

ENTERED

May 29, 2024

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

<hr/>)	
UNITED STATES OF AMERICA and)	
STATE OF TEXAS,)	
)	
	Plaintiffs,)	
)	
v.)	Case No. 2:24-cv-00079
)	
FLINT HILLS RESOURCES)	
INGLESIDE, LLC,)	
	Defendant.)	
<hr/>)	

CONSENT DECREE

TABLE OF CONTENTS

I. INTRODUCTION 1

II. JURISDICTION AND VENUE 4

III. APPLICABILITY..... 5

IV. DEFINITIONS..... 5

V. STATEMENT OF PURPOSE..... 9

VI. PAYMENTS BY THE SETTLING DEFENDANT 9

VII. STIPULATED PENALTIES 14

VIII. FLINT HILLS OIL SPILL RESTORATION ACCOUNT 17

IX. COVENANTS BY THE PLAINTIFFS 18

X. COVENANTS BY THE SETTLING DEFENDANT 21

XI. COSTS 21

XII. NOTICE..... 22

XIII. EFFECTIVE DATE AND RETENTION OF JURISDICTION 25

XIV. MODIFICATION 25

XV. TERMINATION..... 25

XVI. OPPORTUNITY FOR PUBLIC PARTICIPATION..... 26

XVII. SIGNATORIES AND SERVICE 26

XVIII. INTEGRATION 27

XIX. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION 28

XX. FINAL JUDGMENT 28

I. INTRODUCTION

A. The United States of America, on behalf of the United States Department of the Interior (DOI) through the United States Fish and Wildlife Service (FWS) and the United States Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), jointly with the State of Texas ("the State"), appearing through the Office of the Texas Attorney General, on behalf of the Texas General Land Office (TGLO), the Texas Commission on Environmental Quality (TCEQ), and the Texas Parks and Wildlife Department (TPWD), have filed a Complaint against Flint Hills Resources Ingleside, LLC, (Flint Hills or "Settling Defendant") in this Court. The Complaint alleges that Flint Hills is liable (1) to the United States and the State 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), for damages for injury to, destruction of, loss of, or loss of use of, Natural Resources resulting from its discharge of oil into Corpus Christi Bay in December of 2022 and (2) to the United States for civil penalties under Section 311(b) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b), for the oil discharge.

B. The Complaint alleges that on December 24, 2022, oil was discharged into the Bay from one of Flint Hills' pipes at Dock 5 of its Ingleside crude oil terminal. Flint Hills, the Coast Guard, and the State were involved in the response and cleanup efforts. These events are referred to as the "Incident."

C. The Complaint further alleges that Settling Defendant's oil discharge caused injury 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 United States and the State.

D. The Trustees for the Natural Resources alleged to be injured by the Incident include the Secretary of the Department of the Interior, through FWS, and NOAA, on behalf of the United States, and TGLO, TCEQ, and TPWD, on behalf of the State (collectively “Trustees”). The federal trustees are 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)). TGLO, TCEQ, and TPWD are designated as trustees by the Governor of Texas 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. The United States and the State are coordinating injury assessment and Restoration efforts.

E. The Clean Water Act claim for civil penalties is brought by the United States on behalf of the United States Coast Guard.

F. Following the Incident, the Trustees and the Settling Defendant worked collaboratively to, among other things, identify information necessary to evaluate the potential impacts from the Incident to Natural Resources (focusing primarily on injuries

to shoreline, birds, and marine life) and identify potential actions to restore affected Natural Resources.

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

H. Following the Incident, the Settling Defendant reimbursed the TGLO \$105,405.43 for its response costs related to the Incident pursuant to 31 Tex. Admin. Code § 19.55; the Settling Defendant also remitted to the TGLO an administrative penalty in the amount of \$33,750.00 levied in accordance with Tex. Nat. Res. Code § 40.252. *See* January 17, 2024, Order in GLO v. Flint Hills Resources Ingleside, LLC, Spill Number 2022-4304. Also following the Incident, the Settling Defendant reimbursed TPWD \$10,748.00 for investigative costs incurred pursuant to Tex. Water Code § 7.109(b) and (c) and Tex. Parks & Wildlife Code §12.0011(b)(1) and §§ 12.301-308.

