

1 SUE ELLEN WOOLDRIDGE
Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice
3 KATHERINE KONSCHNIK
CA State Bar # 223673
4 Trial Attorney
Environmental Enforcement Section
5 P.O. Box 7611
Washington, D.C. 20044
6 Telephone: (202) 305-0312

7 MCGREGOR W. SCOTT
United States Attorney
8 Eastern District of California
Edmund Brennan
9 Chief, Civil Division
501 I Street, Suite 10-100
10 Sacramento, CA 95814-2322
Telephone: (916) 554-2700

11 Attorneys for Plaintiff United States of America
12

13 UNITED STATES DISTRICT COURT FOR THE
14 EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) No. 2:06-CV-00387-MCE-
16 Plaintiff,) JFM
17 v.)
18 HONEYWELL INTERNATIONAL, INC.,) **CONSENT DECREE**
19 ALPHEUS KAPLAN, NEHEMIAH)
DEVELOPMENT COMPANY,)
20 Defendants.)
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CERCLA SECTION 107 CONSENT DECREE
FOR RECOVERY OF RESPONSE COSTS

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3 I. BACKGROUND

4 A. The United States of America ("United States"), on
5 behalf of the Administrator of the United States Environmental
6 Protection Agency ("EPA"), filed a complaint in this matter
7 pursuant to Section 107 of the Comprehensive Environmental
8 Response, Compensation, and Liability Act of 1980, 42 U.S.C. §
9 9607, as amended ("CERCLA"), seeking reimbursement of response
10 costs incurred or to be incurred for response actions taken at or
11 in connection with the release or threatened release of hazardous
12 substances at the Central Eureka Mine Superfund Site in Amador
13 County, California.

14 B. By entering into this Consent Decree, Defendant
15 Honeywell International, Inc. ("Settling Defendant") does not
16 admit any liability to Plaintiff arising out of the transactions
17 or occurrences alleged in the Complaint.

18 C. The United States and Settling Defendant agree, and this
19 Court by entering this Consent Decree finds, that this Consent
20 Decree has been negotiated by the Parties in good faith, that
21 settlement of this matter will avoid prolonged and complicated
22 litigation between the Parties, and that this Consent Decree is
23 fair, reasonable, and in the public interest.

24 THEREFORE, with the consent of the Parties to this Decree,
25 it is ORDERED, ADJUDGED, AND DECREED:
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II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that Settling Defendant may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

1 a. "CERCLA" shall mean the Comprehensive Environmental
2 Response, Compensation, and Liability Act of 1980, as amended, 42
3 U.S.C. § 9601, *et seq.*

4 b. "Consent Decree" shall mean this Consent Decree and
5 all appendices attached hereto. In the event of conflict between
6 this Consent Decree and any appendix, the Consent Decree shall
7 control.

8 c. "Day" shall mean a calendar day. In computing any
9 period of time under this Consent Decree, where the last day
10 would fall on a Saturday, Sunday, or federal holiday, the period
11 shall run until the close of business of the next working day.

12 d. "DOJ" shall mean the United States Department of
13 Justice and any successor departments, agencies or
14 instrumentalities of the United States.

15 e. "EPA" shall mean the United States Environmental
16 Protection Agency and any successor departments, agencies or
17 instrumentalities of the United States.

18 f. "EPA Hazardous Substance Superfund" shall mean the
19 Hazardous Substance Superfund established by the Internal Revenue
20 Code, 26 U.S.C. § 9507.

21 g. "Interest" shall mean interest at the rate
22 specified for interest on investments of the EPA Hazardous
23 Substance Superfund established by 26 U.S.C. § 9507, compounded
24 annually on October 1 of each year, in accordance with 42 U.S.C.
25 § 9607(a). The applicable rate of interest shall be the rate in
26 effect at the time the interest accrues. The rate of interest is
27 subject to change on October 1 of each year.

1 h. "Paragraph" shall mean a portion of this Consent
2 Decree identified by an Arabic numeral or an upper or lower case
3 letter.

