

Appendix 1A

Settlement Agreement

CONFIDENTIAL SETTLEMENT DOCUMENT

MARCH 1, 1999

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

Ethel Spiller, et al.

)

)

Plaintiffs,

)

)

v.

)

CIVIL NO. A-98-CA-255-SS

)

Robert M. Walker, et al.

)

)

Defendants.

)

SETTLEMENT STIPULATION

WHEREAS plaintiffs have filed complaints and motions for preliminary injunction to halt the construction and operation of the Longhorn Pipeline from the Gulf Coast of Texas to El Paso pending compliance by defendants with the National Environmental Policy Act (“NEPA”), 42 U.S.C. 4321-4347;

WHEREAS the Court entered a preliminary injunction on August 25, 1998, finding a failure to comply with NEPA, directing defendants Department of Transportation (“DOT”) or Environmental Protection Agency (“EPA”) to prepare an environmental impact statement (“EIS”) in accordance with

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NEPA, and enjoining defendant Longhorn Partners Pipeline, L.P., (“Longhorn”) from transporting any petroleum products in the pipeline until further order of the Court or a higher court;

WHEREAS the Court denied reconsideration of the preliminary injunction by Order entered September 24, 1998; and

WHEREAS, the parties have agreed to a process under NEPA and the terms of this Stipulation for studying the environmental impacts of the Longhorn Pipeline Project as defined in Attachment B, Paragraph I.B.

WHEREAS the parties have engaged in detailed settlement negotiations and have reached an agreement.

NOW THEREFORE, the parties agree as follows:

1. Defendants EPA and DOT agree to prepare, as joint lead federal agencies (“lead agencies”), in accordance with this Settlement Stipulation and the Council on Environmental Quality (“CEQ”) and other NEPA regulations and policy (e.g., 40 C.F.R. 1501.3(b), 63 Fed. Reg. 58045 (Oct. 29, 1998) (EPA's Policy for Voluntary Preparation of NEPA Documents)) an environmental assessment (“EA”) of the Longhorn Pipeline Project (as defined in Paragraph I.B. of Attachment B). EPA shall be the lead agency for purposes of overseeing environmental impact analysis, e.g., Sections I and II of Attachment B and for the analyses and recommendations of Sections III.C.1.(a) and (b), III.B (Environmental Effects), III.C.2 and III.D. of Attachment B. DOT shall be the lead agency for

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purposes of overseeing pipeline safety and technology, e.g., Sections III.A., III.B. (Risk Assessment) and III.C.1.(c) of Attachment B.

2. The parties agree that the lead agencies may designate other federal, state and local agencies as cooperating agencies to assist in preparation of the EA; the cooperating agencies shall include at least the Department of the Army. The lead agencies shall invite the U.S. Fish and Wildlife Service, and the City of Austin Fire Department to be cooperating agencies. The parties further agree that the City of Austin, or any other party, may request assistance in the process from the National Transportation Safety Board ("NTSB"). In the event that the City of Austin, or any other party, makes such a request, and the NTSB agrees, the Federal Defendants agree to consider, in the preparation of the EA any assistance, information or comments timely provided by the NTSB.

3. The parties agree that the lead agencies, after consultation with the nonfederal parties, shall select a contractor to prepare the EA and shall direct the contractor as provided in Attachment A.

4. Federal defendants agree that the EA shall include:

(a) an identification of the Longhorn Pipeline Project as described in Attachment B, Paragraph I.B.) and a description of the proposed agency actions;

(b) an identification of alternatives to the proposed actions, including the "no action" alternative and the rerouting alternative identified in Paragraph III.C.1.b.(ii) of

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Attachment B, and any appropriate and reasonable mitigation measures not included in proposed actions;

(c) a description of the affected environment, including environmentally sensitive areas, densely populated areas, and populated areas within the jurisdiction of the City of Austin, including: (i) the following City of Austin neighborhoods in proximity to the pipeline: Dove Springs, Meadow Creek, Texas Oaks, Buckingham Estates, Tanglewood Forest, Cherry Creek, Village of Western Oaks, Silverstone, Southwest Oaks, Whispering Oaks, Woodstone Village, Cortina, Deer Park, Circle C, Matthews Lane, Maple Run #5, South Creeks, Onion Creek Plantation, Park Ridge, Park Wood, Salem Walk and Plantation Oaks and (ii) the following schools in proximity to the pipeline: Widen Elementary, Palm Elementary, Langford Elementary, Pleasant Hill Elementary, Bedichek Middle School, Williams Elementary, Kocurek Elementary, Boone Elementary, Hillcrest Elementary, Popham Elementary, Bowie High School, Kiker Elementary, Mills Elementary, Odom School, Kocurek Elementary, Bailey Middle School, Bowie High School and The Brown School;

(d) an analysis of the safety and environmental effects, including health effects, of the proposed actions and the reasonable alternatives, including a pipeline integrity analysis and risk assessment;

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(e) consideration of relevant information submitted on a timely basis by the parties, cooperating agencies, or the public;

(f) other components, including those identified in Attachment B.

5. Federal defendants agree, except as provided alternatively in Paragraph 7, to publish in the Federal Register a notice of availability of the draft EA and any proposed EA Decision (as defined in Paragraph 7) for comment and to provide each nonfederal party with a copy of the notice, the draft EA and any proposed EA Decision. Federal defendants agree to provide in the notice for a 30-day comment period. Federal defendants agree to hold public meetings in the Cities of Austin, El Paso, Houston and two cities designated by the Lower Colorado River Authority during such 30-day period and to announce the date and place of the meetings in the notice of availability of the draft EA and proposed EA Decision. The Lower Colorado River Authority shall designate such two cities on or before March 31, 1999.

