FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

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Entered on docket
9/29/04 by:
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MOBIL EXPLORATION & PRODUCING U.S. INC., Defendant.	CIV NO. 2:98-CV-00220-ST CONSENT DECREE

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint against Mobil Exploration and Producing U.S. Inc. (hereinafter "Mobil" or "Defendant") alleging violations of the federal Clean Water Act (the "Act") at Mobil's McElmo Creek Unit and Ratherford Unit oil fields, located near Aneth, Utah, on the Navajo Nation;

WHEREAS, the United States alleges that: (1) Mobil discharged pollutants, including oil and produced water, into waters of the United States at its McElmo Creek Unit and Ratherford Unit oil fields in violation of the Act; (2) Mobil failed to adequately prepare and implement a Spill Prevention Control and Countermeasure Plan in violation of 40 C.F.R. Part 112; (3) Mobil failed to provide notification to EPA for a discharge event in violation of 40 C.F.R. § 112.4; and (4) Mobil failed to adequately prepare and implement a Facility Response Plan and drill/training program in violation of 40 C.F.R. §§ 112.20 and 112.21;

WHEREAS, this Consent Decree does not constitute an admission of either any facts or liability by Mobil;

WHEREAS, the parties have agreed that settlement of the civil judicial claims as alleged in the Complaint is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate way to resolve this action;

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

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I. JURISDICTION AND PARTIES BOUND

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E). This Court

also has personal jurisdiction over Defendant. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (c) and 1395(a), and 33 U.S.C. §§ 1319(b) and 1321(b)(7)(E). Notice of the commencement of this action has been given to the State of Utah and to the Navajo Nation in accordance with 33 U.S.C. § 1319(b). Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter, enforce, modify, or terminate this Consent Decree.

2. This Consent Decree shall apply to and be binding upon Defendant and its successors and assigns, and on the United States on behalf of EPA.

3. If Defendant transfers any ownership interest or right to operate the Facility, including but not limited to the sale, lease, or licensing of others to operate all or part of the Facility, Defendant shall give notice of this Consent Decree to any successor in interest prior to such transfer. Defendant shall send a copy of such written notification to EPA concurrently with such sale or transfer. Upon sale or transfer of such Facility, Defendant shall attach a copy of this Consent Decree to the agreement by which such Facility is sold or transferred and shall make performance of the obligations of Defendant under this Consent Decree an obligation of any purchaser or transferee. For 180 days after sale or transfer of such Facility, Mobil and its successor in interest shall be jointly and severally liable for obligations under this Consent Decree. Thereafter, Mobil shall either retain or be relieved of its obligations under the Consent Decree as provided in Appendix J.

II. DEFINITIONS

4. Definitions.

a. "Barrel" or "bbl" shall mean 42 gallons.

b. "Complaint" shall mean the complaint filed by the United States against Mobil in the United States District Court, District of Utah, as amended, and assigned as Civ. No. 2:98-CV-00220-ST.

c. "Consent Decree" shall mean this written agreement and all

appendices or exhibits attached hereto and any modifications of the agreement, appendices, or exhibits.

d. "Defendant" or "Mobil" shall mean Mobil Exploration and Producing U.S. Inc.

e. "DOJ" shall mean the United States Department of Justice.

f. "Effective Date" shall mean the date of entry of the Consent Decree by the Clerk of the United States District Court for the District of Utah.

g. "Eligible SEP Costs" shall mean money that Mobil spends to purchase equipment or to contract for services specified in Appendix I to this Consent Decree, or substantially similar equipment or services.

h. "EPA" shall mean the United States Environmental Protection Agency.

i. "FRP" shall mean Facility Response Plan as set forth in 40 C.F.R. §§ 112.20 and 112.21.

j. "McElmo Creek Unit" or "MCU" shall mean Mobil's McElmo Creek Unit crude oil production facility located near Aneth, Utah, on the Navajo Nation.

k. "Paragraph" shall mean a section of this Consent Decree marked with an Arabic numeral (i.e., 1, 2, 3, etc.), including all subsections of that Paragraph.

l. "Parties" shall mean the United States and Mobil.

m. "Plaintiff" shall mean the United States on behalf of EPA.

n. "Ratherford Unit" or "RU" shall mean Mobil's Ratherford Unit crude oil production facility located near Aneth, Utah, on the Navajo Nation.

o. "Specific Locational Information" shall mean coordinates of latitude and longitude, accurate to within five meters of the reported point's true location. "Specific Locational Information" shall include information relating to its associated method, accuracy, and description codes in accordance with EPA's Method Accuracy

Description, Version 6.1, November 7, 1994.

p. "SPCC" shall mean spill prevention control and countermeasures as set forth in 40 C.F.R. Part 112.

q. "Mobil's Semiannual Report" and "Semiannual Report" shall mean the semiannual report required by this Consent Decree that is identified in Section VI (Compliance Reporting and Record Keeping) of this Consent Decree.

r. "Mobil's Quarterly Spill Report" and "Quarterly Spill Report" shall mean the quarterly report required by Paragraph 19 (Submission of Quarterly Spill Reports and Spill Locations) of this Consent Decree.

III. CIVIL PENALTY

5. After the entry of this Consent Decree and within 10 days of the receipt of the Electronic Fund Transfer procedures described in Paragraph 6, Mobil shall pay to the United States a civil penalty of $515,000 plus interest at 1.38% per year from the date of January 23, 2003, through the date of payment.

