

1 LOIS J. SCHIFFER
2 Acting Assistant Attorney General
3 Environment and Natural Resources Division

4 FRANK W. HUNGER
5 Assistant Attorney General
6 Civil Division

7 NORA M. MANELLA
8 United States Attorney
9 ROGER E. WEST
10 First Assistant Chief, Civil Division
11 Federal Building, Room 7516
12 300 North Los Angeles Street
13 Los Angeles, CA 90012
14 (213) 894-6117

15 PHILIP A. BERNS
16 Attorney in Charge
17 Torts Branch, Civil Division, West Coast Office
18 United States Department of Justice
19 P.O. Box 36028
20 450 Golden Gate Avenue, 10th Floor
21 San Francisco, CA 94102-3463
22 (415) 556-3146

23 ROBERT R. KLOTZ
24 Environmental Enforcement Section
25 Environment and Natural Resources Division
26 United States Department of Justice
27 301 Howard Street, Suite 870
28 San Francisco, California 94105
(415) 744-6491

Attorneys for United States of America

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BP AMERICA, INC; BP OIL SUPPLY
COMPANY; and BP OIL SHIPPING
COMPANY, USA,

Defendants.

No. CV 95-1229-RJK

CONSENT DECREE
(BP)

FILED
CLERK, U.S. DISTRICT COURT
MAR - 5 1997
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
MAR - 5 1997
CENTRAL DISTRICT OF CALIFORNIA
BY

DEPT. OF COMMERCE-NOAA
RECEIVED
MAR 27 1997
SOUTHWEST REGIONAL OFFICE
OFFICE OF GENERAL COUNSEL

1
2 This Consent Decree ("Decree") is entered into by the
3 United States of America ("United States") and BP America, Inc.,
4 BP Oil Supply Company, and BP Oil Shipping Company, USA
5 (collectively referred to as "BP" or "BP Companies").

6 Introduction

7 On February 7, 1990, the steam tanker AMERICAN TRADER
8 ran aground on one of its anchors at the Golden West Marine
9 Terminal, causing Alaska north slope crude oil to spill from the
10 ship's tanks into or upon waters, beaches, and other Natural
11 Resources near Huntington Beach, California, and requiring
12 cleanup of the spilled oil. The United States asserts that the
13 oil covered approximately sixty square miles of ocean and washed
14 ashore along approximately fourteen miles of beaches, injuring
15 birds and fisheries and other Natural Resources.

16 AMERICAN TRADER was owned by American Trading
17 Transportation Company ("Attransco") on the day of the spill, and
18 had Mooring Master John Keon aboard for the purpose of bringing
19 the tanker into the offshore Terminal which was leased and
20 operated by Golden West Refining Company ("Golden West"). Golden
21 West hired Robert Brandenburger of Brandenburger Marine, Inc. to
22 assign mooring masters to particular mooring jobs at the offshore
23 terminal.

24 AMERICAN TRADER's crude oil cargo was to be delivered
25 to Golden West pursuant to a crude oil sales contract between
26 Golden West and BP Oil Supply Company. BP alleges that at the
27 time of the Oil Spill, BP Oil Supply Company was the title owner

1 of the oil aboard the AMERICAN TRADER.

2 BP Oil Shipping Company, USA was the time charterer of
3 the AMERICAN TRADER on February 7, 1990.

4 BP America, Inc. represents that it is an indirect
5 parent of BP Oil Supply Company and BP Oil Shipping Company, USA.

6 The United States, on behalf of the United States
7 Department of Commerce, the United States Department of the
8 Interior, the United States Navy, the United States Coast Guard,
9 and all interested federal governmental agencies, has filed,
10 simultaneously with the lodging of this Consent Decree, an action
11 in federal district court against BP America, Inc., BP Oil Supply
12 Company, and BP Oil Shipping Company, USA seeking, under the
13 Clean Water Act, 33 U.S.C. §§ 1251, et seq. ("Clean Water Act")
14 and other federal statutory and maritime law, inter alia, Natural
15 Resources Damages and Response Costs.

