellent communicator and works closely with his Clients/Customers as their Primary POC with ERRG; has developed excellent negotiating skills and relationships with the regulators; and has successfully negotiated closure for multiple CERCLA sites. He has been the Program Manager for more than 15 ID/IQ environmental investigation and restoration contracts in the past 15 years. Contracts values have ranged from $3M up to $100M with as many as 20 task orders being conducted concurrently. In addition to his program management experience, he has managed numerous Remedial Investigation/ Feasibility Study Programs, Litigation Support Programs, Phase I and II Site Investigations and Remediation Design Projects. His background includes projects conducted for government and private clients as well as work on behalf of attorneys and extensive experience coordinating and conducting legal investigations in preparation of expert witness testimonies. His background in IRP and CERCLA/SARA investigations includes the preparation and implementation of RI/FS Work Plans, Field Sampling Plans, H & S Plans, QA/QC Plans, Remedial Action Plans, Remedial Designs, and Site Closures.

Yodaville Target Clearance and Reconstruction, US Navy, MCAS Yuma Training Range, Arizona (Project 3)
Project Manager for range clearance and target replacement for the Yodaville Urban Training Facility located within the Barry Goldwater Range complex. Project includes assessment of structural integrity of existing targets, removal of structurally unsafe targets, and construction of new targets utilizing 20- and 40-foot used conex containers stacked up to 3 high and painted to look like buildings. UXO clearance includes a surface sweep of the target area and subsurface clearance of the access roads. All target removals and replacements are being conducted using armored equipment to eliminate the need to conduct subsurface sweeps around all of the targets.

Program Manager for **As-Needed Environmental Response Services Contract, US Forest Service,**

Region 5 Projects conducted under this five year contract have included phase I site assessments, Engineering Evaluation/Cost Analyses (EE/CAs), treatability studies, pilot tests, time critical removal actions, non time-critical removal actions, and treatment system construction. Projects have been conducted for both the US Forest Service (Regions 3 and 5) and the Bureau of Land Management in California and New Mexico. Most of the projects have been conducted in relation to abandoned mine lands or former waste disposal areas. A total of 35 Task orders have been issued to date on this contract totaling more than $10 million.

As-Needed ID/IQ Environmental Services Contract, Oakland, California, US Coast Guard CEU Oakland
Coordinated more than 150 projects in four states with up to 20 projects running concurrently at any given time. Program Manager for four US Coast Guard as-needed ID/IQ environmental services contracts from 1993 to date. Contract values ranged from $990,000 up to $4.5 million. Projects conducted under these contracts includes UST/AST investigations, remedial designs, construction management, asbestos abatement, NEPA compliance documentation, biological surveys, dredging studies, LBP investigations, and UST removals.

As-Needed HTRW Services, US Army Corps of Engineers
Coordinated more than 40 staff concurrently working at more than six installations/project sites in four states. Deputy Program Manager for five year $60 million as-needed environmental ID/IQ environmental services contract for US Army Corps of Engineers, Sacramento District. Projects conducted under this contract included remedial investigations, feasibility studies, pilot studies, and interim remedial actions at more than 30 sites in five states.

Environmental Multi-award Contract (EMAC) for Environmental Restoration Services, Naval Facilities Engineering Command (NAVFAC) Southwest
Program Manager for $50M US Navy as-needed environmental restoration services contract from 2008 to date. Includes coordination of environmental investigation and remediation projects in Arizona, California, Nevada, and New Mexico. To date, individual task order values have ranged from $161,000 up to $667,000. Projects conducted under this contract to date include a removal action for VOC-contaminated soil, a RI/FS for TPH and PCB contamination at a former firefighter training facility, and investigation of VOC contamination in proximity to former UST sites. Task orders issued to date total more than $1 million.