6. Payments under this Consent Decree shall be made by Electronic Funds Transfer ("EFT") to the U.S. Treasury according to current United States EFT procedures. The United States shall provide a copy of current EFT procedures to Defendant pursuant to Section XI (Notification) of this Consent Decree. Concurrently with the electronic funds transfer, Defendant shall fax notice of payment to the person designated as "Point of Contact" on the EFT transfer instructions and shall send notice of payment to EPA and the United States Department of Justice ("DOJ") at the addresses listed in Section XI (Notification). The notice of payment shall identify: (1) the date and amount of money transferred; (2) the name and address of the transferring bank; (3) this case by name; (4) Case No. 98-CV-00220-ST (D. Utah); (5) USAO File Number 1997V00311; (6) DOJ #90-5-1-1-4457; (7) this Consent Decree (including date of entry); and (8) a description of the reason for the payment (including the Paragraph numbers of this Consent Decree that are most relevant to the payment).

IV. INJUNCTIVE RELIEF

7. MCU Injection Distribution System. Within 30 days of the Effective Date, Mobil shall certify that it has, by May 15, 1997, replaced all of the MCU injection lateral lines, which were formerly composed of fiberglass, with cement-lined or poly-lined carbon steel pipe. Mobil shall certify that it has replaced approximately 130,000 feet of such lines at MCU.

a. All of the replaced injection lateral lines shall be maintained in good working order, and the integrity of the cathodic protection system on these lines shall be evaluated on an annual basis.

b. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 7 shall be deemed satisfied three years after the Effective Date, provided that Mobil has submitted its certification and completed its obligations under Paragraph 7.a.

8. MCU and RU Injection Distribution System and Emergency Shutdown System. Within 30 days of the Effective Date, Mobil shall certify the following: (1) it has installed and operates field pressure monitors on the MCU and RU injection distribution systems; (2) it has installed and operates monitoring, alarms, an automatic dial-out system, and an automated injection pump emergency shutdown ("ESD") system at its MCU and RU injection station facilities as described in Appendix A to the Consent Decree; (3) it has upgraded WAG skids at MCU with enhanced metallurgy to minimize corrosion; and (4) it has replaced flexible hoses at the RU injection wells with steel pipe to provide greater integrity.

a. Mobil shall respond to an ESD event at the injection station facilities at MCU or RU as soon as practicable (and within one hour if feasible) by identifying which set point has been violated, determining the actual problem in the field, and manually isolating the problem by closing the field isolation valves that are closest to the source of the leaks.

b. All of the equipment in Paragraph 8 shall be maintained in good working order and shall be inspected on a semiannual basis.

c. Mobil shall maintain logs for ESD events at the MCU and RU injection station facilities that result in a spill of at least one barrel of oil or at least five barrels of produced water. The logs shall include the date and time of the ESD activation, the portion of the system activated, the date and time of Mobil's response to the shutdown, a description of Mobil's response to the shutdown, an indication of the cause of the shutdown, and whether Mobil discovered a leak or spill. Mobil shall provide the logs to EPA upon request.

d. Mobil's Semiannual Report shall contain a description of all ESD events at the MCU and RU injection station facilities that result in a spill of at least one barrel of oil or at least five barrels of produced water, including the time and location of the event, the response time and manner of response, the cause of the event, and the resolution of the problem.

e. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 8 shall be deemed satisfied three years after the Effective Date, provided that Mobil has submitted its certification and completed its obligations under Paragraph 8.a. and b.

9. Stuffing Box Leak Detectors. Within six months of the Effective Date, Mobil shall install and operate stuffing box leak detectors on all producing rod wells at MCU and RU listed in Appendix B. Mobil shall also install and operate stuffing box leak detectors on the following rod wells that are located within 1,000 feet of the high water mark of major drainages (e.g., MCU: San Juan River, McElmo Creek, Allen Canyon; RU: San Juan River, Sahgzie Creek, Desert Creek), which are identified as principal and secondary reach areas in Appendix H to this Consent Decree: (1) all new producing rod wells at MCU or RU, which are installed within three years after the Effective Date, and (2) all currently inactive rod wells, which are

brought into operation within three years after the Effective Date.

a. For the wells listed in Appendix B, stuffing box leak detectors required by this Paragraph shall be installed and operational within six months of the Effective Date. For each new well or currently inactive well covered by this Paragraph, stuffing box leak detectors required by this Paragraph shall be installed and operational at the time of the first operation of the new or currently inactive well.

b. All stuffing box leak detectors located at MCU and RU shall be maintained in good working order and inspected quarterly by Mobil personnel.

c. Mobil's Semiannual Report shall list all wells identified in Appendix B at which Mobil installed stuffing box leak detectors and the date of installation. The Semiannual Report shall also identify any new wells located within 1,000 feet of the ordinary high water mark of major drainages (identified as principal and secondary reach areas in Appendix H) that do not yet have operational stuffing box leak detectors.

d. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 9 shall be deemed satisfied three years after the Effective Date, provided that Mobil has completed its obligations under Paragraph 9.a. and b.

10. MCU and RU Flowlines. Mobil shall certify that it has, within the past seven years, replaced existing flowlines with new pipes and currently operates 138,775 feet of new flowlines at MCU and 6,927 feet of new flowlines at RU.[1]

a. All flowlines replaced pursuant to this Paragraph shall be maintained in good working order, and the integrity of the cathodic protection system on these lines shall be evaluated on an annual basis.

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[1] The term "flowlines" refers to pipes leading from producing wells to a satellite or a tank battery.

b. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 10 shall be deemed satisfied three years after the Effective Date, provided that Mobil has submitted its certification and completed its obligations under Paragraph 10.a.

