

**SETTLEMENT AGREEMENT FOR NATURAL RESOURCE DAMAGES
ASSOCIATED WITH THE JULY 14, 2007 EXPLORER PIPELINE JET A FUEL
DISCHARGE INTO AND ADJACENT TO TURKEY CREEK IN WALKER COUNTY,
TEXAS**

This Settlement Agreement ("Agreement") is by and between the Texas Parks and Wildlife Department ("TPWD"), the Texas Commission on Environmental Quality ("TCEQ"), the Texas General Land Office ("GLO") and the United States Department of the Interior ("DOI") represented by the United States Fish and Wildlife Service ("USFWS"), (collectively, "the Trustees"); and Explorer Pipeline ("Settling Party").

This Agreement provides the terms upon which the Trustees and the Settling Party agree to settle the claims of the Trustees for natural resource damages which resulted from the July 14, 2007, discharge of Jet A fuel into and adjacent to Turkey Creek, Walker County, Texas. This Agreement was negotiated and signed by the Parties in good faith to avoid expensive and protracted litigation, and is a fair and equitable settlement of potential claims that could otherwise be contested.

I. DEFINITIONS

Whenever terms listed below are used in this Agreement or in any exhibit attached hereto and incorporated hereunder, the following definitions shall apply:

- A. "Effective Date" shall mean the date of the last Party's signature to this document.
- B. "Federal Trustee" shall mean USFWS.
- C. "Incident" shall mean the July 14, 2007, discharge of Jet A fuel from a high pressure transmission line belonging to Explorer Pipeline into and adjacent to Turkey Creek in Walker County, Texas and the associated response actions.
- D. "Oil" shall have the same meaning as in the Oil Pollution Act, 33 U.S.C. §2701.
- E. "Parties" shall mean the Trustees and the Settling Party.
- F. "Party" shall mean any one of the Parties to this Agreement.
- G. "State Trustees" shall mean TPWD, TCEQ and GLO.

II. TRUSTEE AUTHORITY

The Trustees enter into this Agreement pursuant to their designation as Natural Resource Trustees by the President of the United States or the Governor of Texas and pursuant to their

authority under the Oil Pollution Act (OPA), 33 U.S.C. §§ 2701 et seq., the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §§ 1251 et seq., and any other applicable Federal and State of Texas laws, rules and regulations. The Trustees act on behalf of the public to recover for injuries to natural resources and the lost services those resources would have provided.

III. APPLICABILITY OF AGREEMENT

A. The provisions of this Agreement shall be binding on and inure to the benefit of the Trustees and their successors and assigns and be binding on and inure to the benefit of the Settling Party and its successors and assigns. Any change in ownership or corporate status of the Settling Party, including any transfer of assets or real or personal property shall in no way alter its rights or obligations under this Agreement.

B. This Agreement 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.

IV. BACKGROUND

A. On July 14, 2007, a 5-foot split occurred in a 28-inch, high pressure transmission line belonging to Explorer Pipeline, resulting in an unauthorized discharge of Jet A fuel just east of the city of Huntsville in Walker County, Texas. Approximately 6,568 barrels (275,860 gallons) of jet fuel were discharged onto land and into Turkey Creek and adjacent riparian habitat. Jet fuel was observed at the discharge point and extended about 4.5 miles downstream in Turkey Creek. Response actions included building earthen berms within Turkey Creek, excavating the pipeline, recovering free product from Turkey Creek with vacuum trucks, as well as washing the banks of the creek to remove residual jet fuel.

B. According to findings made by the Trustees in the course of the cooperative natural resource damage assessment, approximately 4.25 acres of aquatic, 1.46 acres of woodland, and 2.89 acres of pasture habitat were injured as a result of the Incident. The Trustees further concluded that certain natural resources and the resource services associated with this habitat were lost or injured as a result of the Incident.

C. As a result of their natural resource damage assessment, the Trustees have concluded that the Settling Party's cleanup of the Jet A fuel did not fully compensate or provide restoration for losses or injuries to natural resources or natural resource services caused by the Incident.