16 The United States, on behalf of the United States
17 Department of Commerce, the United States Department of the
18 Interior, the United States Navy, the United States Coast Guard,
19 and all interested federal governmental agencies, has filed an
20 action in federal district court against the steam tanker
21 AMERICAN TRADER, in rem; Attransco; Golden West; Brandenburger
22 Marine, Inc.; the Assuanceforeninger Gard, the AMERICAN TRADER's
23 liability insurer; and the Trans-Alaska Pipeline Liability Fund,
24 created by the Trans-Alaska Pipeline Authorization Act, 43 U.S.C.
25 §§ 1651, et seq. ("TAPAA"). The United States' action seeks,
26 under the Clean Water Act, TAPAA, and other federal statutory and
27

1 maritime law, inter alia, Natural Resources Damages and Response
2 Costs. United States v. The Steam Tanker, AMERICAN TRADER et
3 al., United States District Court for the Central District of
4 California Case No. CV 91-3363.

5 The State of California ex rel. the California
6 Department of Fish and Game, the Department of Parks and
7 Recreation, the Regional Water Quality Control Board, Santa Ana
8 Region, the State Coastal Conservancy, and the State Lands
9 Commission ("State Agencies") and the City of Huntington Beach,
10 the City of Newport Beach, the Orange County Flood Control
11 District, and the County of Orange ("Local Governments") have
12 filed an action in Superior Court against Golden West, Attransco,
13 BP, and Brandenburger Marine, Inc., seeking, inter alia, Natural
14 Resources Damages and Response Costs. People of the State of
15 California, et al., v. BP AMERICA, Inc. et al., Orange County
16 Superior Court Case No. 64-63-39.

17 The State Agencies and the Local Governments have also
18 filed an action in federal district court against the Trans-
19 Alaska Pipeline Liability Fund under TAPAA for, inter alia,
20 Natural Resources Damages and Response Costs. People of the
21 State of California, et al., v. Trans-Alaska Pipeline Liability
22 Fund, United States District Court for the Central District of
23 California Case No. CV 92-0837.

24 It is the legal position of the United States that only
25 officials of the United States designated by the President and
26 state officials designated by the Governors of the respective
27

1 states are entitled to act on behalf of the public as trustees of
2 Natural Resources to recover Natural Resources Damages resulting
3 from the Oil Spill under Section 311(f) of the Clean Water Act,
4 33 U.S.C. § 1321(f).

5 The United States, the State Agencies, and the Local
6 Governments (collectively, the "Governments") have proposed
7 certain Restoration projects to Restore Natural Resources injured
8 as a direct result of the Oil Spill. The Governments deem the
9 proposed projects reasonable and necessary measures to Restore
10 these Natural Resources.

11 The Parties desire to avoid the costs and risks of
12 further litigation and believe that resolution of this dispute
13 without protracted litigation to be in the best interests of the
14 public.

15 To settle all of the pending litigation between the BP
16 Companies and the Governments, the State Agencies, Local
17 Governments, and BP Companies have entered into the Settlement
18 Agreement that is Attachment 2 to this Decree (the "Settlement
19 Agreement") and the United States and the BP Companies have
20 entered into this Decree.

21 The Parties recognize that this Decree is a settlement
22 of a contested matter and that neither the payment nor the
23 acceptance of any consideration represents an admission of
24 liability or responsibility by any Party. This Decree is without
25 prejudice to the rights and defenses of the Parties hereto to any
26 claims or causes of action against Non-Settling Parties.

1 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and
2 DECREED as follows:

3
4 **JURISDICTION**

5 1. This Court has jurisdiction over the subject
6 matter and over the parties to this action pursuant to 28 U.S.C.
7 §§ 1331, 1333, 1345, and 33 U.S.C. §§ 1319 and 1321. Venue is
8 proper in this Court pursuant to 28 U.S.C. § 1391(b). The United
9 States' Complaint states claims upon which relief may be granted.

10
11 **PARTIES BOUND**

12 2. This Consent Decree shall apply to and be binding
13 upon and inure to the benefit of the United States and the BP
14 Companies, and each of them, and their present and former
15 officers, directors, employees, and agents.

