

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

**ORIGINAL**

**UNITED STATES OF AMERICA,**

**v.**

**EXXON MOBIL CORPORATION,  
Defendant.**

}	Case No.	(D. Col.)
}	Case No.	(D. Wyo.)
}	Case No.	(W.D. Okla.)
}	Case No.	(D. Kan.)
}	Case No.	(N.D. Tex.)

**JOINT FACTUAL STATEMENT**

**I. Introduction**

1. Defendant EXXON MOBIL CORPORATION ("ExxonMobil" or "Defendant") and the United States of America, by and through the Environmental Crimes Section of the United States Department of Justice and the United States Attorneys for the District of Colorado, District of Wyoming, Western District of Oklahoma, District of Kansas and Northern District of Texas, (collectively referred to herein as "the United States" or "the government"), hereby agree that this Joint Factual Statement is a true and accurate statement of the Defendant's criminal conduct and that it provides a sufficient basis for the Defendant's pleas of guilty to the Informations filed this same date in the District of Colorado, District of Wyoming, Western District of Oklahoma, District of Kansas and Northern District of Texas. The Defendant's guilty pleas are to be entered pursuant to the

Plea Agreement signed and dated this same day.

2. Defendant, the world's largest publicly traded international oil and gas company, is a New Jersey corporation headquartered in Irving, Texas with offices worldwide.

Defendant, acting through its divisions, including ExxonMobil Production Company and ExxonMobil Exploration Company, and through its wholly-owned subsidiaries, including ExxonMobil Development Company, extracts oil and natural gas from drilling and production operations conducted worldwide, and in many regions of the United States.

Common features of well sites associated with these operations are open drilling pits and reserve pits and tanks containing water, oil and other hydrocarbon development and production byproducts. Migratory birds, especially waterfowl, are often attracted to these sites and attempt to use them for resting and feeding. The chemical substances present are potentially harmful to wildlife, which may harm or kill the migratory birds that land on the sites. The oil and gas industry, including the Defendant, has known of this situation, and methodologies have been developed to both keep migratory birds off well site and production facility pits and open tanks. Methods of preventing migratory birds from landing on well sites and being potentially harmed by the contents of well site pits and tanks range from simple netting, to plastic "bird balls" which form a floating surface barrier to avian landings, to electronic radar-activated hazing systems that employ noise and movement to scare off approaching birds. The particular method employed must be tailored to the size and type of pit or tank at issue and the environmental conditions present at the site.

3. This case involves Defendant's oil and gas production facilities in the five Districts discussed herein, where migratory birds have died as the result of landing on pits or tanks at the facilities. In some cases, the Defendant had taken steps to minimize the risk to migratory birds associated with the sites, and in some cases had employed methods to prevent migratory birds from coming in contact with the contents of the pits or tanks at issue. However, these steps and methods were not completely effective or consistently

applied.

4. The government's investigation of this case began at natural gas drilling sites in the Piceance Basin of Colorado and at the McGinnis site in Wyoming. Based partly on the Defendant's cooperation, discussed below, it includes sites in the five Districts where charges have been filed in this matter.

## **II. Defendant's Cooperation and Remedial Measures**

5. But for Defendant's cooperation in the government's investigation, including, the voluntary self-disclosure of certain violations, promises of continued cooperation, and remedial and compliance measures, the United States would have sought a substantially larger restitution amount, additional criminal counts of conviction and a longer term of probation. Defendant's compliance efforts were substantial and are credited by the United States.

### **A. Cooperation**

6. Defendant has cooperated throughout the government's investigation by permitting its employees to report migratory bird deaths directly to the United States Fish and Wildlife Service and by allowing its employees to meet and speak with investigators and prosecutors. This conduct has facilitated the government's investigation. The Defendant has disclosed information regarding its violations in all of the Districts involved in this case. While these voluntary disclosures were within the subject matter of the investigation, some of the particular violations were unknown to the United States at the time they were disclosed. The government recognizes and credits these cooperative acts as providing substantial assistance and cooperation to the United States.

### **B. Remedial Measures**

7. Defendant has taken significant remedial and compliance measures both prior and subsequent to the start of the government's investigation. These include changes to its methodology for opening, operating, and closing drilling and reserve pits during natural

gas and oil well drilling and subsequent operation as well as exploring and implementing improved methods for preventing migratory bird contact with, and harm by, drilling/reserve pits and tanks. For example, beginning in 2005, Defendant agreed to voluntarily institute a program in western Colorado to exclude migratory birds from all natural gas reserve pits and production water facilities through the use of netting and/or bird deterrent balls, at a cost to the Defendant in excess of \$1,500,000, to date. Beginning in 2006, Defendant agreed to voluntarily institute a program in Wyoming to exclude migratory birds from all natural gas and oil reserve pits and the McGinnis disposal facility and evaporation pond through the use of netting and/or bird deterrent balls, at a cost to the Defendant in excess of \$1,000,000, to date.