4 i. "Parties" shall mean the United States and Settling
5 Defendant.

6 j. "Past Response Costs" shall mean all costs,
7 including but not limited to direct and indirect costs, including
8 enforcement costs, that EPA or DOJ on behalf of EPA or any other
9 person has paid or incurred at or in connection with the Site
10 through August 7, 2006, plus accrued Interest on all such costs
11 through such date.

12 k. "Plaintiff" shall mean the United States.

13 l. "Section" shall mean a portion of this Consent
14 Decree identified by a Roman numeral.

15 m. "Settling Defendant" shall mean Honeywell
16 International, Inc.

17 n. "Site" shall mean the Central Eureka Mine CERCLA
18 Site, located along Highway 49 near the city of Sutter Creek,
19 Amador County, California, and generally designated by the
20 following property description: the minehead area located on the
21 east side of Sutter Hill road, the Mesa de Oro tailings
22 impoundment area and surrounding subdivisions generally located
23 near the intersection of Highway 49 and Bryson Drive, and the
24 Allen Ranch tailings area, located approximately one half mile
25 west of Allen Ranch Road, and two miles north of State Route 104.

1 o. "United States" shall mean the United States of
2 America, including its departments, agencies and
3 instrumentalities.

4 **V. PAYMENT OF PAST RESPONSE COSTS**

5 4. Payment of Past Response Costs to EPA. If the Consent
6 Decree is entered by the Court, Settling Defendant shall, within
7 15 Days thereof, make payment to EPA in the amount of \$2,000,000
8 plus interest accrued since the lodging of the Consent Decree, in
9 accordance with Paragraphs 5 and 6 below.

10 5. The Payment referenced in Paragraph 4 shall be made by
11 FedWire Electronic Funds Transfer ("EFT") to the Federal Reserve
12 Bank of New York, ABA = 021030004, Account No. 68010727, 33
13 Liberty Street, New York, NY 10045. Field Tag 4200 of the
14 FedWire message should read, "D 68010727 Environmental Protection
15 Agency."

16 6. At the time of payment, Settling Defendant shall also
17 send notice that payment has been made to EPA and DOJ in
18 accordance with Section XII (Notices and Submissions). Such
19 notice shall reference the EPA Region and Site/Spill
20 Identification Number 09AQ, DOJ case number 90-11-3-1692/1, and
21 the civil action number.

22 7. The total amount to be paid pursuant to Paragraph 4,
23 \$2,000,000, plus interest, shall be deposited in the EPA
24 Hazardous Substance Superfund.

25 **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

26 8. Interest on Late Payments. If Settling Defendant fails
27 to make any payment under Paragraph 4 (Payment of Past Response
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Costs) by the required due date, Interest shall continue to
1 accrue on the unpaid balance through the date of payment.

2 9. Stipulated Penalty.

3 a. If any amounts due under Paragraph 4 are not paid
4 by the required date, Settling Defendant shall be in violation of
5 this Consent Decree and shall pay to EPA, as a stipulated
6 penalty, in addition to the Interest required by Paragraph 8,
7 \$500 per violation per day that such payment is late.

8 b. Stipulated penalties are due and payable within 30
9 days of the date of the demand for payment of the penalties by
10 EPA. All payments to EPA under this Paragraph shall be
11 identified as "stipulated penalties" and shall be made by
12 certified or cashier's check made payable to "EPA Hazardous
13 Substance Superfund." The check, or a letter accompanying the
14 check, shall reference the name and address of the party(ies)
15 making payment, the Site name, the EPA Region and Site Spill ID
16 Number 09AQ, DOJ Case Number 90-11-3-1692/1, and the civil action
17 number. Settling Defendant shall send the check (and any
18 accompanying letter) by United States mail to:

19 U.S. Environmental Protection Agency
20 Region 9 Superfund Receivable
21 P.O. Box 371099M
Pittsburgh, PA 15251

22 c. At the time of each payment, Settling Defendant
23 shall also send notice that payment has been made to EPA and DOJ
24 in accordance with Section XII (Notices and Submissions). Such
25 notice shall reference the EPA Region and Site/Spill ID Number
26 09AQ, DOJ Case Number 90-11-3-1692/1, and the civil action
27 number.