6. Defendant lead agencies agree to work diligently with the cooperating agencies and any contractor selected by the lead agencies to complete the EA in accordance with the schedule set forth in Attachment C, provided that the lead agencies reserve the discretion to take such additional time as is necessary to satisfy the requirements of NEPA and implementing regulations and to fulfill and satisfy the scope of the contemplated EA as set out in Attachment B hereto and the requirements of this Stipulation. Longhorn agrees to exercise reasonable efforts to include in its agreement with the

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contractor selected by the lead agencies a provision requiring the contractor to maintain an office or other area available to the parties upon reasonable notice and during normal working hours in which documents and information supplied to the contractor shall be available for inspection and copying at the expense of the party requesting such inspection and copying, but excluding any information or materials that the lead agencies determine are agency deliberative documents not appropriate for public disclosure as part of the NEPA process. In order to facilitate this process, in the event that the contractor agrees to such a procedure, the parties agree that any documents and information provided to the contractor by the parties shall be produced in duplicate.

7. The parties agree that, after completion of the EA and the public hearings referenced in Paragraph 5, the lead and appropriate cooperating federal agencies will issue an "EA Decision" in accordance with NEPA regulations and policy and this Stipulation. An EA Decision is either a Finding of No Significant Impact ("FONSI") or a notice of intent to prepare an Environmental Impact Statement ("EIS"). The lead and appropriate cooperating federal agencies may, if appropriate, issue a notice of intent to prepare an EIS at any time during the preparation of the EA. If there is a notice of intent to prepare an EIS, federal defendants shall proceed in accordance with the CEQ and other NEPA regulations and EPA and DOT shall serve as joint lead agencies with responsibilities as agreed in Paragraph 1 of this Stipulation, while the cooperating and other agencies may participate as agreed in Paragraph 2 of this Stipulation. Such notice shall be issued in the Federal Register.

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8. Federal defendants agree that a determination whether to issue the FONSI, in accordance with 40 C.F.R. 1508.13, shall take into account any appropriate and reasonable mitigation measures to prevent operation of the Longhorn pipeline from significantly affecting safety and the human environment, including health, and that issuance of any FONSI dependent on a mitigation measure or measures shall be conditioned on implementation of the measure or measures.

9. Unless authorized by further court order, or until at least 30 days after issuance of a FONSI, or until at least thirty (30) days after issuance of an EIS and Record of Decision (“ROD”) if a FONSI is not issued,

(a) the Federal defendants agree that:

(i) the Research and Special Programs Administration of the Department of Transportation will not approve or allow Longhorn to commence operations under the Response Plan for the Longhorn Pipeline Project; provided that, in the event of a FONSI conditioned upon Longhorn’s implementation of mitigation measures, the Department of Transportation will not approve or allow Longhorn to commence operations under the Response Plan until Longhorn has implemented the mitigation measures upon which the FONSI is conditioned and that are required to be implemented prior to or upon start up of the pipeline and the appropriate lead agency, as identified in Paragraph 1 of this Stipulation, has obtained reasonable evidence from Longhorn that such mitigation measures have been implemented, and

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(ii) the Department of the Army will not issue a right-of-way for the pipeline across Ft. Bliss, and

(b) Longhorn agrees, without admitting that any such permit may be required, that it will not accept issuance of any permit under the Endangered Species Act of 1973, as amended (an "Endangered Species Permit"); provided, however, nothing herein shall be construed to either (i) prevent Longhorn from applying for and taking all steps necessary to obtain an Endangered Species Permit short of actually accepting issuance of the same, or (ii) applying for and accepting an Endangered Species Permit which is required in connection with the implementation of any mitigation measures upon which a FONSI issued under this Stipulation may be conditioned.

10. (a) Defendant Longhorn agrees that, until 30 days after issuance of an EA Decision, Longhorn will not transport or place any petroleum product in the pipeline, except that Longhorn may introduce petroleum products into the pipeline for purposes of maintenance, construction or testing if such maintenance, construction or testing is requested by the contractor in connection with the EA process and then only after obtaining approval of the Court and providing at least five (5) days written notice to the Office of Pipeline Safety in the Department of Transportation and all of the parties.

(b) Defendant Longhorn agrees not to commence any non-emergency stream crossing construction activity resulting in the discharge of dredged or fill materials into waters of the United States pursuant to a general or nationwide permit ("Stream Construction Activities") for a period of thirty (30)

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days after approval of this Stipulation by the Court. Nothing herein, however, is intended to preclude any challenge, on any basis, to any action under such permit or to the authorization granted to Longhorn under such permit.

(c) Defendant Longhorn agrees that, until thirty (30) days after issuance of an EA Decision, Longhorn will not commence any New Construction Activities (as hereinafter defined), or any Stream Construction Activities in any of the following described counties without providing written notice of such New Construction Activities or Stream Construction Activities ten (10) days prior to commencement of such construction, in the manner hereinafter provided. "New Construction Activities" mean any non-emergency construction activities involving the replacement, lowering or installation of pipe or any construction activities commenced after the date of this Stipulation which involve the surface disturbance of one-half acre or more of land. The notice required and the parties to whom such notice is to be provided are as follows:

(1) In the case of Stream Construction Activities across the Colorado River or any of its tributaries, Defendant Longhorn agrees to provide to the Lower Colorado River Authority as much advance written notice as is reasonably practical prior to commencement of construction, but in no event less than ten (10) days advance written notice of construction.

