

Settlement Agreement Among
The United States Department of the Interior, the State of Oregon, and the Confederated Tribes
of Siletz Indians

And

Blue Line Transportation Co., Inc.

For The

Yaquina River Oil Spill

I. Introduction

- A. The United States of America, on behalf of the Department of the Interior ("DOI") acting through the Fish and Wildlife Service ("FWS"), the State of Oregon, on behalf of the Oregon Department of Fish and Wildlife, and the Confederated Tribes of Siletz Indians (collectively referred to as the "Trustees"), and Blue Line Transportation Co., Inc. ("Blue Line Transportation" or "Settling Defendant"), enter into this Settlement Agreement ("Agreement" or "Settlement Agreement") to resolve, without litigation, the Trustees' civil claims under the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702, for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources, including the reasonable costs of assessing the injuries resulting from the Yaquina River Oil Spill, as defined below.
- B. The Trustees have shared jurisdiction for the natural resources and their services injured as a result of the Yaquina River Oil Spill, and this Settlement Agreement is executed by the governmental agencies in their capacities as Natural Resource Trustees under OPA.
- C. Under OPA, each responsible party for a facility from which oil is discharged into or upon navigable waters is liable for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the injuries. 33 U.S.C. § 2702.
- D. The execution of this Agreement shall not constitute, nor is in any way an admission by Settling Defendant of any liability, and shall not be used in any other action against Settling Defendant as proof of liability.

II. Parties Bound

- 1. The provisions of this Settlement Agreement shall apply to and be binding upon Settling Defendant and all of its successors and assigns, and upon the Trustees.

III. Definitions

2. Except as otherwise expressly provided herein, the terms used in this Settlement Agreement, which are used in OPA or in the National Oceanic and Atmospheric Administration's (NOAA's) Natural Resource Damage Assessment regulations promulgated pursuant to OPA (15 C.F.R. Part 990), shall have the meanings assigned to them by OPA or by its regulations.
 - a. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next business day.
 - b. "Effective Date" shall have the definition provided in Section XII.
 - c. "Natural resources" shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, or held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishing Conservation and Management Act [16 U.S.C. § 1801 *et seq.*]), any State government, or Indian tribe.
 - d. "NRDAR Fund" shall mean the DOI Natural Resource Damage Assessment and Restoration Fund established pursuant to 42 U.S.C. §§ 1474b and 1474b-1.
 - e. "Parties" shall mean the Trustees and Settling Defendant.
 - f. "Yaquina River Oil Spill" shall mean the January 27, 2001 discharge of approximately 5,800 gallons of No. 6 fuel oil from a fuel tanker, owned by Blue Line Transportation, on U.S. Highway 20, near Toledo, Oregon.
 - g. "Settlement Agreement" or "Agreement" shall mean this Settlement Agreement among DOI, the State of Oregon, the Confederated Tribes of Siletz Indians, and Blue Line Transportation.
 - h. "Site" shall mean the location of the Yaquina River Oil Spill on U.S. Highway 20 near Toledo, Oregon, and the geographic area where the discharged oil came to be located, including, but not limited to, the spill site at river mile 30.2 of the Yaquina River to just beyond the Butler Bridge in Toledo, Oregon at river mile 13.2.

IV. Payment of Certain Costs and Damages

3. Payment to the United States for Assessment Costs and Natural Resource Restoration Projects. Within 30 days after the Effective Date, Settling Defendant shall pay \$175,000 to the United States for the following:
 - a. \$25,000 will reimburse DOI for the natural resource damage assessment ("NRDA") costs which it has incurred relating to this Site;
 - b. \$150,000 for implementation of natural resource restoration projects to be selected by the Trustees.
4. The total amount paid pursuant to Paragraph 3(b) shall be deposited into a segregated, case-specific sub-account within the NRDAR Fund for joint use by the Trustees for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured by the Yaquina River Oil Spill, pursuant to a Restoration Plan to be developed by the Trustees under 15 C.F.R. § 990.55.
5. Payment Instructions.

