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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

2007-05-16 12:31:31 PM

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 THE CONFEDERATED TRIBES OF)
 THE WARM SPRINGS)
 RESERVATION OF OREGON,)
)
 Plaintiff-Intervenor,)
)
 v.)
)
 AMERICAN ENERGY, INC.)
)
 Defendant.)

FILED 06 MAY 16 12:31 USDC-ORE

Civil Action No. 04-CV-164-AA

CONSENT DECREE

I. Background

A. The United States of America (“United States”), by the Attorney General, on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint (“Complaint”) against American Energy, Inc. (“Defendant” or “AEI”, formerly American Transport, Inc.) in this Court on February 4, 2004 alleging that the Defendant is liable to the United States under Section 311(b)(3) of the Clean Water Act (“the Act”), 33 U.S.C. §1321(b)(3), as amended by the Oil Pollution Act of 1990 (“OPA”), Pub. L. 101-380, 104 Stat. 484, for a gasoline spill (“Spill”) that occurred on the morning of March 4, 1999, on the Warm Springs Indian Reservation, Wasco County, Oregon. The Complaint alleges that the Spill occurred when a tanker truck and trailer owned and/or operated by AEI overturned on Highway 26 near mile post 77. The Complaint further alleges that as a result of the Spill, approximately 5,400 gallons (128.57 barrels) of gasoline flowed onto the adjoining shorelines and into the waters of Beaver Creek and Beaver

Butte Creek. The United States seeks civil penalties from the Defendant pursuant to Section 311(b)(7) of the Act, 33 U.S.C. §1321(b)(7) for causing the discharge of gasoline into these shorelines and waters.

B. The Confederated Tribes of the Warm Springs Reservation (“Tribe”) joined the United States in the complaint as Plaintiff-Intervenor on July 13, 2004. As a sovereign government, the Tribe exercises authority over its Reservation water resources and has enacted Tribal Water Quality Standards, Warm Springs Tribal Code Chapters 432 and 433. EPA has recognized the Tribe as meeting the criteria of Section 518(e) of the Act, 33 U.S.C. § 1377(e), and has approved the Tribe’s water quality standards under Section 303(c), 33 U.S.C. § 1313(c). The Tribe’s complaint alleges that AEI’s discharge of gasoline into Beaver Creek and Beaver Butte Creek violated its water quality rules and seeks civil penalties under Warm Springs Tribal Code Chapter 433.

C. Defendant is also alleged to be liable to the United States and the Tribe under Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702 (a) and (b), for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing the damages, caused by the Spill. In the hours and days following the Spill, the United States and the Tribe contend that more than 5,000 fish were killed, including steelhead listed as “threatened” under the federal Endangered Species Act. The United States and the Tribe contend that the contamination also threatens the long- term health of the Beaver Creek and Beaver Butte Creek ecosystem. The Tribe contends the damage done by this Spill is especially injurious to the Tribe given the central role that water plays to the culture, religion and subsistence of the Tribe. The United States and the Tribe share trusteeship of the injured resources and are coordinating restoration efforts.

D. The Parties agree and the Court finds that settlement of this matter without further litigation is in the public interest and that the entry of this Decree is the most appropriate means of resolving these matters.

E. The Parties agree and this Court, by entering this Decree, finds that this Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation, and that this Decree is fair, reasonable, and in the public interest.

F. The Defendant does not admit any liability arising out of the transactions or occurrences alleged in this action.

NOW, THEREFORE it is Adjudged, Ordered and Decreed:

II. Jurisdiction

1. The Parties agree and this Court concludes that it has jurisdiction over this action under Section 311(b)(7)(E) of the Act, 33 U.S.C. § 1321(b)(7)(E), Section 1017 of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. §§ 1354 and 1355. Venue is proper in the District of Oregon (“District”) under Section 311(b)(7)(E) of the Act, 33 U.S.C. § 1321(b)(7)(E) and 28 U.S.C. § 1395(a). This Court has, and the Defendant consents to, the Court’s personal jurisdiction over them in connection with this action. Solely for the purposes of this Decree and the underlying complaint, the Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District.

III. Parties Bound

2. This Decree applies to and is binding: upon the United States; upon the Tribe; and upon the Defendant including, without limitation, its successors and assigns. Any change in

ownership or corporate status of the Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Defendant's or its successors' and assigns' rights or responsibilities under this Decree.

