

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

UNITED STATES OF AMERICA

and

**ARKANSAS GAME AND FISH
COMMISSION AND ARKANSAS
DEPARTMENT OF ENERGY AND
ENVIRONMENT, DIVISION OF
ENVIRONMENTAL QUALITY, AS
AGENCIES OF THE STATE OF
ARKANSAS**

Plaintiffs,

**EXXONMOBIL PIPELINE COMPANY
LLC and MOBIL PIPE LINE COMPANY**

Defendants

Civil Action No. 4:24-cv-473-KGB

CONSENT DECREE

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I. INTRODUCTION

A. This Consent Decree is entered into by and among Plaintiffs, the United States of America (“United States”) on behalf of the Secretary of the United States Department of the Interior (“DOI”), acting through the Director of the United States Fish and Wildlife Service (“USFWS”) (the “Federal Trustee”), and the Arkansas Game and Fish Commission (“AGFC”) and the Arkansas Department of Energy and Environment, Division of Environmental Quality (“DEQ”), as state agencies acting on behalf of the State of Arkansas (“State Trustees”), and ExxonMobil Pipeline Company LLC and Mobil Pipe Line Company (“Settling Defendants”).

B. Contemporaneously with the lodging of this Consent Decree, the United States, the AGFC and the DEQ filed a joint complaint in this action, asserting claims under Section 1002(a) and (b)(2)(A) of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702(a) and (b)(2)(A), and also as to the State under the Arkansas Water and Air Pollution Control Act (“AWAPCA”), Ark. Code Ann. §§ 8-4-101, *et seq.* and 8-4-103(b)(3), and Arkansas Game and Fish Commission Code 01.00-H—Restitution, against Settling Defendants for damages for injury to, destruction of, loss of, or loss of use of, Natural Resources, resulting from the discharge of oil from Settling Defendants’ Pegasus Pipeline.

C. The Complaint alleges that: (i) on March 29, 2013, heavy crude oil from Settling Defendants’ Pegasus Pipeline was discharged into the environment and migrated into nearby waterways, wetlands, and entered Dawson Cove, an inlet area at the southwest end of Lake Conway, in and around Mayflower, Faulkner County, Arkansas (the “Release Incident”); (ii) the Release Incident resulted in injuries to, destruction of, loss of, or loss of use of natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Plaintiffs; (iii) the USFWS as the “Federal Trustee” and AGFC and DEQ as the “State Co-

Trustees” have incurred unreimbursed Natural Resource Damage Assessment Costs as a result of the Release Incident, and (iv) Defendants are liable for Natural Resource Damages for such injuries, destruction and losses, including Natural Resource Damage Assessment Costs under OPA, AWAPCA, and AGFC Code 01.00-H.

D. The Federal Trustee is authorized to act pursuant to Section 1006(b)(2) of OPA, 33 U.S.C. § 2706(b)(2), Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) (40 C.F.R. §§ 300.600, *et seq.*) and Executive Order 12580 (3 C.F.R., 1987 Comp. p. 193, 52 Fed. Reg. 2923 (January 23, 1987) as amended by Executive Order 12777 (56 Fed. Reg. 54757 (October 19, 1991)). AGFC and DEQ are designated as trustees by the Governor of Arkansas pursuant to Section 1006(b)(3) of OPA, 33 U.S.C. § 2706(b)(3), and subpart G of the NCP. Under these authorities, each trustee acts on behalf of the public to seek damages for the injury to, destruction of, or loss of Natural Resources resulting from the discharge of oil into the environment.

E. Settling Defendants, with the oversight of DEQ and the U.S. Environmental Protection Agency (“EPA”) and in coordination with AGFC and the USFWS, undertook cleanup actions to address the Release Incident. The cleanup actions included surveying oiled areas, conducting extensive environmental confirmation sampling of soils, sediments, vegetation, groundwater, and surface water, and performing other required remedial activities.

F. The Federal Trustee and State Co-Trustees (collectively referred to herein as the “Trustees”) are trustees of Natural Resources that the Trustees contend are or were injured, or threatened, as a result of the Release Incident, and entered into a Memorandum of Agreement, dated February 2015 (“MOA”), providing a framework for coordinating Natural Resource Damage Assessment and Restoration efforts. Pursuant to the MOA, AGFC is the lead trustee for

the assessment and restoration planning. Among other assessment activities, the Trustees performed surveys and collected significant ephemeral data related to aquatic habitat, supported biota – including fish, terrestrial habitat and supported biota, birds, and services provided by the natural resources – and post-cleanup environmental conditions of the Assessment Area. The Trustees’ assessment in this matter focused on injuries and Damages to Natural Resources within the Assessment Area defined below. The Trustees’ surveys and data gathered for the assessment since the Release Incident have fully characterized the injuries and Damages to Natural Resources within the Assessment Area, and the possibility of unknown conditions from the Release Incident significantly impacting Natural Resources in the future is remote. Timely implementation of the Restoration activities that this settlement makes possible will further benefit Natural Resources impacted by the Release Incident.

G. Based on the Trustees’ Natural Resource Damage Assessment work to assess the injuries to Natural Resources resulting from the Release Incident and experience with restoration efforts throughout the region, the Trustees believe the amount to be paid by the Settling Defendants as set forth in this Consent Decree constitutes adequate and reasonable compensation for Natural Resource Damages arising from the Release Incident.

H. Settling Defendants have previously reimbursed approximately \$402,977.71 of Assessment Costs incurred by the State Trustees.

