

Consent Decree U.S. and Texas v. OXY USA Canadianoxy Offshore Production

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,
and the STATE OF TEXAS,

Plaintiffs,

vs.

OXY USA Inc.; CANADIANOXY OFFSHORE
PRODUCTION COMPANY

Defendant.

CIV. NO. 4:14CV491

CONSENT DECREE ADDRESSING NATURAL RESOURCE DAMAGES

This Consent Decree is made and entered into by and between the United States of America (“United States”), on behalf of the Secretary of the Department of the Interior acting through the United States Fish and Wildlife Service (“DOI/FWS”); and the State of Texas on behalf of the Texas Commission on Environmental Quality (“TCEQ”), the Texas Parks and Wildlife Department (“TPWD”), and the General Land Office (“GLO”) (collectively, the “Trustees”); and OXY USA, Inc. (“OXY”) and CanadianOxy Offshore Production Company (collectively, the “Settling Defendants”).

PARTIES’ JOINT STATEMENT OF BACKGROUND INFORMATION

A. LOCATION AND OPERATING HISTORY

1. The Former Empire Oil Refinery Site (“Site”) is located at 101 County Road 401 in Gainesville, Texas 76240 (Cooke County, 33° 39’ 21” N Latitude, 97° 9’ 26” W Longitude).
2. Industrial activities at the Site included oil refining and the storage of crude oil and refined petroleum products from approximately 1916 until approximately 1935. The Site

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contained at least two pits and six tank pads which at some point contained or stored crude oil, refined petroleum and other waste products and included pipelines installed to carry crude oil and/or refined petroleum products to an offsite refining facility. Site investigations identified various metals, volatiles, semi-volatiles, low, middle and high molecular weight polycyclic aromatic hydrocarbons (PAHs), and other compounds associated with the complex oily waste materials found at the site.

B. NATURAL RESOURCE DAMAGE ASSESSMENT

3. On March 21, 2001, the Site was accepted into TCEQ's Voluntary Cleanup Program ("VCP") and assigned VCP No. 1325. Remediation of the site has been completed pursuant to a VCP Agreement between OXY and TCEQ. A certificate of completion was issued by TCEQ on July 16, 2007.

4. The Trustees have determined that releases into the environment of hazardous substances, including lead, PAHs, and other organic compounds, have occurred at or from the Site as a result of its former use as an oil refinery. The Trustees have determined that the quantities and concentrations of such releases were sufficient to cause injury to natural resources under the trusteeship of the Trustees. As set forth in greater detail in Attachment A, the Restoration Plan, the Trustees have made a further determination that the natural resources injured by such releases include surface water, submerged lands and sediments, wetlands habitats, grassland habitats, upland woods and riparian habitats, avian resources, aquatic biota, and terrestrial wildlife. Data sufficient to pursue a natural resource damage assessment have been collected as a result of remedial investigations conducted under the state Voluntary Cleanup Program. Response actions did not sufficiently remedy the injuries to natural resources without further action. The assessment of injuries to natural resources, including interim ecological

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service losses, and the restoration plan developed to compensate for those injuries are further detailed in the Restoration Plan incorporated herein as Attachment A.

5. The United States contends that it presently has causes of action against Settling Defendants under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq. and § 311 of the Clean Water Act ("CWA"), 33 U.S.C. § 1321 to seek, inter alia, damages, including assessment and/or removal costs, for injury to natural resources under the trusteeship of the United States resulting from releases of hazardous substances at or from the Site. The State of Texas contends that it presently has causes of action against Settling Defendants under CERCLA, CWA, and the Texas Hazardous Substances Spill Prevention and Control Act, Texas Water Code, chapter 26, subchapter G, for damages, including assessment or removal costs, for injury to natural resources under its trusteeship resulting from releases of hazardous substances at or from the Site. Settling Defendants contest that Settling Defendants have any liability based on any cause of action identified herein, but Settling Defendants agree to the terms of this Consent Decree to avoid the uncertainties and costs of litigation.

6. Pursuant to this Consent Decree, the Settling Defendants have completed construction of the Restoration Projects in Attachment A. The Trustees have determined that, upon successful completion of the requirements in the Natural Resource Damage Assessment Monitoring and Reporting Work Plan, the Restoration Project will provide for the restoration or replacement with the equivalent of the natural resources or natural resource services injured, destroyed, or lost as a result of releases of hazardous substances at or from the Site.

C. NEGOTIATED SETTLEMENT

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7. This Consent Decree is a settlement of a contested matter, and neither payment nor the acceptance of any consideration represents an admission of liability or responsibility by any Party.

8. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and implementation of this Consent Decree will restore natural resources, and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

9. The Court has personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b) and Section 311(n) of the CWA, 33 U.S.C. § 1321(n). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and Section 311(n) of the CWA, 33 U.S.C. § 1321(n)(2).

II. PARTIES

10. The parties to this Consent Decree are the United States of America, on behalf of DOI/FWS; the State of Texas, on behalf of TCEQ, TPWD, and GLO; and the Settling Defendants.

III. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA, 42 U.S.C. § 9601 et seq., or in regulations promulgated under CERCLA, 43 C.F.R. Part 11 and 40 C.F.R. Part 300, shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or

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in the attachments attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Consent Decree" means this document entitled "Consent Decree," all attachments thereto, and all items approved by the Trustees pursuant to Section V (Natural Resource Damage Restoration Requirements).

b. "Date of Entry" means the date on which this Consent Decree is entered by the Clerk of Court after the United States and State of Texas have moved for entry and the District Judge has signed the Consent Decree.

c. "Date of Lodging" means the date that this Consent Decree is lodged with the Clerk of Court.

d. "Federal Trustee" means DOI/FWS.

e. "Future Costs" means the reasonable costs which the Trustees have incurred or will incur after October 31, 2009 in connection with the implementation, monitoring, and completion of the Restoration Projects contemplated by this Consent Decree. Such costs include administrative costs and other costs or expenses which are incurred to provide for, carry out or support the activities or responsibilities of the Trustees in overseeing implementation of the Restoration Projects.

f. "Natural Resource Damages" means civil compensatory relief, including the reasonable costs of assessing such damages, which is recoverable pursuant to CERCLA, the CWA, or the Texas Hazardous Substances Spill Prevention and Control Act, Texas Water Code chapter 26, subchapter G, by the Trustees on behalf of the public for injury to, destruction of, loss of, or loss of uses of the natural resources or resource

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services resulting from the release of hazardous substances at or from the Site, including injuries due to response actions, as described in Attachment A.,

g. “Parties” means the Trustees and the Settling Defendants.

h. “Past Costs” means the costs reasonably incurred up to and including October 31, 2009 by the Trustees in assessing the natural resources actually or potentially injured, destroyed, or lost as a result of releases of hazardous substances at or from the Site, including costs due to response actions, and costs incurred in identifying and planning for restoration actions to compensate for such injuries and losses. Such costs include administrative costs and other costs or expenses associated with providing for public participation which are incurred incident to or in support of the assessment and restoration planning process.

i. “Natural Resource Damage Restoration Construction Report” means the report showing the actual construction of the Restoration Projects that is Attachment D to this Consent Decree.

j. “Natural Resource Damage Assessment Monitoring and Reporting Work Plan” (“Monitoring and Reporting Work Plan”) means the work plan containing the performance criteria for the Restoration Projects that is Attachment C to this Consent Decree.

k. “Restoration Plan” means the plan entitled “Damage Assessment and Restoration Plan for the Former Empire Oil Refinery, Gainesville, Texas” and attached as Attachment A to this Consent Decree.

l. “Restoration Project” shall mean the restoration actions defined and described in Attachment A.