I. The Settling Defendant neither admits nor denies the allegations in the Complaint and does not admit liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaint.

J. The Parties agree, and the Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith, that it is intended to avoid potentially prolonged and complicated litigation among the Parties and expedite natural resource Restoration actions to be performed by the Trustees, and that it

is fair, reasonable, in the public interest, and consistent with the purposes of the Oil Pollution Act and the Clean Water Act.

THEREFORE, 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 the OPA claim pursuant to 28 U.S.C. §§ 1331 and 1345 and Section 1017(b) of OPA, 33 U.S.C. § 2717(b). The Court has jurisdiction over the CWA claim pursuant to Section 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n), and 28 U.S.C. §§ 1331, 1345, 1355. Venue lies in this District pursuant to OPA Section 1017(b), 33 U.S.C. § 2717(b), CWA Section 311(b)(7)(E), 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. § 1391(b) because the Settling Defendant resides in this judicial district. The Court also has personal jurisdiction over the Settling Defendant in connection with this action. For the purposes of this Consent Decree, and the underlying Complaint, the Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The Settling Defendant agrees that it will not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

2. For purposes of this Consent Decree, the Settling Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to OPA Section 1002(a) and (b)(2)(A), 33 U.S.C. § 2702 (a) and (b)(2)(A), and CWA Section 311(b), 33 U.S.C. §§ 1321(b).

III. APPLICABILITY

3. This Consent Decree applies to and is binding upon: the United States, on behalf of the U.S. Coast Guard and on behalf of NOAA and FWS as designated federal trustees for Natural Resources, including those Natural Resources at, in the vicinity of, or affected by the Incident; the State, on behalf of TGLO, TCEQ, and TPWD, which are the designated State trustees for Natural Resources, including those Natural Resources at, in the vicinity of, or affected by the Incident; and, the Settling Defendant, including, without limitation, its successors, assigns, or other entities or persons otherwise bound by law.

4. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Defendant's rights or responsibilities under this Consent Decree. In any action to enforce this Consent Decree, the Settling Defendant shall not raise as a defense the failure by any of its 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 following definitions shall apply:

- a. "Complaint" shall mean the civil complaint filed in this action by the Plaintiffs.

- b. “Consent Decree” shall mean this Consent Decree.
- 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, federal holiday, or State of Texas holiday, the period shall run until the close of business of the next working day.
- d. “DARR Fund” shall mean NOAA’s Damage Assessment and Restoration Revolving Fund.
- e. “DOI NRDAR Fund” shall mean DOI’s Natural Resource Damage Assessment and Restoration Fund.
- f. “Effective Date” shall mean the date defined in Paragraph 31.
- g. “Future Trustee Costs” shall mean the natural resource restoration planning, implementation, and monitoring oversight costs to be incurred by the Trustees in connection with the Incident, 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 are specified as Trustee costs incurred after October 31, 2023.
- h. “Incident” shall mean the occurrence described in Section I.B of this Consent Decree, specifically, the discharge of oil into Corpus Christi Bay

from the Settling Defendant's facility occurring on or about December 24, 2022.

- i. "Interest" shall be calculated at the rate set forth in 28 U.S.C. § 1961.
- j. "Natural Resources" shall have the meaning provided in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).
- k. "Natural Resource Damages" shall mean the damages described at Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A).
- l. "Natural Resource Damage Assessment" shall mean the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to evaluate the nature and extent of injuries resulting from an incident and to determine needed restoration actions consistent with 15 C.F.R. § 990.30.
- m. "OPA" shall mean the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. §§ 2701-2761.
- n. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.
- o. "Parties" or "Party" (as applicable in the singular) shall mean the United States, the State of Texas, and the Settling Defendant.
- p. "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).

- q. “Restore” or “Restoration” shall mean any action or combination of actions consistent with 15 C.F.R. § 990.30 to restore, rehabilitate, replace or acquire the equivalent of any Natural Resource and services, including recreational opportunities that were injured, lost, or destroyed as a result of the Incident.
- r. “Restoration Plan” or “Plan” shall mean a plan or plans to be developed by the Trustees in accordance with OPA and its underlying regulations codified at 15 C.F.R. §§ 990.53 – 990.56.
- s. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- t. “Settling Defendant” or “Flint Hills” shall mean Flint Hills Resources Ingleside, LLC, along with its successors and assigns.
- u. “State” shall mean the State of Texas.
- v. “State Trustees” shall mean TGLO, TCEQ, and TPWD.
- w. “Subparagraph” shall mean a portion of this Consent Decree identified by a lower case letter.
- x. “Flint Hills 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 Defendant in accordance with Section VI (Payments by the Settling Defendant) and maintained by DOI in accordance with Section VIII (Flint Hills Oil Spill Restoration Account).