(2) In the case of New Construction Activities in Travis, Hays, Caldwell, Bastrop, Kimble or Menard Counties, Longhorn agrees to provide as much advance written notice as is

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reasonably practical prior to commencement of construction, but in no event less than ten (10) days in advance, as follows:

(I) with respect to New Construction Activities on lands owned by Marian and Lucien Collins in Kimble and Menard Counties and with respect to New Construction Activities in Kimble and Menard Counties requiring the issuance of a new federal permit or authorization, written notice to counsel for Marian and Lucien Collins,

(II) with respect to New Construction Activities on lands owned by David Robertson in Hays County and with respect to New Construction Activities in Hays County requiring a new federal permit of authorization, written notice to counsel for David Robertson;

(III) with respect to New Construction Activities in Travis, Hays, Caldwell and Bastrop Counties, written notice to counsel for Barton Springs-Edwards Aquifer Conservation District, and

(IV) with respect to New Construction Activities in Travis County, written notice to counsel for the City of Austin.

(d) With respect to any Stream Construction Activities and New Construction Activities, Longhorn agrees for the duration of the EA process, prior to commencement of such construction, that

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it will consult to minimize, to the extent reasonably practical, the environmental effects of such construction as follows:

(I) with respect to such Stream Construction Activities at stream crossings across the Colorado River or any of its tributaries, with the Lower Colorado River Authority;

(II) with respect to New Construction Activities identified in subparagraph (c)(2)(I), with Marian and Lucien Collins;

(III) with respect to New Construction Activities identified in subparagraph (c)(2)(II), with David Robertson; and

(IV) with respect to New Construction Activities in any of the counties identified in subparagraphs (c)(2)(III) and (c)(2)(IV), with the Plaintiffs described in such subparagraphs who have jurisdiction within such Counties.

(e) Defendant Longhorn agrees that any investment by Longhorn with respect to any construction in Kimble, Menard, Hays, Travis, Caldwell, Bastrop and any counties within the jurisdiction of the Lower Colorado River Authority after August 25, 1998 shall not be considered for purposes of determining the reasonableness of alternatives. Nothing herein restricts the right of any party to seek appropriate relief from the Court or to take a different position with respect to investments other than those identified in the first sentence of this subparagraph (e).

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11. The parties agree that, if the EA Decision is a FONSI, any party may apply to the Court to extend the Court's injunction contemplated by this Stipulation beyond the 30-day period following the issuance of the EA Decision on the ground that a FONSI issued under this Stipulation is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law under the Administrative Procedure Act, 5 U.S.C. 706, without limitation on any other remedies. The parties further agree that upon a finding by the Court that a FONSI issued under this Stipulation is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, the injunction may be extended upon such terms and conditions as may be imposed by the Court. Nothing in this paragraph shall prejudice the right of any party to appeal any decision of the Court or any finding relating to such decision.

12. The parties agree to this Stipulation for the purpose of efficient and effective resolution of this dispute and to avoid the risk, cost and delay incurred by continued litigation.

13. The parties agree that this Stipulation shall not constitute an admission of any violation of law or legal principle, nor does it constitute a waiver of any argument, claim, or defense, whether jurisdictional or otherwise, involving the Longhorn Pipeline Project, nor does this Stipulation constitute an agreement that the Court's Orders heretofore entered are in any way improper or invalid. Further, the parties specifically reserve the right to contest or appeal any decisions or orders of the trial court

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entered after the issuance of the EA Decision and to bring any other claims under NEPA or any other statute.

14. The parties agree to file a Joint Motion with the Court in the form of Attachment D hereto (the "Parties' Joint Motion") under which the parties will request the Court to enter an Order in the form of Attachment E hereto (the "Agreed Order") approving the terms and conditions of this Stipulation.

15. The parties further agree that this Stipulation shall not be binding upon any of the parties hereto unless and until the Court has granted the Parties' Joint Motion and entered the Agreed Order. Longhorn and the Federal defendants agree to file a motion to dismiss their pending appeals with the U.S. Court of Appeals for the Fifth Circuit promptly, but in no event more than ten (10) days after the District Court has entered the Agreed Order .

16. The parties further agree that if a FONSI has not been issued within two hundred ten (210) days after entry of the Agreed Order, Longhorn may withdraw from this Stipulation by notice to the other parties and to the Court of such withdrawal. Longhorn's withdrawal from this Stipulation shall not affect Longhorn's continuing obligations to make payments to the Contractor for work performed on the EA pursuant to the budget previously established under the provisions of Paragraph 2 of Attachment A hereto. Additionally, Longhorn's withdrawal from this Stipulation shall not affect Longhorn's continuing obligation to cooperate with the lead agencies and the Contractor in completing

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the EA; provided however, that Longhorn shall not have financial obligations after its withdrawal from this Stipulation except as set forth in the immediately preceding sentence.

17. The parties agree that the Court (the United States District Court for the Western District of Texas, Austin Division) should retain jurisdiction of this case.

IT IS SO AGREED AND STIPULATED.

Plaintiffs Marian Collins, Lucien Collins, David Robertson, and Barton Springs-Edwards Aquifer Conservation District:

By: _____

RENEA HICKS, Esq.
BEN J. CUNNINGHAM, Esq.
GEORGE & DONALDSON L.L.P.
1100 Norwood Tower
114 West 7th Street
Austin, Texas 78701
(512) 495-1400
FAX (512) 499-0094

COUNSEL FOR LISTED PLAINTIFFS

Dated: _____

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Plaintiff City of Austin:

By: _____

CONNIE ODÉ, Esq.
DAVID ALLAN SMITH, Esq.
Assistant City Attorneys -- Law Dept.
Norwood Tower -114 West 7th Street
Austin, Texas 78767-1546
(512) 499-2507
FAX (512) 499-6490

COUNSEL FOR PLAINTIFF CITY OF AUSTIN

Dated: _____

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Plaintiff Lower Colorado River Authority

By: _____

JAMES N. RADER, Esq.
PATRICIA L. AKERS, Esq.
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220
(512) 473-3200
FAX (512) 473-3298

COUNSEL FOR PLAINTIFF LOWER COLORADO RIVER AUTHORITY

Dated: _____

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Defendant Longhorn Partners Pipeline, L.P.

