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Layne Friedrich (Bar No. 195431)
layne@lawyersforcleanwater.com
Elizabeth Crosson (Bar No. 262178)
liz@lawyersforcleanwater.com
LAWYERS FOR CLEAN WATER, INC.
1004 A O'Reilly Avenue
San Francisco, California 94129
Telephone: (415) 440-6520 ext. 200
Fax: (415) 440-4155

Attorneys for Plaintiffs,
Inland Empire Waterkeeper, a program of Orange County Coastkeeper,
And Orange County Coastkeeper

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE WATERKEEPER,
a program of ORANGE COUNTY
COASTKEEPER, and ORANGE
COUNTY COASTKEEPER,
a non-profit corporation,

Plaintiffs,

v.

RUBY METALS, INC., and GOLD
COAST METALS TRADING, INC., a
California Corporation,

Defendants.

Case No. CV-09-6558-AHM (OPx)

Hon. A. Howard Matz

CONSENT DECREE

**(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)**

1 **WHEREAS**, Inland Empire Waterkeeper, a program of Orange County
2 Coastkeeper is a non-profit corporation dedicated to the protection and enhancement of
3 the Upper Santa Ana River Watershed through programs of advocacy, education,
4 research, restoration, and enforcement;

5 **WHEREAS**, Orange County Coastkeeper is a non-profit corporation dedicated to
6 the preservation, protection and defense of the environment, the wildlife, and the natural
7 resources of Orange County area waters, including the Santa Ana River Watershed and
8 its receiving waters;

9 **WHEREAS**, Inland Empire Waterkeeper and Orange County Coastkeeper are
10 collectively referred to herein as (“Waterkeeper” or “Plaintiffs”);

11 **WHEREAS**, Ruby Metals, Inc. is an owner and/or operator of the scrap metal
12 recycling facilities located at 2805 South Industrial Drive (“2805 Facility”) and 2820
13 South Industrial Drive (“2820 Facility”), Bloomington, California (collectively the
14 “2805/2820 Facilities”);

15 **WHEREAS**, Gold Coast Metals Trading, Inc. is an owner and/or operator of the
16 scrap metal recycling facilities located at 2805 South Industrial Drive and 2820 South
17 Industrial Drive, Bloomington, California;

18 **WHEREAS**, Ruby Metals, Inc., and Gold Coast Metals Trading, Inc. are
19 collectively referred to herein as “Defendants” or “Ruby Metals”;

20 **WHEREAS**, on June 10, 2009 and June 23, 2009, Waterkeeper served Defendants,
21 the United States Environmental Protection Agency (“EPA”), EPA Region IX, the State
22 Water Resources Control Board (“State Board”) and the Regional Water Quality Control
23 Board (“Regional Board”), with a notice of intent to file suit for violations of the Federal
24 Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”).
25 The notice letter alleged violations of the Clean Water Act for Defendants’ discharges of
26 pollutants into receiving waters in violation of National Pollution Discharge Elimination
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1 System (“NPDES”) General Permit No. CAS0000001 [State Board] Water Quality Order
2 No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“Industrial Permit”);

3 **WHEREAS**, on September 9, 2009, Waterkeeper filed a complaint against
4 Defendants in the United States District Court, Central District of California (Civil Case
5 No. CV 09-6558-AHM (OPx)) entitled *Inland Empire Waterkeeper, et. al. v. Ruby*
6 *Metals, Inc., and Gold Coast Metals Trading, Inc.* (“Complaint”);

7 **WHEREAS**, Defendants deny all allegations of the Complaint;

8 **WHEREAS**, Plaintiffs and Defendants (collectively referred to herein as the
9 “Parties”) have agreed that it is in the Parties' mutual interest to enter into a Consent
10 Decree setting forth terms and conditions appropriate to resolving the allegations set
11 forth in the Complaint without further proceedings;

12 **WHEREAS**, all actions taken by Defendants pursuant to this Consent Decree
13 shall be made in compliance with all applicable federal, state and local rules and
14 regulations;

15 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**
16 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS**
17 **FOLLOWS:**

18 1. The Court has jurisdiction over the subject matter of this action pursuant to
19 Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A);

20 2. Venue is appropriate in the Central District Court pursuant to Section
21 505(c)(1) of the CWA, 33 U.S.C. §1365(c)(1), because the 2805/2820 Facilities at which
22 the alleged violations took place is located within this District;

23 3. The Complaint states a claim upon which relief may be granted against
24 Defendants pursuant to Section 505 of the CWA, 33 U.S.C. § 1365;

25 4. Plaintiffs have standing to bring this action.

26 5. The Court shall retain jurisdiction over this matter for purposes of
27 interpreting, modifying or enforcing the terms of this Consent Decree, or as long

1 thereafter as is necessary for the Court to resolve any motion to enforce this Consent
2 Decree.

3 **I. OBJECTIVES**

4 6. It is the express purpose of the Parties entering into this Consent Decree to
5 further the objectives set forth in Sections 101 *et seq.* of the CWA, 33 U.S.C. §§ 1251 *et*
6 *seq.*, and to resolve those issues alleged by Waterkeeper in its Complaint. In light of
7 these objectives and as set forth fully below, Defendants agree, *inter alia*, to comply with
8 the provisions of this Consent Decree and to comply with the requirements of the
9 Industrial Permit and all applicable provisions of the CWA at the 2805/2820 Facilities.
10 Specifically, Receiving Water Limitation C(2) in the Industrial Permit requires that the
11 2805/2820 Facilities “not cause or contribute to the exceedance of an applicable water
12 quality limit.” Effluent Limitation B(3) of the Industrial Permit requires that Best
13 Management Practices (“BMPs”) be developed and implemented to achieve Best
14 Available Technology (“BAT”) and the Best Conventional Pollutant Control Technology
15 (“BCT”). Defendants are required to develop and implement BMPs necessary to comply
16 with the Industrial Permit’s requirement to achieve compliance with Water Quality
17 Standards and BAT/BCT standards. BMPs must be developed and implemented to
18 prevent discharges or to reduce contamination in storm water discharged from the
19 2805/2820 Facilities sufficient to achieve the numeric limits detailed in paragraphs 19
20 and 20 below.

