

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

~~FILED~~  
~~04 SEP 29 AM 10:35~~  
~~ALBUQUERQUE~~

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

Plaintiffs,

v.

CIV. No. 04-1101 JH RHS

THE BURLINGTON NORTHERN and  
SANTA FE RAILWAY COMPANY,

RECEIVED  
FEB 02 RECD  
BY:

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

Defendant.

JAN 29 2005

CLERK

CONSENT DECREE

I. INTRODUCTION

A. This Consent Decree is entered into by and among Plaintiff United States of America ("United States"), on behalf of the United States Department of the Interior, United States Fish and Wildlife Service ("DOI"); Plaintiff The State of New Mexico ("State"); Plaintiff The New Mexico Office of Natural Resources Trustee ("NMONRT"); and Defendant The Burlington Northern and Santa Fe Railway Company ("BNSF" or "Settling Defendant").

B. The United States, the State, and NMONRT have filed a Complaint against BNSF pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), seeking to recover damages for injury to, destruction of, or loss of Natural Resources resulting from the release of hazardous substances at or from the AT&SF Albuquerque (Tie-treater) Superfund Site, located in Albuquerque, Bernalillo County, New Mexico ("Site"), which is the location of a former AT & SF tie treating

plant. BNSF asserts that the United States Department of the Treasury, successor in interest to the United States Railroad Administration (“Settling Federal Agency”) is liable in contribution for a portion of the alleged damages for injury to, destruction of, or loss of Natural Resources due to the United States Railroad Administration’s (“USRA”) alleged ownership or operation of the Site during World War I.

C. The DOI and NMONRT (collectively “Trustees”) share trusteeship of the natural resources and are coordinating restoration efforts. The parties to this Decree (“Parties”) desire to enter into this Decree, as a compromise of disputed claims, to settle the claims asserted in the Complaint and BNSF’s claim for contribution against the Settling Federal Agency. Pursuant to this Consent Decree, Settling Defendant and Settling Federal Agency, without admitting any liability, each agree to make a payment to the Trustees for use by the Trustees to (1) restore, replace, or acquire natural resources equivalent to those allegedly injured, destroyed, or lost resulting from releases at the Site and; (2) reimburse the Trustees for costs previously incurred to assess the alleged injury to, destruction, and/or loss of natural resources; and Plaintiffs have determined that the payments by Settling Defendant and Settling Federal Agency and the allocation between Trustees are appropriate actions sufficient for these uses and purposes.

D. The Parties 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 will avoid prolonged and complicated litigation between the Parties, and that the Consent Decree is fair, reasonable, consistent with the purposes of CERCLA, and in the public interest.

THREFORE, with the consent of the Parties to this Decree, IT IS ORDERED,  
ADJUDGED, AND DECREED:

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b). Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b). This Court has personal jurisdiction over Settling Defendant. Solely for purposes of entry and enforcement of this Consent Decree, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree applies to and is binding upon the United States, the State, the NMONRT, any successor agencies, and upon the Settling Defendant and its successors and assigns. Any change in ownership or corporate status of Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree shall have the meanings assigned to them in CERCLA, 42 U.S.C. § 9601 *et seq.*, or in regulations promulgated under CERCLA. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "AT & SF Albuquerque (Tie-treater) Superfund Site," or "Site," means the BNSF property located at 3300 Second Street SW in the South Valley area, Albuquerque, Bernalillo County, New Mexico, which is depicted on the map attached hereto as Exhibit 1.

b. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

c. "DOI" means the United States Department of the Interior and any successor departments or agencies of the United States.

d. "DOJ" means the United States Department of Justice and any successor departments or agencies of the United States.

e. "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C.A. § 1801 et seq.]) any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

f. "Natural Resource Damages" means damages for injury to, destruction of, or loss of Natural Resources, including the reasonable costs of assessing such injury, destruction, or loss.

g. "NMONRT" means New Mexico Office of Natural Resources Trustee and any successor departments or agencies of the State of New Mexico.

h. "Parties" means the parties to this Consent Decree.

i. "Trustees" means the United States Department of the Interior, United States Fish and Wildlife Service, and the NMONRT.

j. "Settling Defendant" or "BNSF" means The Burlington Northern and Santa Fe Railway Company, and for purposes of Sections IX, X and XIII of this Consent Decree includes:

(1) directors and officers of BNSF, to the extent that their alleged liability arises from actions taken in their official capacities as directors and officers of BNSF; (2) The Atchison, Topeka & Santa Fe Railway Company; and (3) successors to BNSF, to the extent that their alleged liability arises from their status as successors to BNSF.

k. "Settling Federal Agency" means the United States Department of the Treasury, successor in interest to the United States Railroad Administration.

