MEMORANDUM:

THE PARTIES' JOINT INTERPRETIVE GUIDANCE ON FEDERALLY RECOGNIZED INDIAN TRIBES AND PUBLIC WATER SYSTEMS THAT THEY OWN OR OPERATE

This memorandum provides guidance on how the Settlement Agreement between Public Water Systems and Nation Ford Chemical Company ("Nation Ford") applies to federally recognized Indian Tribes and Public Water Systems that they own or operate.

The Settlement Agreement does not categorically exclude or otherwise afford differential treatment to Public Water Systems owned or operated by federally recognized Indian Tribes. While the Settlement Agreement expressly excludes from the class definition certain Public Water Systems owned by the federal government or by state governments, it contains no such exclusion for Public Water Systems owned or operated by Tribes. Indeed, the Settlement Agreement contains no provisions whatsoever specifically addressing or differentiating Public Water Systems owned or operated by Tribes.

The effect of the Settlement Agreement is therefore clear: If a Public Water System owned by a Tribe otherwise meets the Settlement Class definition, that system is an Eligible Claimant and, unless the system opts out, that system will be a Class Member and the Settlement will apply in the same manner as it does to every other Class Member. This result—inclusion in the Settlement with the option to opt out—pays respect to Tribal self-government and self-determination and provides Tribe-owned Public Water Systems with a degree of flexibility not afforded to the subset of federal- and state-owned systems that are categorically excluded from the Settlement.

If one Public Water System that is owned or operated by a federally recognized Indian Tribe and is an Eligible Claimant opts out (i.e., submits a Request for Exclusion) and thus does not become a Class Member, that action alone would not automatically result in all Eligible Claimants owned or operated (or owned and operated) by the same Tribe, opting out. The Settlement Agreement's Exhibit D (Notice) expressly states:

> [I]f you own or operate more than one Active Public Water System and are authorized to determine whether to submit Requests for Exclusion on those Active Public Water Systems' behalf, you may submit a Request for Exclusion on behalf of some of those Active Public Water Systems but not the other(s). You must submit a Request for an Exclusion on behalf of each such Active Public Water System that you wish to opt out of the Settlement Class. Any Active Public Water System that is not specifically identified in a Request for Exclusion will remain in the Settlement Class

Likewise, as to the Release, if a federally recognized Indian Tribe that owns or operates (or owns *and* operates) multiple Public Water Systems becomes a Class Member as to some of them, but opts out as to others, that Tribe's claims are released as to the former Public Water Systems and their Drinking Water and are not released as to the latter Public Water Systems and their Drinking Water. And if a Class Member is owned by one federally recognized Indian Tribe

but is operated by an entity that owns and/or operates multiple Public Water Systems, the Class Member's decision not to opt out would result in releasing that entity's claims related to the Class Member and its Drinking Water but would not, by itself, result in releasing the claims of other Public Water Systems owned and/or operated by that entity.

Finally, the Parties' mutual understanding is that a Release on behalf of a Tribe-owned Class Member, consistent with the terms of the Settlement Agreement, would not release a Claim that the Tribe might bring, in its sovereign capacity as a natural-resource trustee, for natural-resource damages that are wholly unrelated to Drinking Water or any Public Water System.