

MEMORANDUM OF AGREEMENT FOR M/V NEW CARISSA OIL SPILL

This Memorandum of Agreement (MOA) is between: the United States Department of Commerce as represented by the National Oceanic and Atmospheric Administration (NOAA); the United States Department of the Interior (DOI) as represented by the Bureau of Land Management, the Fish and Wildlife Service, and the Bureau of Indian Affairs; the United States Department of Agriculture as represented by the Forest Service (FS); the State of Oregon (the State) as represented by the Department of Environmental Quality and the Department of Fish and Wildlife; the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians of Oregon; the Coquille Tribe of Oregon; and the Confederated Tribes of the Siletz, Oregon. The listed Departments and Tribes are collectively referred to as the "Trustees".

I. PURPOSE

This MOA is intended to facilitate the coordination and cooperation of the Trustees with regard to:

(i) conducting natural resource damage assessment (NRDA) pre-assessment, emergency restoration, restoration planning, and restoration implementation activities (hereinafter "NRDA activities");

(ii) the expenditure of jointly recovered funds, for NRDA activities, as a result of the M/V New Carissa Oil Spill;

This MOA shall also establish an agreement among the Trustees with regard to:

(iii) confidentiality of documents and discussions related to NRDA activities; and

(iv) the role and responsibilities of the Trustee Council established herein, the Federal Lead Administrative Trustee (FLAT), and the Lead Administrative Trustee (LAT).

II. AUTHORITY

The Parties enter into this MOA pursuant to the authority of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701-2761; OPA regulations, 15 C.F.R. Part 990; the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended; and other applicable state and federal law and regulations. It is the intent of the Trustees to follow the NOAA Natural Resource Damage Assessment Regulations at 15 C.F.R. Part 990. The following officials are the signatories and approving officials to this MOA:

(i) Deputy General Counsel, Office of General Counsel, National Oceanic and Atmospheric Administration, United States Department of Commerce.

(ii) State Director for Oregon/Washington, Bureau of Land Management, United States

Department of the Interior.

(iii) Regional Director, Recreation, Lands and Minerals, United States Department of Agriculture, Forest Service Region 6.

(iv) Director, Oregon Department of Environmental Quality

(v) Director, Oregon Department of Fish and Wildlife.

(vi) Chairman, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians of Oregon.

(vii) Chairman, Coquille Tribe of Oregon.

(viii) Chairman, Confederated Tribe of the Siletz Indians, Oregon.

III. SCOPE

The M/V New Carissa discharged over 70,000 gallons of oil off the coast of Oregon beginning in February 1999. Natural resources for which the above-identified federal, state, and tribal entities are trustees were potentially injured or lost as a result of the discharge. Through this MOA, the trustees agree to coordinate any NRDA activities to fulfill their responsibilities as trustees under applicable law and regulation.

IV. TRUSTEE COUNCIL ESTABLISHMENT AND RESPONSIBILITIES

1. There is hereby established the M/V New Carissa Natural Resource Trustee Council (Trustee Council), which shall be the mechanism through which the Trustees will coordinate their NRDA activities in connection with the M/V New Carissa Oil Spill.

2. The Trustee Council shall be responsible for the following:

(i) conducting NRDA activities;

(ii) negotiating the terms of funding and participation agreements for NRDA activities;

(iii) authorizing deposits to and disbursements from the account(s) in which funding will be deposited; and

(iv) developing joint Trustee assessment, negotiation, settlement, litigation, and restoration positions.

3. The State Director for Oregon/Washington, Bureau of Land Management, United States Department of the Interior, shall carry out the duties of the LAT, as well as those of the FLAT. The State Director of Oregon/Washington also serves as the Authorized Official (AO) for the Department

of the Interior. The LAT and FLAT are responsible for the following:

(i) Lead Administrative Trustee. The LAT manages and coordinates NRDA activities for the Trustees and serves as the Trustee Council's primary contact and representative on NRDA issues. The LAT shall be the chair of the Trustee Council.

(ii) Federal Lead Administrative Trustee. The FLAT coordinates cost documents and

May 12, 1999

works with the United States Coast Guard Oil Spill Liability Trust Fund to recover NRDA activity costs.

4. The Trustee Council shall consist of one member and one alternate from each of the Trustees. Other representatives of each Trustee may attend meetings and participate in the deliberations of the Trustee Council, but decisions shall be reached through consensus of the members of the Council or their designees, in accordance with section VI of this MOA.

5. **The Trustee Council members and alternates are listed below.** A trustee may change members and alternates through a written notice 10 days prior to the effective date..