GARY ZAUSMER, Esq.
JENKENS & GILCHRIST
600 Congress, Suite 2200
Austin, Texas 78701
(512) 499-3894
FAX (512) 404-3520

LOCAL COUNSEL FOR DEFENDANT LONGHORN PARTNERS PIPELINE, L.P.

By: _____

BARRY F. CANNADAY, Esq.
JENKENS & GILCHRIST
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
(214) 855-4360
FAX (214) 969-7169

COUNSEL FOR DEFENDANT LONGHORN PARTNERS PIPELINE, L.P.

Dated: _____

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Defendants Rodney Slater, Secretary, U.S. Dept. Of Transportation; Carol Browner, Administrator, Environmental Protection Agency; and Robert M. Walker, Acting Secretary, Department of the Army

UNITED STATES ATTORNEY

R. BARRY ROBINSON, Esq.
Assistant U.S. Attorney
816 Congress Ave., Suite 1000
Austin, Texas 78701
(512) 916-5858
FAX (512) 916-5854

LOCAL COUNSEL FOR LISTED FEDERAL DEFENDANTS

By: _____

CHARLES W. FINDLAY, Esq.
PAMELA S. WEST, Esq.
SEAN H. DONAHUE, Esq.
Trial Attorneys
General Litigation Section
Environment & Natural Resources Division
U.S. Dept. Of Justice
P.O. Box 663
Washington, D.C. 20044-0663
(202) 305-0447
(202) 305-0457
(202) 514-1047
FAX (202) 305-0506

COUNSEL FOR LISTED FEDERAL DEFENDANTS

Dated: _____

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Attachment A to Settlement Stipulation

RETENTION OF CONTRACTOR TO PREPARE ENVIRONMENTAL ASSESSMENT

1. Contractor Selection.

(a) Lead agencies, after consultation with nonfederal parties, shall select one or more contractors capable of preparing the EA, including preparation of pipeline integrity analysis, health, safety and environmental effects and risk analysis, and identification and analysis of alternatives.

(b) Contractor shall have experience and expertise in design, construction and operation of oil pipelines and environmental effects of such operations, and experience in preparation of NEPA documents.

(c) Contractor shall not have any financial or other interest in the outcome of the Longhorn Pipeline Project and shall provide the lead agencies such financial interest statements and disclosures as may be required by EPA and CEQ policies and procedures.

2. Payment for Contractor. Contractor shall prepare a budget for the EA based upon the timing, scope and components of the analysis as set forth in the Settlement Stipulation and Attachment B (the "Agreed Analysis"). The budget prepared by the Contractor shall be based upon the Agreed Analysis and shall be subject to approval by Longhorn, which approval shall not be unreasonably withheld. If at any time, the Contractor determines that the actual cost of the EA is likely to exceed 110% of the amount budgeted therefor, the Contractor shall submit a revised budget to Longhorn for approval, which approval shall not be unreasonably withheld. Subject to the foregoing, Longhorn shall pay the reasonable expenses and fees of the Contractor so long as the assessments and analysis being performed by the Contractor are within the Agreed Analysis. Notwithstanding Longhorn's responsibility to compensate the Contractor in accordance with this paragraph, the Contractor shall report to and be supervised by the lead agencies.

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3. Contact and Cooperation with Contractor.

- (a) Communications with Contractor by any nonfederal party or others shall be coordinated through the lead agencies. Nothing herein shall prevent the nonfederal parties from cooperating with, responding to, or providing information to the Contractor on a timely basis, which timely information shall be given appropriate consideration by the lead agencies and incorporated into the EA record.

- (b) Longhorn and plaintiffs shall cooperate with Contractor and assist in performance of such tests and inspections as Contractor reasonably determines are necessary and appropriate to perform EA. Plaintiffs shall be provided an opportunity to be present during any such tests or inspections in which Longhorn is involved.

- (c) Upon specific written request by the Mayor or City Council of the City of Austin, Texas, the federal defendants agree that the lead agencies shall organize and host a public information session in the City of Austin, with the participation of the Barton Springs-Edwards Aquifer Conservation District, within thirty (30) days after the date of such request, for the purpose of providing information to the public and receiving information from the public on issues related to environmental impacts in and around the Austin area and the areas within the jurisdiction of the Barton Springs-Edwards Aquifer Conservation District. As part of any such session, the lead agencies shall secure the attendance of the Contractor or its representative. The lead agencies shall provide all other parties to the Stipulation reasonable notice of the time and place of such session, and any such party which desires to do so shall have the opportunity to attend and participate in the session.

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Attachment B to Settlement Stipulation

ENVIRONMENTAL ASSESSMENT

I. Scope.

A. The EA will include an examination of safety and environmental effects, including health effects, of operation of the Longhorn Pipeline Project, and alternatives, including the no action alternative and the rerouting alternative identified in Paragraph III.C.1.b.(ii) of Attachment B, and reasonable and appropriate mitigation measures.