16
17 **DEFINITIONS**

18 3. Whenever the following terms are used in this
19 decree, they shall have the following meanings:

20 (a) "Claims Against BP for Contribution" means claims
21 or causes of action, originating under federal, state, or
22 maritime law, now or in the future, by Non-Settling Parties
23 against any of the BP Companies for equitable comparative
24 contribution; partial, comparative, or total indemnity;
25 contribution; or equitable indemnity which arise from or are
26 related to the Governments' claims for damages caused by the
27

1 Oil Spill, except that claims based upon a written express
2 indemnity agreement are not included within the scope of
3 this definition.

4 (b) "Final Approval" means the earliest date on which
5 all of the following have occurred:

6 (1) The Superior Court has found that the
7 Settlement Agreement (attached to this Decree as Attachment
8 2) was made in "good faith" as that term is used in section
9 877.6 of the California Code of Civil Procedure and
10 determined that all Claims Against BP for Contribution
11 asserted or capable of assertion in state court are barred
12 as a result of the Settlement Agreement and all applicable
13 appeal periods have expired without an appeal being filed,
14 or, if an appeal is taken, the Superior Court's judgment has
15 been upheld on appeal and either the time for further appeal
16 has expired without the filing of a further appeal or no
17 further appeal is allowed; and,

18 (2) All Claims Against BP for Contribution in
19 pending suits in state court have been dismissed with
20 prejudice and all applicable appeal periods have expired
21 without an appeal being filed, or, if an appeal is taken
22 from the dismissal, the judgment has been upheld on appeal
23 and either the time for further appeal has expired without
24 the filing of a further appeal or no further appeal is
25 allowed (it is understood that the term "appeal" is meant to
26 include any applications for a writ from a state appellate
27

1 court); and,

2 (3) The United States District Court for the
3 Central District of California has entered this Decree.

4 (c) "Natural Resource" and "Natural Resources" mean
5 land, fish, wildlife, biota, air, water, ground water,
6 drinking water supplies, and other such resources belonging
7 to, managed by, held in trust by, appertaining to, or
8 otherwise controlled by the United States (including the
9 resources of the fishery conservation zone established by
10 the Magnuson Fishery Conservation and Management Act of
11 1976, 16 U.S.C. §§ 1801 et seq.) and the State of California
12 and its agencies.

13 (d) "Natural Resources Damages" means civil
14 compensatory and remedial relief recoverable by the
15 Governments on behalf of the public for injury to,
16 destruction of, or loss of any or all Natural Resources
17 resulting from the Oil Spill, including (1) costs of damage
18 assessment, including related enforcement costs, (2)
19 compensation for loss, injury, impairment, damage or
20 destruction of Natural Resources, whether temporary or
21 permanent, or for loss of use value (active and passive),
22 consumer surplus, economic rent, or any other similar value
23 of Natural Resources, and (3) costs of restoration,
24 rehabilitation, or replacement of injured Natural Resources
25 or the acquisition of equivalent resources.

26 (e) "Non-Settling Parties" means all persons and
27

1 entities who are not parties to this Decree or the
2 Settlement Agreement, including but not limited to (i)
3 defendants in United States District Court for the Central
4 District of California Case No. CV 91-3363 or any case
5 consolidated with that action, and/or (ii) defendants in
6 Orange County Superior Court Case No. 64-63-39 or any case
7 consolidated with that action.

8 (f) "Oil Spill" means the grounding of the steam
9 tanker, AMERICAN TRADER, on February 7, 1990 at the Golden
10 West Marine Terminal and the resulting oil spill and
11 response activity.

12 (g) "Party" or "Parties" mean the BP Companies, and
13 each of them, and the United States.

14 (h) "Restore" or "Restoration" mean any action to
15 restore to its pre-spill condition any Natural Resource
16 injured, lost, or destroyed as a result of the Oil Spill and
17 the services provided by that Natural Resource, or which
18 restores, replaces, rehabilitates, or acquires the
19 equivalent of, the injured, lost, or destroyed Natural
20 Resource and affected services.

21 (i) "Response and/or Cleanup Costs" mean response
22 and/or cleanup costs incurred by the Governments in
23 responding to the Oil Spill, including but not limited to
24 actions taken to remove and clean up the spilled oil.

25 (j) "Superior Court" means the Superior Court for the
26 County of Orange.