- y. “Trustees” shall mean the designated federal and state officials, and their designees, who act on behalf of the public as trustees for Natural Resources, as described in Section I, Paragraph D.
- z. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including NOAA, the Department of the Interior, and the U.S. Coast Guard.

V. STATEMENT OF PURPOSE

6. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to provide funding by the Settling Defendant to the Trustees to restore, replace, or acquire the equivalent of the Natural Resources allegedly injured, destroyed, or lost as a result of the Incident, including funding for planning, implementation, and oversight of the Restoration work and Future Trustee Costs; (ii) to provide payment by the Settling Defendant to the Trustees to reimburse unpaid Natural Resource Damage Assessment costs incurred by the Trustees; (iii) to resolve the Plaintiffs’ claims against the Settling Defendant for Natural Resource Damages as provided herein; (iv) to resolve the United States’ Clean Water Act civil penalty claim as provided herein; and (v) to avoid potentially costly and time-consuming litigation.

VI. PAYMENTS BY THE SETTLING DEFENDANT

7. The Settling Defendant shall make payments totaling \$989,212.80 to the Plaintiffs in the manner described in Paragraphs 8 through 10 below.

8. Within thirty (30) Days of the Effective Date, the Settling Defendant shall pay the United States \$400,000.00 as a Clean Water Act civil penalty, together with

interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

- a. The Settling Defendant shall pay the civil penalty required in this Paragraph by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice in accordance with written instructions to be provided to Settling Defendant by the United States Attorney's Office for the Southern District of Texas. Such monies are to be deposited in the Oil Spill Liability Trust Fund. The payment shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-12902 and shall specify that the payment is made toward the CWA civil penalty pursuant to 33 U.S.C. § 1321(s) and 26 U.S.C. § 9509(b)(8).
- b. At the time of payment, Settling Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in this case, and shall reference the Civil Action Number assigned to this case and DOJ Number 90-5-1-1-12902, to:

Thomas H. Van Horn
National Pollution Funds Center
US Coast Guard Mailstop 7605
2701 Martin Luther King Jr. Avenue, SE
Washington, DC 20593-7605

- c. The Settling Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

9. The Settling Defendant shall pay for Natural Resource Damage Assessment and Restoration planning costs incurred by the United States and for State and federal Trustee-sponsored Natural Resource Restoration projects and Future Trustee Costs as follows:

- a. Within 30 Days of the Effective Date, the Settling Defendant shall pay a total of \$536,462.39 to the United States. Payment shall be made by FedWire EFT to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the case number and DOJ Number 90-5-1-1-12902. Payment shall be made in accordance with instructions provided to the Settling Defendant by the United States Attorney's Office for the Southern District of Texas following entry of the Consent Decree.
- b. Of the total amount to be paid to the United States by the Settling Defendant pursuant to Subparagraph 9.a:
 - i. As a joint recovery of Natural Resource Damages by the Plaintiffs for the Trustees, \$427,000.00 shall be deposited in a segregated sub-account within the DOI NRDAR Fund to be maintained by DOI for the joint benefit and use of the

Trustees to pay for Trustee-sponsored Restoration projects and Future Trustee Costs in accordance with Section VIII;

ii. Subject to the deduction required by 1994 CJS

Appropriations Act, \$79,506.89 shall be deposited in the NOAA DARR Fund, to be applied to reimburse NOAA for unpaid Natural Resource Damage Assessment costs incurred by NOAA through October 31, 2023.

iii. Subject to the deduction required by 1994 CJS

Appropriations Act, \$29,955.50 shall be deposited in the DOI NRDAR Fund, to be applied to reimburse DOI for unpaid Natural Resource Damage Assessment costs incurred by DOI through October 31, 2023.