Range Sustainment and Remediation Environmental Multi-Award Contract (RSREMAC), Naval Facilities Engineering Command (NAVFAC) Southwest
Program Manager for $100M US Navy as-needed contract to provide performance-based range cleanup, restoration and sustainment services for US Navy and Marine Corps facilities in Arizona, California, Colorado, Nevada, and New Mexico, Utah, Oregon, and other DoD installations nationwide. Included under this contract is the renovation of the Yodaville target complex at the Marine Corps Air Station in Yuma, AZ. Task orders have been issued to date on this contract totaling more than $2.3 million.

Camp Navajo, Bellemont, Arizona (Project 6)
Program Manager for a MEC Surface Removal Action and a MEC Soil Screening project in the former Open Burn/Open Detonation (OB/OD Site) area at Camp Navajo. The work was conducted for the Army National Guard under a subcontract to CH2M Hill. The MEC Surface Removal Action utilized a team of 22 UXO Technicians to sweep 361 acres (485 whole or partial 200 x 200' grids). The MEC Soil Screening project utilized and armored excavator and an armored power screening plant to process approximately 12,000 cubic yards of mixed soil, metal debris, and munition debris. All processed soil larger than ¾-inch was spread and scanned by the field team and all metal debris was processed and certified as safe for recycling/disposal.

Cape Disappointment, Ilwaco, Washington. Program Manager for emergency MEC evaluation and abatement project for the US Coast Guard at Station Cape Disappointment.
Rock Scaling activities being conducted to stabilize a cliff adjacent to the station buildings uncovered blasting holes containing detonation wires. Upon discovery, all activities were halted and the USCG evacuated the facility. Under ERRG's existing as-needed ID/IQ contract, ERRG was tasked to conduct an emergency evaluation of the site and abate any suspect explosives remaining at the site. ERRG mobilized a crew and, utilizing cranes and man-lifts, evaluated and cleared more than 30 drill holes in the 250-foot cliff face.

David Williams	Proposed Job Title: **Project Manager**

Mr. Williams's Qualifications:	▪ 14 years as Program Manager for environmental restoration and remedial action contracts; 18 years as a Senior Manager working with environmental restoration studies and remedial action projects, and more than 20 years total requisite experience ▪ (they want Site Assessment)
Education	▪ Naval School Explosive Ordnance Disposal (NAVSCOLEOD) Graduate ▪ B.S. Management University of Phoenix, 2008
Special Qualifications	▪ OSHA 30 Hour Construction Safety Course
Experience	▪ ERRG, Inc. (5/10-Present) ▪ Bering Sea Eccotech (9/07 – 4/10) ▪ Rest Corp (12/04 - 9/07) ▪ U.S.M.C (1/85 – 12/02)

Mr. Williams has over 23 years of field and operational experience in all areas of explosive ordnance disposal (EOD), unexploded ordnance (UXO) clearance, demolition range operations, demilitarization operations, and range sustainability and closure. Mr. Williams' military EOD experience covered all aspects of EOD operations in the United States Marine Corps, including deployments to active military theaters of war.

Mr. William's civilian UXO experience has focused on advanced quality management principles, range clearances, and demilitarization operations. During the last 5 years, he has worked on numerous MEC projects, amassing a vast amount of knowledge and experience during range clearances and demilitarization operations of active military ranges in the Southwestern United States.

In addition, Mr. Williams has over 15 years' experience the areas of personnel management, project planning, and implementation as an EOD Officer and Senior UXO Supervisor.

Yuma MCAS, Yodaville Target Removal/Replacement Renovation Project 2010, Modification 0002, California ***(Project 3).*** Mr. Williams was the Operations Manager tasked with overseeing the target demilitarization and renovation activities at Area 10 North of the Chocolate Mountains Ranges East located in Niland, California. As the MEC Operations Manager, Mr. Williams oversaw all project operations and managed the onsite project personnel and subcontractor activities and ensured implementation of the project plans. Mr. Williams was integral in planning and implementing multiple operations within a 200-acre site which required completion within a condensed window of availability scheduled to occur during the planned closure of the ranges of Camp Billy Machen. All facets of operations required a high level of interaction with range scheduling and multiple Navy and Marine Corps points of contact.