B. The Longhorn Pipeline Project is a privately owned pipeline planned to carry refined petroleum products from the GATX terminal in Houston, Texas, to El Paso, Texas, with connections to other interstate pipelines with markets in New Mexico, Arizona and Mexico. The volume of product transported in the pipeline is projected to range from an initial average rate of approximately 72,000 barrels per day to, at maximum capacity, an average rate of 225,000 barrels per day. Achievement of maximum capacity is expected to occur gradually over a period of approximately ten (10) years. The number of pumping stations on the pipeline is expected to increase from the present total of six to as many as eighteen, including one station roughly every fifty (50) miles between the existing Satsuma and Crane Stations and one additional station between Crane and El Paso. The actual volumes and type of products transported in the pipeline will be subject to market conditions.

II. Affected Environment.

A. Identification of Water Resources and Uses.

1. Surface water resources and uses downstream of pipeline, and

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2. Ground water resources and uses in proximity to pipeline or otherwise hydrologically connected to water resources in proximity to the pipeline route,

- a. Significant aquifers, including the Barton Springs segment and any other affected segments of the Edwards Aquifer, Edwards Trinity Plateau Aquifer, Colorado River Alluvium, Carrizo-Wilcox Aquifer and the Gulf Coast Aquifer,
- b. Depth from the surface and porosity of aquifers,
- c. Karst features, and
- d. Permeability and other characteristics of soil types affecting transmission to groundwater.

B. Identification of Land Resources and Uses.

1. Flood prone areas in proximity to pipeline,
2. Densely populated areas in proximity to pipeline and populated areas in the City of Austin's jurisdiction, including the neighborhood areas and schools identified in Paragraph 4(c) of the Settlement Stipulation,
3. Sensitive land uses (e.g., schools, hospitals, preserves) in proximity to pipeline, including proposed uses actually under permit, municipal authorization or approved bond on the date this Stipulation is approved by the Court,
4. Highly sensitive industrial facilities in proximity to pipeline (e.g., semiconductor industry), and

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5. Other significant land uses in proximity to pipeline (e.g., transportation facilities, energy facilities), that could be affected by the pipeline.

C. Identification of Flora and Fauna.

1. Threatened and endangered species that may be affected by pipeline operation, and
2. Other species of concern in vicinity of the pipeline that may reasonably be expected to be affected by pipeline operation.

D. Identification of Recreational Resources, including public parks, preserves and natural resource laboratories, that may reasonably be expected to be affected by pipeline operation.

E. Identification of Cultural Resources which may reasonably be expected to be affected by pipeline operation.

III. Environmental Consequences.

A. Pipeline Integrity Analysis.

1. Evaluation whether the existing Longhorn pipeline, new facilities and testing of the pipeline have complied with governmental safety standards for operation of oil pipelines and are consistent with industry standards and sound engineering practice, including consideration of:

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- a. inspection and test records and test methods (e.g., cathodic protection tests, smart pig tests, depth of cover data, “fly-over” records, OPS inspections and audits, hydrostatic tests),
 - b. maintenance records,
 - c. leak history of the existing pipeline, including pin hole leaks, line ruptures, third party accidents,
 - d. aging effects on pipeline,
 - e. pipeline repairs (e.g., clamps, replaced sections),
 - f. sections of pipeline manufactured using low frequency ERW process,
 - g. block and check valve placement and spacing,
 - h. stability of river and creek crossings, including weld integrity, pipeline strength, depth of cover, characteristics of cover material, potential for washout, erosion threats to aerial supports, and
 - i. the products to be carried.
2. Evaluation whether Longhorn's proposed operational standards and procedures comply with governmental safety standards and are consistent with industry standards and sound engineering practices.
 3. Evaluation of Longhorn’s spill/leak response plans and measures and determination whether such plans and measures comply with governmental

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regulations, industry standards and sound engineering practices, including examination of:

- a. proposed leak detection system and procedures for shutdown of pipeline sections considering resources at risk and reasonably available and proven technologies,
 - b. shut down decision process and timing,
 - c. level and type of pipeline surveillance for pipeline sections considering resources at risk,
 - d. staffing and equipment for spill response plans considering resources at risk,
 - e. prevention and clean up standards and recovery plans considering resources at risk, including soil, surface water, groundwater, known karst aquifers, threatened and endangered species,
 - f. other components of OPA 90 Plan, and
 - g. adequacy of plans to prevent and contain damage from fires and explosions in populated areas and local government input in such plans.
4. Identification of any current governmental safety standards which are not being complied with by Longhorn and the corrective measures that need to be taken by Longhorn to comply with those governmental safety standards. Identification of any areas where Longhorn's facilities, testing, operational standards and procedures, and response measures identified in subparagraphs 1 through 3 above are not consistent with "industry standards" or "sound engineering

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practices.” Any such identification shall specify the industry standards or sound engineering practices sufficient to reasonably protect safety and the environment, including health, that Longhorn has failed to meet, the appropriate and reasonable mitigation measures available to Longhorn to remedy any such failures and the anticipated benefit associated with each such mitigation measure.

5. Evaluation of whether Longhorn’s and its operator’s computers affecting the safety and operation of the pipeline are Y2K compliant.