11. MCU and RU Production Transfer System Field Pressure Monitoring and Alarm System. Within 30 days of the Effective Date, Mobil shall certify that it has installed and operates a pressure monitoring and alarm system at the MCU and RU production transfer systems, as described in Appendix C to this Consent Decree.

a. Mobil shall respond to an alarm event at the MCU or RU production transfer systems as soon as practicable (and within one hour if feasible) by identifying which set point has been violated, determining the actual problem in the field, and manually isolating the problem to the extent practicable.

b. All of the equipment in Paragraph 11 shall be maintained in good working order, and shall be inspected in accordance with the inspection schedule set forth in the SPCC Plan for MCU or RU.

c. Mobil shall maintain logs for alarm events at the MCU and RU production transfer systems that result in a spill of at least one barrel of oil or at least five barrels of produced water. The logs shall include the date and time the alarm system is activated, the portion of the system activated, the date and time of Mobil's response to the alarm, a description of Mobil's response to the alarm, an indication whether the alarm resulted in a shutdown, the cause of the shutdown, and whether Mobil discovered a leak or spill. Mobil shall provide the logs to EPA upon request.

d. Mobil's Semiannual Report shall contain a description of all alarm events in the applicable six-month period at the MCU and RU production transfer systems that result in a spill of at least one barrel of oil or at least five barrels of produced water, including the time and location of the event, the response time and

manner of response, the cause of the event, and the resolution of the problem.

e. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 11 shall be deemed satisfied three years after the Effective Date, provided that Mobil has submitted its certification and completed its obligations under Paragraph 11.a. and b.

12. Emergency Pits. Mobil operates four emergency pits at MCU and RU, including the following locations: MCU Area 1, MCU Area 2, MCU Area 4, and MCU Area 6. Within 60 days of the Effective Date, Mobil shall certify that it operates the following equipment at all emergency pits at MCU and RU, and that the equipment is maintained in good repair: walls, liners, secondary berming, inlet flow sensor, remote communication equipment and alarms, and bird netting. Alternatively, in lieu of the certification for any one of the identified emergency pits, Mobil may, within 60 days of the Effective Date, submit to EPA for approval a plan to install and operate aboveground storage tanks that meet all applicable requirements, including, but not limited to, 40 C.F.R. Part 112. Within 60 days of the Effective Date, Mobil shall also certify that it has permanently closed the emergency pit at the RU Water Injection Station and replaced it with aboveground storage tanks that meet all applicable requirements, including, but not limited to, 40 C.F.R. Part 112. Mobil shall not construct any additional emergency pit at MCU or RU without installing an inlet flow sensor, remote communication equipment and alarms, bird netting, and a secondary means of containment adequate to contain the entire contents of the emergency pit plus sufficient freeboard to allow for precipitation. Mobil may install and operate additional aboveground storage tanks at MCU or RU provided that such tanks are installed and operated in accordance with all applicable requirements, including, but not limited to, 40 C.F.R. Part 112.

a. When an inlet flow sensor or alarm indicates that fluid is flowing into an emergency pit, Mobil shall respond to this event in accordance with the procedure set forth in Appendix D.

b. Mobil shall maintain all equipment required by this Paragraph in good working order, and shall inspect the equipment on a monthly basis.

c. Mobil's Semiannual Report shall identify any additional emergency pits constructed at MCU or RU and shall describe how each new emergency pit complies with the requirements of Paragraph 12.

d. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 12 shall be deemed satisfied three years after the Effective Date, provided that Mobil has submitted its certification and completed its obligations under Paragraph 12.a. and b.

13. Spill Prevention Control and Countermeasure ("SPCC") Plan for MCU and RU. Within 30 days of the Effective Date, Mobil shall submit to EPA the revised SPCC Plan dated April 2001, and shall implement the measures set out in the SPCC Plan.

14. Facility Response Plan ("FRP") for MCU and RU. Mobil shall implement the measures set out in its FRP dated June 2001 within six months of the Effective Date.

15. Preventative Maintenance and Testing Program for MCU and RU. Within 30 days of the Effective Date, Mobil shall implement a preventative maintenance and testing ("PM") program that encompasses isolation valves, alarms, pressure monitoring, and shutdown systems for the MCU and RU producing wells, injection distribution system, and production transfer system. The PM program shall also include periodic integrity checks of injection lines, flowlines, stuffing box leak detectors, berms, and emergency pits. The PM program is described in more detail in Appendix E to this Consent Decree.

a. Within 60 days of the Effective Date, Mobil shall incorporate the PM program into a computerized system for maintenance, planning, scheduling, and execution of work activities, and shall include the PM program as part of the standard operating procedures for MCU and RU.

b. For a three-year period after the Effective Date, Mobil shall

provide information in its Semiannual Report summarizing work activities done under the PM program in the applicable six-month period.

c. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 15 shall be deemed satisfied three years after the Effective Date, provided that Mobil has completed its obligations under Paragraph 15.a. and b.

16. Root Cause Analysis. For three years after the Effective Date, Mobil shall conduct a root cause analysis in accordance with the program described in Appendix F to evaluate the cause of: (1) any spill of oil and/or produced water into waters of the United States or adjoining shorelines; and (2) all spills of oil and/or produced water, regardless of location or spill path, greater than 10 barrels. Mobil shall take corrective actions to address the cause of such spills as soon as practicable after conducting a root cause analysis. Within 30 days of the Effective Date, Mobil shall incorporate this practice of root cause analysis into the standard operating procedures for MCU and RU.

a. Mobil's Semiannual Report shall include a copy of all Incident Reports prepared pursuant to Appendix F in the applicable six-month period as well as a description of the corrective actions taken by Mobil during that period in response to the Incident Reports.

b. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 16 shall be deemed satisfied three years after the Effective Date, provided that Mobil has incorporated the practice of root cause analysis into the standard operating procedures for MCU and RU and completed its obligations under Paragraph 16.a.