Navy Range Clearances and Demilitarization Operation Projects. As Senior UXO Supervisor (SUXOS) for numerous range clearance and demilitarization (demil) projects located throughout California, Nevada, and Arizona, Mr. Williams was responsible for planning and managing range clearance and demolition of recovered MEC items to include processing, inspection and certification, and shipment of MDAS materials to authorized facilities for disposal. He was responsible for the supervision of a fleet of heavy equipment and personnel transportation vehicles, and managing up to 150 personnel while conducting range sweeps and target construction in numerous target areas simultaneously. He also served as liaison between BSE and the Navy, and planned and conducted weekly and monthly status meetings attended by owner, client, and other stakeholders.

Frank Cota	Proposed Job Title: QC Manager
Mr. Cota's Qualifications:	▪ 15 years in personnel management, quality services, and customer service/satisfaction roles. ▪ 17 years MEC/EOD operations, including site assessment projects.
Education	▪ Naval School Explosive Ordnance Disposal (NAVSCOLEOD) Indian Head, MD, 1985
Special Qualifications	▪ ASQ Qualified Quality Auditor, 2004 ▪ OSHA 30 Hour Construction Safety Course
Experience	▪ ERRG, Inc. (11/09-Present) ▪ Parsons Infrastructure (12/06 – 11/09) ▪ Northgate Environmental (5/03 – 2/06) ▪ Other UXO positions (3/96 - 5/039)

Mr. Cota has over 17 years of field and operational experience in all areas of explosive ordnance disposal (EOD), unexploded ordnance (UXO) clearance, demolition range operations, and range sustainability and closure. Mr. Cota's civilian UXO experience has focused on advanced quality management principles and implementation strategies. During the last 13 years, Mr. Cota has worked on numerous MEC projects, ranging from site investigation and range maintenance, to MEC cleanup projects at active and former Navy and Army facilities in California.

Project Manager for **Former Camp San Luis Obispo, California Time Critical Removal Action** (TCRA) project. As PM, Mr. Cota managed a 23-person TCRA Surface Clearance project located at the former Camp San Luis Obispo MRS-05 project site in San Luis Obispo, California. The project was located in close proximity to two elementary schools and was actively used as part of the Cal Poly agricultural department student training program. This project involved performing a surface clearance 170 acres, demolition operations of MEC items discovered, and installation of UXO warning signs at various locations in the vicinity of the project site. Data collected during the investigation are being used for assessment of the potential level of contamination of adjacent properties within close vicinity to this FUDS site.

3rd Party Quality Assurance Projects,California. Project Manager/UXO Corporate Quality Control Officer for multiple ERRG projects located throughout California. Currently manages quality assurance prime contract for NAVFAC PMO West at multiple locations in California (Concord Naval Weapons Station **(Project 2)**, Mare Island, Hunter's Point, El Toro) providing 3rd party Q/A of diverse MEC projects. Project requirements vary depending on location but are oriented around the assessment of UXO contamination present at each Navy project site.

Yuma MCAS, Target Removal/Replacement Renovation Project & Range Clearance Project 2010, California (Project 3). Mr. Cota was the QA Manager tasked with overseeing the target demilitarization and renovation activities during the course of this project. As the QA Manager, Mr. Cota oversaw all project operations and managed the onsite project QA Specialist and all QA activities. Ensured compliance of project personnel with the project plans. Served as liaison concerning contract compliance with NAVFAC Contracting Officer.

Camp Navajo, Bellemont, Arizona **(Project 6)**,
Mr. Cota recently participated in the full scale MEC Surface Removal Action located at the former Open Burn/Open Detonation (OB/OD Site). This 361 acre site, comprised of wooded and steep terrain, required a surface removal and was divided into 485 whole or partial 200 x 200' grids with contamination ranging from mild to heavily concentrated.

