IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA and STATE OF OKLAHOMA Plaintiffs, v. BNSF RAILWAY COMPANY, Defendant.	§ § § § § § § § § § §	CIVIL ACTION No.____

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	3
III.	PARTIES BOUND	4
IV.	STATEMENT OF PURPOSE	4
V.	DEFINITIONS	5
VI.	PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES	9
VII.	FAILURE TO MAKE PAYMENT	14
VIII.	CERTIFICATION OF SETTLING DEFENDANT	15
IX.	COVENANT NOT TO SUE BY PLAINTIFFS	15
X.	RESERVATION OF RIGHTS BY PLAINTIFFS	16
XI.	COVENANT NOT TO SUE BY SETTLING DEFENDANT	17
XII.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION	18
XIII.	RETENTION OF RECORDS	19
XIV.	RETENTION OF JURISDICTION	20
XV.	INTEGRATION	21
XVI.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	21
XVII	EFFECTIVE DATE	22
XVIII.	SIGNATORIES/SERVICE	22

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA and STATE OF OKLAHOMA Plaintiffs,	§ § § § §	
v.	§ §	CIVIL ACTION No.____
BNSF RAILWAY COMPANY, Defendant.	§ § § § §	

CONSENT DECREE

I. BACKGROUND

A. Contemporaneously with lodging this Consent Decree, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and the Secretary of the United States Department of the Interior ("DOI"), and the State of Oklahoma, on behalf of the Oklahoma Department of Environmental Quality ("ODEQ"), and the Oklahoma Secretary of the Environment (OSE), filed a complaint against the defendant in this matter ("Settling Defendant") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, (aka Superfund) seeking reimbursement of response costs incurred or to be incurred for response actions taken and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury destruction or loss, at or in

connection with the release or threatened release of hazardous substances at the Double Eagle Superfund Site in Oklahoma City, Oklahoma ("the Site").

B. As a result of the release or threatened release of hazardous substances, EPA, joined by the ODEQ, has undertaken response actions at or in connection with the Site under Sections 104 and 106 of CERCLA 42 U.S.C. §§ 9604 and 9606.

C. The total volume of waste sent to the Site has not been established with certainty. Early EPA investigations found total volumetric contributions of over four million gallons. Subsequent Union Pacific Railroad investigations indicated total contributions of approximately 12.7 million gallons.

D. Information currently known to EPA and the ODEQ supplied by Settling Defendant and through records regarding the Site gathered by EPA indicates that:

1. prompt settlement with Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. §9622(g)(l) and is appropriate under Section 122(j) of CERCLA, 42 U.S.C. § 9622(j);

2. the payment to be made by Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, the State, and by other persons is approximately thirty million dollars ($30,000,000); and

3. the volumetric contribution of hazardous substances contributed to the Site as represented by Settling Defendant is less than 50,000 gallons of waste diesel fuel; and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A) and the hazardous substances contributed by Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

E. The Settling Defendant does not admit any liability to Plaintiffs arising out the transactions or occurrences alleged in the complaint.

F. The United States, the State, and Settling Defendant agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendant.

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

II. JURISDICTION

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) and also has personal jurisdiction over

Settling Defendant. Settling Defendant consents to and 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 is binding upon the United States, the State, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Defendant, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. STATEMENT OF PURPOSE

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Settling Defendant to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a potentially responsible party from further involvement at the Site; and

c. to obtain settlement with Settling Defendant for its fair share of response costs and natural resource damages incurred and to be incurred at or in connection with the Site by the United States, the State, and by other persons, and to provide for full and complete contribution protection for Settling Defendant with regard to the Site pursuant to Sections 113(f)(2), 122(g)(5), and 122 (j) of CERCLA, 42 U.S.C. §§ 9613(f)(2), 9622(g)(5), 9622(g)(5) and 9622(j).