#### **V. PAYMENT.**

4. Within 45 days of entry of this Consent Decree, Settling Defendant shall pay to the Trustees the sum of one million, ninety thousand dollars (\$ 1,090,000.00) in five separate payments as described in Paragraphs 5, 6, and 7 below. Notice that payment has been made shall be provided to DOI, the State, NMNRT, and DOJ in accordance with Paragraph 23 (Notices and Submissions), below, shall reference DOJ Case No. 90-11-2-07889/1, and shall state that payment is for Natural Resource Damages with respect to the AT & SF Albuquerque (Tie-treater) Superfund Site, located in Albuquerque, New Mexico.

5. Of the principal amount paid pursuant to Paragraph 4, the sum of three hundred ninety-six thousand two hundred thirty dollars and sixty-six cents (\$ 396,230.66)("Habitat Resources Damages Payment") shall be placed by the Settling Defendant in a court registry trust account ("Habitat Resources Damages Account") for use by the Trustees jointly to plan and implement projects designed to restore, replace, and/or acquire the equivalent of habitat resources injured, destroyed, or lost as a result of the release of hazardous substances at or from the Site. Of the principal amount paid pursuant to Paragraph 4, the sum of six hundred fifty-four thousand, nine hundred sixty-one dollars and ninety-four cents (\$ 654,961.94)("Groundwater

Resources Damages Payment”) shall be placed by the Settling Defendant in a court registry trust account (“Groundwater Resources Damages Account”) for use by NMONRT to plan and implement projects designed to restore, replace, and/or acquire the equivalent of groundwater resources injured, destroyed, or lost as a result of the release of hazardous substances at or from the Site.

6. Of the principal amount paid pursuant to Paragraph 4, the sum of eleven thousand, six hundred and twenty-five dollars and thirty-two cents (\$11,625.32) shall be paid by the Settling Defendant to DOJ to reimburse DOI for costs it previously incurred to assess the injury to, destruction, or loss of Natural Resources resulting from the release of hazardous substances at the Site (“DOI Assessment Payment”). (DOJ shall pay this amount to DOI less \$ 348.76 of this amount that DOJ shall retain pursuant to Section 108 of Pub. L. 103-121, 107 Stat. 1164 (1994). Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice (“DOJ”) Account in accordance with EFT procedures, referencing USAO File No. 2004v00426 and DOJ Case No. 90-11-2-07889/1. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the District of New Mexico following lodging of the Consent Decree. Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. Of the principal amount paid pursuant to Paragraph 4, Settling Defendant shall pay the sum of twenty-six thousand, one hundred and one dollars and four cents (\$26,101.04) to the NMONRT Trustee fund and the sum of one thousand eighty one dollars and four cents (\$ 1,081.04) to the New Mexico Office of the Attorney General (“AGO”) to reimburse NMONRT and AGO for costs they previously incurred to assess the injury to, destruction, or loss

of Natural Resources resulting from the release of hazardous substances at the Site (“NMONRT Assessment Payment” and “AGO Assessment Payment”). Payments to the NMONRT and the AGO shall be made by certified or cashiers checks made payable to the NMONRT Fund and the AGO, respectively. The check for NMONRT and accompanying transmittal notice shall reference “Albuquerque ATSF Superfund Site natural resources cost recovery.” Payment for NMONRT shall be sent to: Attention Financial Services Bureau, c/o Charles Martinez, New Mexico Environment Department, PO Box 26110, 1190 St. Francis Dr., Santa Fe, NM 87501. Payment for the AGO shall be sent to: Elizabeth Kupfer, Director of the Administrative Services Division, AGO, P.O. Drawer 1508, Santa Fe, NM 87504-1508. A copy of payment documents described in this Paragraph 7 shall be sent to: Rebecca Neri Zagal, New Mexico Office of Natural Resources Trustee, 610 Gold Ave. SW, Suite 236, Albuquerque, NM 87102.