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CONSULTANT AGREEMENT

This agreement ("Agreement") entered into November 22, 2010, is between the City of Benicia, a municipal corporation (hereinafter "CITY"), and ERS Corporation, a California corporation, with its primary office located at 1600 Riviera Ave. Suite 310, Walnut Creek, CA 94596 (hereinafter "CONSULTANT") (collectively, "the Parties").

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure certain services for Arsenal Cleanup Project. The scope of work for said service (hereinafter "Project") is attached hereto as Exhibit "A" and is hereby incorporated by reference; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform the services required by this agreement; and

WHEREAS, CONSULTANT represents it is qualified and willing to provide such services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONSULTANT as follows:

AGREEMENT

1. INCORPORATION OF RECITALS. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. SCOPE OF SERVICE.

(a) Services to be Furnished. Subject to such policy direction and approvals as CITY through the City Attorney may determine from time to time, CONSULTANT shall perform the services set forth in the Task Order labeled Exhibit A, which is attached hereto and incorporated herein by reference.

(b) Schedule for Performance. CONSULTANT shall perform the services identified in Exhibit A and as expeditiously as is consistent with generally accepted standards of professional skill and care, and the orderly progress of work. The parties agree that the efficient and effective prosecution of this project is vital to the success of the project. CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT'S control, and such delays shall extend the times for performance of the work

by CONSULTANT.

(c) Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT'S field of expertise. CONSULTANT shall function as a technical advisor to CITY, and all of CONSULTANT'S activities under this Agreement shall be performed to the full satisfaction and approval of the CITY ATTORNEY.

(d) Compliance With Laws. CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. CONSULTANT shall maintain a City of Benicia business license. CONSULTANT shall at all times during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by CITY. CITY is not responsible or liable for CONSULTANT'S failure to comply with any or all of the requirements contained in this paragraph.

3. COMPENSATION.

(a) $10,000 for out of pocket expenses. CONSULTANT shall be reimbursed by CITY for out of pocket expenses incurred in the prosecution of this project. The amount of out of pocket expenses shall not exceed $10,000. An invoice and backup documentation shall be provided to CITY for the expenses. If funds become available, whether through insurance or other means, the $10,000 shall be reimbursed to CITY if funds become available for this.

(b) Contingency Agreement. This is a contingency fee agreement. CITY shall pay no compensation for the services to be provided by this Agreement. It is anticipated that the compensation paid to CONSULTANT shall be from insurance proceeds, grants and other funds. CONSULTANT shall submit monthly reports documenting its time and materials expended for the services performed under this Agreement during the preceding period. Invoices or reports must be submitted in duplicate and must indicate the hours actually worked by each classification and employee name, as well as all other directly related costs by line item.

(c) Additional Services. CITY shall make no payment to CONSULTANT for any additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

(i) Only the City Council can act on behalf of CITY to authorize CONSULTANT to perform additional services.

(ii) CONSULTANT shall not commence any work or services exceeding the Scope of Services in Section 2 without prior written authorization from CITY in accordance with Section 7. CONSULTANT'S failure to obtain a formal amendment to this Agreement authorizing additional services shall constitute a waiver of any and all right to compensation for such work or services.

(iii) If CONSULTANT believes that any work CITY has directed CONSULTANT to perform is beyond the scope of this Agreement and constitutes additional services, CONSULTANT shall promptly notify CITY of this fact before commencing the work. CITY shall make a determination as to whether such work is beyond the scope of this Agreement and constitutes additional services. If CITY finds that such work does constitute additional services, CITY and CONSULTANT shall execute a formal amendment to this Agreement, in accordance with Section 7, authorizing the additional services and stating the amount of any additional compensation to be paid.

4. PRODUCT REVIEW AND COMMENT. CONSULTANT shall provide CITY with at least two (2) paper copies of each product described in Exhibit A and one electronic version. Upon the completion of each product, CONSULTANT shall be available to meet with CITY. If additional review and/or revision is required by CITY, CITY shall conduct reviews in a timely manner.

5. TERM OF AGREEMENT. This Agreement shall be effective immediately upon the signatures of both Parties and shall remain in effect until completed, amended pursuant to Section 7, or terminated pursuant to Section 6.