Payment of the amount set forth in Paragraph 3 shall be made by check, in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Oregon on the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number that Settling Defendant shall use to identify all payment required to be made in accordance with this Settlement Agreement. The FLU will provide the payment instructions to:

Mary Bergman
AIG
Senior Analyst
AIG Complex Casualty Claims
1000 Bishops Gate Blvd., Suite 100A
Mt. Laurel, NJ 08054
On behalf of Settling Defendant.

At the time of payment, Settling Defendant shall send a written notice of payment and a copy of any transmittal documentation to:

Alexandra James, Attorney
Office of the Regional Solicitor
601 SW 2nd Ave, Suite 1950
Portland, OR 97204

With a copy to:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
DJ # 90-5-1-1-12115

6. Interest. If Settling Defendant fails to make the payment specified in Paragraph 3 when due, Settling Defendant shall pay interest on that payment at the rate specified in 33 U.S.C. § 2705(b)(4). Interest shall be calculated from the Effective Date to the date of payment.
7. Stipulated Penalties.
 - a. In addition, if Settling Defendant fails to make the payment specified in Paragraph 3 when due, it shall pay \$500 as a stipulated penalty for each day or portion thereof that each payment is overdue until all overdue payments (including stipulated penalties) are paid in full. The stipulated penalty shall be paid in accordance with payment instructions in Paragraph 5 and deposited into the segregated, case-specific sub-account in the NRDAR Fund to be used by the Trustees to fund or contribute to additional actions to restore, replace, or acquire the equivalent of injured natural resources. Any payment under Paragraph 7 shall be marked "Stipulated Penalty."
 - b. The stipulated penalty is due and payable within 30 days of the date of the demand for payment of the stipulated penalty by the Trustees.
8. Payments made under Paragraphs 6 and 7 shall be in addition to any other remedies or sanctions available to the Trustees by virtue of Settling Defendant's failure to comply with the requirements of this Settlement Agreement.
9. Notwithstanding any other provisions of this Section IV, each Trustee may, in its unreviewable discretion, waive payment of any portion of the stipulated penalty that has accrued pursuant to this Settlement Agreement. Such waiver of payment shall not be construed as a waiver of any other payment(s) required under this Settlement Agreement.
10. Settling Defendant shall be liable for attorneys' fees and cost incurred by the Trustees to collect any amount due under this Settlement Agreement that is not timely paid.

V. Covenant Not to Sue and Reservation of Rights by the Trustees

11. In consideration of the payments to be made by Settling Defendant pursuant to Section IV (Payment of Certain Costs and Damages), the Trustees covenant not to sue or maintain any lawsuit, action, administrative proceeding, or other proceeding against Settling Defendant pursuant to OPA, 33 U.S.C. § 2702, for (i) injury to, impairment of, destruction of, loss of, diminution in value of, or loss of use of natural resources caused by the Yaquina River Oil Spill, known as of the date of execution of this Settlement Agreement by Trustees, and (ii) costs (including NRDA costs), attorneys' fees, other fees, or expenses incurred by the Trustees to recover such natural resource damages relating to injuries at or from the Yaquina River Oil Spill.
12. The covenants not to sue in Paragraph 11 are not effective until, and are conditioned upon, complete and satisfactory performance by Settling Defendant of its obligations under Section IV (Payment of Certain Costs and Damages) of this Settlement Agreement. These covenants not to sue extend only to Settling Defendant and do not extend to any other person.
13. General Reservations: Notwithstanding any other provisions of this Settlement Agreement, the Trustees reserve, and this Settlement Agreement is without prejudice to, any claims not expressly included in Paragraph 11, including, but not limited to:
 - a. Claims based upon a failure of Settling Defendant to meet a requirement of this Settlement Agreement;
 - b. Criminal claims;
 - c. Claims for costs of removal or remedial action at the Site;
 - d. Claims for injury to, destruction of, or loss of natural resources that the United States, other than DOI, may have under applicable law; and
 - e. Claims for damages to, destruction of, or loss of natural resources unrelated to the Yaquina River Oil Spill.
14. Special Reservation Regarding Natural Resource Damages. Notwithstanding any other provision of this Settlement Agreement, each of the Trustees reserves the right to file claims against Blue Line Transportation seeking recovery of natural resource damages caused by the Yaquina River Oil Spill if conditions are discovered or information is received by the Trustees, not known to the Trustees at the time of execution of this Settlement Agreement,

that, together with any other relevant information, indicates that there is injury to, impairment of, destruction of, loss of, diminution of value of, or loss of use of natural resources of a type unknown or of a magnitude that is substantially greater than was known by the Trustees, as of the date of their execution of this Settlement Agreement.