B. Environmental Effects and Risk Assessment.

1. Analysis of safety and environmental consequences, including health consequences, of potential leaks from pipeline on water resources and uses, land resources and uses, flora and fauna resources, recreational resources, and cultural resources identified above as Affected Environment, including consideration of:
 - a. characteristics of products to be transported in the pipeline, including physical and chemical properties and toxicity,
 - b. potential hazards (e.g., fire, explosion, toxicity),
 - c. most vulnerable points (e.g., stream crossings, pump stations, valves, construction areas),
 - d. magnitude of hazards based on volume of product in the uncontrolled pipeline segment, pressure in the segment, time typically required to shut down pipeline and range of ambient temperatures,

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- e. speed, extent, and effects of spread of a plume, considering further: (i) products the pipeline will carry, (ii) spill to Colorado River or tributary at low flow, average flow, and flood conditions, (iii) spill onto the ground with wet or dry antecedent soil conditions and high and low water table conditions, (iv) differing wind, temperature and other climactic variations,
 - f. emergency response plans and procedures, including procedures for notification of releases, fires, explosions, or other hazardous conditions and for deploying personnel and equipment,
 - g. availability and adequacy of qualified emergency preparedness agencies and services provided by Longhorn, including trained personnel, containment equipment, personal protection equipment, communications capabilities,
 - h. safety and environmental consequences, including health consequences, of location of the pipeline in densely populated areas,
 - i. age and use of the pipeline,
 - j. expected use of the pipeline, and
 - k. adequacy and risk of proposed safeguards to protect the pipeline from damage from third-party construction.
2. Performance of an overall risk assessment of the Longhorn Pipeline Project consistent with recognized professional risk assessment standards, including discounting the magnitude of potential adverse consequences by probability of their occurrence and taking into consideration mitigation measures (both

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preventive and responsive) that Longhorn has implemented or has agreed to implement.

3. Analysis, pursuant to EPA's NEPA Policy Statement of any environmental justice issues associated with operation of the Longhorn pipeline, including but not limited to any issues raised by the prices of fuels in El Paso, Texas and other markets in Texas and New Mexico to be served by Longhorn and the location of the pipeline in certain residential areas.

C. Identification and Analysis of Alternatives.

1. Identification of range of alternatives, including:
 - a. "no action,"
 - b. rerouting alternatives:
 - (i) pipeline construction across Fort Bliss versus along state highway right-of-way and
 - (ii) pipeline construction around: populated areas in and around the City of Austin; the Edwards Aquifer; Edwards Trinity Plateau Aquifer; Colorado River Alluvium; Carrizo-Wilcox Aquifer; and Gulf Coast Aquifer,
 - c. pollution control alternatives:
 - (i) enhanced leak detection,

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- (ii) enhanced ground surveillance,
- (iii) enhanced emergency response capability,
- (iv) replacement of pipe sections with new or double-wall pipe,
- (v) increased depth of buried sections,
- (vi) additional block and/or check valves and remote operation capability, berms or other containment for sections or facilities,
- (vii) any other mitigation measures identified in Paragraph III.A.4.

2. Lead agencies, after consultation with other parties, shall consider a range of alternatives, including mitigation alternatives such as rerouting the pipeline as described in Paragraph 1.b.(ii), explaining reasons why any alternatives identified under Paragraph 1 are selected or eliminated from detailed study. The lead agencies will evaluate in detail those alternatives that are determined to be reasonable means of mitigating significant environmental impacts. Such analysis shall be in accordance with CEQ and other NEPA regulations and shall explain why any alternatives identified in Paragraph 1 are selected or eliminated from study. The time limits for completion of the EA shall not constitute a ground for elimination of any alternative identified in Paragraph 1 from detailed study.

D. Focus of Analysis. Analysis of safety and environmental consequences, including health consequences, of operation of the pipeline and alternatives shall include the entire Longhorn Pipeline Project with particular focus on potential effects from operation of portions of the Longhorn pipeline within the Barton Spring segment and any other segment of the Edwards Aquifer, the Edwards Trinity Plateau Aquifer, the Colorado River Alluvium, the Carrizo-Wilcox Aquifer and the Gulf Coast Aquifer, and at the crossings of the lower Colorado River and its twelve tributaries as designated by the Lower Colorado River Authority and areas within the jurisdiction of the City of Austin

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which are in proximity to the pipeline or that could reasonably be expected to be affected by the operation of the pipeline.

Attachment C to Settlement Stipulation

SCHEDULE FOR COMPLETING ENVIRONMENTAL ASSESSMENT

1. The EA process shall commence immediately upon Court approval of Settlement. Any party shall have the right to terminate the Stipulation if the Court does not approve the Settlement on or before March 12, 1999.

2. Lead agencies shall complete identification and retention of Contractor within two (2) weeks after Court approval of the Settlement Stipulation and the Contractor shall prepare the budget for submission to Longhorn accordance with Paragraph 2 of Attachment A within two (2) weeks after its retention.

3. The Contractor shall endeavor to complete work on the proposed draft EA within one hundred twenty (120) days after the approval of the Stipulation by the Court; provided that if the Contractor has been retained and has commenced work on the EA prior to Court approval of the Settlement Stipulation, then Contractor shall endeavor to complete its work on the proposed draft EA on or before June 8, 1999. After completion of proposed draft EA, lead agencies shall promptly conduct review in consultation with other federal defendants and direct any revisions, additions or modification.

4. Lead agencies shall publish notice of availability of draft EA for comment within five (5) weeks of its receipt from Contractor and shall provide each nonfederal party with copy of notice and draft EA at least three (3) days prior to the date the notice of availability of the draft EA is published. Notice of availability shall also announce public meetings on draft EA as provided in the Settlement Stipulation.

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5. Lead agencies shall allow thirty (30) days for written comments and public meetings on draft EA as provided in Settlement Stipulation.

6. The Contractor shall prepare the final EA for lead agencies' approval as soon as practical after the close of the public comment period, but in no event more than thirty (30) days after the close of the public comment period.

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ATTACHMENT D

TO

SETTLEMENT STIPULATION

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

Ethel Spiller, et al.

)

)

Plaintiffs,

)

)

v.

)

CIVIL NO. A-98-CA-255-SS

)

Robert M. Walker, et al.

)

)

Defendants.