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m. "Restoration Property" means the acreage to be placed under a permanent conservation easement as compensation for natural resource injuries at or from the Site as set forth in the Restoration Plan.

n. "Settling Defendants" shall mean OXY USA, Inc. and CanadianOxy Offshore Production Company.

o. "Site" shall mean the area of the former Empire Oil Refinery Site located at 101 County Road 401 in Gainesville, Texas 76240 (Cooke County, 33° 39' 21" N Latitude, 97° 9' 26" W Longitude) as generally depicted in the map incorporated herein as Attachment B.

p. "State Trustees" means TCEQ, TPWD, and GLO.

q. "Trustees" means the Federal Trustee and the State Trustees.

IV. APPLICABILITY OF CONSENT DECREE

12. The provisions of this Consent Decree shall be binding on and inure to the benefit of the United States and the State of Texas and the Settling Defendants and their successors and assigns and other entities or persons otherwise bound by law. Any change in ownership or corporate status of any of the Settling Defendants, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter their rights or obligations under this Consent Decree.

13. The Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform any Restoration Projects required by this Consent Decree who performs work on any Restoration Project after the effective date of this Consent Decree. The Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Restoration Projects required by the Consent Decree after the effective date of this Consent Decree. The Settling Defendants shall provide a

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copy of this Consent Decree to each person representing the Settling Defendants with respect to the Restoration Projects and shall condition all contracts entered into after the Date of Entry of this Consent Decree relating to the Restoration Projects in conformity with the terms of the Consent Decree. The Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Restoration Projects contemplated herein in accordance with this Consent Decree.

14. Consent Decree Not a Permit. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation. The United States and the State of Texas do not, by their consent to this Consent Decree, warrant or aver in any manner that the Settling Defendants' compliance with this Consent Decree will constitute or result in compliance with the requirements of any federal, state, and local laws and regulations which may be applicable to the implementation of any Restoration Project or other activities required by the terms of this Consent Decree.

15. Responsibility for Compliance. Notwithstanding any action by the Trustees, including, without limitation, their issuance of the Restoration Plan or the review and approval of any design, plan, report, and other information or action formulated by the Settling Defendants under this Consent Decree, the Settling Defendants are and shall remain solely responsible for compliance with all terms and requirements of this Consent Decree, including those related to performance criteria.

16. The Trustees may take any and all legal or administrative actions necessary to enforce the terms of this Consent Decree.

V. NATURAL RESOURCE DAMAGE RESTORATION REQUIREMENTS

A. COMPENSATION FOR NATURAL RESOURCE DAMAGES

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17. This Consent Decree provides the terms upon which the United States, the State of Texas, and the Settling Defendants agree to settle the claims of the Trustees under CERCLA, the CWA, the Texas Hazardous Substances Spill Prevention and Control Act, and the Texas Water Code for Natural Resource Damages which resulted from releases of hazardous substances into the environment at or from the Site.

18. The Settling Defendants shall fully compensate for all Natural Resource Damages by providing, at a minimum, 132.46 acres of constructed or comparably scaled preservation habitat in accordance with the provisions of the Restoration Plan (Attachment A), this Consent Decree and the Monitoring and Reporting Work Plan (Attachment C).

19. Implementation of the Restoration Project in accordance with the requirements of the Restoration Plan (Attachment A), this Consent Decree and the Monitoring and Reporting Work Plan (Attachment C) has been determined by the Trustees to be adequate to restore or replace equivalent natural resources or natural resource services injured, destroyed, or lost as a result of releases of hazardous substances at or from the Site.

20. Conservation Easement Terms and Conditions. In accordance with the terms of this Consent Decree, Settling Defendants shall ensure that a Conservation Easement is prepared and recorded on the Restoration Property to preserve the Restoration Property in perpetuity for protection of the natural resources on the Restoration Property. The terms of the Conservation Easement must be approved in writing by the Trustees prior to execution and recordation in the county real property records. The Conservation Easement shall be granted with warranty covenants, free and clear of all prior liens and encumbrances except those encumbrances that are not objectionable to the Trustees.

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a. In accordance with the terms of this Consent Decree and within sixty (60) days after the Date of Entry of this Consent Decree, or thirty (30) days after the Trustees approve the designated Holder, the terms of the Conservation Easement, and the title commitment and certification, whichever deadline is later, Settling Defendants shall ensure that a Texas Conservation Easement, as defined in Chapter 183 of the Texas Natural Resources Code (TNRC) is granted and properly executed and recorded in the deed records of Cooke County over the Restoration Property in favor of the Holder, qualified under Chapter 183 of the TNRC and approved by the Trustees. The Conservation Easement shall comply with the legal requirements of Chapter 183 of the TNRC and be enforceable under the laws of the State of Texas. The Conservation Easement shall preserve the Restoration Property in perpetuity for protection of the natural resources thereon and the ecological services they provide.

b. Within thirty (30) days after the Date of Entry of this Consent Decree and in accordance with the terms of this Consent Decree, Settling Defendants shall ensure that the identity of the entity proposed to serve as the Holder of the Conservation Easement, as defined in Chapter 183 of the TNRC, together with a written explanation by the proposed Holder of its willingness, financial and technical ability, and qualification under Chapter 183 of the TNRC, to serve as Holder of the Conservation Easement, is submitted in writing to the Trustees. The Holder must commit in writing, in a form acceptable to the Trustees, that it will (i) monitor the Restoration Property and enforce the Conservation Easement through available legal and judicial means, and (ii) inform the Trustees and Settling Defendants in the event that it will no longer be able to meet its obligations at least thirty (30) days before it ceases to do business or ceases to exist as a

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legal entity, whichever is sooner. Within thirty (30) days of receipt of the proposed Holder submission, the United States and the State shall notify Settling Defendants whether the proposed Holder is acceptable. If the proposed Holder is rejected by the Trustees, then Settling Defendants shall ensure that an alternate proposed Holder is submitted to the Trustees for approval within ninety (90) days of the notice of rejection.

c. Within thirty (30) days after Trustee approval of a Holder the terms and form of the Conservation Easement must be submitted to the Trustees for approval in writing prior to execution and recordation in the County real property records.