21 **II. COMMITMENTS OF THE PARTIES**

22 **A. Eliminating Discharge Points**

23 7. 2820 Facility. The 2820 Facility currently discharges at the driveway at the
24 north entrance to the facility, the driveway at the south entrance to the facility, and out
25 the southwest corner of the facility. Ruby Metals will eliminate the southwest corner
26 discharge point by plugging, blocking, closing, or otherwise preventing storm water from
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1 discharging from that location. Instead, water will be routed to the truck dock as
2 explained in Section II.B. below.

3 8. 2805 Facility. The 2805 Facility discharges from the driveway at the north
4 entrance to the facility, the driveway at the south entrance to the facility (which
5 comingles with the discharge draining the southern portion of the facility to the southern
6 driveway), and the northwest corner of the facility adjacent to the neighboring Atlas
7 Pacific facility. Ruby Metals will plug, block, close or otherwise prevent storm water
8 from discharging from the northwest discharge point at the 2805 Facility. Ruby Metals
9 will install curbing along the northern wall leading to the discharge point to prevent any
10 water from discharging from this area. Instead, water will be routed to the truck dock as
11 explained in Section II.B. below.

12 **B. Immediate BMP Plan**

13 9. Water Drainage and Capture System. Ruby Metals is in the process of
14 developing a drainage control and storm water capture system in an effort to prevent
15 storm water from discharging at the 2805/2820 Facilities. Implementation will include
16 installing curbing, drainage channels, and trench gates across the south driveway at the
17 2805 Facility and across the south and north driveways at the 2820 Facility. The intent is
18 to direct all storm water at each of the facilities to the truck dock at each of the respective
19 facilities. The water in the truck docks will be pumped to two (2) 10,000-gallon holding
20 tanks located at the 2820 Facility, and to holding tanks that will be installed at the 2805
21 Facility. Ruby Metals agrees to purchase additional holding tanks as part of their efforts
22 to prevent storm water from discharging at the site. The system will include float-
23 controlled submersible pumps and electrical controls. However, for the first year of this
24 Consent Decree, Ruby Metals agrees to manually operate the system during storm events
25 to reduce water levels in the truck docks and maximize capacity. The system will be
26 operational within 120 days of the Effective Date of this Consent Decree.

1 10. Additional BMPs. Within thirty (30) days of the Effective Date of this
2 Consent Decree Ruby Metals agrees to develop, implement and/or continue to maintain
3 the following BMPs:

4 a. Conducting all vehicle and equipment fueling at the 2805/2820 Facilities
5 on asphalt or other impermeable surface and under cover;

6 b. Conducting all vehicle and equipment maintenance at the 2805/2820
7 Facilities on asphalt or other impermeable surface and under cover. If Ruby must
8 maintain and/or repair stationary equipment identified as the baler and large grappling
9 crane Ruby shall develop and implement BMPs to prevent the exposure of pollutants
10 associated with repair and maintenance to water, such as using a drip pan and straw
11 wattle berming, and shall carry a spill response kit at all times maintenance and repair of
12 stationary equipment occurs. Under no circumstances will Ruby conduct maintenance or
13 repair that is not under cover and on impermeable surface during a rain event;

14 c. Berming or otherwise containing the surface of the area where vehicle
15 maintenance, repair and/or fueling occurs in order to prevent the exposure and/or
16 discharge of pollutants from this area;

17 d. Cleaning the maintenance and fueling area as necessary to control track-
18 off of pollutants;

19 e. Dispensing with all petroleum products within the maintenance and
20 fueling area only; and

21 f. Constructing secondary containment adequate to capture all drips, spills,
22 and leaks around the vehicle fueling area and for all other areas where 55-gallon drums
23 are stored for on-site use.

24 11. BMPs for S. Industrial Drive. Within thirty (30) days of the Effective Date
25 of this Consent Decree, Ruby Metals agrees to develop and implement BMPs on S.
26 Industrial Drive between the 2805 Facility and the 2820 Facility to prevent the exposure
27 of storm water and/or non-storm water to pollutants associated with Ruby Metals'

1 industrial activities until and unless Defendants cease use of S. Industrial Drive. BMPs
2 include but are not limited to:

3 a. Using and/or parking vehicles on S. Industrial Drive only when necessary
4 to carry out Defendants' industrial operations at the 2805/2820 Facilities to minimize the
5 transport or distribution of pollutants associated with Ruby Metals' industrial activities.

6 b. Sweeping adequate to prevent the exposure of pollutants to storm water
7 flows;

8 c. Installing tire washing facilities at all driveways for the 2805/2820
9 Facilities in order to prevent off-site tracking from vehicles using S. Industrial Drive for
10 Ruby Metals' industrial activities;

11 d. Power washing the portion of S. Industrial Drive between the 2805
12 Facility and the 2820 Facility, including areas not reachable by mechanical sweepers, on
13 an annual basis. Ruby Metals shall ensure BMPs are in place to prevent any discharge
14 from the S. Industrial Drive to area storm drains resulting from the power washing.