For the United States Department of Agriculture as represented by the Forest Service (FS):

Council Member: Robert W. Fujimoto
USDA Forest Service
PO Box 3623
Portland, OR 97208-3623
phone:(503) 808-2430
fax: (503) 808-2454
email: rfujimoto/r6pnw@fs.fed.us

Alternate: Ed Becker
Oregon Dunes National Recreation Area
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Reedsport, OR 97467
phone: (541) 271-3611
fax: (541) 271-6019
email: ebecker/r6pnw,siuslaw@fs.fed.us

For the Department of Commerce as represented by NOAA:

Council Member: Greg Baker
NOAA/DAC
7600 Sand Point Way NE
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phone: (206) 526-4601
fax: (206) 526-6665
email: greg.baker@noaa.gov

Alternate: Doug Helton
NOAA/DAC
7600 Sand Point Way NE
Building 1
Seattle, WA 98115-0070
phone: (206) 526-4563
fax: (206) 526-6665
email: doug.helton@noaa.gov

For the Department of Interior as represented by the Bureau of Land Management and Fish and Wildlife Service:

Council Member: Larry S. Mangan
USDI, Bureau of Land Management
1300 Airport Lane
North Bend, OR. 97459
phone: (541) 751-4231
fax: (541) 751-4303
email: Larry_Mangan@blm.gov

Alternate: Stephen J. Zylstra
USDI, Fish and Wildlife Service
2600 S.E. 98th Avenue, Suite 100
Portland, OR. 97266
phone: (503) 231-6179
fax: (503) 231-6195
email: stephen_zylstra@fws.gov

For the State of Oregon, as represented by the Department of Oregon Fish and Wildlife:

Council Member: Bruce Schmidt
Oregon Department of Fish and Wildlife
28655 Hwy. 34
Corvallis, OR 97333
phone: (541) 757-4263, ext. 250
fax: (541) 757-4102

e-mail: schmidtb@fsl.orst.edu

Alternate member presently not designated.

For the State of Oregon, as represented by the Oregon Department of Environmental Quality

Council Member: Jack Wylie
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR. 97204
phone (503) 229-5716
fax: (503) 229-6954
email: wylie.jack@deq.state.or.us

Alternate: Bryson Twidwell
Oregon Department of Environmental Quality
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Salem, OR 97301-1039
phone: (503) 378-8240
fax: (503) 373-7944
email: twidwell.bryson@deq.state.or.us

For the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon

Council Member: Isaiah Upsprung
Environmental/Planning Assistant
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Coos Bay, OR 97420
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email: clusadm@presys.com

Patty Whereat
Cultural/Historical Coordinator
338 Wallace Avenue

Coos Bay, OR. 97420
Phone: (541) 888-9577
fax: (541) 888-5388

For the Coquille Indian Tribe of Oregon

Council Member: Don Ivy
3050 Tremont Street - PO Box 783
North Bend, OR 97459
phone: (541) 756-0904
fax: (541) 756-0847
email: cit@iceinternet.com

Alternate member presently not designated.

For the Confederated Tribes of the Siletz Indians of Oregon

Council Member: Terry Lane
Natural Resources Department
PO Box 549
Siletz, OR 97380
phone: (541) 444-8266
fax: (541) 444-9688
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Alternate: Stan van de Wetering
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V. MEETINGS AND COMMUNICATIONS AMONG TRUSTEES

1. Meetings. Any Trustee may, upon reasonable notice, call a meeting of the Trustees, to be conducted either in person or by telephone conference call. Such meetings shall generally be held in conjunction with other set meetings among the Trustees. The LAT's representative will be the

primary contact for the arrangement of Trustee meetings. At all meetings, the Trustees may invite their respective staff to attend. In the interest of efficiency, trustees should use their discretion to determine the necessary staffing for meetings.

2. Communications. Trustees shall notify all other trustees before taking any action that affects, or could reasonably be expected to affect, the claims of another party or parties to this MOA and shall

provide copies of any written communications which could reasonably be expected to affect the claims of another party or parties to each Trustee Council member. This shall include all communications with the Responsible Party but need not include communications such as internal communications within a Trustee agency or routine communications within Trustee work groups or subcommittees. Each Trustee Council member is responsible for distribution of written communications to appropriate persons within their organization.

VI. DECISIONS AND DISPUTE RESOLUTION

All decisions of the Trustees under this MOA shall be made by consensus of the members of the Trustee Council. Consensus shall be considered to have been reached if at least a majority of the Trustee Council members are present and all members present have reached agreement. In the event that consensus is not reached by members of the Trustee Council, the Council should conduct extensive good faith discussions directed toward obtaining consensus among all Trustees. In the event consensus can not be reached, at the request of any of the Trustees, a written presentation of the matter in dispute shall be forwarded to progressively higher level officials of the Trustees for resolution. The Trustees may adopt further procedures for dispute resolution.