I. The Trustees have prepared a Draft Restoration Plan for the Release Incident and will be submitting it for public comment, as provided for under 15 C.F.R. § 990.55.

J. By entering into this Consent Decree, Settling Defendants do not admit the allegations in the Complaint filed in this action.

K. The Parties agree, and the Court, by entering this Consent Decree, finds that this

Consent Decree: (1) has been negotiated by the Parties in good faith; (2) will avoid potentially prolonged and complicated litigation among the Parties; (3) will expedite natural resource Restoration actions to be performed by the Trustees; and (4) is fair, reasonable, in the public interest, and consistent with the purposes of OPA, AWAPCA, and AGFC Code 01.00-H.

NOW, THEREFORE, without adjudication of any issue of fact or law, except as provided in Section II (Jurisdiction) below, and with the consent of the Parties,

IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. §§ 1331 and 1345, and personal jurisdiction over the Parties to this action for the purpose of entry and enforcement of this Consent Decree. This Court has pendent jurisdiction over the State law claims pursuant to 28 U.S.C. § 1367(a). Venue lies in the Eastern District of Arkansas pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district. For the purposes of this Consent Decree or any action to enforce the Consent Decree, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

2. For purposes of this Consent Decree, the Settling Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 1002(a) and (b)(2)(A) of OPA, 33 U.S.C. § 2702 (a) and (b)(2)(A).

III. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the Parties and each of their successors, assigns, or other entities or persons otherwise bound by law to comply with this Consent Decree.

4. Any change in ownership or corporate status of Settling Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendants' or their successors' and assigns' rights or responsibilities under this Consent Decree. In any action to enforce this Consent Decree, Settling Defendants shall not raise as a defense the failure by any of their respective officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

5. Unless otherwise expressed herein, terms used in this Consent Decree that are defined in Section 1001 of OPA, 33 U.S.C. § 2701, and in the regulations promulgated under OPA at 15 C.F.R. § 990.30, shall have the meaning assigned to them in OPA or in such regulations. In addition, whenever the terms set forth below are used in this Consent Decree, the definitions specified hereinafter shall apply:

a. "DEQ" shall mean the Arkansas Department of Energy and Environment, Division of Environmental Quality.

b. "AGFC" shall mean the Arkansas Game and Fish Commission.

c. "Assessment Area" means the total geographic area that was evaluated for potential injuries to Natural Resources caused by the Release Incident as depicted on Maps in Appendix

A. The portion of the Assessment Area evaluated for potential habitat injuries included the site

of the Pegasus Pipeline breach and release into the adjacent residential area, continuing along the drainage ditch adjacent to North Main Street as it flows east through culverts under U.S. Highway 65 and Interstate 40, and then downstream into wetlands and Dawson Cove adjacent to Lake Conway in Mayflower, Faulkner County, Arkansas (*see* the red-shaded area depicted in Appendix A). The Trustees also evaluated the potential for transport of spilled oil into portions of Lake Conway adjacent to Dawson Cove. The portion of the Assessment Area evaluated for potential wildlife injuries included surrounding land and water where oiled wildlife were either found, or likely to be found, based on wildlife search team activity and oiled wildlife reports received from the public (*see* the entire, blue-shaded circle depicted in Appendix A). The portion of the Assessment Area evaluated for recreational fishing impacts included all of Lake Conway (*see* the yellow-shaded areas depicted in Appendix A).

d. “Assessment Costs” means all costs of the Natural Resource Damage Assessment relating to the Release Incident within the meaning of Section 1002(b)(2) and 1006(d)(1)(C) of OPA, 33 U.S.C. §§ 2702(b)(2)(A), 2706 (d)(1)(C), and AWAPCA, Ark. Code Ann. § 8-4-103(b)(3), incurred by the Trustees resulting from the Release Incident.

e. “Consent Decree” shall mean this Consent Decree and any appendices attached hereto. In the event of any inconsistency between a provision of Sections I – XXII of this Consent Decree and a provision of any appendix, the provision of the Consent Decree controls.

f. “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, federal holiday, or State of Arkansas holiday, the period shall run until the close of business of the next working day.

g. “DOI” shall mean the United States Department of the Interior.

h. “DOI NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and

Restoration Fund.

- i. “Effective Date” shall mean the date defined in Paragraph 34.
- j. “Federal Trustee” shall mean the Secretary of the United States Department of the Interior, represented by USFWS, as the federal official designated to act on behalf of the public as trustee for natural resources under OPA Section 1006(b)(2), 33 U.S.C. § 2706(b)(2).
- k. “Future Trustee Costs” shall mean the Natural Resources restoration planning, implementation, monitoring, assessment, and oversight costs to be incurred by the Trustees in connection with Restoration, including costs to draft and finalize any Restoration Plan(s), environmental compliance (including permitting, if any), and to implement and oversee implementation of Restoration as well as administration of general Trustee responsibilities, such as maintaining an administrative record and administratively closing the case. Future Trustee Costs shall include Trustee costs incurred after July 31, 2021.
- l. “Interest” shall be calculated at the rate set forth in 28 U.S.C. § 1961.
- m. “Mayflower Pegasus Pipeline Oil Spill Restoration Account” or Account shall mean a separate project-numbered account established within the DOI NRDAR Fund, which will be funded by the Settling Defendants in accordance with Section IV (Payments by the Settling Defendants) and maintained by DOI in accordance with Section VIII (Mayflower Pegasus Pipeline Oil Spill Restoration Account for Natural Resource Restoration).
- n. “Natural Resources” shall have the meaning provided in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).
- o. “Natural Resource Damages” shall mean the damages described at Sections 1002(b)(2)(A) and 1006(d) of OPA, 33 U.S.C. §§ 2702(b)(2)(A) and 2706(d), and in Section 311(f)(4) and (5) of the Clean Water Act, 33 U.S.C. § 1321(f)(4) and (5).