1 d. Penalties shall accrue as provided in this
2 Paragraph regardless of whether EPA has notified Settling
3 Defendant of the violation or made a demand for payment, but need
4 only be paid upon demand. All penalties shall begin to accrue on
5 the day after payment is due and shall continue to accrue through
6 the date of payment. Nothing herein shall prevent the
7 simultaneous accrual of separate penalties for separate
8 violations of this Consent Decree.

9 10. If the United States brings an action to enforce this
10 Consent Decree, Settling Defendant shall reimburse the United
11 States for all costs of such action, including but not limited to
12 costs of attorney time.

13 11. Payments made under this Section shall be in addition
14 to any other remedies or sanctions available to Plaintiff by
15 virtue of Settling Defendant's failure to comply with the
16 requirements of this Consent Decree.

17 12. Notwithstanding any other provision of this Section,
18 the United States may, in its unreviewable discretion, waive
19 payment of any portion of the stipulated penalties that have
20 accrued pursuant to this Consent Decree. Payment of stipulated
21 penalties shall not excuse Settling Defendant from payment as
22 required by Section V or from performance of any other
23 requirements of this Consent Decree.

24 **VII. COVENANT NOT TO SUE BY PLAINTIFF**

25 13. Covenant Not to Sue by United States. Except as
26 specifically provided in Section VIII (Reservation of Rights by
27 United States), the United States covenants not to sue or to take
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1 administrative action against Settling Defendant pursuant to
2 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past
3 Response Costs. This covenant not to sue shall take effect upon
4 receipt by EPA of all payments required by Section V, Paragraph 4
5 (Payment of Past Response Costs) and any amount due under Section
6 VI (Failure to Comply with Consent Decree). This covenant not to
7 sue is conditioned upon the satisfactory performance by Settling
8 Defendant of its obligations under this Consent Decree. This
9 covenant not to sue extends only to Settling Defendant and does
10 not extend to any other person.

11 **VIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

12 14. The United States reserves, and this Consent Decree is
13 without prejudice to, all rights against Settling Defendant with
14 respect to all matters not expressly included within the Covenant
15 Not to Sue by Plaintiff in Paragraph 13. Notwithstanding any
16 other provision of this Consent Decree, the United States
17 reserves all rights against Settling Defendant with respect to:

18 a. liability for failure of Settling Defendant to meet
19 a requirement of this Consent Decree;

20 b. liability for costs incurred or to be incurred by
21 the United States that are not within the definition of Past
22 Response Costs;

23 c. liability for injunctive relief or administrative
24 order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

25 d. criminal liability; and
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1 e. liability for damages for injury to, destruction
2 of, or loss of natural resources, and for the costs of any
3 natural resource damage assessments.

4 **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

5 15. Settling Defendant covenants not to sue and agrees not
6 to assert any claims or causes of action against the United
7 States, or its contractors or employees, with respect to Past
8 Response Costs or this Consent Decree, including but not limited
9 to:

10 a. any direct or indirect claim for reimbursement from
11 the Hazardous Substance Superfund based on Sections 106(b)(2),
12 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607,
13 9611, 9612, or 9613, or any other provision of law;

14 b. any claim arising out of the response actions at
15 the Site for which the Past Response Costs were incurred,
16 including any claim under the United States Constitution, the
17 Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28
18 U.S.C. § 2412, as amended, or at common law; or

19 c. any claim against the United States pursuant to
20 Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613,
21 relating to Past Response Costs.

22 16. Nothing in this Consent Decree shall be deemed to
23 constitute approval or preauthorization of a claim within the
24 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
25 300.700(d).