15 **C. Long-Term BMP Plan**

16 12. Within ninety (90) days of the Effective Date of this Consent Decree, Ruby
17 Metals agrees to begin considering additional measures to capture storm water and
18 prevent the discharge of storm water at the 2805/2820 Facilities and/or to reduce the
19 levels of pollutants in storm water discharges at the 2805/2820 Facilities and incorporate
20 them into a long-term plan. The purpose of the long-term plan shall be to retain storm
21 water generated from a 25-year, 24-hour rainfall event without surface water discharge at
22 both the 2820 Facility and the 2805 Facility. If this cannot be fully achieved Ruby
23 Metals shall provide a high level of treatment to the differential between the retained and
24 25-year, 24-hour runoff volumes such that storm water discharges do not contain
25 pollutants above Table 1 or Table 2 levels. Additional BMPs that must be analyzed as
26 part of the long-term plan include but are not limited to:
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1 a. Source control to eliminate contact between industrial activity and
2 associated pollutants with storm water, and/or non-storm water;

3 b. Infiltration including investigating both on-site and off-site (e.g., on lands
4 east of the 2805 Facility) opportunities for collecting and routing storm water to a
5 structure that is designed to be an infiltration facility (such as an infiltration basin or
6 trench). The analysis shall include gathering data on the feasibility such as soils analysis
7 and drilling wells to determine the infiltration possibilities;

8 c. Rain harvesting including transfer to an off-site user;

9 d. Materials storage including placing sources of contamination in covered
10 containers or under cover with such areas contained by berming or other containment
11 sufficient to prevent the exposure of pollutants to storm water and non-storm water, and
12 to therefore prevent the discharge of pollutants;

13 e. Coating structural sources of contamination (e.g., galvanized building
14 roofs and siding);

15 f. Sweeping including employing high efficiency sweeping in order to
16 prevent the exposure of pollutants to storm water flows;

17 g. Storing storm water and/or non-stormwater including constructing and
18 maintaining on-site retention facilities (such as retention ponds or swales, infiltration
19 basins, baker tanks, sumps, and/or cisterns) designed to hold and store the runoff
20 generated by a 25-year, 24-hour rain event without any off-site discharge;

21 h. Treating runoff discharging from the site with devices such as sand filters
22 evaluated in the Caltrans Retrofit Study (“CRS”) or equivalent treatment devices at
23 appropriate locations;

24 i. Installing tire washing facilities at exit points from the 2805/2820
25 Facilities to prevent off-site tracking from vehicles;

26 j. Power washing the entire paved part of the 2805/2820 Facilities,
27 including areas not reachable by mechanical sweepers, as necessary but at least annually.

1 Ruby Metals shall ensure BMPs are in place to prevent any discharge from the 2805/2820
2 Facilities resulting from the power washing.

3 13. By June 1, 2010 Ruby Metals shall complete its consideration and analysis
4 of the long-term BMPs and submit a report describing the analysis for each proposed
5 BMP and if the BMP is not selected the reason(s) why the BMP was rejected (referred to
6 as “Long-Term BMP Plan”). Financial hardship is not in and of itself an adequate
7 justification to reject a BMP. The Long-Term BMP Plan shall also include
8 implementation dates for the proposed BMPs that are selected. Defendants shall submit
9 the Long-Term BMP Plan to Waterkeeper for review and comment. Waterkeeper shall
10 respond with comments within thirty (30) days of receiving the Long-Term BMP Plan.
11 Defendants shall incorporate Plaintiffs’ comments into the Plan, or shall justify in writing
12 why any comment is not being incorporated within thirty (30) days of receiving
13 comments. Any disputes as to the adequacy of the Long-Term BMP Plan shall be
14 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out at
15 Section IV below.

16 **D. Employee Training**

17 14. Within thirty (30) days of the Effective Date, Defendants shall develop a
18 training program, including any materials needed for effectiveness, and shall provide
19 training for employees as follows:

20 a. Non-Storm Water Discharge Training. Defendants shall conduct training
21 on the Industrial Permit’s prohibition of non-storm water discharges so that employees
22 know what non-storm water discharges are and how to avoid them. Such training shall
23 be specified in the SWPPP;

24 b. BMP Training. Defendants shall provide training to all employees
25 responsible for BMP implementation and maintenance. Training shall be provided by a
26 private consultant or representative of Defendants familiar with the Industrial Permit
27 requirements and shall be repeated as necessary to ensure that all such employees are

1 familiar with the Industrial Permit and SWPPP requirements. Defendants shall maintain
2 training records to document compliance with this paragraph, and shall provide
3 Waterkeeper with a copy of these records within fourteen (14) days of receipt of a written
4 request;

5 c. Sampling Training. Defendants shall provide training to all individuals
6 performing sampling pursuant to the Industrial Permit at the 2805/2820 Facilities. All
7 employees shall thereafter be trained prior to becoming responsible for conducting
8 sampling activities. The training shall be provided by a private consultant or
9 representative of Defendants familiar with the Industrial Permit requirements and shall be
10 repeated as necessary to ensure Industrial Permit compliance. Defendants shall maintain
11 training records to document compliance with this paragraph, and shall provide
12 Waterkeeper with a copy of these records within fourteen (14) days of receipt of a written
13 request.

14 d. Visual Observation Training. Defendants shall provide additional training
15 to all individuals performing visual observations pursuant to the Industrial Permit at the
16 2805/2820 Facilities. The training will be provided by a private consultant or
17 representative of Defendants and shall be repeated as necessary to ensure Industrial
18 Permit compliance. All new staff will receive this training before assuming
19 responsibilities for implementing the SWPPP. Defendants shall maintain training records
20 to document compliance with this paragraph, and shall provide Waterkeeper with a copy
21 of these records within fourteen (14) days of a written request.