- p. “Natural Resource Damage Assessment” shall mean the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine damages for injuries to Natural Resources.
- q. “OPA” shall mean the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. §§ 2701-et seq.
- r. “Oil Spill Liability Trust Fund” shall mean the fund defined in Section 1001(11) of OPA, 33 U.S.C. § 2701(11).
- s. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.
- t. “Parties” or “Party” (as applicable in the singular) shall mean the United States, the State Trustees, and the Settling Defendants.
- u. “Release Incident” shall mean the discharge of heavy crude oil from Settling Defendants’ Pegasus Pipeline into the environment and migration into nearby waterways, wetlands, and a portion of Lake Conway in and around Mayflower, Faulkner County, Arkansas beginning on or about March 29, 2013.
- v. “Removal Costs” and “Damages” shall have the meanings ascribed to them pursuant to Sections 1001(5), 1001(31), and 1002(b) of OPA, 33 U.S.C. §§ 2701(5), 2701(31), and 2702(b).
- w. “Restore”, or “Restoration” shall mean any action or combination of actions to restore, rehabilitate, replace, or acquire the equivalent of any Natural Resource and services, including recreational opportunities that are alleged to be injured, lost, or destroyed as a result of the Release Incident.
- x. “Restoration Funds” shall mean the amount deposited in the DOI NRDAR Fund pursuant to Paragraph 7.a. as the Mayflower Pegasus Pipeline Oil Spill Restoration Account for the joint

benefit and use of the Trustees in Restoration of Natural Resources in accordance with Section VIII.

y. “Restoration Plan” or “Plan” shall mean a plan or plans to be developed by the Trustees in accordance with OPA and its underlying regulations at 15 C.F.R. §§ 990.53 – 990.56.

z. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

aa. “Settling Defendants” shall mean ExxonMobil Pipeline Company LLC and Mobil Pipe Line Company, along with their successors.

bb. “State” shall mean the State of Arkansas.

cc. “State Trustees” shall mean AGFC and DEQ, designated by the Governor of the State of Arkansas to act on behalf of the public as trustees for natural resources under OPA §1006(b)(3), 33 U.S.C. § 2706(b)(3), and AWAPCA, Ark. Code Ann. § 8-4-103(b)(3).

dd. “Subparagraph” shall mean a portion of this Consent Decree identified by a lower-case letter.

ee. “Trustees” shall mean the Federal Trustee and State Trustees, and their designees, who act on behalf of the public as trustees for Natural Resources.

ff. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including the Department of the Interior.

V. OBJECTIVES

6. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to provide funding by Settling Defendants to the Trustees to Restore the Natural Resources allegedly injured, destroyed, or lost as a result of the Release Incident, including funding for planning, implementation, and oversight of the Restoration work and Future Trustee Costs; (ii) to provide payment by Settling Defendants to the Trustees to reimburse unpaid Assessment Costs

incurred by the Trustees, Future Trustee Costs and Restoration activities; and (iii) to resolve the Plaintiffs' claims against Settling Defendants for Natural Resource Damages as provided herein.

VI. PAYMENTS BY SETTLING DEFENDANTS

7. Settling Defendants shall make payments totaling \$1,755,082.49, plus applicable Interest, to the Plaintiffs in the manner described herein for Natural Resource Damages. Settling Defendants are jointly and severally liable for such payments:

a. Payment for Restoration Funds of Natural Resources. Within 45 Days of the Effective Date, Settling Defendants shall pay a total of \$1,300,000 to the United States as a joint recovery for Restoration of Natural Resources by the Plaintiffs (the "Restoration Funds"). The Restoration Funds paid shall be deposited in the DOI NRDAR Fund as the Mayflower Pegasus Pipeline Oil Spill Restoration Account for the joint benefit and use of the Trustees in Restoration of Natural Resources in accordance with Section XVIII.

b. Payment of Future Trustee Costs to United States. Within 45 days after the Effective Date, Settling Defendants shall pay \$75,000.00 to the United States. Subject to the deduction required by the 1994 CJS Appropriations Act, this amount shall be deposited in the Mayflower Pegasus Pipeline Oil Spill Restoration Account within the DOI NRDAR Fund as a prepayment to reimburse Future Trustee Costs of the DOI.

c. Payment of Assessment Costs and Future Trustee Costs to State Trustees. Within 45 days after the Effective Date, Settling Defendants shall pay (i) \$340,082.49 to the State for reimbursement of Assessment Costs incurred by the State, and (ii) \$40,000.00 to the State as a prepayment to reimburse the State Trustees for Future Trustee Costs.

8. Procedures for Payments to the United States

a. The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Eastern District of Arkansas will provide to Settling Defendants instructions for making the payment under Paragraphs 7.a. and 7.b. including a Consolidated Debt Collection System (“CDCS”) reference number. Settling Defendants shall make such payments at <https://www.pay.gov> in accordance with the FLU’s instructions, including providing the CDCS Number.

b. Settling Defendants shall send notice of the payments under Paragraph 7.a. and 7.b. to the United States in accordance with Section XIV (Notices). The notices shall reflect that the payment is being made for the “Mayflower Pegasus Pipeline Oil Spill Natural Resource Damage Settlement” and shall reference the civil action number, DOJ Case Number 90-5-1-1-10862/1.