1 and all interest accumulated on the Settlement Amount. Within
2 fifteen (15) days after Final Approval, BP shall instruct the
3 escrow holder holding the BP Settlement Escrow Account to
4 irrevocably transfer the Settlement Amount plus all accrued
5 interest on the Settlement Amount to the BP Settlement Fund
6 created under this paragraph. After deposit of the Settlement
7 Amount, plus all interest accumulated on this sum, to the BP
8 Settlement Fund, the Governments shall allocate and disburse the
9 Settlement Amount, plus all interest accumulated on this sum, as
10 follows:

11 (a) The sum of \$2,484,567 plus all interest
12 accumulated on this sum shall be deposited into a natural
13 resources damages account and shall be used to Restore bird-
14 related Natural Resources impacted by the Oil Spill. The
15 Governments currently plan to use the funds deposited into
16 the Natural Resources Damages Account as follows:

- 17 (1) For the improvement of the South Jetty at
18 North Island, San Diego, to restore day and
19 night roosting habitat for the Brown Pelican
20 and other marine birds, as more fully
21 described in Attachment 1;
- 22 (2) For a multi-year Brown Pelican and marine
23 bird predator control project or projects for
24 Southern California islands within the
25 national boundaries of the United States, as
26 more fully described in Attachment 1;

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(3) For the purchase and installation of structures to serve as artificial roosts for Brown Pelicans and other marine birds, as more fully described in Attachment 1;

(4) For jetty security projects for Brown Pelicans and other marine birds, as more fully described in Attachment 1;

(b) The sum of \$400,000.00 plus all interest accrued on this sum for a fish hatchery program at Aqua Hedionda Lagoon to rear white seabass for replacement of those impacted by the Oil Spill;

(c) The sum of \$300,000.00 plus all interest accrued on this sum for ocean and coastal pollution mitigation and monitoring projects to be administered by the Southern California Coastal Water Research Project;

(d) The sum of \$79,680 plus all interest accrued on this sum for certain revenue losses incurred by the California Department of Parks;

e) The sum of \$630,000 plus all interest accrued on the sum for certain Response Costs of the State Agencies and Local Governments.

8. The Governments commit to the expenditure of the funds set forth in paragraph 7 (a) and (b) above, for the design, implementation, permitting, and monitoring of Restoration projects. If one or more of the projects listed in paragraph 7 (a) is not carried out for any reason, the Governments currently

1 plan to carry out one or more of the alternate projects described
2 in Attachment 1. Nonetheless, the Governments retain the
3 ultimate authority and responsibility to determine the use of
4 funds received for Natural Resources Damages in accordance with
5 the provisions of the Clean Water Act, other relevant federal or
6 state law, and the regulations governing use of recoveries for
7 Natural Resources Damages. If, in applying the provisions of the
8 Clean Water Act and other applicable federal and state law
9 including the aforementioned regulations, and examining the
10 scientific and engineering objectives of the planned Restoration
11 projects, and taking into account the available funds, the
12 Governments determine to expend funds in a manner different from
13 that described in paragraph 7 (a) or (b) or in Attachment 1, the
14 Governments will provide an explanation of their decision to BP
15 and will proceed with other Restoration projects that the
16 Governments deem to be reasonable and necessary to restore
17 Natural Resources directly impacted by the Oil Spill. Following
18 commencement of the Restoration Projects, the United States will
19 advise BP, upon reasonable request, of the status of the
20 projects.

21
22 **RELEASES AND COVENANTS NOT TO SUE**

23 9. Effective upon Final Approval and BP's payment of
24 the Settlement Amount in the manner prescribed in paragraph 5, 6,
25 and 7 of this Decree, the United States releases BP from, and
26 covenants not to sue or take any other civil or administrative
27

1 construed as creating, any claim in favor of any person not a
2 party to this Decree.

3 17. The covenants not to sue in paragraph 9 above
4 shall apply only to matters in paragraph 9 and shall not apply to
5 the following claims:

6 (a) Claims based on a failure of BP to satisfy
7 the requirements of this Decree, and

8 (b) Claims for criminal liability brought by the
9 United States.

10 18. Nothing in this Decree shall affect the
11 subrogation rights, if any, of the Trans-Alaska Pipeline
12 Liability Fund against any Non-Party or Party to this Decree.
13 Neither the existence or non-existence of such subrogation rights
14 shall affect or preclude Final Approval as defined in this
15 Decree.