17. Employee Training.

a. For each requirement in Paragraphs 7-16, Mobil shall ensure appropriate training of personnel. Such training shall occur within three months after each

system identified in each Paragraph becomes operational. Documentation of the content and attendance at each training shall be included in the Semiannual Report. All training developed pursuant to this Paragraph shall be included in each annual training described in Paragraph 17.b.

b. Each Mobil employee who works at the MCU or RU shall participate in annual training on the following topics: preventing spills of oil or produced water, SPCC and FRP requirements, responding to spills, and/or operating the equipment required by the Consent Decree. Mobil shall maintain copies of the training outlines and documents and logs of employee attendance and shall make these materials available to EPA upon request.

c. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 17 shall be deemed satisfied three years after the Effective Date.

18. Compliance Audit for MCU and RU. Within nine months after the Effective Date, Mobil shall conduct an external audit of Clean Water Act compliance at MCU and RU in accordance with the provisions of Appendix G, using either an audit team from other Exxon Mobil work groups or third party contractors to conduct the audit. The purpose of this audit shall be to assess Mobil's compliance with the Clean Water Act, 33 U.S.C. §§ 1251-1387, together with all corresponding regulations.

a. Within one year of the Effective Date, Mobil shall prepare an Audit Assessment Report in accordance with Appendix G and submit it to EPA. The Audit Assessment Report shall describe in detail the pertinent results of the audit.

b. Within 60 days after the submission of the Audit Assessment Report to EPA, Mobil shall submit to EPA a Compliance Implementation Plan containing Mobil's plan for correcting each violation or potential violation noted in the Audit Assessment Report. The Compliance Implementation Plan shall include a schedule for the

steps necessary to remedy or prevent the violations. Any violation that poses an imminent threat to human health or the environment shall be corrected immediately. Other violations shall be corrected as soon as practicable after submission of the Audit Assessment Report. After Mobil has corrected all violations or potential violations noted in the Audit Assessment Report, Mobil shall submit a certification of completion to EPA.

c. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil's obligations under Paragraph 18 shall be deemed satisfied after Mobil complies with the applicable requirements of subparagraphs (a) and (b).

19. Submission of Quarterly Spill Reports and Spill Locations. Mobil's Quarterly Spill Report for MCU and RU shall include notice of: (i) each spill containing oil, produced water, or any other pollutant that reaches the areas indicated on Appendix H; and (ii) each spill containing at least one barrel of oil or at least five barrels of produced water. Such notice may be provided by submission of a completed "Report of Undesirable Event" form (either a copy of the form submitted to Bureau of Land Management, or, for spills not reported to BLM, following the same format). At a minimum, the Quarterly Spill Reports shall specify the date(s) of each spill, the volume and type of material spilled (e.g., 1 bbl oil, 3 bbl produced water), and a detailed description of Mobil's response to the spill. In addition, for each spill containing at least five barrels of oil or at least ten barrels of produced water, Mobil shall provide Specific Locational Information regarding: (i) the beginning of the spill; (ii) the location of any points of spilled fluid recovery; and (iii) the location of the ultimate end point(s) of the spill flowpath(s). Mobil shall also provide a map, diagram, or trace on an aerial photograph showing the beginning location, flow path, recovery points, ultimate extent of the spill, and distances traveled in relation to roads, geographic features, wells, pipes and other equipment in MCU or RU. Mobil's Quarterly Spill Reports shall also contain a separate listing of any spills that reach the areas indicated on Appendix H. This separate listing shall indicate: the date(s) of the spill, the type(s) of material

spilled, the volume of the spill in barrels for each material, the area that the spill reached on Appendix H, and the number of days that the spill flowed into the areas indicated on Appendix H. Mobil's Quarterly Spill Reports shall be submitted to EPA on or before the 30th day following the end of each calendar quarter (March 31, June 30, September 30, and December 31), and shall include reports of all spills in the applicable calendar quarter. For the purposes of Paragraph 29(e) (notification of completion) and Paragraph 62 (termination), Mobil is required to submit Quarterly Spill Reports for the three-year period after the Effective Date.[2]

V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

20. In accordance with the provisions of Appendix I to this Consent Decree, which is attached hereto and incorporated into this Decree by reference, Mobil shall provide for the construction and implementation of the Aneth Waterline Extension Project as a Supplemental Environmental Project ("SEP"). The SEP is intended to provide an adequate supply of drinking water as well as sanitation facilities for local residents in the vicinity of Aneth, Utah, on the Navajo Nation.

21. Mobil is responsible for the satisfactory completion of the SEP in accordance with the provisions of Appendix I to this Decree. Mobil may use contractors and/or consultants in planning and implementing the SEP.

22. With regard to the SEP, Mobil certifies the truth and accuracy of each of the following:

a. That to the best of Mobil's knowledge, a reasonable and good faith estimate of the cost of the SEP is $327,000;

b. That, as of the date of this Decree, Mobil is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Mobil required

[2] For example, if the Effective Date were December 1, 2002, Mobil's first Quarterly Spill Report would be due on January 31, 2003, for the period December 1 to December 31, 2002; its last Quarterly Spill Report would be due on January 31, 2006, for the period October 1 through November 30, 2005.

to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That Mobil has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and

d. That Mobil will not receive any reimbursement for any portion of the SEP from any other person.

23. SEP Completion Report

a. Within thirty (30) days after Mobil concludes that the SEP has been fully implemented in accordance with the requirements of this Decree, Mobil shall submit a SEP Completion Report to the United States, in accordance with Section XI (Notification) of this Consent Decree. The SEP Completion Report shall contain the following information:

i. A detailed description of the SEP as implemented;

ii. A description of any problems encountered in completing the SEP and the solutions thereto;

iii. An itemized list of all Eligible SEP Costs and acceptable evidence of such costs;

iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

v. A description of the environmental and public health benefits resulting from implementation of the SEP.