VII. RECOVERY OF FUNDS

1. The Trustees acknowledge that payments and/or promises of goods and services for NRDA activities made by the responsible party (RP) or other parties to the Trustees collectively are intended for the joint and undivided use and benefit of all the Trustees acting cooperatively in planning, coordinating and conducting NRDA activities. The Trustee Council may from time to time agree to disburse a portion of such payments to one or more Trustees to reimburse costs borne or to be borne by that Trustee in connection with NRDA activities. The Trustee Council may also agree that individual trustees may submit payment requests directly to the RP for approved NRDA activities undertaken by that trustee. In this case, a copy of the payment request and amount of repayment shall be provided to the LAT within 10 days of transmittal. The Trustee Council may direct that goods or services shall be applied in agreed upon restoration actions that benefit natural resources, including property, managed by one or more Trustees. Any such disbursement or direction shall not be deemed to affect the undivided status of other contributions.

2. Settlements, awards, or judgements of natural resource damage claims shall specify that cash payments of damages or contributions for future NRDA activities shall be deposited in an account designated by the Trustees.

3. Settlements, awards, or judgements in reimbursement of past NRDA costs shall specify that such payments shall be made directly to individual Trustees in the amounts allocated to each Trustee in such settlements, awards, judgements or the terms regarding such payments. Provided, however, that settlements, awards, judgements, or payments may also be made to reimburse funds paid by the Oil Spill Liability Trust Fund.

4. The Trustees may supplement this MOA to establish further procedures for use of recovered funds. It is the goal of the Trustees to minimize administrative costs.

VIII. SETTLEMENT NEGOTIATIONS

The Trustees may enter into settlement negotiations with the RP for the purpose of recovering funds for NRDA activities. Settlement negotiations will be coordinated among the Trustees. Since a coordinated settlement with the RP is the desire of the Trustees, no Trustee will conduct independent settlement negotiations with the RP, with the exception of those negotiations conducted by a Trustee in accordance with Section X of this MOA.

IX. CONFIDENTIALITY

The status of the Parties as co-Trustees requires that they carry out NRDA activities and settlement negotiations in a coordinated fashion and that they protect the integrity of the claim determination and analysis process and the confidentiality of certain information and strategies. The Trustees may share among each other certain confidential information, including but not limited to: legal strategies and theories, draft documents, deliberations, proprietary information, and other confidences (“Confidential Information”) regarding the assessment and collection of natural resource damages associated with the M/V New Carissa Oil Spill. The Trustees agree that the sharing of such Confidential Information among Trustees is being done for the purpose of asserting common claims and asserting and protecting the rights and interests of respective clients, and that any other publication or use is not authorized. The attorney-client, attorney work-product, deliberative process, law enforcement, and other such privileges are intended to remain attached to Confidential Information and the sharing and exchange of such Confidential Information does not waive any privilege attaching thereto. To the extent permitted by applicable law, each Trustee agrees not to reveal to any person not party to this MOA, any Confidential Information without the consent of the trustee generating the information.

X. RESERVATION OF RIGHTS

This MOA is intended only to achieve the purposes set out in Section I of the MOA and is not intended to create any right or responsibility which is legally enforceable by any person or entity against any Trustee. This MOA shall not be construed to create any right to judicial review involving the compliance and non-compliance of any Trustee.

It is recognized that each Trustee to this MOA reserves all rights now or hereafter existing and that nothing in this MOA waives or forecloses the exercise of any such rights. However, each Party to this MOA agrees to provide ten (10) days prior written notice (or shorter notice if agreed by all other Trustees then participating in this MOA) to all other Trustees of its intent to participate in independent claims or negotiations with the RP or other entity regarding settlement or other disposition of natural resource damage claims resulting from the M/V New Carissa Oil Spill. A Trustee engaging in the above independent claims or negotiations shall also submit notice of withdrawal from this MOA in accordance with Section XI.

XI. MISCELLANEOUS PROVISIONS

1. Effective Date; Amendment and Termination. This MOA shall be in effect from the date of execution until termination by agreement of the Trustees. A Trustee may withdraw from the MOA, but such withdrawal must be in writing at least ten (10) days in advance of the withdrawal. In the event of the withdrawal of any Trustee, or at the termination of this MOA, there shall be a full and complete accounting of all funds received and expended pursuant to Section VII of this MOA, or otherwise controlled in any joint account by the Trustees as a result of the M/V New Carissa Oil Spill.
2. Commitment of Resources. Nothing in the MOA shall be construed as obligating the United States, the Tribes, the state, their officers, agents, or employees, to expend any funds in excess of appropriations authorized by law.
3. Modification of MOA Modification of this MOA must be in writing and approved by all Trustees party to the MOA at the time of modification.
4. Nothing herein is intended to conflict with existing directives of any of the Trustees. If the terms of this MOA are inconsistent with existing directives of any of the Trustees, those portions of this MOA that are determined to be inconsistent shall be identified. At the first opportunity for review of the MOA, all identified inconsistencies shall be discussed by the Trustees for possible amendment to this MOA as the Parties determine appropriate.
5. By signing this Agreement, no Trustee is acknowledging or denying the Trusteeship for, or other authority over any natural resources of any other Trustee.