9. Procedures for Payments to the State.

a. Settling Defendants shall make payments under Paragraph 7.c. for Assessment Costs and Future Trustee Costs by (1) electronic funds transfer (“EFT”) into AGFC’s bank deposit account or (2) delivering checks made payable to the “Arkansas Game and Fish Commission” attention: Emily Shumate CFO, AGFC Fiscal Division, 2 Natural Resources Drive, Little Rock, AR 72205, for deposit in the State Game Protection Mayflower Oil Spill Sub Fund. Delivery shall be made by EFT in accordance with the AGFC’s instructions, USPS Certified Mail Restricted Delivery, or other mutually agreed method.

b. Settling Defendants shall send notices of payments to the State in accordance with Section XIV (Notices).

10. Interest shall be paid by Settling Defendants on any amounts not paid within the allotted time. If Interest is owed due to late payment under this Section, Interest shall accrue from the date of lodging of this Consent Decree and continue to accrue through the date of full payment. Payment of Interest shall be made in accordance with the instructions provided in Paragraphs 8 and 9. Payment of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Plaintiffs for the Settling Defendants' failure to make timely payments under this Consent Decree including, but not limited to, payment of stipulated penalties pursuant to Section VII (Stipulated Penalties).

VII. STIPULATED PENALTIES

11. Assessment of Stipulated Penalties. For each failure to make any payment required under Paragraph 7.a., 7.b., or 7.c. when due, Settling Defendants shall pay a stipulated penalty as provided below in this Section VII.

12. Stipulated penalties shall accrue at a rate of two thousand dollars (\$2,000) per day for each of the first thirty (30) days that a payment is late, and at the rate of five thousand dollars (\$5,000) per day for each additional day that a payment is late. Stipulated penalties shall begin to accrue on the day after a required payment is due, and such penalties shall continue to accrue until the date on which the required payment is received. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

13. In the case of late payments due under Paragraph 7.a., above, one-half of the accrued stipulated penalties, together with any Interest thereon, shall be paid to the United States in the manner specified in Paragraph 8, and one-half of the accrued penalties, together with any Interest thereon, shall be paid to the State in the manner specified in Paragraph 9. Stipulated

penalties, together with any Interest thereon, owed to the United States for late payments due under Paragraph 7.b. shall be paid to the United States in the manner specified in Paragraph 8. Stipulated penalties, together with any Interest thereon, owed to the State for late payments due under Paragraph 7.c. shall be paid to the States in the manner specified in Paragraph 9.

14. Notice and Demand. In the event of a failure to make a timely payment required under Paragraph 7, above, either Plaintiff may provide Settling Defendants with a written notice of noncompliance and a demand for payment of stipulated penalties, in the manner specified in Section XIV of this Consent Decree (Notices). The demand should include a description of the noncompliance and should specify the amount of the stipulated penalties owed to each Plaintiff. However, stipulated penalties for any violation of Paragraph 7 shall accrue as provided in Paragraph 11, above, regardless of whether Settling Defendants have been notified of a violation.

15. Settling Defendants shall pay stipulated penalties as provided below in this Section VII within thirty (30) days of receipt of written demand for such stipulated penalties. Settling Defendants shall send notices of any payment under this Section to each Plaintiff receiving a payment. Any such notice must identify the payment as a stipulated penalty paid under this Consent Decree.

16. Interest. If Settling Defendants fail to pay any stipulated penalties when due, Settling Defendants shall pay Interest on the unpaid balance of any stipulated penalties due. Such Interest shall begin to accrue on the thirty-first day (31) past the date of demand for stipulated penalties.

17. Payment Instructions. All stipulated penalty and Interest payments due under this Section VII to the United States shall be paid in accordance with Section VI and accompanied by a reference to this Consent Decree, be identified as “Stipulated Penalties,” and reference

“Mayflower Natural Resource Damage Settlement.” Settling Defendants shall pay any stipulated penalties and any related Interest to the State by electronic funds transfer in accordance with instructions to be provided by the State. Such funds shall be deposited by the State in a general restoration account for assessment activities. Notice of payment of a stipulated penalty shall be made to the appropriate Trustees in the manner specified in Section XIV (Notices).

18. Stipulated penalties accrue as provided in this Section regardless of whether Plaintiffs have notified Settling Defendants of a violation. A failure by any Plaintiff to insist upon strict and prompt performance of any provision of this Consent Decree does not operate as a waiver of any requirement of the Consent Decree or of either Plaintiff’s right to enforce such provision in the future.

19. The payment of stipulated penalties does not alter any other obligation of Settling Defendants under the Consent Decree.

20. Notwithstanding any other provision of this Section, any Plaintiff may, in its unreviewable discretion, waive any portion of any stipulated penalties owed to that Plaintiff under the Consent Decree.

21. Non-Exclusivity of Remedy. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the authority of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendants’ violation of this Consent Decree or of the statutes, regulations, or rules upon which it is based.