24. For purposes of Paragraph 23.a.iii, "acceptable evidence" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts do not constitute acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made.

25. Mobil hereby agrees that any funds expended by Mobil in the performance of the SEP shall not be deductible for purposes of calculating federal and state taxes. Mobil, at the time of completion of the SEP, shall submit to the United States certification that any funds expended in the performance of the SEP pursuant to this Consent Decree have not been and will not be deducted for purposes of such taxes.

26. Within thirty (30) days after receipt of a SEP Completion Report (unless the United States notifies Defendant that additional time is required), the United States shall notify Mobil whether or not Mobil has satisfactorily completed the SEP. If Mobil's total Eligible SEP Costs are less than $327,000 in connection with the performance of the Aneth Waterline Extension Project described in Appendix I to this Consent Decree, or if the SEP has not been satisfactorily completed, stipulated penalties may be assessed under Section VII (Stipulated Penalties) of this Consent Decree. Disputes concerning the satisfactory completion of the SEP may be resolved under Section X (Dispute Resolution) of this Decree.

27. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 51 below.

28. Any public statement, oral or written, in print, film, or other media, made by Mobil making reference to the SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. Mobil Exploration and Producing U.S. Inc., taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act."

VI. COMPLIANCE REPORTING AND RECORD KEEPING

29. Mobil's Semiannual Report. On or before the 30th day following the end of each calendar half (June 30 and December 31), Mobil shall submit to EPA a Semiannual Report containing any information required by the Consent Decree to be reported to EPA. The Semiannual Report shall contain the following items:

a. Information required to be provided by Paragraphs 7 through 28 of this Consent Decree. Mobil shall provide separate descriptions for each of Paragraphs 7 through 28, and the descriptions shall be clearly labeled by the appropriate Paragraph Number of this Consent Decree.

b. Descriptions of any noncompliance with the requirements of this Consent Decree.

c. Any other information required to be reported to EPA by this Consent Decree.

d. Copies of any SPCC Plans or FRP that have been amended.

e. If Mobil believes that it has completed all of the requirements of a particular Paragraph numbered 7 through 20 of this Consent Decree, the Semiannual Report shall specifically certify that Mobil has completed all of the requirements of the particular Paragraph. Thereafter, Mobil need not include a description of the project in the Semiannual Report except to state that the project was completed and to reference the Semiannual Report in which the completion certification was provided.

30. Record Keeping. Mobil shall maintain at MCU or RU copies of all notices, reports, information, submissions, and records required by this Consent Decree until the termination of this Consent Decree. Mobil shall provide any of these documents to EPA upon request.

VII. STIPULATED PENALTIES

31. Late, Inaccurate, or Incomplete Notices or Reports: If Defendant fails to provide any notice, report, submission, or other documents required by this Consent Decree by the due date, Defendant shall pay a stipulated penalty of $2,000 per day for each day that the notice or report is late. When EPA notifies Defendant that a notice or report is inaccurate or incomplete, Defendant shall have 30 days from receipt of EPA's notification to provide an accurate and complete notice or report. If Defendant fails to submit the revised and corrected notice or report

to EPA within the 30-day period, Defendant shall pay a stipulated penalty of $2,000 per day for each day until a revised and corrected notice or report is submitted to EPA.

32. Late Payment of Civil Penalty: Defendant shall pay stipulated penalties of $5,000 per day for failure to timely pay the civil penalty required by Paragraph 5.

33. Other Injunctive Relief Requirements: For each failure to comply with any of the requirements of Paragraphs 7 through 19 (other than the notice and reporting requirements subject to Paragraph 31), Defendant shall pay a stipulated penalty for each day of each violation of the Consent Decree's requirements as follows:

Penalty per day, per violation	Number of days
$2,500	first through tenth
$5,000	eleventh through twentieth
$10,000	each day beyond twentieth

34. Spills: For each spill containing oil and/or produced water at MCU or RU, Mobil shall pay a stipulated penalty per day for each spill equal to the highest of the following four amounts:

a. For any spill of produced water that reaches the principal reach areas indicated on Appendix H, the stipulated penalty, based on the total volume of the spill, shall be:

Volume of spill (bbl)	Stipulated penalty
Greater than 999	$20,000
Between 250 and 999 (inclusive)	$10,000
Between 25 and 249 (inclusive)	$5,000
Less than 25	$2,500

b. For any spill that reaches the principal reach areas indicated on Appendix H, either (i) containing at least 10 barrels of oil, or (ii) in which oil is at least 10 percent of the spill's total volume, the stipulated penalty, based on the total volume of the spill, shall be $1,100 per barrel spilled.

c. For any spill of produced water that reaches the secondary reach areas indicated on Appendix H, the stipulated penalty, based on the total volume of the spill, shall be:

Volume of spill (bbl)	Stipulated penalty
Greater than 999	$10,000
Between 250 and 999 (inclusive)	$5,000
Between 25 and 249 (inclusive)	$2,500
Less than 25	$1,250

d. For any spill that reaches the secondary reach areas indicated on Appendix H, either (i) containing at least 10 barrels of oil, or (ii) in which oil is at least 10 percent of the spill's total volume, the stipulated penalty, based on the total volume of the spill, shall be $500 per barrel spilled.

e. For purposes of Paragraph 34.a and c, each day that a spill continues to flow into the areas indicated on Appendix H shall be considered a separate day of violation.

f. Mobil's obligation to pay stipulated penalties pursuant to this Paragraph shall apply only to any spill containing oil and/or produced water at MCU or RU that occurs in the three-year period after the Entry Date.