8. As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of the Settling Federal Agency, shall pay to the Trustees the sum of \$ 10,000.00 in two separate payments. Of this amount, the sum of three thousand seven hundred sixty nine dollars and thirty-four cents (\$ 3,769.34) shall be placed by the Settling Federal Agency in the Habitat Resources Damages Account for use by the Trustees jointly to plan and implement projects designed to restore, replace, and/or acquire the equivalent of habitat resources injured, destroyed, or lost as a result of the release of hazardous substances at or from the Site (“Settling Federal Agency Habitat Resources Payment”); and the sum of six thousand two hundred thirty dollars and sixty-six cents (\$ 6,230.66) shall be placed by the Settling Federal Agency in the Groundwater Resources Damages Account for use by NMONRT to plan and implement projects designed to restore, replace, and/or acquire the equivalent of groundwater

resources injured, destroyed, or lost as a result of the release of hazardous substances at or from the Site. ("Settling Federal Agency Habitat Resources Payment"). Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day. Notice that payment has been made shall be provided to DOI, the State, NMONRT, and DOJ in accordance with Paragraph 23 (Notices and Submissions), below, shall reference DOJ Case No. 90-11-2-07889/1, and shall state that payment is for Natural Resource Damages with respect to the AT & SF Albuquerque (Tie-treater) Superfund Site, located in Albuquerque, New Mexico.

## **VI. INTEREST**

9. In the event that Settling Defendant fails to timely pay the full amount of any of the payments described in Paragraphs 5-7, Settling Defendant shall pay Interest on the unpaid principal amount in accordance with 28 U.S.C. § 1961. Interest shall accrue on any unpaid principal amount from and including the 45th day following the date of entry of the Consent Decree, until and including the day full payment of the remaining principal balance, interest accruing under this Paragraph, and any stipulated penalties assessed under Paragraph 11, below, is received. Payment of interest accruing on the Habitat Resources Damages Payment and the Groundwater Resources Damages Payment described in Paragraph 5 shall be made into the Habitat Resources Damages Account and the Groundwater Resources Damages Account, respectively. Payment of interest accruing on the payment described in Paragraph 6 shall be made to DOJ in the manner directed by DOJ. Payment of interest accruing on the NMONRT Assessment Payment and the AGO Assessment Payment described in Paragraph 7 shall be made to NMONRT and AGO, respectively, in the manner directed by NMONRT and AGO, respectively. Settling Defendant shall be liable for and pay attorneys' fees and costs incurred by



the United States and NMONRT to collect any amount due under this Consent Decree.

10. In the event that Settling Federal Agency does not make the payments under Paragraph 8 within forty-five (45) days of the date of entry of the Consent Decree, Settling Federal Agency shall pay interest on the unpaid principal amount in accordance with 28 U.S.C. § 1961. Interest shall accrue on any unpaid principal amount from and including the 45<sup>th</sup> day following the date of entry of the Consent Decree, until and including the day full payment of the remaining principal balance and interest accruing under this Paragraph, is received. Payment of Interest on the Settling Federal Agency Habitat Resources Payment and the Settling Federal Agency Groundwater Resources Payment shall be made into the Habitat Resources Damages Account and the Groundwater Resources Damages Account, respectively.

#### **VIII. STIPULATED PENALTIES**

11. If Settling Defendant fails to timely pay the full amount required to be paid under Paragraph 4, above, Settling Defendant shall pay, in addition to the unpaid principal balance and accrued interest, a stipulated penalty in the amount of \$ 3,000.00 for each day that the payment is late. Any stipulated penalties shall be allocated among the Habitat Resources Damages Payment, the Groundwater Resources Damages Payment, the DOI Assessment Payment, the NMONRT Assessment Payment, and the AGO Assessment Payment in accordance with the proportions that the unpaid amounts of those payments bear to the total unpaid amount.