VIII. MAYFLOWER PEGASUS PIPELINE OIL SPILL RESTORATION ACCOUNT FOR NATURAL RESOURCE RESTORATION

22. All funds paid under Paragraph 7.a. (Restoration Funds) into the Mayflower Pegasus Pipeline Oil Spill Restoration Account established within the DOI NRDAR Fund shall

be held solely for use by the Trustees for Restoration of Natural Resources allegedly injured as a result of the Release Incident in accordance with this Consent Decree. The Trustees will use the Restoration Funds to restore, rehabilitate, replace, or acquire the equivalent of any Natural Resource and its services injured, lost, or destroyed as a result of the Release Incident in accordance with the Restoration Plan. The allocation of Restoration Funds for specific projects or categories of projects will be set forth in a Restoration Plan approved by the Trustees, after public notice, opportunity for public input, and consideration of public comment on the draft Restoration Plan, as required under OPA and the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* AGFC will be the lead Trustee for Restoration Plan implementation. Upon request by the Trustees, the DOI NRDAR Fund Restoration Manager shall transfer Restoration Funds held in the Mayflower Pegasus Pipeline Oil Spill Restoration Account, to AGFC for deposit in the State Game Protection Mayflower Oil Spill Sub Fund. The activities for which Restoration Funds may be applied include: (a) Restoration planning, including any further assessment needed to develop and finalize Restoration plans; (b) design and implementation of Restoration projects, including oversight of Restoration; (c) administrative expenses and indirect costs related to Restoration planning or implementation; and (d) operation, maintenance, and monitoring of completed Restoration projects and adaptive management to reinstate or enhance the effectiveness of Restoration.

23. Decisions regarding any use or expenditure of funds under this Section shall be made by the Trustees. Settling Defendants may not challenge or dispute, in any forum or proceeding, any decision by the Trustees regarding the use of Restoration Funds under this Section or the selection or implementation of Restoration relating to the Assessment Area, except that it may participate in opportunities for public comment on Trustee proposals that are formally

noticed for comments by the general public.

IX. COVENANTS BY THE PLAINTIFFS

24. Subject to Section X (Reservations of Rights by Plaintiffs), the United States and the State covenant not to sue or take administrative action against Settling Defendants pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), or Section 311(f) (4) and (5) of the CWA, 33 U.S.C. § 1321(f) (4) and (5), or State law, for Natural Resource Damages resulting from the Release Incident. These Covenants (a) take effect upon the Effective Date, (b) are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree, (c) extend to the successors of a Settling Defendant but only to the extent that the alleged liability of the successor is based solely on its status as a successor of a Settling Defendant, and (d) do not extend to any other person.

X. RESERVATION OF RIGHTS BY THE PLAINTIFFS

25. Reservations of Rights. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters other than those expressly specified in the covenants not to sue set forth in Paragraph 24, including without limitation the following:

- a. Claims for liability for Settling Defendants' failure to meet a requirement of this Consent Decree;
- b. Claims for liability for Natural Resource Damages that are not a result of the Release Incident;

- c. Claims for criminal liability;
- d. Claims for liability for violations of State or Federal law that occur after the date of lodging of this Consent Decree;
- e. Claims for liability for civil penalties and injunctive relief under the Clean Water Act, or State law, associated with the Release Incident; and
- f. Claims, other than claims for Natural Resource Damages related to the Release Incident, that the United States, on behalf of the United States Environmental Protection Agency or the United States Coast Guard, or the State may have under any applicable law, including for recovery of OPA Removal Costs, or other costs, and damages.

26. Pursuant to 33 U.S.C. § 2715(c), the United States expressly reserves, and Settling Defendants expressly acknowledge, the right of the United States to institute proceedings, to take judgment thereon, and collect such judgment(s) thereon against Settling Defendants or any other liable person, to seek and recover Removal Costs and Damages resulting from the Release Incident based on claims submitted to or filed against the United States, including claims against the Oil Spill Liability Trust Fund.

XI. COVENANTS BY SETTLING DEFENDANTS

27. Settling Defendants hereby covenant not to sue and agree not to assert or maintain any claims or causes of action against the United States or the State or their respective officials, employees, agents, contractors, departments, agencies, attorneys, directors, representatives, administrations and bureaus, related to Natural Resource Damages arising from the Release Incident, the assessment of Natural Resource injuries and Damages, or any Restoration actions

relating to the Assessment Area or Release Incident, including but not limited to any direct or indirect claim under OPA §§ 1007, 1008, 1012, 1013 or 1015(a), 33 U.S.C. §§ 2707, 2708, 2712, 2713, 2715(a), or AWAPCA, Ark. Code Ann. § 8-4-101 *et seq.* Settling Defendants hereby covenant and agree not to assert or maintain, any claims against the Oil Spill Liability Trust Fund relating to any Natural Resource Damages, or any claims for recovery of any costs incurred by Settling Defendants pursuant to this Consent Decree. If Settling Defendants, or any affiliate of a Settling Defendant, pursues any claim for such costs or Damages against the United States or the State, Settling Defendants shall indemnify the United States or the State, as appropriate, for all costs incurred as a result of such claims.

XII. EFFECT OF SETTLEMENT

28. 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.

29. In any subsequent administrative or judicial proceeding initiated by the United States or the State relating to the Release Incident, Settling Defendants 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 or the State 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, as set forth in Section IX.

30. Nothing in this Consent Decree shall establish or be construed to establish any liability on the part of Settling Defendants or be used as evidence of any such liability on the part of Settling Defendants, in connection with any claims, including other claims arising from the

Release Incident.

31. This Consent Decree shall not preclude the United States or the State from instituting a separate or ancillary action to enforce the terms of this Consent Decree.

XIII. COSTS

32. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the amounts due under Section VI (Payments by Settling Defendants) or any stipulated penalties due but not paid under Section VII (Stipulated Penalties).

XIV. NOTICES

33. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed to those listed below. All notices under this Section are effective upon receipt, unless otherwise specified. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Consent Decree regarding such Party. Any Party may, by written notice to other Parties, change its designated notice recipient or notice address provided below.