6. TERMINATION:

(a) CITY shall have the right to terminate this Agreement for any reason whatsoever at any time by serving upon CONSULTANT written notice of termination. The Agreement shall terminate three (3) business days after notice of termination is given. The notice shall be deemed given on the date it is deposited in the U.S. mail, certified, postage prepaid, addressed to CONSULTANT at the address indicated in Section 11.

(b) If CITY issues a notice of termination,

(i) CONSULTANT shall immediately cease rendering services pursuant to this Agreement;

(ii) CONSULTANT shall deliver to CITY copies of all writings, whether or

not completed, which were prepared by CONSULTANT, its employees, or its subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, photostatting, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof;

(iii) CITY shall pay CONSULTANT for work actually performed up to the effective date of the notice of termination, subject to the limitations prescribed by Section 3 of this Agreement, less any compensation to CITY for damages suffered as a result of CONSULTANT'S failure to comply with the terms of this Agreement. Such payment shall be in accordance with Exhibit B. However, if this Agreement is terminated for fault of CONSULTANT, CITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT'S services which are of benefit to CITY.

7. AMENDMENTS. Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties.

8. NONDISCLOSURE OF CONFIDENTIAL INFORMATION. CONSULTANT shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of CITY without the prior written consent of CITY.

9. INSPECTION. CITY representatives shall, with reasonable notice, have access to the work and work records, including time records, for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement. Inspections by CITY do not in any way relieve or minimize the responsibility of CONSULTANT to comply with this Agreement and all applicable laws.

10. INDEPENDENT CONTRACTOR. In the performance of the services in this Agreement, CONSULTANT is an independent contractor and is not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. CONSULTANT has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of said service hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

11. NOTICE. Any notices or other communications to be given to either party pursuant to this Agreement shall be in writing and delivered personally or by certified U.S. mail, postage prepaid, addressed to the party at the address set forth below. Either party may change its address for notices by complying with the notice procedures in this Section. Notice so mailed shall be deemed delivered three (3) business days after deposit in the U.S. mail. Nothing shall preclude the giving of notice by facsimile machine provided, however, that notice by facsimile machine shall be followed by notice deposited in the U.S. mail as discussed above.

If to CITY: City Attorney
City of Benicia
250 East L Street
Benicia, CA 94510

If to CONSULTANT: Mark O'Brien
ERS Corporation
1600 Riviera Ave. Suite 310
Walnut Creek, CA 94596

12. OWNERSHIP OF MATERIALS. CITY is the owner of all records and information created, produced, or generated as part of the services performed under this Agreement. At any time during the term of this Agreement, at the request of CITY, CONSULTANT shall deliver to CITY all writings, records, and information created or maintained pursuant to this Agreement. In addition, CONSULTANT shall not use any of the writing, records, or information generated for the Project under this Agreement for any other work without CITY's consent.

13. EMPLOYEES; ASSIGNMENT; SUBCONTRACTING.

(a) Employees. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services required by this Agreement. CONSULTANT shall not engage the services of any person(s) now employed by CITY without CITY's prior express written consent. The primary team members listed in CONSULTANT's Proposal on pages 18-20 shall not be substituted unless prior agreement is given by the City Attorney.

(b) Assignment. CONSULTANT shall not assign, delegate, or transfer its duties, responsibilities, or interests in this Agreement without the prior express written consent of CITY. Any attempted assignment without such approval shall be void and, at CITY's option, shall terminate this Agreement and any license or privilege granted herein.

(c) Subcontracting. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior express written consent of CITY. If CITY consents to CONSULTANT'S hiring of subcontractors, CONSULTANT shall provide to CITY copies of each and every subcontract prior to its execution. All subcontractors are deemed to be employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the

provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control.

14. BINDING AGREEMENT. This Agreement shall bind the successors in interest, legal representatives, and permitted assigns of CITY and CONSULTANT in the same manner as if they were expressly named herein.