10. Within 30 Days of the Effective Date, the Settling Defendant shall pay for unpaid Natural Resource Damage Assessment and Restoration planning costs incurred by the State Trustees as follows:

- a. The Settling Defendant shall pay \$36,987.69 to TGLO for unpaid Natural Resource Damage Assessment costs incurred by TGLO through October 31, 2023. Payment shall be made in the form of a wire transfer or a certified check, made payable to the “State of Texas (AG# CX0398687769).” Checks shall be delivered to Chief, Environmental Protection Division, Office of the Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711. The payment shall

reference “Flint Hills NRD assessment costs; in care of TGLO.” If the Settling Defendant requests to make payment by wire transfer, the payment shall be made in accordance with instructions provided by the Office of the Texas Attorney General.

b. The Settling Defendant shall pay \$7,839.03 to TCEQ for unpaid Natural Resource Damage Assessment costs incurred by TCEQ through October 31, 2023. Payment shall be made in the form of a wire transfer or a certified check, made payable to the “State of Texas (AG# CX4871492981).” Checks shall be delivered to Chief, Environmental Protection Division, Office of the Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711. The payment shall reference “Flint Hills NRD assessment costs; in care of TCEQ.” If the Settling Defendant requests to make payment by wire transfer, the payment shall be made in accordance with instructions provided by the Office of the Texas Attorney General.

c. The Settling Defendant shall pay \$7,923.69 to TPWD for unpaid Natural Resource Damage Assessment costs incurred by TPWD through October 31, 2023. Payment shall be made in the form of a wire transfer or a certified check, made payable to the “State of Texas (AG# CX2116407068).” Checks shall be delivered to Chief, Environmental Protection Division, Office of the Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711. The payment shall

reference “Flint Hills NRD assessment costs; in care of TPWD.” If the Settling Defendant requests to make payment by wire transfer, the payment shall be made in accordance with instructions provided by the Office of the Texas Attorney General.

11. At the time of the payments in Paragraphs 9 and 10, the Settling Defendant shall send written notice of payment and a copy of any transmittal documentation to the Trustees in accordance with Section XII (Notice). The notice shall reflect that the payment is being made for the “Flint Hills Natural Resource Damages Settlement.”

12. For the payments in Paragraphs 9 and 10, Interest shall be paid by the Settling Defendant 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 9 and 10. Payment of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Plaintiffs for the Settling Defendant’s 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

13. Assessment of Stipulated Penalties. The Settling Defendant shall pay stipulated penalties for failure to make timely payments (“Noncompliance”) in accordance with the deadlines in Section VI (Payments by the Settling Defendant) at the rate of five thousand dollars (\$5,000) per Day for each Day of Noncompliance.

- a. Stipulated penalties shall begin to accrue on the day after payment is due and continue to accrue until the date of full payment.
- b. Any stipulated penalties owed for late payment under Paragraphs 8 and 9 shall be paid to the United States. Any stipulated penalties owed for late payment under Paragraph 10 shall be paid to the State.
- c. The United States or the State may give the Settling Defendant a written notification that it has failed to make a required payment. Such notice shall describe the Noncompliance and make a demand for the payment of the stipulated penalties. However, stipulated penalties shall accrue as provided in Paragraph 13.a regardless of whether the Settling Defendant has been notified of a Noncompliance. The Settling Defendant shall pay stipulated penalties within 30 Days of written demand for such stipulated penalties, as determined by the date of mailing by U.S. Mail or other mail service of the written demand. Failure to notify the Settling Defendant of a Noncompliance does not waive the Plaintiffs' right to collect Interest resulting from the Noncompliance.
- d. If the Settling Defendant fails to pay stipulated penalties when due, the United States and the State may institute proceedings to collect the stipulated penalties, as well as Interest as provided in Paragraph 13.e.
- e. Interest on Stipulated Penalties. The Settling Defendant shall pay Interest on any unpaid stipulated penalties, which shall begin to accrue on the 31st Day of the date of mailing of the written demand.

- f. Notwithstanding any other provision of this Section, the United States or the State may, in the unreviewable exercise of their discretion, reduce or waive the stipulated penalties owed to them that have accrued pursuant to this Consent Decree. Any such waiver shall only apply to the stipulated penalties identified by the United States or the State in exercising their discretion and shall not affect the right to seek the full amount of stipulated penalties due for any other Noncompliance.
- g. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States and the State to seek any other remedies or sanctions available by virtue of the Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based.