22 **F. Sampling, Monitoring, Inspecting, and Reporting**

23 15. Sampling Program. Within thirty (30) days of the Effective Date of this
24 Consent Decree, Defendants shall revise their monitoring and reporting plan (“M&RP”)
25 to comply with this section. All storm water discharge locations shall be sampled at the
26 2805/2820 Facilities. Storm water samples collected must represent the discharge at the
27 point it leaves the 2820 Facility and the 2805 Facility. For example, if storm water is

1 discharging from both sides of a driveway, two separate storm water samples must be
2 collected from each side of the driveway. Additionally, sampling of stored or contained
3 storm water shall occur at the time the stored or contained storm water is released.
4 Finally, the M&RP shall be revised to include sampling at all new or additional discharge
5 points created in the future.

6 16. Waterkeeper's Review of Revised M&RP. Defendants agree to submit the
7 M&RP to Waterkeeper for review and comment as soon as it is completed but in any
8 event no later than thirty (30) days from the Effective Date of this Consent Decree.
9 Waterkeeper shall provide comments, if any, to the Defendants within thirty (30) days of
10 receipt of the M&RP. Defendants shall incorporate Plaintiffs' comments into the M&RP,
11 or shall justify in writing why any comment is not incorporated within fourteen (14) days
12 of receiving comments. Any disputes as to the adequacy of the M&RP shall be resolved
13 pursuant to the dispute resolution provisions of this Consent Decree, set out at Section IV
14 below.

15 17. Sample Analysis and Sample Frequency. Beginning with the 2009/2010
16 Wet Season (defined as October 1- May 31), Defendants shall collect storm water
17 samples from each discharge location from each storm event at the 2805/2820 Facilities.
18 In years 2-5 of the Consent Decree, Ruby Metals agrees to sample every storm event up
19 to five storm events per Wet Season. Defendant may discontinue analyzing storm water
20 samples for a constituent specified in Tables 1 and 2 if five consecutive sampling results
21 within a Wet Season for the constituent are reported as below the limits in Tables 1 and
22 2.

23 18. Defendants shall analyze the samples for the constituents identified in Table
24 1 and Table 2. A California State certified laboratory shall perform all sample chemical
25 analyses. Defendants shall select laboratories and analytical limits such that, at a
26 minimum, the method detection limits ("MDLs") shall be below both the Table 1 and
27

1 Table 2 Limits set forth herein. In addition, Defendants shall perform sampling as
 2 required by the Industrial Permit for the 2805/2820 Facilities.

3 19. BAT/BCT and Technology Based Limits:¹ Contaminants in discharges shall
 4 not exceed the limits in Table 1:

Contaminant (All metals are total recoverable)	Limit (All but pH expressed as Mg/L)
Total suspended solids	100
Copper	0.064123
Lead	0.081669
Zinc	0.117
Oil and grease	15
Aluminum	0.750
Arsenic	0.16854
Cadmium	0.0159
Iron	1
Mercury	0.0024
Nickel	1.417
Silver	0.0318
Chemical oxygen demand	120
pH	6.0-9.0 units

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 21 ¹ The Best Available Technology (“BAT”) limits were derived from the International BMP
 22 Database assembled by EPA and others for contaminants measured at a variety of BMPs, accepted into
 23 the database, and subjected to statistical analysis. The proposed BAT limit is generally based on the
 24 maximum median pollutant discharge concentration among all reported BMP types, except
 25 hydrodynamic devices (which perform more poorly than land-based BMPs). In some cases the Caltrans
 26 Retrofit Pilot Study results for the same BMPs were also consulted to guide the selection. The BAT
 27 limit for oil and grease is equivalent to the widely accepted capability of a coalescing plate or equivalent
 28 oil/water separator. Other contaminants common in scrap yard discharges are not represented at all, or
 are not sufficiently represented, in the database to set BAT limits. In these cases the limits are the
 benchmarks in the EPA multi-sector industrial permit. Defendants shall analyze for hardness when
 collecting samples and Defendants may adjust limits based on hardness where applicable.

20. Water Quality Standard (WQS) Based Limits. Contaminants in discharges shall not exceed the limits in Table 2. The chemical oxygen demand and pH limits are from the applicable Basin Plan, all other are the CTR CMC² limits:

Contaminant	Limit (All but pH expressed as Mg/L)
Arsenic	340
Cadmium	0.0043
Copper	0.013
Lead	0.065
Nickel	0.470
Silver	0.0034
Zinc	0.120
PCBs	Goal of 0.000014
Chemical oxygen demand	30
pH	6.5-8.5 units

21. Ruby Metals shall be in violation of this Consent Decree if any sample results exceed Table 1 or Table 2 limits.

22. Action Plan for Table 1 or Table 2 Exceedances. Ruby Metals agrees to submit an action plan if any sampling demonstrates discharges of storm water containing concentration of pollutants exceeding a Table 1 or 2 limit that complies with the requirements below. The Parties agree to comply with the dispute resolution procedures set forth in Section IV below if there are any disagreements or disputes regarding any of the action plan(s) discussed below.

a. Benchmark Levels Action Plan. Defendants shall provide Waterkeeper with a Benchmark Action Plan within thirty (30) days of Ruby Metal's receipt of storm

² The CTR CMC limits are the California Toxics Rule (CTR) Criterion Maximum Concentrations (CMC) from the Federal Register, Vol. 65, No. 97, May 18, 2000. Defendant shall measure dissolved as well as total recoverable metals. In general, freshwater limits for metals depend on water hardness. Defendants shall analyze for hardness when collecting samples and Defendants can adjust limits based on hardness where applicable.