V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

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

b. "Consent Decree" shall mean this Consent Decree between the United States of America, State of Oklahoma and BNSF Railway Company.

c. "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, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Federal Natural Resource Trustee" shall mean the U.S. Department of the Interior, by and through the U.S. Fish and Wildlife Service.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Natural Resource Damages" shall mean damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from releases of hazardous substances at the Site. For the purposes of this Consent Decree, "Natural Resource Damages" shall mean the estimated sum of money necessary to restore, replace or acquire the equivalent of natural resources injured, destroyed or lost as a result of releases of hazardous substances at the Site, which shall include impairment of services

or functions of Natural Resources, as well as the Natural Resource Trustees' damage assessment costs. "Natural Resource Damages" shall also mean the Natural Resource Trustees' estimated costs to plan, design, permit, implement, administer, and monitor project(s) to restore, replace, or acquire the equivalent of injured natural resources, or to have these activities performed under their oversight.

j. "Natural resource" and "natural resources" shall mean land, fish, biota, air, water, groundwater, drinking water supplies, and such other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States Department of Interior and/or the State of Oklahoma, and shall also mean the services provided by such resources to other resources or to humans.

k. "Natural Resource Trustees" shall mean the State Natural Resource Trustee represented by the ODWC and the Federal Natural Resource Trustee represented by the Fish and Wildlife Service collectively.

l. "ODEQ" shall mean the Oklahoma Department of Environmental Quality and any successor departments, agencies, or instrumentalities of the State of Oklahoma.

m. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

n. "Parties" shall mean the United States, the State and Settling Defendant.

o. "Person" shall mean an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

p. "Plaintiffs" shall mean the United States and the State.

q. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

r. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

s. "Settling Defendant" shall mean BNSF Railway Company.

t. "Site" shall mean the Double Eagle Superfund Site located at 1900 NE First Street in Oklahoma City, Oklahoma County, Oklahoma. The Site covers approximately 12 acres and is bounded by the Union Pacific Railroad tracks on the north, Martin Luther King Boulevard on the east, a wooded area on the west, and a truck stop on the south. The Site also includes adjacent properties where contaminants from the Site have migrated, including the Radio Tower area, Parcel H, and associated areas of contamination described more fully in the Records of Decision for Source Control (OU1, issued on September 28, 1992) and Ground Water (OU2, issued on April 19, 1994).

u. "State" shall mean the State of Oklahoma, on behalf of the Oklahoma Department of Environmental Quality and the Oklahoma Secretary of the Environment.

v. "State Natural Resource Trustee" shall mean the Oklahoma Secretary of the Environment, or any duly designated official or agency of the State of Oklahoma acting as Natural Resource Trustee for the State pursuant to Section 1-2-101 of Title 27A of the Oklahoma Statutes.

w. "State Response Costs" shall mean all costs for removal, remediation, or monitoring including but not limited to direct and indirect costs, together with accrued interest

incurred by the ODEQ or any other person in response to the release or threatened release of hazardous substances at or in connection with the Site, but not including amounts reimbursed to the State by EPA.

x. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

VI. PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

5. Payment of Response Costs to EPA. Within 30 days after entry of this Consent Decree, Settling Defendant shall pay to EPA a settlement amount of $255,000.

6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Western District of Oklahoma following lodging of the Consent Decree.

7. At the time of payment, Settling Defendant shall also send notice that payment has been made to EPA and DOJ. Such notice shall reference the EPA Region and Site/Spill Identification Number 06B1, DOJ case number #90-11-2-857/2, and the civil action number.

8. The total amount to be paid to the EPA for Response Costs pursuant to Paragraph 5 shall be deposited in the EPA Hazardous Substance Superfund.

9. Payment of Response Costs to the State. Within 30 days after entry of this Consent Decree, Settling Defendant shall pay to the State a settlement amount of $30,000 for response costs incurred by the ODEQ.