14. Payment Instructions for Stipulated Penalties. Any stipulated penalty payment shall be accompanied by a reference to this Consent Decree, be identified as "Stipulated Penalties," and reference the "Flint Hills Natural Resource Damages Settlement." Notice of payment of a stipulated penalties shall be made to the Trustees in the manner specified in Section XII (Notice). Stipulated penalty payments to the United States shall be made by FedWire EFT to the U.S. Department of Justice in accordance with written instructions to be provided to the Settling Defendant by the U.S. Attorney's Office for the Southern District of Texas. At the time of payment, the Settling Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for stipulated penalties

owed pursuant to the Consent Decree, and shall reference the case name, civil action number, DOJ Number 90-5-1-1-12902, and the Noncompliance for which the stipulated penalties are being paid to the United States, in accordance with Section XII (Notice). Payment of stipulated penalties owed to the State shall be made in accordance with instructions provided by the Office of the Texas Attorney General.

VIII. FLINT HILLS OIL SPILL RESTORATION ACCOUNT

15. Upon receipt of the monies pursuant to Paragraph 9.b.i, DOI will place the monies in a project-specific account within the DOI NRDAR Fund to be maintained as a segregated account within the Fund. All monies deposited in the Flint Hills Oil Spill Restoration Account in accordance with this Paragraph shall be held in the Account solely for use by the Trustees to jointly plan, implement, oversee, and monitor the Restoration of injuries to Natural Resources resulting from the Incident and for Future Trustee costs.

16. The Trustees commit to the expenditure of the monies set forth in Paragraph 9.b.i for the planning, design, implementation, permitting (as necessary), monitoring, and oversight of Restoration projects and for the costs of complying with the requirements of the law to conduct a Restoration planning and implementation process. The Trustees will use the monies to restore, rehabilitate, replace, or acquire the equivalent of any Natural Resource and its services injured, lost, or destroyed as a result of the Incident and for Future Trustee costs.

17. The allocation of monies for specific projects or categories of projects will be contained in a Restoration Plan or Plans prepared jointly by the Trustees, for which

public notice, opportunity for public input, and consideration of public comment will be provided, as required under OPA and the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (NEPA). Once the public review process has been completed, the Trustees will implement the Restoration Plan(s) with any revisions the Trustees may deem appropriate after considering all public comments.

18. Decisions regarding any use or expenditure of monies under this Section shall be made by the Trustees. The Settling Defendant shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of monies or Restoration efforts under this Section.

IX. COVENANTS BY THE PLAINTIFFS

19. In consideration of the payments and actions that have been and will be made by the Settling Defendant under this Consent Decree, and except as otherwise specified in this Section, the United States and the State covenant not to sue or take administrative action against the Settling Defendant pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), or State law, for Natural Resource Damages resulting from the Incident. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments required by Section VI (Payments by the Settling Defendant) and, as applicable, Section VII (Stipulated Penalties). The covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

20. This Consent Decree also resolves the civil Clean Water Act claim of the United States against the Settling Defendant for the violation alleged in the Complaint.

21. 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 the Settling Defendant with respect to all matters other than those expressly specified in the covenants not to sue set forth in Paragraphs 19 and 20, including, but not limited to:

- a. Claims against the Settling Defendant for its failure to meet a requirement of this Consent Decree;
- b. Claims against the Settling Defendant for Natural Resource Damages that are not a result of the Incident;
- c. Claims against the Settling Defendant for criminal liability associated with the Incident;
- d. Claims against the Settling Defendant for civil penalties and injunctive relief under the Clean Water Act, or State law, associated with the Incident;
and
- e. Claims, other than claims for Natural Resource Damages related to the Incident, against the Settling Defendant 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 but not limited to recovery of OPA Removal Costs and Damages.

22. Special Reservations Regarding Natural Resource Damages.

Notwithstanding any other provision of this Consent Decree, the United States and the

State reserve the right to institute proceedings against the Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages based on:

- a. Conditions caused by the Incident, unknown by the Trustees as of the date of the lodging of this Consent Decree, that cause new or additional injury to, destruction of, loss of, or loss of use of such Natural Resources; or
- b. Information received by the Trustees after the date of lodging of this Consent Decree indicating that the Incident has resulted in new or significant additional injury to, destruction of, loss of, or loss of use of, such Natural Resources which injury is of a type that was unknown or a magnitude greater than was known by the Trustees as of the date of lodging of this Consent Decree.