15. WAIVER.

(a) Effect of Waiver. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.

(b) No Implied Waivers. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time.

16. NONDISCRIMINATION.

(a) Consultant shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.

(b) Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT'S employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

17. INDEMNITY. CONSULTANT specifically agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses including attorneys' fees, damages, and liabilities resulting from injury or death of a person or injury to property, arising out of or in any way connected with the performance of this Agreement, however caused, regardless of any negligence of the CITY, whether active or passive, excepting only such injury or death as may be caused by the sole negligence or willful misconduct of the CITY. The CONSULTANT shall pay all costs that may be incurred by CITY in enforcing this indemnity, including reasonable attorneys' fees.

18. INSURANCE.

(a) Required Coverage. CONSULTANT, at its sole cost and expense, shall obtain

and maintain in full force and effect throughout the entire term of this Agreement the following described insurance coverage. This coverage shall insure not only CONSULTANT, but also, with the exception of workers' compensation and employer's liability insurance, shall name as additional insureds CITY, its officers, agents, employees, and volunteers, and each of them:

Policy	Minimum Limits of Coverage
(i) Workers' Compensation	Statutory
(ii) Comprehensive Automobile Insurance Services Office, form #CA 0001 (Ed 1/87 covering auto liability code 1 (any auto)	Bodily Injury/Property Damage $1,000,000 each accident
(iii) General Liability Insurance Services Office Commercial General Liability coverage on an occurrence basis (occurrence form CG 0001)	$1,000,000 per occurrence. If Commerical General Liability Insurance or other form with a general aggregate limit shall apply separately to this Project/ location, the general aggregate limit shall be twice the required occurrence limit
(iv) Errors and Omissions/ Professional's Liability, errors and omissions liability insurance appropriate to the CONSULTANT's profession.	Generally $1,000,000 per occurrence

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY.

(c) Required Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) For any claims related to this Project, the CONSULTANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in excess of the CONSULTANT'S insurance and shall not contribute with it;

(ii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, or volunteers;

(iii) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(iv) Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after giving CITY 30 days' prior written notice by certified mail, return receipt requested.

(d) Acceptability of Insurers. CONSULTANT shall place insurance with insurers with a current A.M. Best's rating of no less than [A:VII] unless CONSULTANT requests and obtains CITY'S express written consent to the contrary.

(e) Verification of Coverage. CONSULTANT must provide complete, certified copies of all required insurance policies, including original endorsements affecting the coverage required by these specifications. The endorsements are to be signed by a person authorized by CONSULTANT'S insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences.

19. WORKERS' COMPENSATION.

(a) Covenant to Provide. CONSULTANT warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. CONSULTANT further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. CONSULTANT and CONSULTANT'S insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONSULTANT'S workers' compensation insurance policy which arise from the work performed by CONSULTANT for CITY.

20. FINANCIAL RECORDS. CONSULTANT shall retain all financial records, including but not limited to documents, reports, books, and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement. CITY or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

21. CONFLICT OF INTEREST. CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with CITY'S interest. During the term of this Agreement, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with CITY or in any way compromises the services to be performed under this Agreement. CONSULTANT shall immediately notify CITY of any and all violations of this Section upon becoming aware of such

violation.

It is anticipated that the Consultant will do work for other property owners so that economies and efficiencies of scale may be achieved. The City shall be the Consultant's primary client. If a conflict arises, the Consultant shall cease work for other clients in the Arsenal and work only for the City unless otherwise agreed by the City and Consultant.

22. TIME OF THE ESSENCE. CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

23. SEVERABILITY. If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

24. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Solano County.

25. COSTS AND ATTORNEYS' FEES. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least 66% of the dollar amount requested in the complaint's prayer for relief.

26. CONTINGENCY ATTORNEY SUPERVISION. The City Attorney retains (1) complete control over the course and conduct of the project; (2) a veto power over any decisions made by outside counsel; and (3) must be personally involved in overseeing the litigation.