As to the United States: Notice must be sent to DOJ and DOI.

For the Department of Justice

via email to:

eescdcopy.enrd@usdoj.gov

Ref: DJ # 90-5-1-1-10862/1

For the USFWS

Charmaine Pedrozo
Fish and Wildlife Biologist/Case Manager
United States Fish and Wildlife Service
Gulf Restoration Office
341 Greeno Road North, Suite A
Fairhope, Alabama 36532
Telephone: (251) 517-8005
Email: charmaine_pedrozo@fws.gov

For the Department of the Interior

Brigette J. Beaton
Attorney Advisor
U.S. Department of the Interior
Office of the Solicitor
75 Ted Turner Drive, S.W., Suite 304
Atlanta, Georgia 30303
Telephone: (404) 331-5611
Email: brigette.beaton@sol.doi.gov

As to the State of Arkansas:

For the AGFC

James F. Goodhart
John P. Marks
Arkansas Game and Fish Commission
Legal Division
2 Natural Resources Drive
Little Rock, Arkansas 72205
Telephone: (501) 223-6327
Fax: (501) 223-6463
Email: james.goodhart@agfc.ar.gov
Email: john.marks@agfc.ar.gov

For the DEQ

Michael McAlister, Deputy Chief Counsel
Arkansas Energy and Environment,
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317
Telephone: (501) 682-0744
Fax: (501) 682-0880
Michael.McAlister@adeq.state.ar.us

As to the Settling Defendants:

Kevin J. Vaughan
Senior Counsel, GSC & SSHE
Exxon Mobil Corporation
22777 Springwoods Village Parkway
Spring, Texas 77389
Telephone: (346) 467-9705
Email: kevin.j.vaughan@exxonmobil.com

Joseph A. Abel
ExxonMobil Environmental and Property Solutions Company
c/o Infineum
1900 East Linden Avenue, Building 28A
Linden, NJ 07036
Email: joseph.a.abel@exxonmobil.com

XV. EFFECTIVE DATE AND RETENTION OF JURISDICTION

34. This Consent Decree shall take effect upon entry of the Consent Decree by the Court or upon the Court granting a motion to enter this Consent Decree (either, “Effective Date”), whichever occurs first as recorded on the Court’s docket.

35. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

XVI. MODIFICATION

36. Any material modification of this Consent Decree shall be made only by written agreement of the Parties and shall take effect only upon approval by the Court.

37. Any non-material modification of this Consent Decree shall be made by written agreement of the Parties. Nothing in this Consent Decree shall be deemed to alter the Court’s power to enforce, supervise, or approve modifications to this Consent Decree. Unless all Parties to the Consent Decree agree on a modification, a party seeking a judicial order to modify the Consent Decree bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

38. The provisions of this Consent Decree are not severable. The Parties’ consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

39. Economic hardship or changed financial circumstances of Settling Defendants

shall not serve as a basis for modification of this Consent Decree.

XVII. TERMINATION

40. This Consent Decree will terminate automatically upon completion of the payments by the Settling Defendants of the amounts required under Section VI (Payments by Settling Defendants) and payment of any applicable stipulated penalties and Interest under Section VI (Stipulated Penalties).

XVIII. PUBLIC PARTICIPATION

41. This Consent Decree shall be lodged with the Court for at least thirty (30) Days for public notice and comment in accordance with Department of Justice policy and applicable State law.

42. The United States and the State reserve the right to withdraw or withhold consent if comments received regarding the Consent Decree disclose facts or considerations that indicate the Consent Decree is inappropriate, improper, or inadequate.

43. Settling Defendants consent to the entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of the Consent Decree or to challenge any provision of the Consent Decree, unless the Plaintiffs have notified Settling Defendants in writing that they no longer support entry of the Consent Decree.

44. 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.

XIX. SIGNATORIES AND SERVICE

45. The Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice or designee, the undersigned representatives of the State, and the undersigned representatives of Settling Defendants each certify 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.

46. This Consent Decree may be signed in counterparts and, as executed, shall constitute one agreement, and its validity shall not be challenged on that basis.

47. Settling Defendants shall identify, on the attached signature page, the name and address of agents who are authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Settling Defendants need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. INTEGRATION

48. 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, concerning the settlement embodied therein. 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.

XXI. APPENDIX

49. Appendix A is attached to and incorporated into this Decree.

Appendix A is the set of two maps depicting the Assessment Area.

XXII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

50. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 162(f)(2)(A)(ii), the payments required by Paragraph 7 are restitution, remediation or required to come into compliance with law.

XXIII. FINAL JUDGMENT

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

SO ORDERED THIS _____ DAY OF _____, 2024.