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

24. 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.

25. 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. In addition, nothing in this Consent Decree shall limit, enlarge, or otherwise affect, the private rights

or claims of any person not a Party to this Consent Decree, except as may be determined otherwise by a court of competent jurisdiction.

X. COVENANTS BY THE SETTLING DEFENDANT

26. The Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State, and their employees, agents, contractors, departments, agencies, administrations and bureaus arising from the Incident, including, without limitation, any potential or pending claims against the Oil Spill Liability Trust Fund relating to the Incident.

27. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, penalties, costs, damages, criminal liability, or other relief relating to the Incident, the 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 preclusion, claim-splitting, or other similar defenses based upon a 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, except with respect to claims that have been specifically resolved pursuant to Paragraphs 19 and 20.

XI.COSTS

28. The Plaintiffs shall be entitled to collect from the Settling Defendant the costs (including reasonable attorneys' fees) incurred in any action necessary to collect any portion of the amounts past due under Section VI (Payments by the Settling

Defendant), or any stipulated penalties due but not paid under Section VII (Stipulated Penalties).

XII. NOTICE

29. 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.

As to the United States:

For the Department of Justice

EES Case Management Unit
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
eescdcopy.enrd@usdoj.gov
Re: DOJ Number 90-5-1-1-12902

For NOAA

National Oceanic and Atmospheric Administration
Office of General Counsel
Natural Resources Section
Attn. Jared Piaggione, Attorney-Advisor
1315 East-West Highway
SSMC3, Suite 15106
Silver Spring, MD 20910
jared.piaggione@noaa.gov

National Oceanic and Atmospheric Administration

Assessment and Restoration Division
Southeast Regional Office
Attn. Kevin Kirsch, Southeast Branch Chief
263 13th Avenue South
St. Petersburg, FL 33701
kevin.kirsch@noaa.gov

For the Department of the Interior

Sarah Shattuck, Attorney-Advisor
U.S. Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
Washington, DC 20240
sarah.shattuck@sol.doi.gov

For the Coast Guard

Heather Kennealy, Attorney Advisor
U.S. Coast Guard, Office of Claims and Litigation
2703 Martin Luther King Junior Avenue, SE STOP 7213
Washington, DC 20593

LT Larissa Tiller, Senior Staff Attorney
U.S. Coast Guard
USCG Eighth District (dl)
500 Poydras Street
New Orleans, LA 70130

As to the State of Texas and the State Trustees:

For the Office of the Attorney General

Clark C. Reeder
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
AG#CX0398687769
AG# CX2116407068
AG#CX4871492981

For TGLO

Allison Fisher
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

For TCEQ

Taylor Alexander
Texas Commission on Environmental Quality
P.O. Box 13087, MC-136
Austin, Texas 78711-3087

For TPWD

Angela Schrift
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

As to the Settling Defendant:

Shane Pierce
Executive Vice President & General Counsel
Flint Hills Resources
4111 E 37th Street North
Wichita, Kansas 67220

Molly Cagle
Baker Botts L.L.P.
98 San Jacinto Blvd., Suite 1500
Austin, Texas 78701
Counsel for Flint Hills Resources Ingleside, LLC

30. Any Party may, by written notice to other Parties, change its designated notice recipient or notice address provided above.

XIII. EFFECTIVE DATE AND RETENTION OF JURISDICTION

31. 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, whichever occurs first as recorded on the Court's docket.

32. 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.

XIV. MODIFICATION

33. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

34. In any dispute concerning modification of this Consent Decree, the Party seeking modification bears the burden of demonstrating that it is entitled to the modification in accordance with Federal Rule of Civil Procedure 60(b).

XV. TERMINATION

35. This Consent Decree will terminate automatically upon completion of the payments by the Settling Defendant of the amounts required under Section VI (Payments

by the Settling Defendant) and payment of any applicable stipulated penalties under Section VII (Stipulated Penalties).