12. Stipulated penalties shall be due and payable within thirty days of Settling Defendant's receipt from the United States or NMONRT of a demand for payment of Stipulated Penalties. Stipulated Penalties allocated to the Habitat Resources Damages Payment shall be paid 50% to NMONRT and 50% to the United States. Stipulated Penalties allocated to the DOI

Assessment Payment shall be paid to the United States. Stipulated Penalties allocated to the Groundwater Resources Damages Payment, the NMONRT Assessment Payment and the AGO Assessment Payment shall be paid to NMONRT. Payment of Stipulated Penalties to the United States shall be made by cashiers check payable to "Treasurer, United States of America," tendered to the United States Attorney, District of New Mexico, P.O. Box 607, Albuquerque, NM 87103-0607. Payment shall reference USAO File No. 2004v00426 and DOJ Case No. 90-11-2-07889/1, and shall state that it is for "Stipulated Penalties." Payment of Stipulated Penalties to NMONRT shall be made as directed by NMONRT. Notwithstanding any other provision of this Consent Decree, the United States and NMONRT may waive payment of Stipulated Penalties.

**IX. COVENANTS NOT TO SUE OR TAKE ADMINISTRATIVE ACTION**

13. In consideration of the payments made by Settling Defendant and Settling Federal Agency in accordance with this Consent Decree, and except as specifically provided in Section X (Non-Waiver Provisions), below, the United States, including the Settling Federal Agency, DOI, the State and NMONRT each hereby covenant not to sue or to take any other civil or administrative action against Settling Defendant or Settling Federal Agency to recover Natural Resource Damages resulting from past releases of hazardous substances or other substances at or from the Site, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607(a)(4), the Oil Pollution Act ("OPA"), 33 U.S.C. §§ 2702 and 2707, the Clean Water Act, 33 U.S.C. § 1321, or any other applicable federal or state statutory or common law.

14. These covenants to Settling Defendant and Settling Federal Agency are each

conditioned upon payment by that party, and shall not take effect until receipt by the United States and NMONRT of all funds required to be paid by that party under the terms of this Decree. These covenants extend only to the Settling Defendant and the Settling Federal Agency, and do not extend to any other person. Nonpayment by one of these parties will not affect the covenants given to the other party.

15. In consideration of the covenants contained in Paragraph 13, Settling Defendant agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, including without limitation the Settling Federal Agency, the State, including any department, agency or instrumentality of the State, or NMONRT related to Natural Resources Damages resulting from past releases of hazardous substances or other substances at or from the Site, pursuant to CERCLA Section 113(f), 42 U.S.C. § 9613(f), the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*, or any other applicable federal or state statutory or common law.

#### **X. NON-WAIVER PROVISIONS**

16. Nothing in this Consent Decree shall be construed to relieve the Settling Defendant 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 CERCLA.

17. Notwithstanding any other provision of this Consent Decree, the United States, DOI, the State and NMONRT each reserve, and this Consent Decree is without prejudice to:

a. Any and all rights of the United States, the State and NMONRT to institute proceedings against Settling Defendant or Settling Federal Agency in this action or in a new

action, and any and all rights of DOI to issue an administrative order, seeking to require Settling Defendant or Settling Federal Agency to reimburse the United States, DOI, the State or NMONRT for additional Natural Resource Damages if:

(1) conditions with respect to the Site, unknown to the United States, DOI, the State or NMONRT at the date of lodging of this Decree, that have resulted in releases of hazardous substances at or from the Site, are discovered after the date of lodging of this Decree; or

(2) information with respect to the Site, unknown to the United States, DOI, the State or NMONRT at the date of lodging of this Decree, is received after the date of lodging of the Decree;

and such conditions or information indicate that there is injury to, destruction of, or loss of Natural Resources of a type that was unknown, or of a magnitude greater than was known, to the United States, DOI, the State or NMONRT at the date of lodging of this Decree. For purposes of this Paragraph 17, conditions and information unknown to the United States, DOI, the State or NMONRT do not include any conditions or information set forth in the EPA Superfund Record of Decision for the Site dated June 2000, or in the administrative record on which the Record of Decision was based.

b. Any and all rights against the Settling Defendant and Settling Federal Agency with respect to all other matters not specifically included in the covenants set forth in Paragraph 13, including but not limited to the following:

(i) claims other than claims for Natural Resource Damages, against the Settling Defendant or the Settling Federal Agency that the United States, DOI, the State or NMONRT may have under Sections 106 and 107 of CERCLA, 42 U.S.C. § 9606 and § 9607;

(ii) claims based on a failure by Settling Defendant or Settling Federal Agency to meet a requirement of this Consent Decree;

(iii) liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site;

(iv) liability for the disposal of any hazardous substances taken from the Site; and,

(v) criminal liability.