d. The terms of the Conservation Easement shall specify that it is intended by the parties that the United States, on behalf of the Federal Trustee, and the State shall have access to the Restoration Property and third party rights of enforcement of the Conservation Easement to prevent any activity on or use of the Restoration Property that is inconsistent with the Conservation Easement and to ensure that the intended purpose of this Consent Decree is satisfied.

e. Settling Defendants have provided, and the Trustees have approved, a current title commitment and title certification for the Restoration Property showing that Settling Defendants or affiliates within their control have clear title.

f. Immediately prior to recording the Conservation Easement, Settling Defendants shall ensure that the title search is updated and that a determination has been made on whether there has been an occurrence that impairs the title since the effective date of the original title commitment or certification. Settling Defendants shall (except as otherwise requested by Settling Defendants and approved by the Trustees) ensure that

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any defect or impairment to the title is removed within thirty (30) days from receipt of the title update.

g. Within thirty (30) days after recording the Conservation Easement and in accordance with the terms of this Consent Decree, Settling Defendants shall ensure that the Trustees are provided with a final title insurance policy in the amount of \$200,000 and a certified copy of the original recorded Conservation Easement, showing the clerk's recording stamps.

21. Provisions Applicable in the Event of Transfer of Restoration Property. Settling Defendants shall ensure that if the owner of the Restoration Property seeks to transfer title or ownership (or any portion thereof) of the Restoration Property, the owner of the Restoration Property may only do so to a person or entity subject to the following requirements:

a. Settling Defendants shall file a deed restriction to ensure that the owner of the Restoration Property does not transfer title or ownership to a Holder, or a proposed or intended Holder, of the Conservation Easement;

b. Settling Defendants shall file a deed restriction to ensure that the owner of the Restoration Property does not transfer title or ownership of the Restoration Property without the Trustees' written approval, which approval shall not be unreasonably withheld. Settling Defendants shall ensure that the owner of the Restoration Property provides notice to the Trustees of the proposed transferee at least forty-five (45) days prior to the transfer, and the Trustees shall have thirty (30) days to approve or disapprove of the proposed transferee. The Trustees shall not approve of the proposed transferee

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before receiving acknowledgment from the proposed transferee that it has received the Notice and copies of documents pursuant to subparagraphs 21 c and d.

c. No later than sixty (60) days prior to the transfer and in accordance with the terms of this Consent Decree, Settling Defendants shall ensure that the owner of the Restoration Property provides the proposed transferee with a copy of this Consent Decree and the Conservation Easement, together with a written Notice that the Restoration Property and its owner are subject to the Consent Decree and Conservation Easement, that the transferee will become jointly and severally responsible with Settling Defendants for obligations under the Consent Decree with respect to the Restoration Property, that the Trustees will have unfettered access to the Restoration Property for the purposes of enforcing the terms of this Decree and the Conservation Easement, and that the Restoration Property is to remain undeveloped, unused (except as expressly permitted in the Conservation Easement), and its natural resources preserved. Settling Defendants shall ensure that the Trustees are provided with a copy of this Notice when the owner of the Restoration Property serves the Notice on the proposed transferee.

d. No later than forty-five (45) days prior to the transfer, and prior to the Trustees' approval of the proposed transferee, Settling Defendants shall ensure that the proposed transferee provides written acknowledgment to the Trustees of its receipt of the Notice provided to it pursuant to this subparagraph c, the Consent Decree and the Conservation Easement.

e. If the transfer is to occur prior to the recordation of the Conservation Easement, then Settling Defendants shall ensure that the transferee complies with the

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requirements of subparagraphs 20 a, e, f and g of this Consent Decree with respect to obtaining a title commitment or title certification, title insurance, and the removal of defects or impairments of title, prior to a transfer of the Restoration Property to another person.

f. The transferee shall be required to comply with all obligations of Settling Defendants herein with respect to the Restoration Property.

B. PROJECT REVIEW GROUP

22. A Project Review Group was established prior to the entry of this Consent Decree. The Project Review Group consists of one or more representatives each from the DOI/FWS, TCEQ, TPWD, and GLO designated in Paragraph 36. In addition, the representative of the Settling Defendants identified in Paragraph 37 serves as a non-voting, ex-officio member of the Project Review Group. The Project Review Group has acted and shall continue to act on behalf of the Trustees on all matters related to the Restoration Projects under the terms of this Consent Decree, including, but not limited to the following:

- a. Reviewing and approving all work plans and specifications, including performance criteria, for use in implementing and monitoring the Restoration Projects;
- b. Overseeing the implementation of such plans, including by inspecting the Restoration Projects;
- c. Certifying construction of each Restoration Project when completed, as provided in Paragraph 27;
- d. Until this Consent Decree is terminated in accordance with Section XXIV of this Consent Decree, monitoring each Restoration Project post-construction to evaluate

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its viability and to provide timely identification of problems or conditions to be addressed;

e. Determining appropriate corrective actions for each Restoration Project to ensure that performance criteria will be met; and

f. Certifying the satisfactory completion of each Restoration Project when performance criteria are achieved, as provided in Paragraph 30.

23. The representative of the Settling Defendants identified in Paragraph 37 shall be the liaison to act as the Project Review Group's point of contact with the Settling Defendants and to coordinate the Settling Defendants' activities in implementing the Restoration Projects in accordance with this Consent Decree.

C. PROJECT PLANNING AND IMPLEMENTATION

24. The Restoration Plan was noticed for public comment on February 1, 2008. All public comments received have been addressed. The Restoration Plan has been accepted as final. Settling Defendants have submitted the Natural Resource Damage Restoration Construction Report in Attachment D to the Trustees.

25. Settling Defendants are responsible for obtaining all permits, rights-of-way, access agreements, and other documents necessary to implement the Restoration Projects at their expense. To the extent that work to implement the Restoration Projects prior to the effective date of this Consent Decree may not have complied with any applicable federal, state, or local laws, Settling Defendants shall use best efforts to attain compliance with all applicable federal, state, and local laws. In the event that any further permits, rights-of-way, access agreements, or other documents are needed, Settling Defendants shall obtain them at their expense and agree to comply with them.

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26. The Settling Defendants have completed construction of the Restoration Projects.

27. The construction of the Restoration Project has been approved and accepted by the Project Review Group and the Trustees will issue a Construction Completion Certificate within thirty days after entry of this Consent Decree.

D. PROJECT MONITORING

28. To the extent that the monitoring for that Project is not already complete, the Settling Defendants shall initiate or continue monitoring as provided in the Monitoring and Reporting Work Plan (Attachment C).

29. The Settling Defendants shall notify the Project Review Group when they believe the Project has achieved the performance criteria in the Monitoring and Reporting Work Plan.