UNITED STATES DISTRICT JUDGE
Eastern District of Arkansas

The UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Arkansas v. ExxonMobil Pipeline Company LLC et al.:

FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

 5/1/2024
KENNETH G. LONG

Senior Trial Attorney (DC Bar No. 414791)
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611
Telephone: (202) 514-2840
Fax: (202) 616-6584
Email: kenneth.long@usdoj.gov

JONATHAN D. ROSS
United States Attorney
Eastern District of Arkansas

SHANNON SMITH
Assistant United States Attorney
United States Attorney's Office
Eastern District of Arkansas
P.O. Box 1229
Little Rock, Arkansas 72203
Telephone: (501) 340-2600
Fax: (501) 340-2730
Email: shannon.smith@usdoj.gov

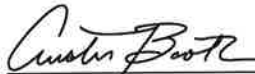
Of Counsel:

BRIGETTE J. BEATON
Attorney, U.S. Department of the Interior
Office of the Solicitor
75 Ted Turner Drive, Suite 304
Atlanta, GA 30303
Tele: (404) 331-5611
Email: brigitte.beaton@sol.doi.gov

The UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Arkansas. v. ExxonMobil Pipeline Company LLC, et al.:

FOR THE STATE OF ARKANSAS:

ARKANSAS GAME AND FISH COMMISSION



AUSTIN BOOTH
Arkansas Game and Fish Commission
Director
2 Natural Resources Drive
Little Rock, Arkansas 72205
Telephone: (501) 604-3808
Fax: (501) 223-6463
austin.booth@agfc.ar.gov

James F. Goodhart
Arkansas Game and Fish Commission
General Counsel, Legal Division
2 Natural Resources Drive
Little Rock, Arkansas 72205
Telephone: (501) 382-3358
Fax: (501) 223-6463
james.goodhart@agfc.ar.gov

The UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Arkansas v. ExxonMobil Pipeline Company LLC, et al.:

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY**



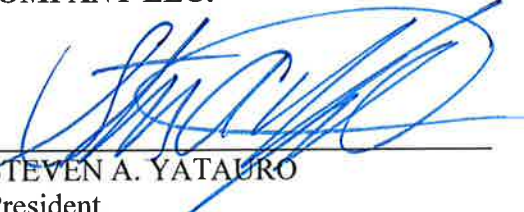
CALEB J. OSBORNE
Division Of Environmental Quality, Director
Chief Administrator, Environment
Arkansas Department of Energy & Environment
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317
Telephone: (501) 682-0744
caleb.osborne@arkansas.gov

Michael McAlister, Deputy Chief Counsel
Arkansas Energy and Environment,
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317
Telephone: (501) 682-0744
michael.mcalister@arkansas.gov

The UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Arkansas. v. ExxonMobil Pipeline Company LLC et al.:

FOR EXXONMOBIL PIPELINE COMPANY LLC:

APRIL 8, 2024
(Date)



STEVEN A. YATAURO
President
ExxonMobil Pipeline Company LLC
22777 Springwoods Village Pkwy.
Spring, Texas 77389


Agent authorized to accept service on behalf of EXXONMOBIL PIPELINE COMPANY LLC:

Kevin J. Vaughan
Senior Counsel, Environmental & Safety
Exxon Mobil Corporation
22777 Springwoods Village Parkway, N1.5B
Spring, Texas 77389

The UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of Arkansas. v. ExxonMobil Pipeline Company LLC et al.:

FOR MOBIL PIPE LINE COMPANY:

APRIL 8, 2024
(Date)