18. Notwithstanding any other provision of this Consent Decree, this Consent Decree is without prejudice to all rights of the Settling Defendant with respect to all matters other than those expressly specified in the covenants not to sue set forth in Paragraph 15. In the event that the United States, DOI, the State or the NMONRT exercises its rights pursuant to Paragraph 17, and except as provided in Paragraph 21, the Settling Defendant and Settling Federal Agency reserve the right to assert any defenses that they may have with respect to the matters raised by the United States, DOI, the State or the NMONRT pursuant to Paragraph 17.

19. This Consent Decree does not limit or affect the rights of the United States, including the Settling Federal Agency and DOI, the State, NMONRT or the Settling Defendant as against any third party. Except as set forth in Paragraph 20, this Consent Decree does not limit the rights of any entity, not a party to this Consent Decree, against Settling Defendant.

20. The Parties hereto agree that Settling Defendant and Settling Federal Agency are each entitled, as of the receipt by the United States, NMONRT and AGO of all funds that it is required to pay under the terms of this Decree, to protection from contribution actions or claims as provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), or by applicable state law, for all matters addressed in this Consent Decree. The matters addressed in this Consent Decree are

Natural Resource Damages which result from the release of hazardous substances at or from the Site. Nonpayment by one of these two parties will not affect the contribution protection given to the other party.

21. In any subsequent administrative or judicial proceeding initiated by the United States, the State or NMONRT against Settling Defendant relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the United States, the State or NMONRT 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 covenants set forth in Paragraph 13, above.

22. Nothing in this Consent Decree shall be deemed to limit the response authority of the United States or any agency of the State of New Mexico under federal or state law.

#### **XI. NOTICES AND SUBMISSIONS**

23. Notices required by this Decree shall be made as follows:

a. To DOI:

Bruce Nessler  
United States Department of the Interior  
Attn: Restoration Fund Manager  
1849 C Street, NW  
Mailstop 4449  
Washington, DC 20240

Karen Cathey, NRDA Coordinator  
United States Fish and Wildlife Service  
P.O. Box 1386  
Albuquerque, NM 87103

b. To DOJ:

Chief  
Environmental Enforcement Section  
United States Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20005

Chief  
Environmental Defense Section  
United States Department of Justice  
Environment and Natural Resources Division  
P.O. Box 23986  
Washington, DC 20026-3986

c. To the State:

Stephen R. Farris,  
Assistant Attorney General  
Director, Water Environment and Utilities Division  
Office of the New Mexico Attorney General  
P.O. Drawer 1508  
Bataan Memorial Building  
Santa Fe, New Mexico 87504

d. To NMONRT:

Jim Baca, Trustee  
New Mexico Office of Natural Resource Trustee  
610 Gold Avenue, SW, Suite 236  
Albuquerque, NM 87102

Stephen R. Farris, Assistant Attorney General  
Director, Water Environment and Utilities Division  
Office of the New Mexico Attorney General  
P.O. Drawer 1508  
Bataan Memorial Building  
Santa Fe, New Mexico 87504

e. To Settling Defendant:

The Burlington Northern and Santa Fe Railway Company  
Vice President of Law

2500 Lou Menk Drive  
AOB, 3<sup>rd</sup> Floor  
Ft. Worth, Tx. 76131

## **XII. RETENTION OF JURISDICTION**

24. This Court shall retain jurisdiction over the subject matter and the Parties for the purpose of enforcing this Consent Decree until the United States and NMONRT have received all payments required to be made under this Consent Decree.

## **XIII. PUBLIC COMMENT**

25. The Parties agree and acknowledge that final approval by the United States, the State and NMONRT and entry of this Consent Decree are subject to a thirty (30) day period for public notice and an opportunity for public comment. The United States, the State and NMONRT each reserve the right to withdraw or withhold consent if the public comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

26. If consent is withdrawn pursuant to Paragraph 25, or if for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

## **XIV. EFFECTIVE DATE**

27. This Consent Decree is effective upon the date of its entry by the Court.

## **XV. SIGNATORIES/SERVICE**



28. 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 its respective party to this document.

29. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States, the State or NMONRT notifies them in writing that it no longer supports entry of the Consent Decree.

30. The Settling Defendant 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 Defendant hereby agrees 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.

31. 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.

SO ORDERED THIS 27<sup>th</sup> DAY OF January, ~~2004~~ 2005.