XVI. OPPORTUNITY FOR PUBLIC PARTICIPATION

36. This Consent Decree shall be lodged with the Court for at least 30 days for public notice and comment.

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

38. The Settling Defendant consents to the entry of this Consent Decree without further notice, except notice of the filing of a motion to enter the Consent Decree, and agrees not to withdraw or oppose entry of the Consent Decree or to challenge any provision of the Consent Decree.

39. 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.

XVII. SIGNATORIES AND SERVICE

40. The Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice or designee, the State's Assistant Attorney General for the Environmental Protection Division, and the undersigned representative of the Settling Defendant each certifies that he or she is fully authorized to enter into the terms

and conditions of this Consent Decree and to execute it and legally bind the Party he or she represents to this document.

41. 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.

42. The Settling Defendant 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. The Settling Defendant agrees 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. The 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.

XVIII. INTEGRATION

43. 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.

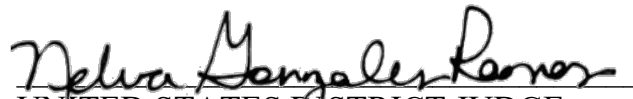
XIX. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

44. For purposes of the identification requirement of Section 162(b)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Paragraph 9 is restitution or required to come into compliance with law to the extent it applies to federal agencies.

XX. FINAL JUDGMENT

45. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court.

SO ORDERED THIS 29th DAY OF MAY, 2024.


UNITED STATES DISTRICT JUDGE

Signature Page to Consent Decree in *United States, et al. v. Flint Hills Resources Ingleside, LLC*

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

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

March 15, 2024
Date

/s/ Jason T. Barbeau
JASON T. BARBEAU
Senior Trial Attorney (D.C. Bar No. 468200)
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 616-8908 (telephone)
(202) 616-6584 (facsimile)
jason.barbeau@usdoj.gov


ALAMDAR HAMDANI
United States Attorney
Southern District of Texas

DANIEL DAVID HU
Chief, Civil Division (Texas Bar No. 10131415)
United States Attorney's Office
Southern District of Texas
1000 Louisiana, Suite 2300
Houston, TX 77002
Phone: (713) 567-9518
E-mail: daniel.hu@usdoj.gov

Signature Page to Consent Decree in *United States, et al. v. Flint Hills Resources Ingleside, LLC*

FOR PLAINTIFF THE UNITED STATES OF AMERICA (continued):

4 MAR 2024
Date


BRIAN JUDGE
Chief, Office of Claims and Litigation
United States Coast Guard
Coast Guard Headquarters
2703 Martin Luther King Jr. Ave, SE
Washington, DC 20593-7213

CAPT BRANDY PARKER
Staff Judge Advocate
United States Coast Guard
Eighth Coast Guard District
500 Poydras St., Suite 1311
New Orleans, LA 70130

Signature Page to Consent Decree in *United States, et al. v. Flint Hills Resources Ingleside, LLC*

FOR PLAINTIFF THE STATE OF TEXAS ON BEHALF OF STATE TRUSTEES:

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

KELLIE E. BILLINGS-RAY
Chief, Environmental Protection Division

* *s/ Clark C. Reeder*
CLARK C. REEDER
Assistant Attorney General
State Bar No. 24118678
Southern District Bar No. 3863343
Clark.Reeder@oag.texas.gov

April 5, 2024
Date

Office of the Attorney General of Texas
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, TX 78711-2548
Telephone: 512-463-2012
Facsimile: 512-320-0911

COUNSEL FOR THE STATE OF TEXAS ON BEHALF OF THE TEXAS GENERAL LAND OFFICE, THE TEXAS PARKS AND WILDLIFE DEPARTMENT, AND THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

* Counsel for the State of Texas provided consent for the placement of his electronic signature on this pleading.

Signature Page to Consent Decree in *United States, et al. v. Flint Hills Resources Ingleside, LLC*

FOR DEFENDANT FLINT HILLS RESOURCES INGLESIDE, LLC:

2³/15/24
Date JRC

JRC


Jeff Ramsey
President & CEO
Flint Hills Resources
4111 E 37th Street North
Wichita, Kansas 67220

Molly Cagle
Baker Botts L.L.P.
98 San Jacinto Blvd., Suite 1500
Austin, Texas 78701
Counsel for Flint Hills Resources Ingleside, LLC