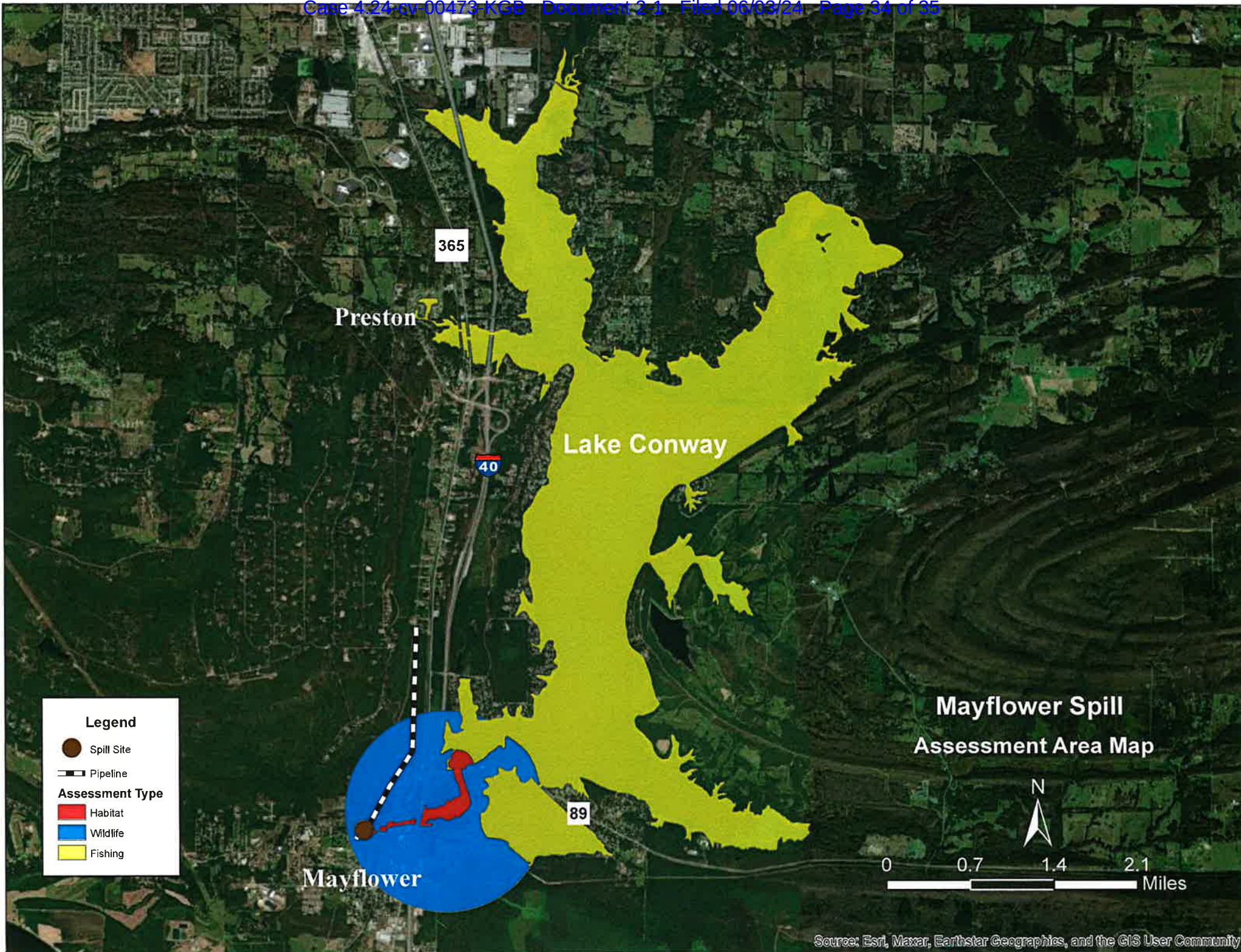


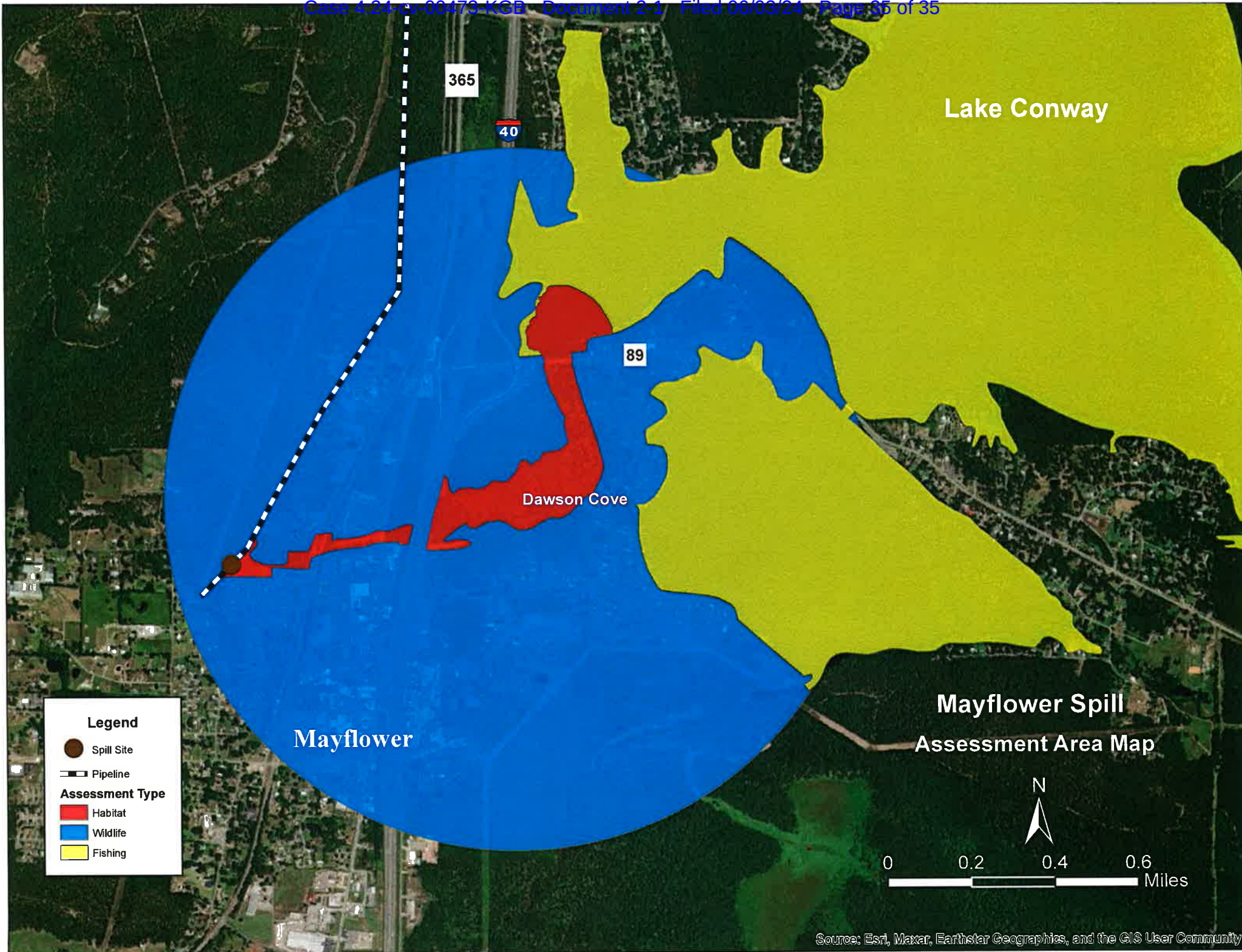
STEVEN A. YATAURO
President
Mobil Pipe Line Company
22777 Springwoods Village Pkwy.
Spring, Texas 77389

Agent authorized to accept service on behalf of MOBIL PIPE LINE COMPANY:

Kevin J. Vaughan
Senior Counsel, Environmental & Safety
Exxon Mobil Corporation
22777 Springwoods Village Parkway, N1.5B
Spring, Texas 77389

APPENDIX A





Lake Conway

365

40

89

Dawson Cove

Mayflower

Mayflower Spill

Assessment Area Map

N

0 0.2 0.4 0.6 Miles