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UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA  
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| CLERK U.S. DISTRICT COURT<br>DISTRICT OF ARIZONA |        |
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UNITED STATES OF AMERICA

Plaintiff,

v.

PILOT CORPORATION,

Defendant.

CIVIL ACTION NO.

CV 03-2410 PCT MS

**CONSENT DECREE**

This Consent Decree is entered into between the United States, on behalf of the United States Department of the Interior, U.S. Fish and Wildlife Service ("Plaintiff" or "DOI/USFWS"), and Pilot Corporation, ("Pilot" or "Defendant").

**INTRODUCTION**

A. Plaintiff United States filed a complaint ("Complaint") against Pilot in this action on behalf of the Fish and Wildlife Service of the Department of the Interior seeking damages and assessment costs under the Oil Pollution Act ("OPA"), 33 U.S.C. §§ 2701-2761. DOI is acting in its capacity as a trustee for Natural Resources which have been actually or potentially affected by the discharges of oil attributable to the Spill as defined herein. Pursuant to Section 1006(b) of OPA, 33 U.S.C. § 2706(b), the federal government designated officials to act as trustees for Natural Resources. The Fish and Wildlife Service is the federal trustee for certain wildlife, including threatened and endangered species and migratory birds, and federal wildlife refuges. See 40 C.F.R. § 300.600(2), (3) and 40 C.F.R. Pt. 300, App. E § 6.4.5(a).

B. On December 7, 2000, a tanker truck owned and operated by Pilot, carrying approximately 7,500 gallons of diesel fuel, overturned immediately north of the State Highway 95 bridge between Lake Havasu City and Parker Dam in Arizona. This event is hereinafter called the "Spill."

C. It is believed that some of the diesel fuel flowed from the highway into a wash located on the Bill Williams River National Wildlife Refuge ("Refuge"), which is managed and

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administered by the U.S. Fish and Wildlife Service. The Refuge is a riparian ecosystem in the desert Southwest that is home to threatened and endangered species, migratory birds, and other wildlife. The wash is immediately adjacent to, and a tributary to, the Bill Williams River. The Bill Williams River is tributary to the Colorado River, which is located less than one-half mile from the site of the Spill. The Colorado River is part of a federal water project managed by the Bureau of Reclamation. It is believed that the diesel fuel may have infiltrated the substrate of the wash, which in the area of the Spill consists of a shallow layer of sandy soil, underlain by fractured bedrock.

D. In response to the Spill, Pilot immediately carried out an emergency response, in which it excavated spilled diesel fuel, took soil samples, and installed monitoring wells. Pilot excavated approximately 9,000 tons of soil from the Refuge.

E. The Spill and cleanup action at the site caused injuries to natural resources managed by the U.S. Fish and Wildlife Service through the Refuge, including but not limited to the removal of several little-leaf palo verde trees, the removal of the Refuge entrance sign, and the closure of the visitor resource for thirty-eight (38) days.

F. DOI, through the U.S. Fish and Wildlife Service and the Bureau of Reclamation, incurred costs of assessing damages resulting from the Spill.

G. DOI is considering a series of restoration projects to compensate for the losses caused by the Spill and subsequent removal of diesel fuel.

H. In the years since the Spill occurred, DOI and Pilot have monitored the refuge for continued diesel contamination. Results of the monitoring have shown that no levels of contaminants have been detected, under the analytical methods used.

I. This settlement is made in good faith after arm's-length negotiations. The United States and Pilot agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter and entry of this Decree will avoid litigation between the Parties, is the most appropriate means to resolve the

matters covered herein, and is fair, reasonable and in the public interest.

**NOW, THEREFORE**, with the consent of the Parties to this Decree, it is hereby  
**ORDERED, ADJUDGED AND DECREED:**

#### **JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2717(b), Section 311(f) of the CWA, 33 U.S.C. § 1321(f)(4) and (5), and pursuant to 28 U.S.C. §§ 1331 and 1345.

#### **VENUE**

2. Venue is proper in this District pursuant to Section 1017(b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2717(b), and pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a), as it is the judicial district in which the discharges of oil and damages are alleged to have occurred.

#### **BINDING EFFECT**

3. This Consent Decree applies to and is binding upon the United States, its agencies, department and divisions, and upon Pilot and its directors, employees, agents, predecessors, subsidiaries, affiliates, parents, successors, and assigns. Any change in corporate status or ownership of Pilot, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Pilot's responsibilities under this Consent Decree.