26 17. Settling Defendant agrees not to assert any claims and
27 to waive all claims or causes of action that Settling Defendant
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1 may have for all matters relating to the Site, including for
2 contribution, against any person that has entered into a final *de*
3 *minimis* settlement under Section 122(g) of CERCLA, 42 U.S.C. §
4 9622(g), with EPA with respect to the Site as of the date of
5 entry of the Consent Decree. This waiver shall not apply with
6 respect to any defense, claim, or cause of action that Settling
7 Defendant may have against any person if such person asserts a
8 claim or cause of action relating to the Site against Settling
9 Defendant.

10 **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

11 18. Except as provided in Paragraph 17 (*De Minimis* Waiver),
12 nothing in this Consent Decree shall be construed to create any
13 rights in, or grant any cause of action to, any person not a
14 Party to this Consent Decree. Except as provided in Paragraph 17
15 (*De Minimis* Waiver), the Parties expressly reserve any and all
16 rights (including, but not limited to, any right to
17 contribution), defenses, claims, demands, and causes of action
18 that they may have with respect to any matter, transaction, or
19 occurrence relating in any way to the Site against any person not
20 a party hereto.

21 19. The Parties agree, and by entering this Consent Decree
22 this Court finds, that Settling Defendant is entitled, as of the
23 date of entry of this Consent Decree, to protection from
24 contribution actions or claims as provided by Section 113(f)(2)
25 of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in
26 this Consent Decree. The "matters addressed" in this Consent
27 Decree are Past Response Costs.

1 20. Settling Defendant agrees that, with respect to any
2 suit or claim for contribution brought by it for matters related
3 to this Consent Decree, it will notify EPA and DOJ in writing no
4 later than 60 days prior to the initiation of such suit or claim.

5 Settling Defendant also agrees that, with respect to any suit or
6 claim for contribution brought against it for matters related to
7 this Consent Decree, it will notify EPA and DOJ in writing within
8 20 days of service of the complaint or claim upon it. In
9 addition, Settling Defendant shall notify EPA and DOJ within 15
10 days of service or receipt of any Motion for Summary Judgment,
11 and within 20 days of receipt of any order from a court setting a
12 case for trial, for matters related to this Consent Decree.

13 21. In any subsequent administrative or judicial proceeding
14 initiated by the United States for injunctive relief, recovery of
15 response costs, or other relief relating to the Site, Settling
16 Defendant shall not assert, and may not maintain, any defense or
17 claim based upon the principles of waiver, *res judicata*,
18 collateral estoppel, issue preclusion, claim-splitting, or other
19 defenses based upon any contention that the claims raised by the
20 United States in the subsequent proceeding were or should have
21 been brought in the instant case; provided, however, that nothing
22 in this Paragraph affects or limits the enforceability of the
23 Covenant Not to Sue by Plaintiff set forth in Section VII.
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1 reasonable opportunity to dispute the privilege claim and any
2 such dispute has been resolved in the Settling Defendant's favor.

3 However, no records created or generated pursuant to the
4 requirements of this or any other settlement with the EPA
5 pertaining to the Site shall be withheld on the grounds that they
6 are privileged.

7 24. Settling Defendant hereby certifies that, to the best
8 of its knowledge and belief, after reasonable inquiry, it has not
9 altered, mutilated, discarded, destroyed or otherwise disposed of
10 any records, reports, or information relating to its potential
11 liability regarding the Site since notification of potential
12 liability by the United States or the State or the filing of suit
13 against it regarding the Site and that it has fully complied with
14 any and all EPA requests for information pursuant to Sections
15 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e),
16 and Section 3007 of RCRA, 42 U.S.C. § 6972.