10. Payment to the State shall be made by certified cashier's check made payable to the "State of Oklahoma". The check and any letter accompanying the check shall specify the name and address of the party making the payment, and specify that such payment is in regards to the "Double Eagle Superfund Site". Payment to the State shall be sent to:

Oklahoma Office of Attorney General
Attention: Ellen A. Phillips, Assistant Attorney General
313 N.E. 21st Street, Room 2081
Oklahoma City, Ok 73105

11. At the time of payment to the State for Response Costs, Settling Defendant shall also send notice to the ODEQ that such payment has been made. Notice shall include a copy of the certified cashier's check, specify that such payment was made in regard to the "Double Eagle Superfund Site" and be sent to:

STEVEN A. THOMPSON
Executive Director
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

12. Payment of Natural Resource Damages to State and Federal Natural Resource Trustees.

a. Within 30 days after entry of this Consent Decree, Settling Defendant shall pay to the Natural Resource Trustees a Natural Resource Damages settlement amount of $15,000. This amount includes $8,628.52 for the joint state and federal Natural Resource Damages ("NRD") settlement amount for injury to wildlife and habitat and $672.00 for federal assessment costs for the terrestrial claim to be paid in accordance with paragraph 12.b., $168.00 for State past assessment costs to be paid in accordance with paragraph 12.e., and $5,531.48 for the state

Natural Resource Damage claims for injury to groundwater resources to be paid in accordance with paragraph 12.d.

b. Payment of Joint State and Federal Natural Resource Damage Claims. Within 30 days after entry of this Consent Decree, Settling Defendant shall pay $8,628.52, the joint state and federal NRD settlement amount for injury to terrestrial wildlife and habitat and $672.00 for federal assessment costs, for a total of $9,300.52. The payment shall include interest accruing from the date on which the Consent Decree is entered with the Court, at the rate specified in 28 U.S.C. § 1961. Payment for the joint NRD settlement amount shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendants following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Oklahoma. Such monies are to be deposited in the NRDAR Fund, referencing: file number 14X5198 (NRDAR), Agency Code INTE, DOJ # 90-11-2-857/2, the name of the paying party and the NRDAR case name -- the Double Eagle Superfund Site, Oklahoma Co., OK. Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day.

c. At the time of payment, Settling Defendant shall send written notice of payment of the Joint Natural Resource Damages Claims to the State and the United States, together with a copy of any transmittal documentation, referencing NRDAR account number 14X5198, Agency Code INTE, DOJ # 90-11-2-857/2, the civil action number, the name of the paying responsible party, and the NRDAR case name -- the Double Eagle Superfund Site, Oklahoma Co., OK. The notice shall state that the payment is for Natural Resource Damages

sustained by the United States and the State of Oklahoma with respect to the Double Eagle Superfund Site in Oklahoma. The notices shall be sent to:

Bruce Gelber, Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611

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

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 4449
Washington, D.C. 20204

Martin Steinmetz
Tulsa Field Solicitor Office
United States Department of the Interior
7906 East 33d Street, Suite 100
Tulsa, Oklahoma 74104

Jerry J. Brabander
Field Supervisor
Fish & Wildlife Service
Division of Ecological Services
9014 East 21st
Tulsa, Oklahoma 74129

Miles Tolbert, Oklahoma Secretary of the Environment
3800 Classen Boulevard
Oklahoma City, Oklahoma 73118

William Ray
Oklahoma Department of Wildlife Conservation
1801 N. Lincoln Boulevard

Oklahoma City, Oklahoma 73152

Ellen Phillips, Assistant Attorney General
Environmental Protection Unit
Oklahoma Office of the Attorney General
313 N.W. 21st St., Room 2081
Oklahoma City, Oklahoma 73105

d. Payment of Claims for Injury to Groundwater. Within 30 days after entry of this Consent Decree, Settling Defendant shall pay to the State $5,531.48, the Natural Resource Damages settlement amount for injury to groundwater resources. Payment shall be by certified cashier's check made payable to the "State of Oklahoma" delivered to the:

Oklahoma Office of Attorney General
Attention: Ellen A. Phillips, Assistant Attorney General
313 N.E. 21st Street, Room 2081
Oklahoma City, Ok 73105

and shall clearly state either on the certified check and in any accompanying documentation that such payment is for the State's Natural Resource Damage claims for groundwater with respect to the Double Eagle Superfund Site in Oklahoma County, Oklahoma. At the time of payment, Settling Defendant shall also send notice of such payment including a copy of the certified check and any accompanying documentation, to:

Miles Tolbert, Oklahoma Secretary of the Environment
3800 Classen Boulevard
Oklahoma City, Oklahoma 73118

e. Payment to the State of Natural Resource Past Assessment Costs. Within thirty (30) days after entry of this Consent Decree, Settling Defendant shall pay to the State $168.00, the Natural Resource Damages settlement amount for assessment of damages of the

State's natural resources. Payment shall be made by certified cashier's check payable to the "State of Oklahoma" delivered to the:

Oklahoma Office of Attorney General
Attention: Ellen A. Phillips, Assistant Attorney General
313 N.E. 21st Street, Room 2081
Oklahoma City, Ok 73105

and shall clearly state either on the certified check and in any accompanying documentation that such payment is for past costs incurred by the State in the assessment of Natural Resource Damages at the Double Eagle Superfund Site in Oklahoma County, Oklahoma. At the time of payment, Settling Defendant shall also send notice of such payment including a copy of the certified check and any accompanying documentation, to:

Greg Duffy, Director
Oklahoma Department of Wildlife Conservation
1801 N. Lincoln Boulevard
Oklahoma City, Oklahoma 73152

VII. FAILURE TO MAKE PAYMENT

13. If Settling Defendant fails to make full payments within the time required by Section VI, Settling Defendant shall pay Interest on the unpaid balance, which shall continue to accrue on the unpaid balance through the date of payment. In addition, if Settling Defendant fails to make full payments as required by Section VI, the United States and the State may, in addition to any other available remedies or sanctions, bring an action against Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, for failure to make timely payment.

VIII. CERTIFICATION OF SETTLING DEFENDANT

14. By signing this Consent Decree, Settling Defendant certifies that to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to the United States and the State all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

IX. COVENANT NOT TO SUE BY PLAINTIFFS

15. In consideration of the payments that will be made by Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Section X (Reservations of Rights), the United States and the State covenant not to sue or take administrative action against Settling Defendant pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607

relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt of Settling Defendant's payments as required by Section VI of this Consent Decree. This covenant not to sue is conditioned upon: a) the satisfactory performance by Settling Defendant of all obligations under this Consent Decree; and b) the veracity of the information provided to EPA by Settling Defendant relating to Settling Defendant's involvement with the Site. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY PLAINTIFFS

16. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue in Paragraph 15. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendant with respect to:

a. liability for failure to meet a requirement of this Consent Decree;

b. criminal liability;

c. liability, based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant.

17. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against Settling Defendant in this action, or in a new action or to issue an administrative order to Settling Defendant seeking to compel Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States and the State for additional costs of response and natural resource damages if information is discovered which indicates that Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that Settling Defendant no longer qualifies as a *de minimis* party at the Site.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANT

18. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Oklahoma, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States or the State pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

19. Except as provided in Paragraph 21(Waiver of Claims) and Paragraph 23 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Section X, but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States or the State is seeking pursuant to the applicable reservation.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

21. Waiver of Claims. Settling Defendant agrees not to assert any claims or causes of action (including claims for contribution under CERCLA) that they may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against Settling Defendant.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. Except as provided in Paragraph 21 (Waiver of Claims), 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. Except as provided in Paragraph 21, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

23. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief 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 in the subsequent proceeding were or should have been brought in the instant action; provided however, that nothing in this Paragraph affects the enforceability of the covenants not to sue included in Section IX.

24. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken, all response costs and natural resource damages incurred or to be incurred, at or in connection with the Site, by the United States, the State, or any other person.

XIII. RETENTION OF RECORDS

25. Until ten (10) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession

or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

26. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA, DOJ and the State at least ninety (90) days prior to the destruction of any such records, and upon request by EPA, DOJ or the State, Settling Defendant shall deliver any such records to EPA or the State. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

27. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIV. RETENTION OF JURISDICTION

28. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION

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

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

30. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States and the State shall file with the Court any written comments received and the United States' and the State's responses thereto. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice, and the United States and the State reserve the right to oppose any attempt by any person to intervene in this civil action.