#### **DEFINITIONS**

4. Unless otherwise expressly provided herein, terms used in this Consent Decree shall have the meanings ascribed to them in the Oil Pollution Act, ("OPA"), 33 U.S.C. § 2701, et seq. The following definitions also apply to terms used in this Consent Decree:

- a. "Date of Lodging of this Decree" shall mean the date that this Decree is lodged, or a copy of it is filed, with the Court.
- b. "Date of Entry of this Decree" shall mean the date that this Decree is entered by the Court.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business, eastern standard time of the next working day.

d. "Interest" shall be calculated in accordance with 28 U.S.C. § 1961.

e. "Damages" shall have the meaning provided in Sections 1001(5) and 1002(b) of OPA, 33 U.S.C. §§ 2701(5) and 2702(b), and Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321 (4) and (5).

f. "Restoration" shall mean any action or combination of actions to restore, rehabilitate, replace, or acquire the equivalent of any natural resource or its services injured, lost, or destroyed as a result of the Spill.

g. "Parties" means the United States and Pilot.

h. "Spill" shall mean the occurrence described in the Paragraph B of the Introduction, above.

#### **NO ADMISSION OF LIABILITY**

5. By entering into this Consent Decree, Pilot does not admit to any allegations set forth in the Complaint, this Consent Decree or any other allegations relating to the Spill. This Consent Decree may not be construed as an admission of liability by Pilot in any judicial or administrative proceeding as to the fact or extent of Pilot's alleged liability with respect to any allegation relating to the Spill.

#### **PAYMENT BY DEFENDANT FOR DAMAGES**

6. Within 30 days of the Date of Entry of this Consent Decree, Pilot shall pay the sum of one hundred and forty-five thousand dollars (\$145,000), plus Interest accruing from the Date of Lodging of this Decree, by Fedwire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedure, referencing DOJ case number 90-5-1-1-07504. A transmittal letter indicating that the EFT has occurred shall be

sent to the Parties in accordance with the paragraph below entitled "Notices," and also to:

Bruce Nesslage  
DOI Restoration Fund Manager  
1849 "C" Street, N.W.  
Mail Stop 4449  
Washington, D.C. 20240

The EFT and transmittal letter shall reflect that the payment is being made to the "Natural Resources Damage Assessment and Restoration Fund, Bill Williams Bridge Diesel Spill."

#### **DEFAULT**

7. In the event that Pilot fails to timely pay any amount specified in Paragraph 6, it shall pay Interest on any balance due in accordance with 28 U.S.C. § 1961. Interest shall accrue on any unpaid amount from and including the Date of Lodging of the Consent Decree, until and including the day full payment of penalty and interest is received by the United States. Payment of Interest due shall be made in the manner directed by the United States. Pilot shall be liable for attorneys' fees and costs incurred by the United States to collect any amount due under this Consent Decree.

8. If Pilot fails to timely make any payment under this Decree, or to take any action specified in this Consent Decree, this Consent Decree shall be considered an enforceable judgment against Pilot for purposes of post-judgment collection under Federal Rule 69, Federal Rules of Civil Procedure, and other applicable statutory authority without further order of this Court.

9. In addition to any Interest, Pilot shall pay Stipulated Penalties to the United States for each failure to comply with any term or condition of this Consent Decree. Any Stipulated Penalties paid pursuant to this Section shall be in addition to the payment of damages pursuant to Paragraph 6, and shall be payable to the United States in the manner instructed by the government. Pilot shall pay the following total amounts per day for each day of violation:

| <u>Period of<br/>Failure to Comply</u> | <u>Penalty Per<br/>Violation Per Day</u> |
|----------------------------------------|------------------------------------------|
| 1st through 7th day                    | \$500                                    |
| 8th through 30th day                   | \$1000                                   |
| 31 <sup>st</sup> day and beyond        | \$1,500                                  |

10. All Stipulated Penalties begin to accrue on the day that complete performance is due or a violation of the Consent Decree occurs, and continue to accrue through the final day of the correction of the non-compliance. Stipulated penalties for late payment shall not accrue until 20 days after the United States provides EFT instructions to Pilot. Nothing herein shall preclude the simultaneous accrual of separate Stipulated Penalties for separate violations of this Consent Decree.

11. All penalties due under this Section shall be due and payable within 30 days of the Pilot's receipt of a demand for payment from the United States.

12. All payments under this Section shall be made in the form of a certified check or checks and made payable to the United States in the manner prescribed in the manner instructed by the DOI/USFWS.

13. If Pilot fails to pay Stipulated Penalties when due, the United States may institute proceedings to collect the penalties, as well as any interest associated thereto. In addition, Pilot shall be liable for attorney's fees and costs incurred by the United States associated with the collection of Stipulated Penalties.

#### **EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

14. In consideration of the compensation provided by Pilot in accordance with this Consent Decree and the actions required under this Consent Decree, and except as specifically provided in Paragraph 16 the United States covenants not to sue or to take any other civil or administrative action against Pilot for Damages pursuant to Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A) and Section 311(f)(4) and (5) of the CWA, 33 U.S.C. § 1321 (4) and (5), resulting from the Spill.