30. If the Project Review Group determines that the performance criteria have been achieved, it shall provide the Settling Defendants with a written statement certifying completion of the Project ("Project Completion Certificate").

31. In the event the Project Review Group determines that the performance criteria have not been achieved, the following procedures shall apply:

a. The Project Review Group will notify the Settling Defendants of their determination, and shall set a reasonable deadline for achievement of the performance criteria.

b. Within 60 days of receiving such notification, the Settling Defendants shall submit to the Project Review Group a Corrective Action Work Plan for conducting actions necessary for the Restoration Project to achieve the performance criteria. The draft work plan shall:

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- i. Be consistent with the Restoration Project requirements set forth in Attachment A,
 - ii. Identify any federal, state, or local permits required to construct the Restoration Project and be consistent with the requirements of such permits,
 - iii. Identify a schedule for implementation of the Corrective Action Work Plan, including both a proposed date to begin construction and an anticipated date of completion,
 - iv. Propose, consistent with the criteria specified in Attachment C, performance criteria and documentation for use in determining completion of each Restoration Project as provided in Section V.D of this Consent Decree, and
 - v. Propose, consistent with the performance criteria and the parameters, schedule, and documentation for monitoring specified in Attachment C, a detailed Corrective Action Work Plan to be used by the Trustees in monitoring and assessing the Project's performance as provided in Section V.D of this Consent Decree.
- c. The Project Review Group shall review the Corrective Action Work Plan as follows:
 - i. The Project Review Group will review the draft work plan and either approve it or disapprove it. The Project Review Group will provide written comments specifying the basis for any disapproval of a draft work plan.
 - ii. In the event the draft work plan is disapproved, the Project Review Group will provide written comments specifying the reasons for the disapproval. Within thirty (30) days after receipt of the Project Review Group's comments, the

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Settling Defendants shall revise the draft work plan in accordance with the Project Review Group's comments and shall submit the revised draft work plan to the Project Review Group. The process described in this Paragraph, including time limits for Settling Defendants' response, will be repeated until the draft work plan is approved by the Project Review Group or until the Dispute Resolution Procedures of this Consent Decree are invoked by either party, whichever first occurs.

iii. Upon approval by the Project Review Group, the draft work plan becomes the final work plan and shall be implemented by the Settling Defendants according to the schedule identified therein.

iv. The Settling Defendants shall complete the actions specified in the approved Corrective Action Work Plan and notify the Project Review Group after it completes these actions. In the event the Trustees disagree that the approved Corrective Action Work Plan has been completed, the Project Review Group will provide written comments specifying the reasons for the disapproval. Within thirty (30) days after receipt of the Project Review Group's comments, the Settling Defendants shall undertake the work recommended by the Project Review Group's comments and shall submit a revised notification that Settling Defendants have completed the actions specified in the approved Corrective Action Work Plan. This process shall be repeated until the performance criteria have been met or until the Dispute Resolution Procedures of this Consent Decree are invoked by either party, whichever first occurs.

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VI. PAST COSTS REIMBURSEMENT

32. The Trustees have expended time, funds and resources in assessing damages for the natural resource injuries and losses that resulted from releases of hazardous substances at or from the Site. Within sixty (60) days after entry of the Consent Decree, the Settling Defendants shall pay the State and Federal Trustees the amount of \$157,906.52 in accordance with the following instructions:

a. Payment of DOI's Past Costs shall be in the form of a certified check in the amount of \$36,677.07 with the annotation "USAO File Number _____, DOJ case number, 90-11-2-07981, DOI NRDA Project No. 0835" payable to the United States

Department of Justice and sent to:

United States Attorney, E.D. Tex.
Attn: Randi Russell
110 North College, Suite 700
Tyler, Texas 75702
Tel: 903-590-1436

With a copy of the check sent to:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

DOJ # 90-11-3-07668

Jennifer Bagdovitz
Division of Environmental Quality
U.S. Fish and Wildlife Service
4401 N. Fairfax Dr., Room 330
Arlington, VA 22203; and

Martin Steinmetz, Esq.
Office of the Field Solicitor
U.S. Department of the Interior

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7906 E. 33rd St., Suite 100
Tulsa, OK 74145

b. Payment of the State of Texas' Past Costs shall be in the form of a certified check made payable and mailed to each individual Trustee Agency as follows:

i. TCEQ: A certified check in the amount of \$37,084.44 made payable to: "Texas Commission on Environmental Quality" with the annotation "Oxy Empire Oil Refinery-NRDA, PCA 46006." Payment should be mailed to:

Texas Commission on Environmental Quality
ATTN: John Racanelli, MC-214
P.O. Box 13088
Austin, Texas 78711-3088

ii. GLO: A certified check in the amount of \$10,683.64 made payable to: "Texas General Land Office" with the notation "NRDA cost reimbursement for Oxy USA Site, Cooke County- NRDA 3802025." Payment should be mailed to:

The Texas General Land Office
ATTN: Conrad Swan, Financial Management
P.O. Box 12873
Austin, Texas 78711-2873

iii. TPWD: A certified check in the amount of \$73,461.43 made payable to: "Texas Treasury Safekeeping Trust Company" with the notation "Oxy USA settlement-Natural Resource Trustees- Natural Resource Damage Restoration- Texas Parks and Wildlife Damage Assessment. (Account 1908)" Payment should be made to:

Texas Treasury, Safekeeping Trust Company
P.O. Box 12608
ATTN: Settlement & Custody Services Department
Austin, Texas 78711-2608

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A copy of the certified check should be sent to:

Johanna Gregory
Environmental Assessment, Response & Restoration Program
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

33. In the event that any payments required by Section VI of this Consent Decree are not sent by the sixtieth (60th) day after entry of the Consent Decree, the Settling Defendants shall pay interest on the unpaid balance. Interest shall begin to accrue commencing on the sixty-first (61st) day after entry of the Consent Decree and continue to accrue through the date of payment. In accordance with 42 U.S.C. § 9607(a), interest shall accrue at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year. All accrued interest shall be paid at the time the principal amount of Past Costs is paid.

VII. FUTURE COSTS

34. The Trustees will continue to incur Future Costs in connection with oversight and monitoring of the Restoration Projects and subsequent performance monitoring activities pursuant to this Consent Decree.