### **III. Factual Background**

8. A violation of the Migratory Bird Treaty Act, 16 §§ U.S.C. 703, 707 occurs when a person or corporation: (1) takes, which is defined to include killing or wounding, (2) a migratory bird, (3) without being permitted to do so. The Defendant hereby admits that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts beyond a reasonable doubt:

9. At all times relevant hereto the Defendant owned, operated, or otherwise controlled operations at sites in the Districts described below, in which migratory birds were unlawfully killed. The Defendant acknowledges that the migratory birds taken as described herein, and in the Informations associated with these events, died, or were injured, after exposure to substances toxic to avian life such as hydrocarbons, oil, and/or surfactants on Defendant's sites.

#### **A. District of Colorado**

10. On November 6, 2003, ExxonMobil employees recovered two dead migratory birds (mallard ducks) from a produced water pond near the ExxonMobil production facility located near County Road 3, Rio Blanco County, Colorado. The ducks, which bore a heavy odor of hydrocarbons, were voluntarily surrendered to a Special Agent of

the USFWS, who informed ExxonMobil at that time that ExxonMobil would continue to take migratory birds in natural gas well production water storage facilities and natural gas reserve pits in the area if birds were not excluded from such bodies of toxic water. On February 19, 2004, ExxonMobil was cited and fined \$250.00 by the USFWS for this violation.

10. On October 25, 2004 ExxonMobil employees recovered a sick migratory bird (mallard duck) from a natural gas well reserve pit near County Road 3, Rio Blanco County, Colorado. The duck eventually died. ExxonMobil was again advised by a Special Agent of the USFWS of the potential future take of migratory birds if migratory birds were not excluded from natural gas well reserve pits. ExxonMobil had ten uncovered natural gas well reserve pits in the area at this time.

11. On April 2, 2005, ten migratory birds (gadwall ducks) died after landing on a ExxonMobil natural gas well reserve pit near County Road 3, Rio Blanco County, Colorado. At the time the birds landed, the pit's surface was covered with a sheen of oil which coated the ducks' feathers.

12. On April 27, 2005, a migratory bird (white-faced ibis) died after landing on an active natural gas reserve pit in the Piceance Basin, Rio Blanco County, Colorado.

13. In pleading guilty to the Migratory Bird Treaty Act offense charged in the Information associated with these events, Defendant acknowledges and admits that, acting through its employees and agents, it unlawfully took the migratory birds, as set forth in Count One of the Information.

#### B. District of Wyoming

14. On June 20, 2003, at the ExxonMobil Shute Creek Gas Plant, Lincoln County, Wyoming, 18 migratory birds (including Wilson phalaropes, mallard ducks, Northern Shoveler ducks, gadwall duck, avocets, curlew, green-winged teal) died after landing on a reserve pit. On December 3, 2003, ExxonMobil (through then operations superintendent, Keith E. Merkley) was cited and fined \$1,583.00 by USFWS for this violation.

15. Between July 14, 2005, and December 16, 2005, on at least 10 separate occasions, a total of at least 46 migratory birds (including ducks and grebes) died after exposure to hydrocarbons on the surface of the ExxonMobil McGinnis disposal facility and evaporation pond located in Sublette County, Wyoming.

16. Between April 16, 2006, and May 1, 2006, on at least three separate occasions, a total of at least 6 migratory birds (grebes) died after exposure to hydrocarbons on the surface of the ExxonMobil McGinnis disposal facility and evaporation pond located in Sublette County, Wyoming.

17. In April, May and June 2008, on several occasions, at least 12 migratory birds died after exposure to hydrocarbons on the surface of pits at the Defendant's Shute Creek gas processing facility in Lincoln County, Wyoming, its Black Canyon Dehydration Facility and at the nearby well field located in Sublette County, Wyoming.

18. In pleading guilty to the Migratory Bird Treaty Act offense charged in the Information associated with these events, Defendant acknowledges and admits that, acting through its employees and agents, it unlawfully took the migratory birds, as set forth in Count One of the Information.

#### C. Western District of Oklahoma

19. On June 22, 2005, a migratory bird (Cassin's sparrow) was recovered from an ExxonMobil oil well tank on the Jolliffe Unit lease, in Texas County, Oklahoma. On October 25, 2005, ExxonMobil was cited and fined \$1,325.00 by USFWS for this violation.

20. On October 17, 2005, a migratory bird (hawk) was recovered from a previously netted open-topped tank on the ExxonMobil Reaszer lease in Texas County, Oklahoma.

21. In pleading guilty to the Migratory Bird Treaty Act offense charged in the Information associated with these events, Defendant acknowledges and admits that, acting through its employees and agents, it unlawfully took the migratory birds, as set

forth in Count One of the Information.

D. District of Kansas

22. On November 4, 2005, two migratory birds were recovered from two different ExxonMobil open tanks in the Hickok oil field, Kearny County, Kansas.

23. On November 10, 2005, and December 13, 2005, five migratory birds were recovered from previously netted open tanks in Stevens County, Kansas. Netting on the tanks had not been properly maintained to exclude migratory birds.