XVII. EFFECTIVE DATE

31. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraph 30.

XVIII. SIGNATORIES/SERVICE

32. The undersigned representative of Settling Defendant, the Deputy Chief of the Environmental Enforcement Section of the United States Department of Justice (or his delegate), and the signatories for the State, on behalf of the Oklahoma Department of Environmental Quality, and the Oklahoma Secretary of the Environment, certify that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

33. 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 either the United States or the State have notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

34. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. 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 local rules of this

Court. The Parties agree that Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

SO ORDERED in the matter of *United States and State of Oklahoma v. BNSF Railway Company*, relating to the Double Eagle Superfund Site, THIS ___ DAY OF _____, 2007,

_____
The HONORABLE ROBIN CAUTHRON
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and State of Oklahoma v. BNSF Railway Company*, relating to the Double Eagle Superfund Site.

FOR THE UNITED STATES OF AMERICA
UNITED STATES DEPARTMENT OF JUSTICE:

RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 9/7/07

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-2750

Date: Sept 4, 2007

CARA M. MROCZEK
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-1447

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and State of Oklahoma v. BNSF Railway Company*, relating to the Double Eagle Superfund Site.

FOR THE UNITED STATES OF AMERICA
UNITED STATES DEPARTMENT OF JUSTICE:

Date: _____

_____
H. LEE SCHMIDT
Assistant U.S. Attorney
Western District of Oklahoma
210 Park Avenue, Suite 400
Oklahoma City, OK 72102
405.553.4745

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and State of Oklahoma v. BNSF Railway Company*, relating to the Double Eagle Superfund Site.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 9/18/07

SAMUEL COLEMAN, P.E.
Director, Superfund Division
U. S. Environmental Protection Agency Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Date: 09/18/07

PAMELA J. TRAVIS
Assistant Regional Counsel
Office of Regional Counsel
U. S. Environmental Protection Agency Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and State of Oklahoma v. BNSF Railway Company*, relating to the Double Eagle Superfund Site.

FOR THE STATE OF OKLAHOMA on behalf of the Oklahoma Department of Environmental Quality and the Oklahoma Secretary of the Environment:

Date: 8/31/07

ELLEN PHILLIPS
Assistant Attorney General
Oklahoma Office of Attorney General
Environmental Protection Unit
313 N.E. 21st St., Room 2081
Oklahoma City, Oklahoma 73105
Office: (405) 522-4448
Fax: (405) 522-0608

Date: _____

MILES TOLBERT
Oklahoma Secretary of the Environment
3800 Classen Boulevard
Oklahoma City, Oklahoma 73118

Date: 8-28-07

STEVEN A. THOMPSON
Executive Director
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and State of Oklahoma v. BNSF Railway Company*, relating to the Double Eagle Superfund Site.

FOR THE STATE OF OKLAHOMA on behalf of the Oklahoma Department of Environmental Quality and the Oklahoma Secretary of the Environment:

Date: 8/27/07

ELLEN PHILLIPS
Assistant Attorney General
Oklahoma Office of Attorney General
Environmental Protection Unit
313 N.E. 21st St., Room 2081
Oklahoma City, Oklahoma 73105
Office: (405) 522-4448
Fax: (405) 522-0608

Date: 8/27/07

MILES TOLBERT
Oklahoma Secretary of the Environment
3800 Classen Boulevard
Oklahoma City, Oklahoma 73118

Date: _____

STEVEN A. THOMPSON
Executive Director
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

THE UNDERSIGNED PARTY enter into this Consent Decree in the matter of *United States and State of Oklahoma v. BNSF Railway Company,* relating to the Double Eagle Superfund Site.

FOR DEFENDANT BNSF RAILWAY COMPANY:

Date: 7/26/07

PAUL R. HOFERER
Vice President and General Counsel
P.O.Box 961056
Fort Worth, TX 76161-0056

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Holly Vandrovec
Kelly Hart & Hallman L.L.P.
301 Congress Ave., Suite 2000
Austin, Texas 78701