35. The Trustees will send Settling Defendants a statement of their Future Costs with supporting documentation, identifying the costs and expenses incurred by each Trustee consistent with the Consent Decree. The Trustees will make best efforts to send such statements on an annual basis. Settling Defendants shall pay each Trustee for the Future Costs within sixty (60) days of receipt of a statement and supporting documentation in accordance with the following payment instructions:

- a. Payment of DOI's Future Costs shall be in the form of a certified check with the annotation "USAO File Number _____, DOJ case number, 90-11-2-07981,

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DOI NRDA Project No. 0835" payable to the United States Department of Justice and
sent to:

United States Attorney
Attn: Randi Russell
350 Magnolia Avenue
Suite 150
Beaumont, TX 77701-2237
409-839-2538

With a copy of the check sent to:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044DOJ # 90-11-3-07668

Jennifer Bagdovitz
Division of Environmental Quality
U.S. Fish and Wildlife Service
4401 N. Fairfax Dr., Room 330
Arlington, VA 22203; and

Martin Steinmetz, Esq.
Office of the Field Solicitor
U.S. Department of the Interior
7906 E. 33rd St., Suite 100
Tulsa, OK 74145

b. Payment of the State of Texas' Future Costs shall be in the form of a
certified check made payable and mailed to each individual Trustee Agency as follows:

i. TCEQ: A certified check in the amount billed made payable to:
"Texas Commission on Environmental Quality" with the annotation "Oxy Empire
Oil Refinery-NRDA, PCA 46006." Payment should be mailed to:

Texas Commission on Environmental Quality
ATTN: John Racanelli, MC-214
P.O. Box 13088

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Austin, Texas 78711-3088

ii. GLO: A certified check in the amount billed made payable to:

“Texas General Land Office” with the notation “NRDA cost reimbursement for
Oxy USA Site, Cooke County- NRDA 3802025.” Payment should be mailed to:

The Texas General Land Office
ATTN: Conrad Swan, Financial Management
P.O. Box 12873
Austin, Texas 78711-2873

iii. TPWD: A certified check in the amount billed made payable to:

“Texas Treasury Safekeeping Trust Company” with the notation “Oxy USA
Settlement-Natural Resource Trustees- Natural Resource Damage Restoration-
Texas Parks and Wildlife Damage Assessment.” Payment should be made to:

Texas Treasury, Safekeeping Trust Company
P.O. Box 12608
ATTN: Settlement & Custody Services Department
Austin, Texas 78711-2608

In the event that payments required by this Paragraph are not sent within sixty (60) days of the Settling Defendants’ receipt of the statement and supporting documents, the Settling Defendants shall pay interest on the unpaid balance. Interest shall accrue commencing on the sixty-first (61st) day after the Settling Defendants’ receipt of the statement and supporting documents and shall continue to accrue through the date of payment at the interest rate specified in Paragraph 33.

VIII. NOTICE AND CONTACT PROVISIONS

36. Each Trustee agency hereby respectively designates the following person(s) as its representative for receipt of information and notices required or occasioned under this Consent Decree and as its member of the Project Review Group:

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a. For DOI/FWS:

Chip Wood
U.S. Fish & Wildlife Service
Corpus Christi ESFO
6300 Ocean Drive, Unit 5837
Corpus Christ, TX 78412-5837
Tel: 361-994-9005 x228
chip_wood@fws.gov

b. For the State Trustees:

Richard Seiler
Natural Resource Trustee Program
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-2523
richard.seiler@tceq.texas.gov

Johanna Gregory
Trustee Program
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744
Tel: (512) 389-8755
johanna.gregory@tpwd.state.tx.us

Jane G. Sarosdy
Director, NRDA Trustee Program
Oil Spill Prevention & Response
Texas General Land Office
1700 N. Congress Ave.
P. O. Box 12873
Austin, TX 78711-2873
Tel: (512) 475-3786
jane.sarosdy@glo.texas.gov

37. The Settling Defendants hereby respectively designate the following person(s) as their representative for receipt of information and notices required or occasioned under this Consent Decree and as its ex-officio member of the Project Review Group:

Name: Roger F. Smith, P.G., CAPM
Address: 5005 LBJ Freeway, Suite 1350
City, State: Dallas, TX 75244-6119

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Tel: (972) 687-7516
roger_smith@oxy.com

38. Any Trustee or the Settling Defendants may change the address and the person designated under Paragraph 36 or 37 by communicating such changes in writing to the other Parties.

39. The Settling Defendants shall provide notice of payment of Future Costs and notices invoking force majeure and dispute resolution to the Texas Office of the Attorney General at the address specified below:

Jane Atwood
Assistant Attorney General
Environmental Protection Section
Texas Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, TX 78711-2548

The Texas Office of the Attorney General may change the person designated under this Paragraph by submitting written notice to all Parties.

40. The Settling Defendants shall provide notice of all payments, whether for Past Costs, Future Costs, interest, or stipulated penalties; copies of notice contesting costs; copies of written documents, including notices and reports pertaining to force majeure; and copies of written documents, including notices and reports, pertaining to dispute resolution to the United States at the addresses specified below.

a. As to the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611
DJ # 90-11-2-07981

b. As to DOI/FWS:

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Martin Steinmetz, Esq.
Office of the Field Solicitor
U.S. Department of the Interior
7906 E. 33rd St., Suite 100
Tulsa, OK 74145

The United States may change the persons designated under this Paragraph by submitting written notice to all Parties.

41. All notices and submissions shall be considered effective upon receipt by mail, unless otherwise provided. All notices shall be sent by first-class United States mail. Submission of written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the Parties.

IX. INDEMNIFICATION

42. The United States and the State of Texas do not assume any liability by entering into this agreement. The Settling Defendants shall indemnify, save and hold harmless the United States and the State of Texas and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or wrongful acts or omissions of the Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any person acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Further, the Settling Defendants agree to pay the United States and the State of Texas all reasonable costs incurred by those governmental entities, including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State of Texas based on negligent or wrongful acts or omissions of the Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State of Texas shall be held out as a party to any contract

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entered into by or on behalf of the Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States or the State of Texas.

43. The United States and the State of Texas shall give the Settling Defendants timely notice of any claim for which the United States or the State of Texas plans to seek indemnification pursuant to Paragraph 42.

44. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. §2671; nor shall any such claim include a claim based on the Trustees' selection of the Restoration Projects, their oversight of the Restoration Projects, their approval of Settling Defendant's plans or activities associated with Restoration Projects. The foregoing applies only to claims that are brought pursuant to any statute other than CERCLA and the CWA and for which the waiver of sovereign immunity is found in a statute other than CERCLA and the CWA.

45. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the State of Texas for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the State

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of Texas while acting within the scope of his office or employment under circumstances where the State of Texas, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State of Texas employee as that term is defined in the Texas Tort Claims Act, Texas Civil Practices & Remedies Code, §101.001; nor shall any such claim include a claim based on the Trustees' selection of the Restoration Projects, their oversight of the Restoration Projects, their approval of Settling Defendants' plans, or activities associated with Restoration Projects. The foregoing applies only to claims that are brought pursuant to any statute other than CERCLA, the CWA and the Texas Hazardous Substances Spill Prevention and Control Act and for which the waiver of sovereign immunity is found in a statute other than CERCLA, the CWA and the Texas Hazardous Substances Spill Prevention and Control Act. Nothing in this Consent Decree shall be deemed to waive any immunity granted to the state under the Texas Tort Claims Act, Texas Civil Practices & Remedies Code §101.001 et seq.