D. The methodologies used by the Trustees to assess injuries to the natural resources resulting from the Incident were specific to the Incident and provide appropriate, valid, and reliable estimates of injuries resulting from the Incident. In compliance with OPA, the Trustees

have ensured that no double counting of natural resource damages has resulted from the methodologies used to determine injury or required compensation for those injuries.

E. The Trustees are developing a Damage Assessment and Restoration Plan ("DARP") that details the assessment methodology used and the restoration alternatives evaluated for the Incident. The DARP evaluates restoration alternatives appropriate for addressing natural resources and natural resource services losses associated with the Incident. The Parties agree that the payment of an amount of money sufficient to construct a minimum of three (3) acres of freshwater wetlands in the vicinity of the Incident or alternatively that would fund implementation of a comparable restoration or preservation project will adequately compensate the public for natural resource service losses associated with the Incident.

F. Settling Party recognizes and understands the contentions of the Trustees asserted in this Background section and other sections of the Agreement, but Settling Party expressly denies all liability from the Incident and does not admit or agree with such contentions.

V. OBLIGATIONS OF SETTTLING PARTY

A. Compensation for Natural Resources

1. Within thirty (30) days of the Effective Date of this Agreement, the Settling Party agrees to pay to the Trustees the total sum of Two Hundred and Nine Thousand, Eight Hundred and Five Dollars and Fifty Three Cents (\$209,805.53). The Settling Party shall deposit One Hundred and Sixty Four Thousand, Six Hundred and Twenty Six Dollars and Twenty Cents (\$164,626.20) of the total amount due directly into the DOI's Natural Resource Damage Assessment and Restoration Fund ("NRDAR Fund") held on behalf of the Trustees, according to the following instructions. The Settling Party may deposit monies into the NRDAR Fund through an automated clearing house known as the Department of Treasury's Automated Clearing House (ACH)/Remittance Express program. If this program is unavailable, then Federal Wire Transfer procedure should be utilized. Attachment I provides additional information about both procedures. Alternatively, the Settling Party may send a check. Checks should be made payable to the "Department of the Interior" and sent to the following address:

Department of the Interior
NBC/Division of Financial Management Services
Branch of Accounting Operations
Mail Stop D-2777
7401 W. Mansfield Ave.
Lakewood, CO 80235

The following information must be included with the check:

Account number: 14X5198 (NRDAR)
Site or case name: Explorer Pipeline Jet A Fuel Spill

Location of site: Walker County, Texas
Paying potentially responsible party: Explorer Pipeline

Upon making payment to the NRDAR Fund, the Settling Party shall send written notice that payment has been made to the Fund Manager at the following address:

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 3548
Washington, D.C. 20240

2. Within thirty (30) days of the Effective Date of this Agreement, the Settling Party shall deposit Twenty Eight Thousand, Eight Hundred Eighty Seven Dollars and Thirty Cents (\$28,887.30) of the total amount due directly into the Texas Treasury Safekeeping Trust Company Account by electronic funds transfer according to the following instructions:

RECEIVER: REX COMPT AUSTIN
ABA Routing Number: 114900164
BNF: TTSC AC 440474001
REF: Natural Resource Trustees – Natural Resource Damage Restoration

B. State Trustee Past Assessment Costs

1. The Trustees have expended time, funds, and resources in assessing damages for the natural resource injuries that resulted from the Incident and in arriving at a settlement with the Settling Party.

2. Within thirty (30) days of the Effective Date of this Agreement, the Settling Party shall pay each Trustee un-reimbursed past costs of assessment from July 14, 2007 through August 31, 2008 in the following amounts and according to the following instructions:

a. TPWD: A certified check in the amount of Nine Thousand, Seven Hundred and Fifty Dollars and Six Cents (\$9,750.06) payable to: "Texas Treasury Safekeeping Trust Company" with the notation "Natural Resource Trustees – Natural Resource Damage Restoration – Texas Parks and Wildlife Damage Assessment". Payment should be mailed to:

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

A copy of the check should be sent to:

Johanna Gregory, Trustee Program
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

b. TCEQ: A certified check in the amount of Four Thousand, Nine Hundred and Ten Dollars and Sixty-Six Cents (\$4,910.66) payable to: "Texas Commission on Environmental Quality" with the notation "PCA 46047". Payment should be mailed to:

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

c. GLO: A certified check in the amount of One Thousand, Six Hundred and Thirty-One Dollars and Thirty-One Cents (\$1,631.31) payable to: "Texas General Land Office" with the notation "Trustee cost reimbursement Explorer 2007 Jet A fuel spill, Walker County." Payment should be mailed to:

Texas General Land Office
ATTN: Conrad Swan, Coastal Resources, MC-151
P.O. Box 12873
Austin, Texas 78711-2873

VI. USE OF RECOVERED FUNDS

A minimum of One Hundred Fifty Six Thousand, Five Hundred and Forty Nine Dollars and Twenty Cents (\$156,549.20) shall be used by the Trustees to implement a restoration or preservation project in the vicinity of the Incident that will compensate the public for natural resource injuries and losses caused by the Incident. The Trustees anticipate using these funds to construct approximately three (3) acres of freshwater wetlands in the vicinity of the Incident or alternatively to implement a comparable restoration or preservation project that provides natural resource services equivalent to those injured or lost. Any such project will be implemented only in accordance with a final restoration plan that has been through a public notice and comment process. The remaining Eight Thousand, Seventy Seven Dollars (\$8,077.00) in the NRDAR Fund shall be available for use by the USFWS to cover their past and future costs of assessment and implementation of the project. Twenty Eight Thousand, Eight Hundred and Eighty Seven Dollars and Thirty Cents (\$28, 887.30) shall be available for use by the State Trustees to cover their costs of assessment and implementation accrued between September 1, 2008 and the date of completion of the project.

VII. COVENANTS AND RELEASES

A. Covenant Not to Sue by State Trustees

1. Subject to the Settling Party's satisfactory completion of all of its obligations under this Agreement, and except as specifically provided in Section VII (Reservation of Rights), the State Trustees hereby covenant not to sue or take any other civil or administrative action against the Settling Party for any civil cause of action under OPA, FWPCA, or any other federal, state or common law for natural resource damages that resulted from the Incident.

2. This covenant not to sue shall take effect upon the Settling Party's performance of all obligations under this Agreement and is conditioned upon the satisfactory performance by the Settling Party of all its obligations under this Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person or entity.

B. Covenant Not to Sue by the Federal Trustee

1. Subject to the Settling Party's satisfactory performance of all of its obligations under this Agreement and except as specifically provided in Section VII (Reservation of Rights) the Federal Trustee hereby covenants not to sue the Settling Party or take any other civil or administrative action against the Settling Party for any civil cause of action under OPA, FWPCA, or any other federal or common law for natural resource damages that resulted from the Incident.

2. This covenant not to sue shall take effect upon the Settling Party's performance of all its obligations under this Agreement and is conditioned upon the satisfactory performance by the Settling Party of all its obligations under this Agreement. This covenant not to sue extends only to the Settling Party and does not extend to any other person or entity.

C. Covenant Not to Sue by Settling Party

1. The Settling Party hereby covenants not to sue and agrees not to assert any of the following claims or causes of action against the State of Texas or the United States pursuant to any Federal, State, or common law for any claims arising from or relating to natural resource damages resulting from the Incident:

a. Any direct or indirect claim for reimbursement for removal costs or damages from the Oil Spill Liability Trust Fund (established pursuant to the Internal Revenue

Code, 26 U.S.C. §9509) through Sections 1002, 1008, 1012, or 1013 of OPA (33 U.S.C. §§2702, 2708, 2712 and 2713) or any other provision of state or federal law; or

b. Any claims arising out of activities related to the restoration or preservation project, including claims based on the Trustees' selection of the restoration or preservation project, oversight of the restoration or preservation project, or approval for such activities.

VIII. RESERVATION OF RIGHTS

A. Notwithstanding any other provision of this Agreement, the Trustees reserve the right to institute civil or administrative proceedings as applicable against the Settling Party for the recovery of natural resource damages based upon the following:

1. Conditions that were unknown to the Trustees as of the Effective Date of this Agreement that are discovered and which indicate that there is injury to, destruction of, or loss of additional natural resources; or

2. New information that is received by the Trustees after the Effective Date of this Agreement that indicates that there is injury to, destruction of, or loss of use of resources of a type unknown to the Trustees as of the Effective Date of this Agreement.