15. The covenants not to sue contained in Paragraph 14 are conditioned and shall only take effect upon satisfactory performance by Pilot of its obligations under this Consent

Decree. Further, these covenants not to sue extend only to Pilot, its directors, officers, shareholders, employees, and agents, acting in their capacity as such, and not to any other person.

16. This Consent Decree is without prejudice to the rights of the United States against Pilot with respect to all matters other than those expressly specified in Paragraph 14 including, but not limited to, the following:

1. claims based on a failure of Pilot to meet a requirement of this Consent Decree;
2. any and all criminal liability;
3. past, present, or future releases, discharges, or spills of oil other than the Spill described in this Consent Decree.

17. Pilot hereby covenants not to sue and agrees not to assert any claims or causes of action against the Plaintiff, its employees, agents, experts, contractors, or the Oil Spill Liability Trust Fund with respect to the Spill including, but not limited to any claims arising out of activities related to the Restoration Projects, including without limitation, claims based on the DOI/USFWS's selection of the Restoration Projects.

18. In any subsequent administrative or judicial proceeding initiated by the Plaintiff with respect to this Spill, Pilot shall not assert, and may not maintain any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or any other defenses based upon the contention that the claims raised by the Plaintiff in the subsequent proceeding were or should have been brought in the instant case, provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Paragraph 14. Notwithstanding the foregoing, nothing in this paragraph shall preclude Pilot from asserting a defense that claims for costs asserted by Plaintiff in any subsequent administrative or judicial proceeding are duplication of costs settled in this Consent Decree.

19. Nothing in this Consent Decree shall be construed to relieve Pilot or its officers,

agents, servants, employees, successors, or assigns of their obligations to comply with all applicable federal, state and local statutes and regulations, including, but not limited to, OPA, 33 U.S.C. § 2701 et seq.

20. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States to seek or obtain any other remedy, sanction or relief that may be available by virtue of Pilot's failure to comply with this Consent Decree, the OPA, or any other applicable law or regulation.

21. This Consent Decree does not limit or affect the rights of the United States or Pilot as against any third party. Nothing in this Consent Decree shall be construed to create any right in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action which each Party may have with respect to this Spill against any person not a Party hereto.

#### NOTICES AND SUBMISSIONS

22. Any notices or correspondence required to implement this Consent Decree shall be in writing and shall be deemed to have been made when sent by certified mail or its equivalent, including overnight courier, to the persons specified below:

a. Notices or correspondence to be submitted to the United States shall refer to DJ No. 90-5-1-1-07504 and shall be sent to:

United States Department of Justice  
Chief, Environment and Natural Resources Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, D.C. 20005

and

William W. Quinn  
Office of the Field Solicitor  
United States Department of Interior  
Sandra Day O'Connor U.S. Courthouse, Suite 404  
401 West Washington Street, SPC 44  
Phoenix, Arizona 85003-2151



- b. Notices or correspondence to be submitted to Pilot shall be sent to:

Pilot Corporation  
5508 Lonas Drive  
P.O. Box 10146  
Knoxville, Tennessee 37939-0146  
Attention: Mr. William Beuchat

and

David J. Armstrong, Esq.  
Gallagher & Kennedy, PA  
2575 East Camelback Road  
Phoenix, Arizona 85016

### **RETENTION OF JURISDICTION**

23. The Court shall retain jurisdiction over both the subject matter of, and the Parties to, this action for the purposes of enforcing the Parties' rights and obligations under this Consent Decree until such time as Pilot has fulfilled its payment obligations under this Consent Decree.

### **ENTIRE AGREEMENT**

24. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

### **CERTIFICATION/SIGNATORIES/COUNTERPARTS**

25. Each undersigned representative of the United States and Pilot 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 the Party he or she represents to this document.

26. Pilot certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the Plaintiff all information requested by the Plaintiff in the possession of

Pilot's officers, employees, contractors and agents, that relates in any way to the discharge of oil due to the Spill.

27. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

**FINAL JUDGMENT**

28. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and Pilot.

DATED: December 30, 2003

  
MAGISTRATE  
UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. Pilot Corp.

FOR THE UNITED STATES OF AMERICA:

Dated: \_\_\_\_\_

  
W. Benjamin Fisherow  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice

Dec. 1, 2003  
Dated: \_\_\_\_\_

  
Steven O'Rourke  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
P. O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-9009  
(202) 514-8395 (fax)

WE HEREBY CONSENT to the entry of the Consent Decree in United States v. Pilot Corp.

FOR PILOT CORPORATION:

DATE: \_\_\_\_\_

By:

SIGNATURE

WILLIAM D. BEUCHAT  
NAME (printed or typed)

CLAIMS MANAGER  
TITLE (printed or typed)