46. Except as set forth in Paragraphs 44 and 45, the Settling Defendants waive all claims against the United States and the State of Texas for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State of Texas, arising from or on account of any contract, agreement, or arrangement between the Settling Defendants and any person for performance of constructing the Restoration Projects, including, but not limited to, claims on account of construction delays. In addition, the Settling Defendants shall indemnify and hold harmless the United States and the State of Texas with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or

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arrangement between the Settling Defendants and any person for performance of the Restoration Projects including, but not limited to, claims on account of construction delays.

X. FORCE MAJEURE

47. “Force majeure,” for the purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by the Settling Defendants, or of the Settling Defendants’ contractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendants’ best efforts to fulfill the obligation except the obligations to make payments described in Sections VI and VII of this Consent Decree shall not be subject to force majeure. The requirement that the Settling Defendants exercise “best efforts to fulfill the obligation” includes using the best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure, such that the delay is minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete a Restoration Project or a failure to satisfy the requirements of the approved final work plan.

48. If any circumstance occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by force majeure, the Settling Defendants shall notify the members of the Project Review Group by email within forty-eight (48) hours of the time that the Settling Defendants first knew or should have known that the circumstances might cause a delay. Within ten (10) days thereafter, the Settling Defendants shall provide in writing to the Trustees a detailed description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay; the Settling Defendants’ rationale for attributing such a delay to a force majeure if they

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intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such circumstances may cause or contribute to an endangerment to public health or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Settling Defendants from asserting any claim of force majeure for that circumstance for the period of time of such failure to comply, and for any additional delay caused by such failure. The Settling Defendants shall be deemed to have actual or constructive knowledge of any circumstances of which the Settling Defendants, any entity controlled by the Settling Defendants, or the Settling Defendants' contractors knew or should have known.

49. If the Trustees agree that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the Trustees for such time as necessary to complete the obligations. All extensions of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Trustees will notify the Settling Defendants in writing of their decision. If the Trustees agree that the delay is attributable to a force majeure, the Trustees will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

50. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution) regarding the Trustees' notice under Paragraph 48, they shall do so no later than fifteen (15) days after receipt of the Trustees' notice. In any such

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proceeding, the Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendants complied with the requirements of this Paragraph and Paragraph 47. If the Settling Defendants carry this burden, the delay at issue shall not be deemed to be a violation by the Settling Defendants of the affected obligation of this Consent Decree identified to the Trustees and the Court.

XI. DISPUTE RESOLUTION

51. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State of Texas to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

52. Informal Dispute Resolution. If, in the opinion of either the Trustees or the Settling Defendants, there is a dispute which arises under or with respect to this Consent Decree, that Party shall send written notice to the other Parties to the dispute outlining the nature of the dispute and requesting negotiations to resolve the dispute. The Parties shall endeavor to resolve the dispute through good faith negotiations. The period for informal negotiations may last up to forty-five (45) days from the date the notice is sent, unless this time period is modified by written agreement of the Parties.

53. Formal Dispute Resolution.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under Paragraph 52, then the position advanced by the Trustees shall be

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considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the Settling Defendants invoke the formal dispute resolution procedures of this Section by serving the Trustees with a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Settling Defendants.

b. Within sixty (60) days after receipt of the Settling Defendants' Statement of Position, the Trustees will serve on the Settling Defendants their Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Trustees. Within fifteen (15) days after receipt of this Statement of Position, the Settling Defendants may submit a Reply.

c. An administrative record of the dispute shall be maintained by the Trustees and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Trustees may allow submission of supplemental statements of position by the Parties to the dispute.

d. The Trustees will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 53 c. This decision shall be binding on the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 53 e.

e. Any administrative decision made by the Trustees pursuant to this Paragraph shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties

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within twenty (20) days of receipt by Settling Defendants of the Trustees' decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The Trustees may file a response to the Settling Defendants' motion.

f. In proceedings on any dispute governed by this Paragraph, the Settling Defendants shall have the burden of demonstrating that the decision of the Trustees is not in accordance with the requirements of the Consent Decree, according to a standard of review based on applicable law. Judicial review of the decision of the Trustees shall be on the administrative record compiled pursuant to Paragraph 53 c.

54. The invocation of informal or formal dispute resolution procedures pursuant to prior Paragraphs shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree that is not directly in dispute, unless the Trustees or the Court agree otherwise. Stipulated penalties with respect to the disputed matter shall accrue but payment shall be stayed pending resolution of the dispute.

XII. STIPULATED PENALTIES

55. The Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 56 to the United States and the State of Texas for failure to comply with the requirements of this Consent Decree. "Compliance" by the Settling Defendants shall include completion of the activities identified in Paragraph 56 within the schedules established in the Consent Decree.

56. The following stipulated penalties shall accrue per violation per day for the Settling Defendants' failure to comply with the time schedules established for the following implementation requirements:

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a. Failure to timely submit monitoring reports, and Draft or Revised Corrective Action Work Plans under Paragraph 28: \$500/day.

b. Failure to comply with schedules approved under Paragraphs 27 and 31 for implementing final Corrective Action Work Plans: \$1000/day.

c. Failure to comply with all requirements imposed in Paragraphs 20 and 21 regarding the Conservation Easement: \$1,000/day.

57. All penalties shall begin to accrue on the day after the Settling Defendants should have performed an obligation specified in Paragraph 56 and during a dispute resolution process specified in Paragraphs 52 and 53 and shall continue to accrue through the day the Settling Defendants comply with the obligation.

58. All penalties due under this Section shall be due and payable within sixty (60) days of the Settling Defendants' receipt of a demand for payment from the United States and/or the State of Texas, unless the Settling Defendants invoke dispute resolution under Section XI of this Consent Decree. If the Settling Defendants invoke dispute resolution under Section XI, then stipulated penalties shall be due at the time specified in Paragraph 54. Stipulated penalties shall be paid 50% to the United States and 50% to the State of Texas.

59. All payments to the United States under this Section shall be paid by certified check made payable to "U.S. Department of Justice". This payment shall be mailed to the U.S. Attorney's Office, Eastern District of Texas, 110 North College, Suite 700, Tyler, Texas 75702, referencing "United States and the State of Texas v. OXYUSA, Inc and CanadianOXY Offshore Production Company, USAO File Number____, DOJ Case Number 90-11-2-07981"

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and the name and address of the party making payment. Copies of the check and notice shall be sent to the Parties as specified in Section VIII (Notice and Contact Provisions).

All Payments made to the State of Texas under this Section shall be paid by certified check made payable to "State of Texas". This Payment should be mailed to the Chief, Environmental Protection and Administrative Law Division, Texas Attorney General's Office, P.O. Box 12548, Austin, TX 78711. The check shall bear the identifying number "AG# _____".