)

JOINT MOTION

For the reasons stated below and as more fully set out in the Settlement Stipulation attached hereto, the parties hereby jointly move for a stay of this action and to vacate certain orders previously entered herein, and the plaintiffs move for an injunction as follows:

1. On August 25, 1998, the Court entered a preliminary injunction preventing Longhorn Partners Pipeline, L.P., (Longhorn) from transporting any petroleum products until

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further order of the Court or a higher Court, and it ordered defendants Environmental Protection Agency (EPA) or Department of Transportation (DOT) to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), 42 U.S.C 4321-4347.

2. On September 24, 1998, the Court denied the motion of Longhorn Partners Pipeline, L.P. to reconsider the preliminary injunction.

3. The parties to this action have entered into a Settlement Stipulation dated March 1, 1999, a copy of which is attached hereto as Exhibit A. Under the Settlement Stipulation the parties have agreed that for the purpose of efficient and effective resolution of this action defendants EPA and DOT, in cooperation with one or more other cooperating agencies including the Department of the Army, have agreed to prepare an environmental assessment (EA) pursuant to the Settlement Stipulation and under NEPA and the implementing regulations issued by the Council on Environmental Quality. Defendants EPA, DOT and the appropriate cooperating federal agencies will thereafter issue an "EA Decision," either a Finding of No Significant Impact (FONSI) or a notice of intent to prepare an EIS.

4. Defendant Longhorn agrees that, until 30 days after issuance of an EA Decision (but in no event prior to (i) Longhorn's implementation of any mitigation measures upon which a FONSI may be conditioned and that are required to be implemented prior to or upon start up of the pipeline, and (ii) the appropriate lead agency, as identified in Paragraph 1 of the Stipulation, obtaining reasonable evidence from Longhorn that such mitigation measures have

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been implemented), Longhorn will not transport or place any petroleum product in the pipeline, except that Longhorn may introduce petroleum products into the pipeline for purposes of maintenance, construction or testing if such maintenance, construction or testing is requested by the contractor in connection with the EA process, and then only after obtaining approval of the Court and providing at least five (5) days written notice to the Office of Pipeline Safety in the Department of Transportation and all of the parties.

5. The parties agree that, if the EA Decision is a FONSI, any party may apply to the Court to extend the Court's injunction contemplated by Paragraph 1 of the Agreed Order beyond the 30-day period following the issuance of the EA Decision on the ground that a FONSI issued under the Stipulation is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law under the Administrative Procedure Act, 5 U.S.C. 706, without limitation on any other remedies. The parties further agree that upon a finding by the Court that the FONSI issued under the Stipulation is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, the injunction may be extended upon such terms and conditions as may be imposed by the Court.

6. The parties move jointly to vacate the preliminary injunction and reconsideration orders previously entered in this case. The parties move jointly to stay further proceedings in this action (except as otherwise provided in the Stipulation) until the earlier of --

(1) the election of Longhorn to withdraw from the provisions of the Stipulation pursuant to the provisions of Paragraph 16 thereof; or

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(2) thirty (30) days after the issuance of an EA Decision;

provided that nothing in the stay referred to in this paragraph shall preclude the Court from entering an order of the type referred to in the second paragraph of page 5 of the Order entered on January 19, 1999, in the case styled Longhorn Partners Pipeline, L.P. v. Holly Corporation, et al., Cause No. EP 98 CA 406 SS (W.D. Tex., El Paso Div.).

7. The plaintiffs further jointly move for an injunction, in the event (a) the lead agencies issue a notice of intent to prepare an Environmental Impact Statement ("EIS"), or (b) Longhorn elects to withdraw from the Stipulation pursuant to Paragraph 16 thereof, such injunction to be issued without further action of the Court, effective immediately upon the occurrence of either of such events enjoining Longhorn from transporting or placing refined petroleum products in the pipeline until thirty (30) days after the completion of an EIS and ROD or further order of the Court, except that Longhorn may introduce petroleum products into the pipeline for purposes of maintenance, construction or testing if such maintenance, construction or testing is requested by the contractor in connection with the EIS process, after obtaining prior approval of the Court and after providing five (5) days written notice to the Office of Pipeline Safety in the Department of Transportation, and all of the parties.

Accordingly, the parties request that the attached proposed Order staying this action to allow for implementation of the Stipulation be entered.

Respectfully submitted,

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Plaintiffs Marian Collins, Lucien Collins, David Robertson, and Barton Springs-Edwards Aquifer Conservation District:

By: _____

RENEA HICKS, ESQ.
BEN J. CUNNINGHAM, ESQ.
GEORGE & DONALDSON, L.L.P.
1100 Norwood Tower
114 West 7th Street
Austin, Texas 78701
(512) 495-1400
FAX (512) 499-0094

COUNSEL FOR LISTED PLAINTIFFS

Dated: _____

Plaintiff City of Austin:

By: _____

CONNIE, ODÉ, Esq.
DAVID ALLAN SMITH, Esq.
Assistant City Attorneys -- Law Dept.
Norwood Tower -114 West 7th Street
Austin, Texas 78767-1546
(512) 499-2507
FAX (512) 499-6490

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COUNSEL FOR PLAINTIFF CITY OF AUSTIN

Dated: _____

Plaintiff Lower Colorado River Authority

By: _____

JAMES N. RADER, Esq.
PATRICIA L. AKERS, Esq.
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220
(512) 473-3200
FAX 9512) 473-3298

COUNSEL FOR PLAINTIFF LOWER COLORADO RIVER AUTHORITY

Dated: _____

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MARCH 1, 1999

Defendant Longhorn Partners Pipeline, L.P.