24. On January 18, 2006, three migratory birds (owls) were found in a closed tank in the ExxonMobil Hugoton oil field in Morton County, Kansas.

25. In pleading guilty to the Migratory Bird Treaty Act offense charged in the Information associated with these events, Defendant acknowledges and admits that, acting through its employees and agents, it unlawfully took the migratory birds, as set forth in Count One of the Information.

E. Northern District of Texas

26. On November 1, 2005, one migratory bird (purple martin) was found dead in an open-topped oil tank in the ExxonMobil Hardesty oil field in Hansford County, Texas.

27. In pleading guilty to the Migratory Bird Treaty Act offense charged in the Information associated with these events, Defendant acknowledges and admits that, acting through its employees and agents, it unlawfully took the migratory birds, as set forth in Count One of the Information.

AGREED TO AND ACCEPTED,

JOHN C. CRUDEN  
ACTING ASSISTANT ATTORNEY  
GENERAL

ENVIRONMENT & NATURAL RESOURCES  
DIVISION  
U.S. DEPARTMENT OF JUSTICE

Date: 14 MAY 2009

BY:

Robert S. Anderson  
ROBERT S. ANDERSON  
SENIOR TRIAL ATTORNEY  
ENVIRONMENTAL CRIMES SECTION

DAVID M. GAOUCETTE  
ACTING UNITED STATES ATTORNEY  
DISTRICT OF COLORADO

Date: 5-29-09

BY:

Michael P. Carey  
MICHAEL P. CAREY  
ASSISTANT U.S. ATTORNEY

KELLY RANKIN  
UNITED STATES ATTORNEY  
DISTRICT OF WYOMING

Date: 5-20-09

BY:

David Kubichek  
DAVID KUBICHEK  
ASSISTANT U.S. ATTORNEY

JOHN C. RICHTER  
UNITED STATES ATTORNEY  
WESTERN DISTRICT OF OKLAHOMA

Date: 5-22-09

BY:

Kerry Kelly  
KERRY KELLY



ASSISTANT U.S. ATTORNEY

MARIETTA PARKER  
ACTING UNITED STATES ATTORNEY  
DISTRICT OF KANSAS

Date: 5-20-09

BY: 

MATTHEW TREASTER  
ASSISTANT U.S. ATTORNEY

JAMES T. JACKS  
ACTING UNITED STATES ATTORNEY  
NORTHERN DISTRICT OF TEXAS

Date: 5-27-09

BY: 

CHRISTY DRAKE  
ASSISTANT U.S. ATTORNEY

As an authorized representative of the defendant, Exxon Mobil Corporation, I have read this Joint Factual Statement and every part of it has been carefully reviewed with responsible management and officers of Exxon Mobil Corporation and Exxon Mobil Corporation's criminal defense counsel. We understand the terms of this Joint Factual Statement and Exxon Mobil Corporation voluntarily agrees to those terms. Exxon Mobil Corporation's attorneys have advised us of Exxon Mobil Corporation's rights, of possible defenses, and of the consequences of entering into this Joint Factual Statement. No promises or inducements have been made to Exxon Mobil Corporation other than those contained in this Joint Factual Statement. No one has threatened or forced Exxon Mobil Corporation in any way to enter into this Joint Factual Statement. Finally, Exxon Mobil Corporation is satisfied with the representation of its attorneys in this matter.

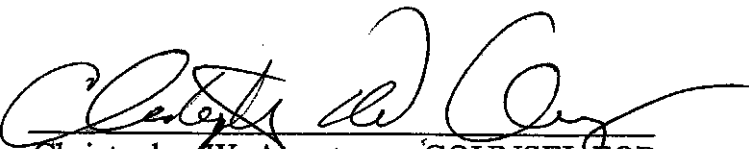
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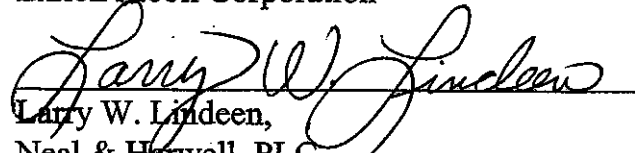
Randy J. Cleveland  
U.S. Production Manager  
ExxonMobil Production Company,  
A division of Exxon Mobil Corporation

We are Exxon Mobil Corporation's attorneys. We have carefully discussed every part of this Joint Factual Statement with the authorized representatives of Exxon Mobil Corporation. Further, we have fully advised the authorized representatives of Exxon Mobil Corporation of the corporation's rights, of possible defenses, and of the consequences of entering into this Joint Factual Statement. To our knowledge, the decision of Exxon Mobil Corporation to enter into this Joint Factual Statement is an informed and voluntary one.

Date: 5/12/09

BY:   
Christopher W. Armstrong, COUNSEL FOR  
Exxon Mobil Corporation

Date: 5/12/09

BY:   
Larry W. Lindeen,  
Neal & Harwell, PLC  
COUNSEL FOR  
Exxon Mobil Corporation