60. In the event the Settling Defendants fail to pay stipulated penalties when due, the United States and/or the State of Texas may institute a legal proceeding to collect such penalties, as well as interest accruing on any unpaid balance, as provided by law. Pursuant to Paragraph 54, however, stipulated penalties arising from a matter that is the subject of dispute resolution are not due and payable until resolution of the dispute.

XIII. COVENANTS NOT TO SUE BY THE UNITED STATES
AND THE STATE OF TEXAS

61. In consideration of the satisfactory performance by the Settling Defendants of all of their obligations under this Consent Decree, and except as specifically provided in Section XIV (Reservation of Rights by the United States and the State of Texas), the United States and the State of Texas each hereby covenant not to sue or to take administrative action against the Settling Defendants for Natural Resource Damages that resulted from the release of hazardous substances at or from the Site. For the payment of Past Costs to the Federal Trustee, these covenants not to sue shall take effect upon receipt by the Federal Trustee of the payment of all Past Costs due pursuant to Paragraphs 32 and 33 of this Consent Decree. For the payment of Past Costs to the State Trustees, these covenants not to sue shall take effect upon receipt by the State Trustees of the payment of all Past Costs due pursuant to Paragraphs 32 and 33 of this

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Consent Decree. With respect to all obligations under this Consent Decree (other than payment of Past Costs of the Trustees), these covenants not to sue shall take effect upon the issuance of all Construction Completion Certificates and the Project Completion Certificate by the Trustees (pursuant to Paragraphs 27 and 30) and the receipt by the Trustees of all payments due pursuant to both Sections VI and VII (Past Costs Reimbursement and Future Costs) and Section XII (Stipulated Penalties), whichever occurs last. These covenants not to sue are conditioned upon the satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and their successors and assigns or other entities or persons otherwise bound by law, and do not extend to any other person.

XIV. RESERVATION OF RIGHTS BY THE UNITED STATES
AND THE STATE OF TEXAS

62. Notwithstanding any other provision of this Consent Decree, the United States and the State of Texas reserve the right to institute civil or administrative proceedings as applicable against the Settling Defendants in this action or in a new action, seeking recovery of additional Natural Resource Damages, if:

- a. conditions, including the release of hazardous substances at or from the Site, that were previously unknown to the Trustees, are discovered; or
- b. information about the release of hazardous substances at or from the Site that previously was unknown to the Trustees in whole or in part is received, and these previously unknown conditions or this information together with any other relevant information indicates that there are new or additional injuries to, destruction of, or losses of natural resources or new or additional service losses that were unknown to the Trustees when they issued the Final Damage Assessment and Restoration Plan.

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63. Information and conditions known to the Trustees shall include only the information and conditions set forth in the administrative record supporting the Restoration Plan.

64. Nothing in the Consent Decree is intended to be, nor shall be construed as, a release from liability or a covenant not to sue for any claim or cause of action, administrative or judicial, for the following:

- a. The Settling Defendants' failure to pay the Trustees' Past Costs and their Future Costs, to complete the Restoration Projects and related obligations described in Section V (Natural Resource Damage Restoration Requirements), or to comply with any other obligation or requirement of this Consent Decree;
- b. Claims brought on behalf of the United States and the State of Texas, including state and federal agencies, for costs, damages, and expenses of any sort, other than for Natural Resource Damages that are the subject of this Consent Decree;
- c. Liability arising from any past, present, or future releases of hazardous substances other than the releases at or from the Site that are the subject of this Consent Decree;
- d. Liability arising from any releases of hazardous substances from any site or location that is not the subject of this Consent Decree, including, but not limited to, any hazardous substance taken from the Site and disposed of at another site or location;
- e. Liability for violations of federal and state law which occur during or incident to the implementation and/or monitoring of the Restoration Projects;
- f. Any and all criminal liability; and

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g. Any matter not expressly included in the covenant not to sue for Natural Resource Damages set forth in Section XIII (Covenants Not to Sue by the United States and the State of Texas) of this Consent Decree.

65. With regard to state property interests, the state of Texas reserves full rights, title, and interest in state-owned land.

66. The failure of the Trustees to insist upon strict and prompt performance of any provision of this Consent Decree shall not operate as a waiver of any requirement of this Consent Decree or of the Trustees' right to insist on prompt compliance in the future with such provision, and shall not prevent a subsequent action by the Trustees to enforce such a provision.

67. Work Takeover. In the event the Trustees determine that the Settling Defendants have ceased implementation of any portion of the Restoration Projects, are seriously or repeatedly deficient or late in their performance of the Restoration Projects, or are implementing the Restoration Projects in a manner which may cause an endangerment to human health or the environment, the Trustees may assume the performance of all or any portion of the Restoration Projects as they determine necessary. The Settling Defendants may invoke the procedures set forth in Section XI (Dispute Resolution) to dispute the Trustees' determination that takeover of the Restoration Projects is warranted under this Paragraph. Reasonable costs incurred by the Trustees in performing the Restoration Projects pursuant to this Paragraph shall be considered Future Costs that the Settling Defendants shall pay pursuant to Section VII (Future Costs).

68. In any subsequent administrative or judicial proceeding initiated by the United States or the State of Texas for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue

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preclusion, claim-splitting, or other defenses based upon any contention that the claim raised by the United States or the State of Texas in subsequent proceedings were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIII (Covenants Not to Sue by the United States and the State of Texas).

69. Except as otherwise provided in this Consent Decree, the United States and the State of Texas retain all authority and reserve all rights to take any and all actions authorized by law.

XV. COVENANTS BY THE SETTLING DEFENDANTS

70. Except as set forth in Paragraphs 44 and 45, the Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State of Texas for any claims arising from or relating to the Restoration Projects or any claims arising from or relating to Natural Resource Damages resulting from the release of hazardous substances at or from the Site, pursuant to any federal, state, or common law, including, but not limited to the following:

a. any direct or indirect claim for reimbursement for Natural Resource Damages from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 107, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9607, 9611, 9612, and 9613, or any other provision of state or federal law; or

b. any claims arising out of activities related to the Restoration Projects, including without limitation, claims based on the Trustees' selection of the Restoration Projects, oversight of the Restoration Projects, and/or approval of plans for such activities.

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71. The Settling Defendants hereby covenant not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States or the State of Texas notifies them in writing that it no longer supports entry of the Consent Decree.

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

73. Notwithstanding any other provision of this Consent Decree, this Consent Decree is without prejudice to all rights of the Settling Defendants with respect to all matters other than those expressly specified in the covenants set forth in Paragraphs 70 and 71.

XVI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

74. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution against third parties), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to Natural Resource Damages resulting from the release of hazardous substances at or from the Site against any person not a Party hereto.

75. The Parties agree, and by entering into this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Date of Entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) for Natural Resource Damages.