IV. Definitions

3. Unless otherwise expressly provided herein, terms used in this Decree which are defined in the Clean Water Act, shall have the meaning assigned to them in that Act. In addition:

“Act” means the Clean Water Act, 33 U.S.C. §§ 1251 to 1387.

“AEI” means American Energy, Inc.

“Day” means a calendar day unless expressly stated to be a working day.

“Working day” shall mean a day other than Saturday, Sunday, or Federal holiday.

“Decree” means this Consent Decree.

“Defendant” means American Energy, Inc.

“DOI” means the United States Department of the Interior.

“EPA” means the United States Environmental Protection Agency.

“Fund” means the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C.

§§ 4611 and 9509.

“FWS” means the United States Fish and Wildlife Service, an agency of the United States Department of the Interior.

“Natural Resources” shall have the meaning provided in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

“Natural Resource Damages” shall mean the damages described at Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A).

“Natural Resources Plan” means the Beaver Butte Creek Natural Resources Restoration Plan which will be developed by the Trustees.

“NOAA” means the National Oceanic and Atmospheric Administration of the United States Department of Commerce.

“OPA” means the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. §§ 2701 to 2761.

“Parties” means the Plaintiffs and the Defendant.

“Plaintiffs” means the United States and the Tribe.

“Spill” means the gasoline discharge that occurred on the morning of March 4, 1999, on the Warm Springs Indian Reservation, Wasco, County, Oregon..

“Tribe” means the Confederated Tribes of the Warm Springs Reservation of Oregon.

“Trustees” means the designated federal and tribal officials who act on behalf of the public as trustees for the Natural Resources injured by the Spill: the United States Department of the Interior; the United States Department of Commerce, represented by the National Oceanic and Atmospheric Administration; and the Confederated Tribes of the Warm Springs Reservation.

“United States” means the United States of America, on behalf of the United States Environmental Protection Agency, the United States Department of the Interior and the United States Department of Commerce, National Oceanic and Atmospheric Administration, including all agencies, bureaus, administrations or departments of EPA, DOI and NOAA.

V. Objectives of the Parties

4. The Parties are entering into this Decree to resolve all of the United States' and the Tribe's claims against the Defendant, attributable to the Spill, for civil penalties under Section 311(b)(7) of the Act, 33 U.S.C. § 1321(b)(7), for Natural Resource Damages under Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702 (a) and (b), and for civil penalties under the Warm Springs Tribal Code Chapter 433.

VI. Settlement of Claims for Civil Penalties, Damage Assessment Reimbursement and Natural Resource Damages

5. Settlement of Federal Civil Penalties Claim. Within thirty (30) days following entry of this Decree, AEI shall pay to the United States \$80,000 in complete settlement of the United States' claim for civil penalties. Payment to the United States shall be to the Oil Spill Liability Trust Fund by cashier's check or certified check referencing Case No. 04-CV-164-AA (D. Oregon) to the following address:

United State Coast Guard – Oil Pollution
Re: No. 04-CV-164-AA (U.S. District Oregon)
P.O. Box 403427
Atlanta, GA 30384-3427

Defendant shall send notice of payment to EPA and the United States Department of Justice ("DOJ") at the addresses listed in Section XV (Notices). 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. 04-CV-164-AA (D. Oregon); (5) this Decree (including date of entry); and (6) a description of the reason for the payment (including the Paragraph numbers of this Decree that are most relevant to the payment).

6. Settlement of Tribal Civil Penalties Claim. Within thirty (30) days following entry of this Decree, AEI shall pay to the Tribe \$80,000 in complete settlement of the Tribe's civil penalty claim. Payment shall be made by cashier's check or certified check referencing the "Beaver Butte Creek Gasoline Spill" and payable to "Confederated Tribes of the Warm Springs Reservation of Oregon." The check shall be mailed via overnight mail, with notice referring to this action, to:

Charles R. Calica, Secretary-Treasurer
Confederated Tribes of the Warm Springs Reservation of Oregon
P. O. Box C
Warm Springs, OR 97761

7. Damage Assessment Reimbursement. Within thirty (30) days of entry of this Decree, AEI shall pay the following amounts to the Trustees to reimburse their costs in assessing the damages to Natural Resources related to the Spill:

a. \$94,243.98 to NOAA as reimbursement of costs incurred by NOAA in assessing the Natural Resource Damages caused by the Spill. Payment shall be made by cashier's check or certified check referencing Case No. 04-CV-164-AA (D. Oregon), and payable to "National Oceanic and Atmospheric Administration." The check shall be mailed via overnight mail, with notice referring to this action, to the following address:

Chief, Damage Assessment Center
NOAA, N/ORCAx1
1305 East West Highway, Room 10218
Silver Spring, MD 20910

Notice of the payment shall be sent to the United States and to the Trustees as specified in Section XV (Notices). The notice shall state that the payment is for reimbursement of costs of assessing Natural Resource Damages caused by the Spill.

b. \$15,533.52 to DOI as reimbursement of costs incurred by the FWS in assessing the Natural Resource Damages caused by the Spill. Payment shall be made by cashier's check or certified check to the "Department of the Interior" with a note referencing American Energy Inc. for Account #14X5198(NRDAR), the Beaver Creek/Warm Springs Spill. The check shall be mailed via overnight mail, with notice referring to this action, to the following address:

Department of the Interior
NBC/Division of Financial Management Services
Branch of Accounting Operations (Mail Stop D-2777)
7401 W. Mansfield Avenue
Lakewood, Colorado 80235

Notice of the payment shall be sent to the United States and to the Trustees as specified in Section XV (Notices). The notice shall state that the payment is for reimbursement of costs of assessing Natural Resource Damages caused by the Spill.

8. Natural Resource Damages. Within thirty (30) days following entry of this Decree, the AEI shall also pay \$315,222.50 to the Trustees as monetary compensation for the Natural Resource Damages allegedly resulting from the Spill. Payments shall be made in accordance with the attached Order directing the deposit of Natural Resource Damages into the Registry of the Court. Notice of the Payments shall be sent to the United States and the Tribe as specified in Section XV (Notices).

9. Interest. In addition to the stipulated penalties set forth in Section VIII (Stipulated Penalties) below, in the event AEI fails to make timely payments of any amounts required under this Decree, including stipulated penalties, AEI shall pay interest on the unpaid balance. Interest for late payments of the federal and tribal civil penalties, required under Paragraphs 5 and 6 respectively, shall be at the rate specified in 28 U.S.C. § 1961. Interest for late payments of the damage assessment reimbursements and the Natural Resource Damages, required under

Paragraphs 7 and 8 respectively, shall be at the rate specified in Section 1005 of OPA, 33 U.S.C. § 2705. The interest shall be calculated from the first day following the final due date for these payments (i.e. 31 days after the entry of the Decree), until the entire outstanding balance has been received.

VII. Beaver Butte Creek Natural Resources Plan

10. The Trustees shall use the funds recovered under Paragraph 8 to develop and implement a Natural Resources Plan for Beaver Creek and Beaver Butte Creek. The Plan shall outline the steps the Trustees shall take to restore natural resources damaged by the Spill and to recover natural resource services lost as a result of the Spill. It shall also present the Trustees' plans for monitoring and maintaining the restoration projects developed pursuant to the Plan, for overseeing Plan implementation and for further reimbursing Trustees for any additional damage assessment costs. The Trustees may enter into further agreements to implement the provisions of this Consent Decree.

VIII. Stipulated Penalties

11. Failure to Pay Civil Penalties. The Defendant shall pay a stipulated penalty to the United States for failure to timely make the full payment required in Paragraph 5 at the rate of one thousand dollars (\$1,000) per day for each day of non-compliance. Payment of a stipulated penalty for failure to make the payment required under Paragraph 5 shall be in accordance with the payment procedures outlined in Paragraph 5. The Defendant shall pay a stipulated penalty to the Tribe for failure to timely make the full payment required in Paragraph 6 at the rate of one thousand dollars (\$1,000) per day for each day of non-compliance. Payment of a stipulated

penalty for failure to make the payment required under Paragraph 6 shall be in accordance with the payment procedures outlined in Paragraph 6.

12. Failure to Pay Damage Assessment Costs. The Defendant shall pay a stipulated penalty to the Trustees for failure to make the payment required in Paragraph 7 at the rate of one thousand dollars (\$1,000) per day for each day of non-compliance. Payment of a stipulated penalty for failure to make a payment required under Paragraph 7 shall be in accordance with the payment procedures outlined in Paragraph 7. The stipulated penalty shall be paid 80% to NOAA and 20% to the FWS.

13. Failure to Pay Natural Resource Damages. The Defendant shall pay a stipulated penalty to the Trustees for failure to make the payment required in Paragraph 8 at the rate of two thousand dollars (\$2,000) per day for each day of non-compliance. Payment of a stipulated penalty for failure to make a payment required under Paragraph 8 shall be in accordance with the payment procedures outlined in Paragraph 8.