1 water sampling data demonstrating an exceedance of a Benchmark Level at either the
2 2820 Facility or the 2805 Facility. The Action Plan shall include at a minimum (1) the
3 identification of the pollutant(s) discharged in excess of the Benchmark Levels, (2) an
4 assessment of the source of each pollutant exceedance, (3) the identification of additional
5 BMPs that will be implemented to achieve compliance with the Benchmark Levels set
6 forth in Table 1, and (4) time schedules for implementation of the proposed BMPs.
7 Waterkeeper shall have thirty (30) days upon receipt of Defendants' Benchmark Action
8 Plan to provide Defendants with comments. Defendants shall have thirty (30) days from
9 the date Waterkeeper comments on Defendants' Benchmark Action Plan to implement
10 any additional non-structural or structural BMPs recommended by Waterkeeper. Ruby
11 Metals shall provide a written explanation if Ruby Metals refuses to develop and/or
12 implement any of Waterkeeper's recommended additional BMPs. If any structural BMPs
13 require any agency approval, then Defendants shall contact Waterkeeper to request an
14 extension of the deadline to implement the structural BMPs requiring agency approval.
15 Waterkeeper's consent to Defendants' requested extension shall not be unreasonably
16 withheld. Defendants shall notify Waterkeeper in writing when the Action Plan has been
17 implemented.

18 b. WQS Action Plan. Defendants shall provide Waterkeeper with a WQS
19 Action Plan by July 1 following each Wet Season if storm water sampling data
20 demonstrating an exceedance of a WQS Level at either the 2820 Facility or the 2805
21 Facility. The objective of the WQS Action Plan is to set forth additional BMPs designed
22 to achieve compliance with Table 2 limits. The Action Plan shall include at a minimum
23 (1) the identification of the pollutant(s) discharged in excess of the WQS; (2) an
24 assessment of the source of the pollutant; (3) the identification of additional BMPs that
25 will be implemented to achieve compliance with the applicable WQS; and (4) time
26 schedules for implementation of the proposed structural and non-structural BMPs.
27 Waterkeeper shall have thirty (30) days upon receipt of Defendants' WQS Action Plan to

1 provide Defendants with comments. Defendants shall have thirty (30) days from the date
2 Waterkeeper comments on Defendants' Action Plan to implement any additional non-
3 structural or structural BMPs. Ruby Metals shall provide a written explanation if Ruby
4 Metals refuses to develop and/or implement any of Waterkeeper's recommended
5 additional BMPs. If any structural BMPs require any agency approval, then Defendants
6 shall contact Waterkeeper to request an extension of the deadline to implement the
7 structural BMPs requiring agency approval. Waterkeeper's consent to Defendants'
8 requested extension shall not be unreasonably withheld. Defendants shall notify
9 Waterkeeper in writing when the Action Plan has been implemented.

10 c. Action Plan for Year 4 Wet Season. If at the end of the 2011-2012 Wet
11 Season, storm water sample results demonstrate that Defendants continue to discharge
12 storm water and/or non-stormwater containing pollutants exceeding the limits set forth in
13 Tables 1 and/or 2, the Parties shall meet and confer by July 1, 2012 to discuss the sample
14 results, current BMPs, and to devise a mutually agreeable action plan ("Year 4 Action
15 Plan"). Within fourteen (14) days of meeting and conferring, Defendants will develop
16 and submit the Year 4 Action Plan to Waterkeeper. Waterkeepers will provide comments
17 on the Year 4 Action Pan within thirty (30) days of receipt of the plan. Ruby Metals shall
18 revise the Year 4 Action Plan to include Waterkeeper's comments.

19 **G. Storm Water Pollution Prevention Plan**

20 23. SWPPP Revisions. Within thirty (30) days of the Effective Date of this
21 Consent Decree, Defendants agree to revise the SWPPP currently in effect at the
22 2805/2820 Facilities to incorporate all storm water pollution prevention measures and
23 other requirements set forth in this Consent Decree and/or the Industrial Permit.
24 Specifically, the SWPPP shall include a description of all industrial activities and
25 corresponding potential pollution sources, and, for each potential pollutant source, a
26 description of the potential pollutants from the sources. The SWPPP shall also identify
27 BMPs (and their implementation dates) designed to achieve compliance with Numeric
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1 Limits set forth in Table 1 and Table 2. Defendants shall revise the SWPPP as necessary
2 to incorporate additional BMPs developed pursuant to this Consent Decree.

3 24. Waterkeeper's Review of Revised SWPPP. Defendants agree to submit the
4 revised SWPPP to Waterkeeper for review and comment as soon as it is completed but in
5 any event no later than thirty (30) days from the Effective Date of this Consent Decree.
6 Within thirty (30) days of Waterkeeper's receipt of the revised SWPPP, Waterkeeper
7 shall provide Defendants with comments and suggestions, if any, concerning the
8 revisions to the SWPPP. Within fourteen (14) days of Defendants' receipt of
9 Waterkeeper's comments on the revised SWPPP, Defendants shall incorporate
10 Waterkeeper's comments and re-issue the SWPPP. Any disputes as to the adequacy of
11 the SWPPP shall be resolved pursuant to the dispute resolution provisions of this Consent
12 Decree, set out at Section IV below.