27. INTEGRATION. This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7.

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Executed by CITY and CONSULTANT on the date shown next to their respective signatures.
The effective date of this Agreement shall be the date of execution by the CITY as shown below.

ERS CORPORATION

BY:_____
DATED

CITY OF BENICIA

BY:_____
DATED:

RECOMMENDED FOR APPROVAL

_____
Department Head

APPROVED AS TO FORM

_____
City Attorney

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SCOPE OF WORK

The work to be performed under this Agreement includes the work proposed in the Consultant's proposal and the Request for Qualifications, which are incorporated by reference as well as the items listed below.

1. Early Meetings with the Department of Toxic Substances Control and other agencies.
2. Insurance: In order to provide a source of funds for the Arsenal Project, the Consultant shall review and analyze historic insurance policies and insurance records of the City. The Consultant will tender the Arsenal Project to the appropriate insurance companies. If gaps are found in the insurance coverage, the Consultant will perform the necessary historical research to locate other items of evidence of insurance coverage such as non-traditional evidence, e.g. leases or other items mentioning possible responsibility of a party.
    a. The Consultant may assist other property owners determine if they have historical insurance policies and provide assistance with tendering their claims.
    b. The Consultant shall determine if insurance coverage will be provided to the city only if there is litigation or if coverage is provided for a threat of litigation or for an order issued by the State or Federal government.
    c. The Consultant shall also provide advice on Cost Cap containment policies and other types of insurance products that will help shield the City (and other property owners if possible) from unplanned cleanup costs.
3. Preliminary Strategy and Goal Setting: The Consultant shall meet with the Council Subcommittee and City Attorney to review and discuss preliminary objectives and outcomes for the project.
4. Funding Options: The Consultant shall identify funding options available to the City beyond the insurance option. Options included, but are not limited to, grant funds such as the EPA Brownfields grant program, US O.E.A.BRAC or FUDS Cleanup grants, indemnity, California Revolving Loan program, CERCLA ability to pay and private sources as another possible funding source.
5. Develop Strategy: Based on a review of existing documents pertaining to the Arsenal, the Consultant will develop a strategy for achieving the City's goals in a cost, time efficient and effective manner. The Strategy should include consideration of the best regulating mechanism for the Project goals including which is the best state agency to lead the project, which approach minimizes the out of pocket expenses and liability for City and other property owners, and which statutory method for meeting CERCLA and environmental clearance (voluntary agreements or orders).
    a. The Consultant shall analyze the City's potential liability and provide a report. Liability for public utilities as well as property ownership, among other things, shall be reviewed and considered if necessary.
    b. Various approaches shall be considered and recommended, including Hazardous Substances Accountability Act, Polanco Act, voluntary agreements with one or more PRP, CERCLA methods or orders.

c. The Consultant shall analyze the public health and safety risks iterated considering the existing documentation as well as any supplemental reports that may be required. The Consultant shall consider whether a CERCLA 120f approach is required.

6. Implement the Strategy:
   a. Directed by the City Attorney, the Consultant shall attend meetings as a representative of the City. Meetings include those with regulators, other PRPs, insurance companies and the public.
   b. The Consultant shall monitor implementation of the strategy and report to the City to make sure that the goals of the Arsenal Project are attained. The Consultant shall recommend additional measures to attain the goals, if necessary.
7. Public Participation:
   a. The Consultant shall provide information and recommendations, if any, for the Council Subcommittee's monthly report to the Council and public.
   b. The Consultant shall conduct periodic meetings for the general public and provide information for the City's website. Information shall consist of background information to assist the public's need to know as well as current status updates on what is going on with the project. There shall be an up to date FAQ provided by the Consultant as part of this information task. Copies of the information on the website shall be provided in hard copy for a repository of documents to be retained in the City of Benicia Library while the project is current.
8. If litigation is necessary, the Consultant shall provide the required services.
9. Legislation and lobbying. As needed, the Consultant will provide lobbying services and assistance with any necessary state or federal legislation.