35. SEP Compliance: If Mobil's total Eligible SEP Costs are less than $327,000 in connection with the performance of the Aneth Waterline Extension Project described in Appendix I to this Consent Decree, or if the SEP has not been satisfactorily completed, Mobil shall be liable for stipulated penalties, as set forth below. If Mobil has halted or abandoned completion of the SEP, such penalties shall accrue from the date of abandonment or the date set for completion of the SEP, whichever is earlier.

a. If the SEP has been satisfactorily completed but Mobil's total Eligible SEP Costs for that SEP are less than $327,000, Mobil shall pay stipulated penalties at the rate of 100% for every one dollar that Mobil's total Eligible SEP Costs for that SEP are less than $327,000.

b. If a SEP has not been satisfactorily completed, Mobil shall pay stipulated

penalties at the rate of 150% for every one dollar that Mobil's total Eligible SEP Costs for that SEP are less than $327,000. However, to the extent that Mobil has made good faith and timely efforts to complete the project, Mobil shall pay stipulated penalties at the rate of 100% for every one dollar that Mobil's total Eligible SEP Costs for that SEP are less than $327,000. If a SEP is not satisfactorily completed but Mobil's total Eligible SEP Costs for that SEP are equal to or exceed $327,000, Mobil shall not be liable for any stipulated penalties for that SEP if Mobil has made good faith and timely efforts to complete the project and certifies with supporting documentation, no later than the date that Mobil is required to submit a SEP Completion Report for that project, that it has spent at least $327,000. If Mobil does not provide the certification and documentation required by this subparagraph, or if the documentation provided does not support Mobil's certification, Mobil shall be deemed to be in violation of this Consent Decree and shall pay stipulated penalties of $25,000. For the Aneth Waterline Extension Project described in Appendix I to this Consent Decree, Mobil shall be deemed to have made good faith and timely efforts to complete the project if Mobil complies with its specific obligations set forth in Paragraphs 20, 22 through 25, 27, 28, and Appendix I to this Consent Decree.

c. If Mobil fails to: (i) transfer $327,000 to the Indian Health Service within 30 days after the Effective Date as required by Appendix I to this Consent Decree; or (ii) timely submit a SEP Completion Report under Paragraph 23, Mobil shall pay stipulated penalties as follows:

Penalty per Violation Per Day	Period of Noncompliance
$100	1st through 14th day
$250	15th through 30th day
$500	31st day and beyond

36. Right of Entry: Defendant shall pay stipulated penalties of $5,000 per day for failure to comply with the right of entry granted by Section VIII of this Consent Decree.

37. Except for stipulated penalties for spills covered by Paragraph 34 or for

SEP compliance covered by Paragraph 35.a. and b, all stipulated penalties shall begin to accrue on the day after the complete performance is due or the day that a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Any stipulated penalty accruing pursuant to this Consent Decree shall be payable upon demand and due not later than 30 days from EPA's written demand. Stipulated penalties shall be paid in the same manner as set forth in Paragraph 6. The transmittal letter accompanying a payment of stipulated penalties shall provide the same information as the notice of payment under Paragraph 6.

38. If Defendant fails to pay stipulated penalties owed pursuant to this Consent Decree within 30 days of EPA's written demand, it shall pay interest on the late payment for each day of late payment after the initial 30-day time period. The rate of interest shall be the most recent interest rate determined pursuant to 28 U.S.C. § 1961. If Defendant disputes its obligation to pay part or all of a stipulated penalty, it shall initiate the dispute resolution procedures under Section X (Dispute Resolution). If Defendant invokes dispute resolution, Defendant shall pay to the United States any amount that it does not dispute.

39. Payment of stipulated penalties for a violation of this Consent Decree shall not preclude the United States from seeking additional monetary penalties or other relief for the violations giving rise to the stipulated penalties. The United States reserves its right to pursue any or all relief for any or all violations directly, either administratively or judicially, and outside the provisions of this Consent Decree. Where a violation of this Consent Decree is also a violation of the Clean Water Act, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. RIGHT OF ENTRY

40. EPA and its contractors, consultants, and agents shall have authority to enter the Facility at all reasonable times, upon proper presentation of credentials. This provision in no way limits or otherwise affects any right of entry held by EPA pursuant to applicable federal,

state, or local laws, regulations, or permits.

IX. FORCE MAJEURE

41. Defendant shall satisfy the requirements of Paragraphs 7 through 30 except to the extent, and for the period of time, that such performance is prevented or delayed by events that constitute a force majeure.

42. For the purposes of this Consent Decree, a force majeure is defined as any event arising from causes beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" include anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

43. In the event of a force majeure, the time for performance of the activity delayed by the force majeure shall be extended for the time period of the delay attributable to the force majeure. The time for performance of any activity dependent on the delayed activity shall be similarly extended, except to the extent that the dependent activity can be reasonably implemented in a shorter time. EPA shall determine whether dependent activities will be delayed by the force majeure and whether the time period should be extended for performance of such activities. Defendant shall adopt all reasonable measures to avoid or minimize any delay caused by a force majeure.

44. When an event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Decree and that Defendant believes is a force majeure, Defendant shall notify by telephone, (415) 972-3505, the Chief, Clean Water Act Compliance Office, EPA, Region 9, within 72 hours of Defendant's knowledge of such event. Telephone notification shall be followed by written notification, made within seven (7) working

days of Defendant's knowledge of the event. The written notification shall fully describe: the event that may delay or prevent performance; reasons for the delay; the reasons the delay is beyond the reasonable control of Defendant; the anticipated duration of the delay; actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and the time needed to implement any dependent activities.