13 **H. Compliance Monitoring**

14 25. Site Inspections. Waterkeeper, Dr. Richard Horner, or an alternative water
15 quality engineer identified by Waterkeeper, accompanied by Waterkeeper's attorney or
16 other representative, may conduct up to three yearly site inspections at the 2805/2820
17 Facilities for the first two years of the this Consent Decree, and may conduct up to two
18 site inspections each year thereafter. Site inspections shall occur during normal business
19 hours and Waterkeeper shall provide Defendants' with as much notice as possible, but at
20 least twenty-four (24) hours notice during the Wet Weather season and forty-eight (48)
21 hours notice during the dry season prior to each inspection. Notice will be provided by
22 phone and electronic mail. During site inspections, Waterkeeper and/or its
23 representatives shall be allowed access to the 2805/2820 Facilities SWPPP, monitoring
24 records, and monitoring reports and data for the 2805/2820 Facilities. During site
25 inspections, Waterkeeper and/or its representatives may collect samples of storm water
26 discharges at the 2805/2820 Facilities. A certified California laboratory shall analyze
27 storm water samples collected by Waterkeeper.

1 26. Compliance Monitoring and Oversight. Defendants agree to help defray
2 Waterkeeper's reasonable costs incurred in conducting site inspections and compliance
3 monitoring by paying Five Thousand Dollars (\$5,000) towards this end. Payment shall
4 be made within sixty (60) days from execution of this Consent Decree and be made
5 payable to Lawyers for Clean Water Attorney Client Trust Account and sent certified
6 mail or overnight delivery to Lawyers for Clean Water, Inc., 1004 A O'Reilly Avenue,
7 San Francisco, California 94129.

8 27. Reporting. During the life of this Consent Decree, on a monthly basis,
9 Defendants shall provide Waterkeeper with a copy of all compliance and monitoring
10 data, including inspection reports, related to the 2805/2820 Facilities. During the life of
11 this Consent Decree, Defendants shall provide Waterkeeper with all laboratory analyses
12 of storm water or non-stormwater data at the 2805/2820 Facilities within seven (7) days
13 of Defendants' receipt of such information.

14 28. Document Provision. During the life of this Consent Decree, Defendants
15 shall copy Waterkeeper on all documents related to water quality at the 2805/2820
16 Facilities that are submitted to the Regional Board, the State Board, and/or any State or
17 local agency or municipality. Such reports and documents shall be provided to
18 Waterkeeper concurrently as they are sent to the agencies and/or municipalities. Any
19 correspondence received by Ruby Metals from any regulatory agency shall be provided
20 to Waterkeeper within three (3) business days of receipt by Ruby Metals.

21 **I. Environmental Projects and Fees and Costs**

22 29. Environmental Mitigation Project. Defendants agree make a payment of
23 Thirty Thousand Dollars (\$30,000) to the Public Interest Green Fund to be used for
24 projects that reduce or mitigate the impacts of storm water pollution in Orange County
25 and the Inland Empire. Defendants shall pay Five Thousand Dollars (\$5,000) each
26 month for six months starting ninety (90) days from the Effective Date, for a total of six
27 payments of Five Thousand Dollars. Payment shall be made via certified mail or

1 overnight delivery to the Public Interest Green Fund at the Orange County Community
2 Foundation, 30 Corporate Park, Suite 410, Irvine, California 92606. Defendants shall
3 provide Waterkeeper with a copy of such payment.

4 30. Waterkeeper's Fees and Costs. Defendants agree to partially reimburse
5 Waterkeeper in the amount of Forty-Five Thousand Dollars (\$45,000) for their
6 investigation fees and costs, consultant fees and costs, reasonable attorneys' fees, and
7 other costs incurred as a result of investigating and filing the lawsuit, and negotiating a
8 resolution of this matter. Payment shall be made within sixty (60) days of execution of
9 this Consent Decree and be made payable to Lawyers for Clean Water Attorney Client
10 Trust Account, and sent certified mail or overnight delivery to Lawyers for Clean Water,
11 Inc., 1004 A O'Reilly Avenue, San Francisco, California 94129.

12 31. Stipulated Payment. Defendants shall make a remediation payment of One
13 Thousand Dollars (\$1,000) for each missed deadline included in or contemplated by this
14 Consent Decree, unless the missed deadline results from a Force Majeure Event.
15 Payments for missed deadline shall be made for the restoration and/or improvement of
16 the watershed in the area affected by Defendants' discharges and shall be awarded to the
17 Environmental Mitigation Project recipient identified in paragraph 29 below. Defendants
18 agree to make the stipulated payment within thirty (30) days of a missed deadline and
19 mail via certified mail or overnight delivery. Defendants shall provide Waterkeeper with
20 a copy of each such payment.

21 **J. Commitments of Plaintiff**

22 32. Plaintiffs shall submit this Consent Decree to the United States
23 Environmental Protection Agency and the United States Department of Justice ("DOJ")
24 within three (3) days of the final signature of the Parties for agency review consistent
25 with 40 C.F.R. §135.5. The agency review period expires forty-five (45) days after
26 receipt by both agencies, as evidenced by the certified return receipts, copies of which
27 shall be provided to Defendants if requested. In the event that EPA or DOJ object to
28

1 entry of this Consent Decree the Parties agree to meet and confer to attempt to resolve the
2 issue(s) raised by EPA or DOJ.

3 33. Plaintiffs shall file this Consent Decree with the District Court within three
4 (3) days of the Effective Date. Waterkeeper is responsible for notifying Defendants of the
5 District Court's entry of the Order dismissing these claims with prejudice. Such
6 notification can be satisfied by the Central District of California's Case
7 Management/Electronic Case Filing ("CM/ECF") notification to the Parties that the
8 Order was executed and entered by the District Court.