  
United States District Judge

FOR PLAINTIFF UNITED STATES:

*Tom Sansonetti*

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, DC 30530

*Nicholas F. Persampieri*

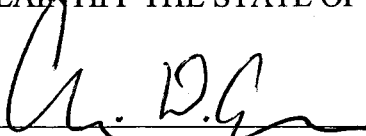
NICHOLAS F. PERSAMPIERI  
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Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
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Of Counsel:

DORI RICHARDS  
Special Assistant United States Attorney  
District of New Mexico  
505 Marquette, NW  
Albuquerque, NM 87102

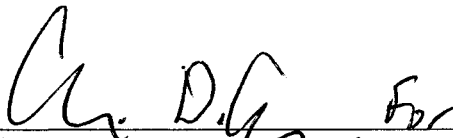
FOR PLAINTIFF THE STATE OF NEW MEXICO:



CHRISTOPHER D. COPPIN

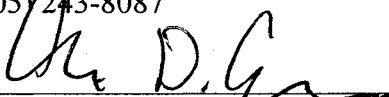
Assistant Attorney General  
New Mexico Office of the Attorney General  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508  
(505) 827-6000

FOR PLAINTIFF THE NEW MEXICO OFFICE  
OF NATURAL RESOURCES TRUSTEE:



JIM BACA, State Trustee

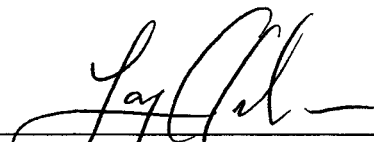
New Mexico Office of Natural Resources Trustee  
610 Gold Avenue, SW, Suite 236  
Albuquerque, New Mexico 87102  
(505) 243-8087



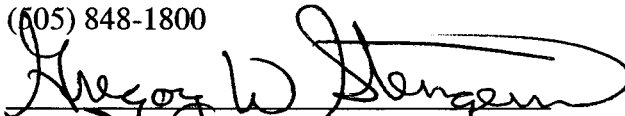
CHRISTOPHER D. COPPIN

Assistant Attorney General  
New Mexico Office of the Attorney General  
P.O. Drawer 1508  
Bataan Memorial Building  
Santa Fe, New Mexico 87504  
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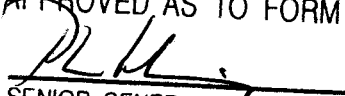
FOR THE DEFENDANT BURLINGTON NORTHERN  
and SANTA FE RAILWAY COMPANY:

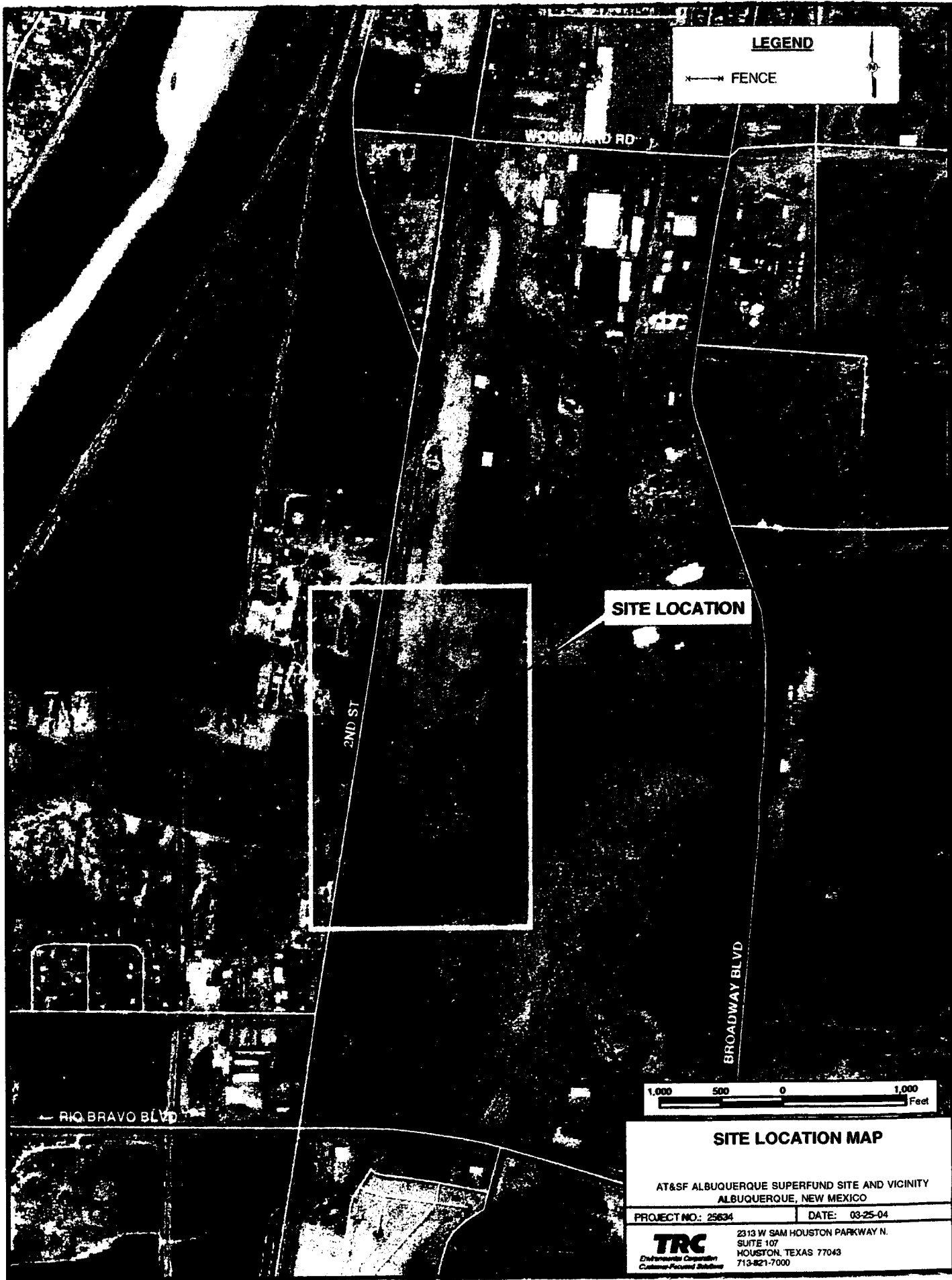


LARRY P. AUSERMAN  
Modrall Sperling Roehl Harris & Sisk PA  
P.O. Box 2168  
Albuquerque, NM 87103-2168  
(505) 848-1800



GREGORY W. STENGEM  
Vice President Safety, Training and Operations Support  
2500 Lou Menk Drive  
Fort Worth, Texas 76131  
(817) 352-1220

APPROVED AS TO FORM  
  
SENIOR GENERAL ATTORNEY



**LEGEND**

—> FENCE

**SITE LOCATION**

2ND ST

WOODWARD RD

BROADWAY BLVD

RIO BRAVO BLVD



**SITE LOCATION MAP**

AT&SF ALBUQUERQUE SUPERFUND SITE AND VICINITY  
ALBUQUERQUE, NEW MEXICO

PROJECT NO: 25634      DATE: 03-25-04



2313 W SAM HOUSTON PARKWAY N.  
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U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611

Telephone (202) 514-1134  
Facsimile (202) 514-8395

September 27, 2004

Norman H. Meyer, Jr.  
Acting Clerk  
United States District Court  
District of New Mexico  
333 Lomas Blvd NW, Ste. 270  
Albuquerque, NM 87102

Dear Mr. Meyer:

I enclose for filing and lodging the original and three copies of a Notice of Lodging, Complaint, and Consent Decree, in each of two separate cases: The United States of America, The State of New Mexico, and The New Mexico Office of the Natural Resources Trustee v. The Burlington Northern and Santa Fe Railway Company; and The United States of America and the New Mexico Environment Department v. The Burlington Northern and Santa Fe Railway Company.

Please file the original Notices of Lodging and Complaints, and return a file stamped copy to the representative of the United States Attorneys' Office.

As is explained in the Notices of Lodging, the Consent Decrees are subject to a public comment period. We therefore are requesting that the Consent Decrees be lodged with the Court and that the assigned Judge or Judges not take action on the Consent Decrees at this time. We will contact the Court following expiration of the public comment period to request the Court's consideration of the Consent Decree.

Please telephone me if you have any questions. Thank you.

Sincerely,

  
Nicholas F. Persampieri

cc: Larry P. Ausherman, Esq.