VI. Covenant Not to Sue by Settling Defendant

15. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the Trustees, including their departments, agencies or instrumentalities, or their employees, agents, experts or contracts, for:
 - a. Claims related to natural resource damages at the Site;
 - b. Any direct or indirect claim for reimbursement from the Oil Spill Liability Trustec or any State of Oregon fund; and
 - c. Any claim for costs, attorneys' fees, other fees, or expenses incurred in connection with this Settlement Agreement or claims resolved herein.
16. In any subsequent administrative or judicial proceeding initiated by a Trustee or the Trustees related to the Yaquina River Oil Spill, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the Trustees in the subsequent proceeding were or should have been settled in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section V (Covenant Not to Sue and Reservation of Rights by the Trustees) herein.

VII. Signatories

17. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such Party to this document.

VIII. Entire Agreement

18. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Agreement and supersedes all prior agreements and understanding, whether oral or written. No other document, nor any

representation, inducement, agreement, understanding or promise constitutes any part of this Agreement or the settlement it represents, nor shall it be used in construing the terms of this Agreement.

IX. Modification

19. The terms of this Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

X. Execution

20. This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

XI. Public Comment

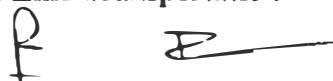
21. Final approval by the United States and the effectiveness of this Settlement Agreement are subject to public notice and comment period of not less than 30 days after publication of notice of this Settlement Agreement in the Federal Register. Settling Defendant agrees not to withdraw its consent to the Settlement Agreement pending consideration of public comments and approval of the United States. If public comments disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate, the United States, the State of Oregon, or the Confederated Tribes of Siletz Indians may withdraw its approval of the Settlement Agreement. Should the United States, the State of Oregon, or the Confederated Tribes of Siletz Indians withdraw its approval, this Agreement shall be null and void.

XII. Effective Date

22. The Effective Date of this Settlement Agreement shall be the date upon which the United States issues written notice to the Settling Defendant that the public comment period pursuant to Section XI (Public Comment) has closed and that comments received, if any, do not require modification or withdrawal from this Settlement Agreement.

Settlement Agreement among the United States Department of the Interior, the State of Oregon,
the Confederated Tribes of Siletz Indians, and Blue Line Transportation for the Yaquina River
Oil Spill

Blue Line Transportation

By: 

NAME Ross Imes

Title Owner

Settlement Agreement among the United States Department of the Interior, the State of Oregon,
the Confederated Tribes of Siletz Indians, and Blue Line Transportation for the Yaquina River
Oil Spill

The State of Oregon

By: **Shannon M Hurn** _____

Digitally signed by
Shannon M Hurn
Date: 2021.12.10
08:21:17 -08'00'

Date: _____

NAME

Title

Settlement Agreement among the United States Department of the Interior, the State of Oregon,
the Confederated Tribes of Siletz Indians, and Blue Line Transportation for the Yaquina River
Oil Spill

Confederated Tribes of Siletz Indians

By: 

Date: 12/1/2021

NAME Mike Kennedy
Title Interim General Manager

Settlement Agreement among the United States Department of the Interior, the State of Oregon,
the Confederated Tribes of Siletz Indians, and Blue Line Transportation for the Yaquina River
Oil Spill

**FOR THE UNITED STATES OF AMERICA, ON BEHALF OF THE
DEPARTMENT OF THE INTERIOR**

By: **NATHANIEL DOUGLAS** Digitally signed by
NATHANIEL DOUGLAS
Date: 2022.02.16
20:01:18 -05'00' Date: _____
NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section