45. Defendant's failure to comply with the force majeure notice requirements provided in Paragraph 44 for any delay in performance will be deemed an automatic forfeiture of its right to assert that the delay was caused by a force majeure unless such failure to provide notice was caused by a force majeure.

46. Within seven (7) working days after receiving notice from Defendant of a force majeure, EPA shall provide written notification to Defendant stating whether Defendant's request for a delay is justified. EPA's failure to respond to a request for a delay shall be deemed a denial of that request. If Defendant disagrees with EPA's determination, it may initiate dispute resolution procedures pursuant to Section X (Dispute Resolution).

X. DISPUTE RESOLUTION

47. If Defendant disputes any determination made by EPA under this Consent Decree related to (1) a request by EPA for stipulated penalties, (2) EPA's determination pursuant to Paragraph 26, (3) EPA's determination related to force majeure, or (4) the termination of the Consent Decree under Paragraph 62, it shall send a written notice to EPA and DOJ outlining the nature of the dispute and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond 10 working days from the date when the notice was sent unless the parties agree otherwise.

48. If the informal negotiations are unsuccessful, the determination of EPA shall control, unless Defendant files a motion with this Court for dispute resolution. Any such motion must be filed within 30 days after receipt by Defendant of a notice in writing terminating

informal negotiations, and such motion must be concurrently sent to DOJ and EPA in accordance with Section XI (Notification) of this Consent Decree. The United States shall then have 30 days to respond to Defendant's motion. The Court's decision in any such dispute resolution proceeding shall be based on the administrative record. Defendant shall bear the burden of proving that: (i) in disputes regarding EPA's request for stipulated penalties under Section VII (Stipulated Penalties), Defendant did not violate the terms and conditions of this Consent Decree; (ii) in disputes regarding EPA's determination under Paragraph 26, Defendant has satisfied all of its obligations under Section V; and (iii) in disputes regarding Section IX (Force Majeure), the delay was caused by circumstances beyond the reasonable control of Defendant, its contractors, and agents, all reasonable measures were taken to avoid or minimize delay, and the duration of the delay was reasonable under the circumstances; and (iv) in disputes regarding termination of the Consent Decree under Paragraph 62, Defendant has satisfied all of its obligations under this Consent Decree. The Court shall uphold EPA's determination unless Defendant proves that the determination is arbitrary, capricious, or otherwise not in accordance with law.

49. A timely motion by Defendant will not toll the accrual of stipulated penalties under this Consent Decree for any ongoing noncompliance with respect to the disputed matter.

XI. NOTIFICATION

50. Except as otherwise specifically stated, all notices and submissions from Defendant to EPA required by this Consent Decree shall be sent by certified mail, express mail, or similar overnight mail delivery service with return receipt requested and addressed to:

Chief, Clean Water Act Compliance Office (WTR-7)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

All notices and reports submitted to EPA or DOJ shall refer to this Consent Decree and the date of entry of the Consent Decree, and shall cite the case name of United States v. Mobil

Exploration and Producing U.S. Inc., the case number 2:98-CV-00220-ST (D. Utah), and DOJ #90-5-1-1-4457.

51. All submissions made pursuant to this Consent Decree shall be signed and affirmed by a responsible official of the Defendant using the following certification statement:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

52. Notice as required by this Consent Decree shall be submitted to:

U.S. Department of Justice:

Chief, Environmental Enforcement Section
U.S. Department of Justice
Attn: DOJ #90-5-1-1-4457 (Mullaney)
301 Howard St., Suite 1050
San Francisco, CA 94105

Mobil Exploration and Producing U.S. Inc.:

Vice President
Mobil Exploration and Producing U.S., Inc.
396 West Greens Road
Houston, Texas 77067

53. All submissions made pursuant to this Consent Decree shall be deemed submitted on the date postmarked.

XII. EFFECT OF SETTLEMENT/NON-WAIVER PROVISIONS

54. Neither by entering into this Consent Decree nor by taking any action in accordance with it (including paying the civil penalty required by this Consent Decree) shall Defendant be deemed to have admitted any liability for any purpose or any responsibility for, or wrongdoing relating to, the matters specifically alleged in the Complaint, or to have admitted

any issues of law or fact related to or arising from the matters specifically alleged in the Complaint, except as set forth in Section I (Jurisdiction). It is the intent of the parties to this Consent Decree that neither the terms and conditions of this Consent Decree nor any act of performance by Defendant shall be (i) admissible in any proceeding for the purpose of imputing, implying, or otherwise raising an inference of wrongdoing by Defendant or (ii) used against Defendant as collateral estoppel in any other proceeding with any third party not a signatory to this Consent Decree.

55. With the exception of Mobil's spill at P-20 in January 2001, entry of this Consent Decree and compliance with the requirements herein resolve the civil claims of the United States against Mobil Exploration and Producing U.S. Inc., Exxon Mobil Corporation, ExxonMobil Oil Corporation, Mobil Exploration and Production North America, and Mobil Producing Texas and New Mexico Inc., for the violations alleged in the Complaint filed in this action, and for those spills listed in Appendix K, up to the date on which this Decree is lodged. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act, or under other federal or state laws, regulations, or permit conditions, relating to Defendant's spill at P-20 in January 2001. This Consent Decree resolves only those matters specifically alleged in the Complaint filed in this action, and those spills listed in Appendix K, up to the date of lodging of the Decree.

56. Except as specifically provided herein, the United States does not waive any rights or remedies available to it for violation by Defendant of federal or state laws or regulations. This Consent Decree shall in no way affect the United States' ability to bring future actions for any matters either not specifically alleged in the Complaint filed in this action, or not listed in Appendix K, up to the date of lodging of the Consent Decree. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve any criminal liability of Defendant.

