

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
THE STATE OF NEW MEXICO, and
THE NEW MEXICO OFFICE OF
NATURAL RESOURCES TRUSTEE,

Plaintiffs,

v.

No. CIV-03-1105 MV KBM

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

**[PROPOSED] ORDER GRANTING JOINT
MOTION FOR DISBURSEMENT OF FUNDS**

WHEREAS this matter having come before the Court on the Joint Motion for Disbursement of Funds (“Motion”) filed jointly in this matter on June 29, 2007, by Plaintiff the United States of America, on behalf of the Department of the Interior, Fish and Wildlife Service (“United States”) and by Plaintiffs the State of New Mexico and the New Mexico Office of Natural Resources Trustee (jointly, “State”);

WHEREAS, pursuant to the consent decree (“Consent Decree”) entered in this case on January 14, 2004, Defendant Burlington Northern and Santa Fe Railway Company deposited \$459,000.00 into a court registry trust account as damages for alleged injuries to natural resources. The Consent Decree specifies that the United States and the State (jointly, “Trustees”) shall use these funds (“Wetlands Enhancement Payments”) to plan and implement projects to restore, replace or acquire natural resources equivalent to the allegedly injured natural resources.

WHEREAS the Trustees have agreed regarding the distribution of the Wetlands Enhancement Payments for use to restore, replace or acquire natural resources equivalent to the

allegedly injured natural resources, as provided in the Consent Decree and in the Resolution attached as Exhibit A to the Motion, and the Trustees, in the Motion, requested an order from this Court disbursing these funds as described in the Motion.

NOW THEREFORE, the Court, being fully advised in the premises and otherwise, finds that the motion is well taken and **ORDERS** that the Motion shall be and hereby is **GRANTED**, and that the Clerk of the Court is ordered to disburse the Wetlands Enhancement Payments from the court registry trust account in two amounts, \$69,253.00 to the United States and \$389,747.00 to the State.

In addition, the Trustees are ordered: (1) to deposit these funds into the accounts and to use these funds for the purposes specified in the Motion and Consent Decree; (2) to maintain these funds in segregated subaccounts and not to commingle these funds with any other moneys; and (3) to use interest accruing on these funds only for the purposes described in the Motion and Consent Decree.

District Judge Martha Vazquez

Approved:

**FOR PLAINTIFFS THE STATE OF NEW MEXICO AND THE
NEW MEXICO OFFICE OF NATURAL RESOURCES TRUSTEE:**

/s/ Karen L. Reed
Gary K. King, Attorney General
By: Karen L. Reed, Assistant Attorney General
New Mexico Office of the Attorney General
P.O. Drawer 1508
408 Galisteo Street, Room R-118
Santa Fe, New Mexico 87504-1508
Phone (505) 827-6695
Fax (505) 827-4440

Date: June 29, 2007

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

/s/ Karen L. Reed for Steven D. Shermer
STEVEN D. SHERMER
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station - P.O. Box 7611
Washington, D.C. 20044-7611
Phone (202) 514-1134
Fax (202) 616-6584
Steven.Shermer@usdoj.gov

Date: June 29, 2007