9 **III. EFFECTIVE DATE AND TERMINATION DATE**

10 34. The term "Effective Date," as used in this Consent Decree, shall mean the
11 last date for the United States Department of Justice and the United States Environmental
12 Protection Agency ("Federal Agencies") to comment on the Consent Decree, i.e., the
13 45th day following the United States Department of Justice and United States
14 Environmental Protection Agency's receipt of the Consent Decree or, the date on which
15 the Federal Agencies provides notice that it requires no further review and the Court
16 enters the final Consent Decree, whichever occurs earlier.

17 35. This Consent Decree will terminate on its own terms five (5) years from the
18 Effective Date.

19 **IV. DISPUTE RESOLUTION**

20 36. If Ruby Metals claims inability to pay as the basis for their failure to comply
21 with any provision of this Consent Decree including but not limited to developing or
22 implementing a BMP, or making monetary payments, Defendants' shall submit financial
23 documents that support their claim. Waterkeeper reserves the right to require the
24 submission of additional financial documents in order to analyze Defendants' claim of
25 inability to pay.

26 37. This Court shall retain jurisdiction over this matter for the purposes of
27 adjudicating all disputes among the parties that may arise under the provisions of this
28

1 Consent Decree. The Court shall have the power to enforce this Consent Decree with all
2 available legal and equitable remedies, including contempt.

3 38. Meet and Confer. A party to this Consent Decree shall invoke the dispute
4 resolution procedures of this Section by notifying all other Parties in writing of the
5 matter(s) in dispute and of the party's proposal to resolve the dispute under this Section.
6 The Parties shall then meet and confer in an attempt to resolve the dispute informally
7 over a period of ten (10) calendar days from the date of the notice.

8 39. If the Parties cannot resolve a dispute by the end of the meet and confer
9 informal negotiations, the party invoking the dispute resolution provision may invoke
10 formal dispute resolution by filing a motion before the United States District Court for
11 the Central District of California. The Parties shall jointly apply to the Court for an
12 expedited hearing schedule on the motion.

13 40. If Waterkeeper initiates a motion or proceeding before the Court to enforce
14 the terms and conditions of this Consent Decree, Waterkeeper shall be entitled to recover
15 reasonable fees incurred to enforce the terms of this Consent Decree consistent with the
16 provisions of Sections 505 and 309 of the CWA, 33 U.S.C. §§ 1365, 1319.

17 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

18 41. In consideration of the above, upon the Effective Date of this Consent
19 Decree, the Parties hereby fully release, except for claims for the Defendants' failure to
20 comply with this Consent Decree and as expressly provided below, each other and their
21 respective successors, assigns, officers, agents, employees, and all persons, firms and
22 corporations having an interest in them, from any and all alleged CWA violations
23 claimed in the Complaint, up to and including the Effective Date of this Consent Decree.

24 42. Nothing in this Consent Decree limits or otherwise affects Plaintiffs' right to
25 address or take any position that it deems necessary or appropriate in any formal or
26 informal proceeding before the Regional Board, EPA, or any other judicial or
27 administrative body on any other matter relating to Defendants.

1 43. Neither the Consent Decree nor any payment pursuant to the Consent Decree
2 shall constitute or be construed as a finding, adjudication, or acknowledgement of any
3 fact, law or liability, nor shall in be construed as an admission of violation of any law,
4 rule, or regulation. Defendants maintain and reserve all defenses they may have to any
5 alleged violations that may be raised in the future.

6 44. Force Majeure. Defendants shall notify Waterkeeper pursuant to the terms
7 of this paragraph, when implementation of the requirements set forth in this Consent
8 Decree, within the deadlines set forth in those paragraphs, becomes impossible, despite
9 the timely good-faith efforts of Defendants, due to circumstances beyond the reasonable
10 control of Defendants or its agents, and which could not have been reasonably foreseen
11 and prevented by the exercise of due diligence by Defendants. Any delays due to
12 Defendants' failure to make timely and bona fide applications and to exercise diligent
13 efforts to obtain any necessary permits, or due to normal inclement weather, shall not, in
14 any event, be considered to be circumstances beyond Ruby Metals control.

15 a. If Defendants claim impossibility, it shall notify Waterkeeper in writing
16 within twenty-one (21) days of the date that Ruby Metals first knew of the event or
17 circumstance that caused or would cause a violation of this Consent Decree or the date
18 Ruby Metals should have known of the event or circumstance by the exercise of due
19 diligence. The notice shall describe the reason for the nonperformance and specifically
20 refer to this Section. It shall describe the anticipated length of time the delay may persist,
21 the cause or causes of the delay, the measures taken or to be taken by Ruby Metals to
22 prevent or minimize the delay, the schedule by which the measures will be implemented,
23 and the anticipated date of compliance. Ruby Metals shall adopt all reasonable measures
24 to avoid and minimize such delays.

25 b. The Parties shall meet and confer in good-faith concerning the non-
26 performance and, where the Parties concur that performance was or is impossible, despite
27 the timely good faith efforts of Ruby Metals, due to circumstances beyond the control of

1 Ruby Metals that could not have been reasonably foreseen and prevented by the exercise
2 of due diligence by Ruby Metals, new deadlines shall be established.

3 c. If Waterkeeper disagrees with Ruby Metals' notice, or in the event that
4 the Parties cannot timely agree on the terms of new performance deadlines or
5 requirements, either party shall have the right to invoke the Dispute Resolution Procedure
6 pursuant to Section IV. In such proceeding, Ruby Metals shall bear the burden of
7 proving that any delay in performance of any requirement of this Consent Decree was
8 caused or will be caused by force majeure and the extent of any delay attributable to such
9 circumstances.