16
17 **NOTICES AND SUBMITTALS**

18 19. Whenever, under the terms of this Decree, written
19 notice is required to be given by one Party to another, it shall
20 be directed to the individuals and addresses specified below,
21 unless the individuals specified or their successors give notice,
22 in writing, to the other Parties that notice should be directed
23 to a different individual or address.

1 Notice to the United States:

2 Chief, Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice
5 P.O. Box 7611
6 Ben Franklin Station
7 Washington, D.C. 20044

8 Robert R. Klotz
9 Environment and Natural Resources Division
10 United States Department of Justice
11 301 Howard Street, Suite. 870
12 San Francisco, CA 94105

13 Philip A. Berns
14 Attorney in Charge
15 U.S. Department of Justice
16 Torts Branch, Civil Division
17 P.O. Box 36028
18 450 Golden Gate Avenue, 10th Floor
19 San Francisco, CA 94012-3463

20 Notice to BP:

21 General Counsel
22 BP America, Inc.
23 200 Public Square
24 Cleveland, Ohio 44114

25 ELECTION TO TERMINATE

26 20. Any Party may elect to terminate this Decree if,
27 prior to Final Approval, (i) a final judicial determination is
28 made by any court of competent jurisdiction that this Agreement
will not be approved in state court as a good faith settlement
under Section 877.6 of the California Code of Civil Procedure, or
(ii) a final judicial determination is made by any such court
that Claims Against BP for Contribution asserted or assertable in
state court are not barred by this settlement, or (iii) the
United States District Court for the Central District of

1 California makes a final determination that this Decree will not
2 be entered as an order of the Court. A Party electing to
3 terminate this Decree must do so within fifteen (15) days after
4 the final judicial determination specified in the preceding
5 sentence, and shall immediately notify the other Parties to this
6 Decree (and the parties to the Settlement Agreement) of such
7 election in writing by hand delivery, facsimile, or overnight
8 mail. Termination of this Decree by one Party shall effect
9 termination as to all Parties. For purposes of this paragraph,
10 "termination" and "terminate" shall mean the cessation, as of the
11 date of notice of such termination, of any and all rights,
12 obligations, releases, and covenants under this Decree.
13

14 REPRESENTATIVES

15 21. Each undersigned representative of the BP
16 Companies certifies that he or she is fully authorized to enter
17 into the terms and conditions of this Decree and to execute and
18 legally bind her or his respective Parties to this Decree.
19

20 INTEGRATION CLAUSE

21 22. This document (including its attachments)
22 encompasses the entire agreement of the Parties with respect to
23 the subject matter hereof and totally supersedes all prior
24 agreements or understandings, whether oral or in writing.
25

MODIFICATION

23. Minor modifications not materially altering this Decree may be effected by the written agreement of the Parties. No other modifications of this Decree may be made unless the Parties agree in writing to the modification and the Court approves of the requested modification. Nothing in this paragraph shall be deemed to limit the Court's power to supervise or modify this Consent Decree.

Dated and entered this 5th day of March, ~~1994~~ ¹⁹⁹⁷.


ROBERT J. KELLEHER

HONORABLE ROBERT J. KELLEHER
UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Decree:

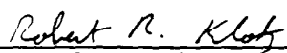
FOR THE UNITED STATES OF AMERICA:

By:



LOIS J. SCHIFFER
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

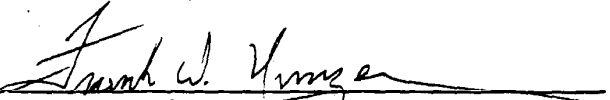
BY:




ROBERT R. KLOTZ
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
301 Howard Street, Suite. 870
San Francisco, CA 94105

FOR THE UNITED STATES OF AMERICA (con't):

By:


FRANK W. HUNGER
Assistant Attorney General
Civil Division
United States Department of Justice

By:


PHILIP A. BERNS
Attorney in Charge
U.S. Department of Justice
Torts Branch, Civil Division
P.O. Box 36028
450 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102-3463

FOR THE BP COMPANIES:

By: _____


Roger Gale
BP America, Inc.
BP Oil Supply Company
BP Oil Shipping Company USA