GARY ZAUSMER, Esq.
JENKENS & GILCHRIST
600 Congress, Suite 2200
Austin, Texas 78701
(512) 499-3894
FAX (512) 404-3520

LOCAL COUNSEL FOR DEFENDANT LONGHORN PARTNERS PIPELINE,
L.P.

By: _____

BARRY F. CANNADAY
JENKENS & GILCHRIST
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202
(214) 855-4360
FAX (214) 969-7169

COUNSEL FOR DEFENDANT LONGHORN PARTNERS PIPELINE, L.P.

Dated: _____

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Defendants Rodney Slater, Secretary, U.S. Dept. Of Transportation; Carol Browner, Administrator, Environmental Protection Agency; and Robert M. Walker, Acting Secretary, Department of the Army

UNITED STATES ATTORNEY

R. BARRY ROBINSON, Esq.
Assistant U.S. Attorney
816 Congress Ave., Suite 1000
Austin, Texas 78701
(512) 916-5858
FAX (512) 916-5854

LOCAL COUNSEL FOR LISTED FEDERAL DEFENDANTS

By: _____

CHARLES W. FINDLAY, Esq.
PAMELA S. WEST, Esq.
SEAN H. DONAHUE, Esq.
Trial Attorneys, General Litigation Section
Environment & Natural Resources Division
U.S. Dept. Of Justice
P.O. Box 663
Washington, D.C. 20044-0663
(202) 305-0447
(202) 305-0457
(202) 514-1047
FAX (202) 305-0506

COUNSEL FOR LISTED FEDERAL DEFENDANTS

Dated: _____

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ATTACHMENT E

TO

SETTLEMENT STIPULATION

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MARCH 1, 1999

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

Ethel Spiller, <u>et al.</u>)	
)	
Plaintiffs,)	
)	
v.)	CIVIL NO. A-98-CA-255-SS
)	
Robert M. Walker, <u>et al.</u>)	
)	
Defendants.)	

AGREED ORDER

The parties have submitted a Joint Motion and a Settlement Stipulation which explain that the Environmental Protection Agency and the Department of Transportation have agreed to prepare an environmental assessment (EA) under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4347, on the Longhorn Pipeline Project. As explained, the two agencies will rely on one or more cooperating agencies, including the Department of the Army. As further explained, the appropriate agencies will then issue an "EA Decision," either a Finding

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of No Significant Impact (FONSI) or a notice of intent to prepare an Environmental Impact Statement (EIS) under NEPA.

The parties agree that as described more fully in the Stipulation, until 30 days after this process is completed, Longhorn Pipeline Partners, L.P., will not transport petroleum products through the pipeline.

In view of these and other agreements set forth in detail in the Stipulation, it is hereby ORDERED that:

1. Until 30 days after issuance of an EA Decision (but in no event prior to (i) Longhorn's implementation of any mitigation measures upon which a FONSI may be conditioned and that are required to be implemented prior to or upon start up of the pipeline, and (ii) the appropriate lead agency, as identified in Paragraph 1 of the Stipulation, obtaining reasonable evidence from Longhorn that such mitigation measures have been implemented), Longhorn shall not transport or place any petroleum product in the pipeline, except that Longhorn may introduce petroleum products into the pipeline for purposes of maintenance, construction or testing if such maintenance, construction or testing is requested by the contractor in connection with the EA process, and then only after obtaining approval of the Court and providing at least five (5) days written notice to the Office of Pipeline Safety in the Department of Transportation, and all of the parties.

2. If the EA Decision is a FONSI, any plaintiff may apply to the Court to extend the injunction in Paragraph 1 beyond the 30-day period following the issuance of the EA

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Decision on the ground that the FONSI is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law under the Administrative Procedure Act, 5 U.S.C. 706, without limitation on any other remedies.

3. The preliminary injunction and reconsideration orders previously entered in this action are VACATED, and

4. All further proceedings in this action (except as otherwise provided in the Stipulation and in Paragraph 6 hereof) are STAYED until the earlier of --

(a) the election of Longhorn to withdraw from the provisions of the Stipulation pursuant to the provisions of Paragraph 16 thereof; or

(b) thirty (30) days after the issuance of an EA Decision.

If the EA Decision is a FONSI, the Plaintiffs shall have the right to apply to the Court for relief as provided in Paragraph 11 of the Stipulation.

5. It is further ORDERED that if (a) the lead agencies issue a notice of intent to prepare an Environmental Impact Statement ("EIS"), or (b) Longhorn elects to withdraw from the Stipulation pursuant to Paragraph 16 thereof, an injunction shall be issued effective immediately upon the occurrence of either of such events without further action of the Court, enjoining Longhorn from transporting or placing refined petroleum products in the pipeline until thirty (30) days after the completion of an EIS and ROD or until further order of the Court, except that Longhorn may introduce petroleum products into the pipeline for purposes of maintenance, construction or testing if such maintenance, construction or testing is requested by

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the contractor in connection with the EIS process and then only after obtaining prior approval of the Court and after providing five (5) days written notice to the Office of Pipeline Safety in the Department of Transportation, and all of the parties.

6. Pending final disposition of this case or further order of the Court, this Court retains jurisdiction of this case. Nothing in the stay referred to in Paragraph 4 of this Order shall preclude the Court from entering an order of the type referred to in the second paragraph of page 5 of the Order entered on January 19, 1999, in the case styled Longhorn Partners Pipeline, L.P. v. Holly Corporation, et al., Cause No. EP 98 CA 406 SS (W.D. Tex., El Paso Div.)

Signed this the __ day of _____ 1999.

UNITED STATES DISTRICT JUDGE