10 **VI. MISCELLANEOUS PROVISIONS**

11 45. Construction. The language in all parts of this Consent Decree shall be
12 construed according to its plain and ordinary meaning, except as to those terms defined in
13 the Industrial Permit, the Clean Water Act, or specifically herein.

14 46. Choice of Law. The laws of the United States shall govern this Consent
15 Decree.

16 47. Severability. In the event that any provision, paragraph, section, or sentence
17 of this Consent Decree is held by a court to be unenforceable, the validity of the
18 enforceable provisions shall not be adversely affected.

19 48. Correspondence. All notices required herein or any other correspondence
20 pertaining to this Consent Decree shall be sent by regular, certified, or overnight mail and
21 electronic mail as follows:

22 If to Plaintiff:

23 Layne Friedrich, Esq.
24 Elizabeth Crosson, Esq.
25 Lawyers for Clean Water
26 1004 A O'Reilly Ave
27 San Francisco, CA 94129
28 layne@lawyersforcleanwater.com
liz@lawyersforcleanwater.com

1 With copies to:

2 Orange County Coastkeeper/Inland Empire Waterkeeper
3 Garry Brown
4 3151 Airway Ave # F110
5 Costa Mesa, CA 92626-4621
6 garry@coastekeeper.org

7 If to Defendant:

8 William Funderburk, Esq.
9 Stanzler Funderburk & Castellon LLP
10 811 Wilshire Blvd. Suite 1025
11 Los Angeles, CA 90017
12 wfunderburk@sfcfirm.com

12 With copies to:

13 Ruby Metals, Inc.
14 Attn: Peter Chen
15 2805 South Industrial Drive
16 Bloomington, CA 92316
17 Brian@rubymetals.com

18 Gold Coast Metals Trading, Inc.
19 Attn: Chen Ying Hsiung
20 2805 South Industrial Drive
21 Bloomington, CA 92316
22 Brian@rubymetals.com

23 Notifications of communications shall be deemed submitted three (3) days after the
24 date that they are postmarked and sent by first-class mail or deposited with an overnight
25 mail/delivery service. Any change of address or addresses shall be communicated in the
26 manner described above for giving notices.

27 49. Effect of Consent Decree. Plaintiff does not, by its consent to this Consent
28 Decree, warrant or aver in any manner that the Defendants' compliance with this Consent
Decree will constitute or result in compliance with any federal or state law or regulation.

1 Nothing in this Consent Decree shall be construed to affect or limit in any way the
2 obligation of the Defendants to comply with all federal, state, and local laws and
3 regulations governing any activity required by this Consent Decree.

4 50. Counterparts. This Consent Decree may be executed in any number of
5 counterparts, all of which together shall constitute one original document. Telecopy
6 and/or facsimile copies of original signature shall be deemed to be originally executed
7 counterparts of this Consent Decree.

8 51. Modification of the Consent Decree. This Consent Decree, and any
9 provisions herein, may not be changed, waived, discharged, or terminated unless by a
10 written instrument, signed by the Parties.

11 52. Full Settlement. This Consent Decree constitutes a full and final settlement
12 of this matter.

13 53. Integration Clause. This is an integrated Consent Decree. This Consent
14 Decree is intended to be a full and complete statement of the terms of the agreement
15 between the parties and expressly supersedes any and all prior oral or written agreements
16 covenants, representations, and warranties (express or implied) concerning the subject
17 matter of this Consent Decree.

18 54. Authority. The undersigned representatives for Plaintiffs and Defendants
19 each certify that he/she is fully authorized by the party whom he/she represents to enter
20 into the terms and conditions of this Consent Decree.

21 55. The provisions of this Consent Decree apply to and bind the Parties,
22 including any successors or assigns. The Parties certify that their undersigned
23 representatives are fully authorized to enter into this Consent Decree, to execute it on
24 behalf of the Parties, and to legally bind the Parties to its terms.

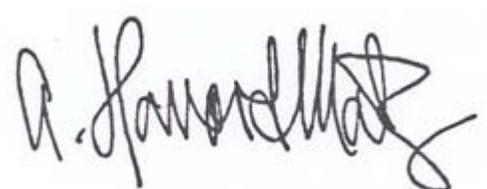
25 56. The Parties agree to be bound by this Consent Decree and not to contest its
26 validity in any subsequent proceeding to implement or enforce its terms. By entering into
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1 this Consent Decree, the Defendants do not admit liability for any purpose as to any
2 allegation or matter arising out of this Action.

3 The undersigned representatives for Waterkeeper and Defendants each certify that
4 he/she is fully authorized by the party whom he/she represents to enter into the terms
5 and conditions of this Consent Decree and that this Consent Decree binds that party.

6 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree as
7 of the date first set forth above.

8 **IT IS SO ORDERED:**



9
10 Date: January 08, 2010

11
12 **JS-6**

Honorable A. Howard Matz
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWYERS FOR CLEAN WATER, INC.

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14
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16
17 Dated: November _____, 2009

Layne Friedrich
Lawyers for Clean Water, Inc.
Attorneys for Plaintiff

ORANGE COUNTY COASTKEEPER

18
19
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21
22
23 Dated: November _____, 2009

Garry Brown
Orange County Coastkeeper/Inland Empire
Waterkeeper

1 STANZLER FUNDERBURK CASTELLON LLP

2
3
4 Dated: November _____, 2009

5 William W. Funderburk
6 Attorney for Defendants

7
8 RUBY METALS, INC.

9
10 Dated: November _____, 2009

11 Peter Chen, Owner
12 Ruby Metals, Inc.

13 GOLD COAST METALS TRADING, INC.

14
15
16 Dated: November _____, 2009

17 Chen Ying Hsiung, Owner
18 Gold Coast Metals Trading, Inc.