17 **XII. NOTICES AND SUBMISSIONS**

18 25. Whenever, under the terms of this Consent Decree,
19 notice is required to be given or a document is required to be
20 sent by one party to another, it shall be directed to the
21 individuals at the addresses specified below, unless those
22 individuals or their successors give notice of a change to the
23 other Party in writing. Written notice as specified herein shall
24 constitute complete satisfaction of any written notice
25 requirement of the Consent Decree with respect to the United
26 States, EPA, DOJ, and Settling Defendant, respectively.
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As to the United States:

1 As to DOJ:

2 Chief, Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice (DJ # 90-11-2-07733)
5 P.O. Box 7611
6 Washington, D.C. 20044-7611

6 As to EPA:

7 Chris Reiner
8 Civil Investigator
9 U.S. Environmental Protection Agency, Region IX
10 75 Hawthorne Street

9 San Francisco, CA 94105

10 Larry Bradfish
11 Assistant Regional Counsel
12 Office of Regional Counsel
13 U.S. Environmental Protection Agency, Region IX
14 75 Hawthorne Street
15 San Francisco, CA 94105

14 As to Settling Defendant:

15 Tao Wu
16 Remediation Manager
17 Honeywell International, Inc.
18 111 South 34th Street, Bld. 158
19 Phoenix, AZ 85034

18 With a copy to:

19 Kenneth J. Berke
20 Berke, Kent & Ward, LLP
21 23975 Park Sorrento, Suite 200
22 Calabasas, CA 91302

22 **XIII. RETENTION OF JURISDICTION**

23 26. This Court shall retain jurisdiction over this matter
24 for the purpose of interpreting and enforcing the terms of this
25 Consent Decree.

1 enter into the terms and conditions of this Consent Decree and to
2 execute and bind legally such Party to this document.

3 31. Settling Defendant hereby agrees not to oppose entry of
4 this Consent Decree by this Court or to challenge any provision
5 of this Consent Decree, unless the United States has notified
6 Settling Defendant in writing that it no longer supports entry of
7 the Consent Decree.

8 32. Settling Defendant shall identify, on the attached
9 signature page, the name and address of an agent who is
10 authorized to accept service of process by mail on behalf of that
11 Party with respect to all matters arising under or relating to
12 this Consent Decree.

13 **XVII. FINAL JUDGMENT**

14 33. Upon approval and entry of this Consent Decree by the
15 Court, this Consent Decree shall constitute the final judgment
16 between and among the United States and Settling Defendant. The
17 Court finds that there is no just reason for delay and therefore
18 enters this judgment as a final judgment under Fed. R. Civ. P. 54
19 and 58.
20


21 SO ORDERED THIS _____ DAY OF _____, 20__ .
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25 United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Honeywell International, Inc., No.
3 2:06-CV-00387-MCE-JFM, relating to the Central Eureka Mine
4 Superfund Site.

5 FOR THE UNITED STATES OF
6 AMERICA

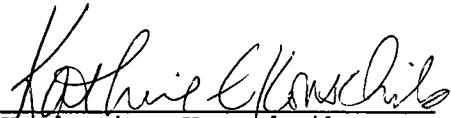
7 Date: _____


8 Sue Ellen Wooldridge
9 Assistant Attorney General
10 Environment and Natural Resources
11 Division
12 U.S. Department of Justice
13 Washington, D.C. 20530

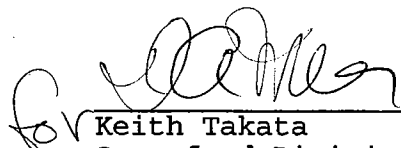
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McGREGOR W. SCOTT
United States Attorney
Eastern District of California

By: _____

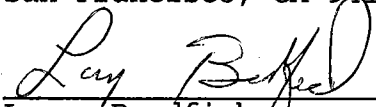
Edmund Brennan
Chief, Civil Division
501 I Street, Suite 10-100
Sacramento, CA 95814-2322
Telephone: (916) 554-2700


Katherine Konschnik
Trial Attorney
Environmental Enforcement
Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

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for Keith Takata
Superfund Division Director
U.S. Environmental Protection
Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Larry Bradfish
Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

FOR HONEYWELL INTERNATIONAL,
INC.



Tao Wu
Remediation Manager
Honeywell International, Inc.
111 South 34th Street, Bld. 158
Phoenix, AZ 85034

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