B. Information and conditions known to the Trustees with respect to the Incident as of the Effective Date of this Agreement shall include only the information and the conditions set forth in this Agreement.

C. Nothing in this Agreement 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:

1. The Settling Party's failure to satisfy any obligations or requirements of this Agreement;

2. Claims brought on behalf of the State of Texas or the United States for costs, damages and expenses of any sort, other than for the natural resource damages resulting from the Incident that is the subject of this Agreement;

3. Liability arising from any future discharges of Oil other than the Incident that is the subject of this Agreement;

4. Liability arising from any discharges of Oil at any time or location that is not the subject of this Agreement, including any Oil removed from the location of the Incident that is the subject of this Agreement and disposed of at another location;

5. Any and all criminal liability; and

6. Any matter not expressly included in Section VI (Covenants and Releases) of this Agreement.

D. The failure of the Trustees to insist upon strict and prompt performance of any provision of this Agreement shall not operate as a waiver of any requirement of this Agreement 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.

E. Nothing in this Agreement is intended to be, nor shall be construed as, a waiver of the State of Texas' or the United States' sovereign immunity relating to suit, liability, and the payment of damages.

IX. EFFECT OF SETTLEMENT

A. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person or entity not a Party to this Agreement. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Agreement may have under applicable law. Except as otherwise expressly provided in this Agreement, each of the Parties expressly reserves any and all rights (including any right of contribution against third parties), defenses, claims, demands, and causes of action that each Party may have against any person or entity not a Party hereto with respect to any matter, transaction, or occurrence relating in any way to natural resource damages resulting from the Incident.

B. It is expressly understood and agreed that this is a settlement and release of disputed claims and that nothing contained herein shall be construed as an admission of liability by or on behalf of the Settling Party, all liability being hereby expressly denied. This Agreement may not be used or construed as an admission against Settling Party in any way, including, but not limited to the Incident, or the effects of the Incident, if any, or any damages or liability resulting from the Incident.

X. CERTIFICATIONS

A. The Settling Party certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the Trustees all information requested by the Trustees regarding potential natural resource damages related to the Incident that is currently in the possession of the Settling Party, its officers, employees, contractors and agents.

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

XI. TERMINATION

This Agreement shall terminate upon the Settling Party's satisfactory performance of all its obligations under this Agreement. The termination of this Agreement shall not affect the following provisions: Section VI (Covenants and Releases), Section VII (Reservation of Rights) and Section VIII (Effect of Settlement).

XII. SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way.

XIII. COUNTERPARTS

This Agreement may be signed in any number of counterparts and, as signed, shall constitute one Agreement, binding on all of the Parties hereto even though all of the Parties do not sign the same counterpart.

XIV. COMPLETE AGREEMENT

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

EXPLORER PIPELINE


By: Curtis L. Craig
Signature of Authorized Official

Curtis L. Craig
Printed Name

V.P. & General Counsel
Title

1/22/09
Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

By: 
Signature of Authorized Official

MARK Vickery
Printed Name

Executive Director
Title

2-11-08
Date

TEXAS GENERAL LAND OFFICE

By: 
Signature of Authorized Official

Larry Laine
Printed Name

Depty Commissioner & Chief Clerk
Title

11/29/09
Date

TEXAS PARKS AND WILDLIFE DEPARTMENT

By: 
Signature of Authorized Official

Carter Smith
Printed Name

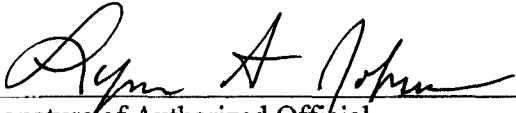
Executive Director
Title

2 February 2009
Date

UNITED STATES FISH AND WILDLIFE SERVICE

on behalf of the Department of the Interior

By:


Signature of Authorized Official

Lynn A. Johnson
Printed Name

Regional Solicitor
Title

January 23, 2009
Date