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XVII. CERTIFICATION

76. The Settling Defendants certify that, to the best of their knowledge and belief, they have fully and accurately disclosed to the Trustees all information requested by the Trustees regarding potential Natural Resource Damages at the Site which is currently in the possession of the Settling Defendants' officers, employees, contractors and agents, that relates in any way to the release of hazardous substances at or from the Site.

77. Each undersigned representative of a Party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

XVIII. ACCESS

78. Access to Restoration Project Sites. The Settling Defendants agree to provide the Project Review Group and/or its representatives, including contractors, access at all reasonable times to the Restoration Project sites and to any other property to which access is required for the implementation of this Consent Decree, to the extent that access is controlled by the Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including but not limited to:

- a. Overseeing or monitoring the implementation of the Restoration Projects;
- b. Verifying any data or information submitted to the Trustees;
- c. Conducting investigations related to implementation of the Restoration Projects;
- d. Obtaining samples;
- e. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by the Settling Defendants or their agents, consistent with this Section; and

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f. Assessing the Settling Defendants' compliance with this Consent Decree.

79. Access to Information. The Settling Defendants shall provide to the Trustees, upon request, copies of all non-privileged documents and information within their possession or control relating to the Restoration Projects or the implementation of this Consent Decree, including, but not limited to, sampling, analyses, chain of custody records, manifests, receipts, reports, correspondence, or other non-privileged documents or information related to the implementation of the Restoration Projects. In the event that requested documents are withheld based on a claim of privilege, Settling Defendants shall describe with reasonable specificity the nature of the documents withheld and the basis for the claim of privilege. The Settling Defendants shall also make available to the Trustees, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the implementation, condition, or performance of the Restoration Projects.

80. Other Access Provisions. Notwithstanding any provision of this Consent Decree, the United States and the State of Texas retain all access authorities and rights, including enforcement authorities related thereto, under CERCLA, the CWA, or any other applicable federal or state statute or regulation.

XIX. VOIDABILITY

81. If for any reason the District Court should decline to approve entry of this Consent Decree in the form presented, this Consent Decree and the settlement embodied herein shall be voidable by written notice to the other Parties at the sole discretion of any Party to this Consent Decree, and the terms hereof may not be used as evidence, in any litigation.

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XX. COMPLIANCE WITH OTHER LAWS

82. This Consent Decree shall not be construed in any way to relieve the Settling Defendants or any other person or entity from the obligation to comply with any federal, state, or local law.

XXI. RETENTION OF JURISDICTION

83. The Court shall retain jurisdiction of this matter for the purpose of entering such further order, direction, or relief as may be necessary or appropriate for the construction, implementation, resolution of disputes, or enforcement of this Consent Decree.

XXII. MODIFICATION

84. Any modification that materially alters a Restoration Project must be approved by the Court.

85. Any modification to the Consent Decree, including the attachments thereto, that does not materially alter a Restoration Project may be made by written agreement between the Trustees and the Settling Defendants, or in accordance with the dispute resolution process, as provided in Section XI (Dispute Resolution).

XXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

86. The Parties agree and acknowledge that final approval by the United States and the State of Texas and entry of this Consent Decree is subject to a thirty-day (30) period for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. §9622(d)(2) and 28 C.F.R. §50.7. The United States, the State of Texas, and the Settling Defendants reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice.

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XXIV. TERMINATION

87. Any Party may file a Motion to the Court to terminate the Consent Decree after the Settling Defendants have made all payments required by this Consent Decree; the Trustees have issued all Project Completion Certificates, pursuant to Paragraph 30; and the Conservation Easement described in Paragraph 20 has been executed and recorded. If a Party files a Motion to terminate the Consent Decree, then any other Party may file an opposition within ninety (90) days. Termination of this Consent Decree shall not affect the covenants, reservations, and effects of settlement set forth in Section XIII (Covenants Not to Sue by the United States and the State of Texas); Section XIV (Reservation of Rights by the United States and the State of Texas); Section XV (Covenants by the Settling Defendants); and Section XVI (Effect of Settlement; Contribution Protection).

XXV. SIGNATORIES/SERVICE

88. The Settling Defendants shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable rules of this Court, including, but not limited to, service of a summons.

89. This Consent Decree may be executed in any number of counterparts and, as executed, shall constitute one agreement, binding on all of the Parties hereto, even though all of the Parties do not sign the original or the same counterpart.

XXVI. APPENDICES

90. The following appendices are attached to and incorporated into this Consent Decree:

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Attachment A is the Restoration Plan.

Attachment B is the Site Map.

Attachment C is the Natural Resource Damage Assessment Monitoring and Reporting Work Plan.

Attachment D is the Natural Resource Damage Restoration and Construction Report.

XXVII. FINAL JUDGMENT

91. This Consent Decree and its Attachments constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those contained expressly in this Consent Decree.

92. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State of Texas, and the Settling Defendants.

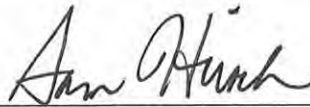
SIGNED this 7th day of January, 2015.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

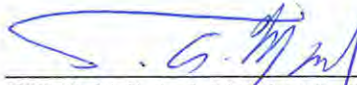
FOR THE PLAINTIFF UNITED STATES:

JOHN MALCOM BALES
United States Attorney
Eastern District of Texas

By: /s/ Michael W. Lockhart
MICHAEL LOCKHART
Assistant U.S. Attorney
350 Magnolia Avenue
Suite 150
Beaumont, TX 77701
Michael.Lockhart@usdoj.gov
409-839-2538
Texas Bar No. 12472200



SAM HIRSCH
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530



THOMAS A. MARIANI, Jr.
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Tom.Mariani@usdoj.gov
202-514-4620

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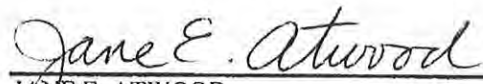
FOR THE PLAINTIFF STATE OF TEXAS:

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN B. SCOTT
Deputy Attorney General for Civil Litigation

JON NIERMANN
Chief, Environmental Protection Division



JANE E. ATWOOD
Assistant Attorney General
Tex. Bar No. 00796144
S. D. Tex. No. 310525
Email: jane.atwood@oag.state.tx.us
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
Fax: (512) 320-0052
Tel: (512) 463-2012,

Consent Decree U.S. and Texas v. OXY USA Canadianoxy Offshore Production

FOR OXY USA:

 VP/OXY USA
Designated Agent for OXY USA per Section XXV

MICHAEL G. ANDERSON
Name

5005 LBJ FREEWAY, Suite 1350, DALLAS, TX 75244
Address

972-687-7501
Telephone Number

Consent Decree U.S. and Texas v. OXY USA Canadianoxy Offshore Production

FOR CanadianOxy Offshore Production
(CCOPCO):

Gregg E. Radetsky *mc*
Designated Agent for COOPCO per Section XXV

GREGG E. RADETSKY
Name

945 BUNKER HILL, HOUSTON, TX
Address *77024*

832-714-5055
Telephone Number