57. Nothing in this Consent Decree shall affect the United States' jurisdiction

over "waters of the United States" under the Clean Water Act. The United States specifically reserves its rights to assert jurisdiction over waters of the United States at locations including, but not limited to, those specified in Appendix H. Defendant shall not assert or maintain that this Consent Decree constitutes a waiver by the United States of its rights to assert jurisdiction over waters of the United States. Defendant shall not assert or maintain that this Consent Decree constitutes a determination by the United States as to the extent of its jurisdiction over waters of the United States. Nothing in this Consent Decree shall constitute an admission by Mobil regarding the extent to which waters of the United States may occur within or around MCU or RU. Mobil specifically reserves its right to assert that certain locations are not waters of the United States, including, but not limited to, those specified in Appendix H. The United States shall not assert or maintain that this Consent Decree constitutes a waiver by Mobil of Mobil's right to assert that locations within and around MCU or RU are not waters of the United States. The United States shall not assert or maintain that this Consent Decree constitutes an acknowledgment by Mobil as to the extent of the United States' jurisdiction over waters of the United States.

58. This Consent Decree in no way affects Defendant's responsibilities to comply with all federal, state, or local laws, regulations or permits. This Consent Decree is not, and shall not be construed as, a permit or a modification of a permit. Nothing in this Consent Decree shall diminish EPA's ability to request information from Defendant under applicable laws or regulations.

59. This Consent Decree does not limit or affect the rights of the Plaintiff or Defendant against any third parties (parties not specifically part of this Decree), nor does it limit the rights of such third parties against Defendant. This Consent Decree shall not be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree.

XIII. MISCELLANEOUS

60. Fees and Appeals. Each party shall bear its own costs and attorney's fees in

this action. Each party agrees not to file an appeal in this case.

61. Integration and Modifications. This Consent Decree (including its attachments) contains the entire agreement between the Parties. The reporting requirements of this Consent Decree may be modified only if such modifications are made in writing and approved by all Parties. In all other respects, this Consent Decree may not be enlarged, modified, or altered unless such modifications are made in writing and approved by all Parties and the Court.

62. Termination. This Consent Decree shall terminate after Defendant satisfies all of its obligations under this Consent Decree and obtained EPA's consent to termination according to the following procedure: Defendant shall provide EPA notice within one month after satisfying all of its obligations under this Consent Decree. The notice required by this Paragraph shall specifically state that Defendant has satisfied all obligations of the Consent Decree, shall identify those obligations and provide evidence that the obligations have been satisfied, shall state that Defendant believes the Consent Decree can be terminated, and shall refer to this Paragraph. After receiving notice from Defendant, EPA shall provide Defendant with written notification that indicates either: (i) the Consent Decree is terminated, or (ii) EPA has determined that the Consent Decree should not be terminated. If EPA fails to provide written notice that the Consent Decree is terminated within one month after receiving written notice from Defendant or if EPA determines that the Consent Decree should not be terminated, Defendant may initiate dispute resolution procedures pursuant to Section X (Dispute Resolution).

63. Retention of Jurisdiction. The Court shall retain jurisdiction to resolve any disputes that arise under this Consent Decree, including any disputes pending at the time the Consent Decree is terminated.

64. Public Comment. Defendant agrees and acknowledges that final approval of this Consent Decree by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Decree in the

Federal Register, opportunity for public comment for at least 30 days, and consideration by the United States of any comments prior to entry of the Consent Decree by the Court. The United States reserves its right to withdraw its consent to this Consent Decree based on comments received during the public notice period. Defendant consents to entry of this Consent Decree without further notice.

65. Final Judgment. Upon entry by this Court, this Consent Decree shall constitute a final judgment for purposes of Fed. R. Civ. P. 54 and 58.

ORDER

IT IS SO ORDERED, this 29th day of September, 2004.

United States District Judge

For the Plaintiff United States of America:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Dated: 6/21/04

By: _____
W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

Dated: 7-30-04

_____
ROBERT D. MULLANEY
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
301 Howard Street, Suite 1050
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Telephone: (415) 744-6491

PAUL M. WARNER
United States Attorney
JEANNETTE SWENT
Assistant United States Attorney
District of Utah
185 South State St., Suite 400
Salt Lake City, UT 84111

Dated: 7/27/04

THOMAS V. SKINNER
Acting Assistant Administrator for Enforcement
and Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C.

Dated: 29 JUNE 04

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection
Agency, Region 9
San Francisco, CA

OF COUNSEL:

LAURIE KERMISH
Assistant Regional Counsel
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75 Hawthorne Street
San Francisco, CA 94105

For Defendant Mobil Exploration and Producing U.S., Inc.:

Dated: 6/11/04

JOHN P. CHAPLIN
Vice President
Mobil Exploration and Producing U.S., Inc.
396 West Greens Road
Houston, Texas 77067

Dated: 6/15/04

LARRY W. LINDEEN
ExxonMobil Corporation
800 Bell Street
Houston, Texas 77002-7426
Telephone: (713) 656-3429

Attorneys for Defendant

Appendices

A. Injection Distribution System - Emergency Shutdown Systems
B. Stuffing Box Leak Detectors
C. Production Transfer System
D. Emergency Pits
E. Preventative Maintenance and Testing Program
F. Root Cause Analysis
G. Compliance Audit
H. Principal and Secondary Reach Areas
I. Supplemental Environmental Project
J. Consent Decree Obligations after Sale or Transfer of Facility
K. List of Post-Complaint Spills

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.

jmr

United States District Court
for the
District of Utah
September 29, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:98-cv-00220

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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Judge Stephen L Roth, Esq.
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