14. Written Notice of Penalties. The United States or the Tribe may give the Defendant written notification that it has failed to make a payment as required by Paragraphs 5, 6, 7 and 8. Such notice shall describe the noncompliance, and make a demand for the full payment due and payment of the applicable penalties. However, the penalties provided for in Paragraphs 11, 12 and 13 shall be owed and shall accrue regardless of whether or not the Defendant has been notified of a violation. The Defendant shall pay stipulated penalties within thirty (30) days from the date a written demand for such penalties is mailed.

15. In General. Any stipulated penalty payments shall be accompanied by a reference to this Decree, and be identified as "Stipulated Penalties." Notice of payment of a stipulated penalty shall be made to the United States and the Tribe in the manner specified in Section XV

(Notices). Stipulated penalties shall begin to accrue interest on the day after payment is due at the rate specified under 28 U.S.C. § 1961 and shall continue to accrue interest until full payment is made. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

16. Notwithstanding any other provision of this Section, the United States and/or the Tribe may, in their unreviewable discretion, waive any portion of stipulated penalties or interest that have accrued pursuant to this Decree.

17. Nothing in this Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the Tribe to seek any other remedies or sanctions available by virtue of Defendant's violation of this Decree or of the statutes and regulations upon which it is based.

IX. Covenant Not to Sue by Plaintiffs

18. United States' Covenant In consideration of the payments that will be made by AEI under Section VI (Civil Penalties, Damage Assessment Reimbursement and Natural Resource Damages) of this Decree, the United States covenants not to sue or take administrative action against the Defendant pursuant to: Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), for civil penalties for the Spill or otherwise relating to or arising from the Spill; and Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), for Natural Resource Damages caused by the Spill or otherwise relating to or arising from the Spill. This covenant not to sue is conditioned upon receipt by the United States and the Tribe of all payments and interest required by Section VI (Civil Penalties, Damage Assessment Reimbursement and Natural Resource Damages) and Section VIII (Stipulated Penalties) of this Decree.

19. Tribe's Covenant. In consideration of the payment that will be made by the AEI under Section VI (Civil Penalties, Damage Assessment Reimbursement, and Natural Resource Damages) of this Decree, the Tribe covenants not to sue the Defendant pursuant to: the Tribe's Water Quality Standards, Warm Springs Tribal Code Chapter 432, for illegal discharge of gasoline in violation of tribal law or otherwise relating to or arising from the Spill; Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), for civil penalties for the Spill or otherwise relating to or arising from the Spill; and Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), for Natural Resource Damages caused by the Spill or otherwise relating to or arising from the Spill. This covenant not to sue is conditioned upon receipt by the United States and the Tribe of all payments and interest required by Section VI (Civil Penalties, Damage Assessment Reimbursement, and Natural Resource Damages) and Section VIII (Stipulated Penalties) of this Decree.

**X. Covenant Not to Present Claims to the
Oil Spill Liability Trust Fund**

20. All Parties covenant not to present any claim for removal costs or Natural Resource Damages arising from the Spill, pursuant to Sections 1008 and 1013 of OPA, 33 U.S.C. §§ 2708 and 2713, to the Oil Spill Liability Trust Fund.

XI. Reservation of Rights

21. Reservation of Rights. Notwithstanding any other provision of this Decree, the United States and the Tribe reserve, and this Decree is without prejudice to, all rights against the

Defendant with respect to all matters other than those expressly specified in the covenant not to sue set forth in Paragraphs 18 and 19 above, including, but not limited to:

- a. claims against the Defendant for its failure to meet a requirement of this Decree;
- b. claims against the Defendant for damages, including the costs of an assessment of damages, under OPA and any other applicable law, for injury to, destruction of, or loss of Natural Resources due to sources of contamination that do not arise from the Spill; and
- c. any criminal liability.

XII. Covenant by the Defendant

22. The Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States (including all employees, agents, contractors, departments, agencies, administrations and bureaus thereof) or the Tribe (including all employees, agents, contractors, departments, agencies, administrations and bureaus thereof) related to the Spill, including, without limitation, any potential or pending claims against the Fund relating to the Spill.

XIII. Effect of Settlement

23. Nothing in this Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action which each Party may have with respect to the Spill against any person not a Party hereto.

24. In any subsequent administrative or judicial proceeding initiated by the United States or the Tribe for injunctive relief, recovery of costs, or other appropriate relief relating to the Spill, the Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine, or other defenses based upon any contention that the claims raised by the United States or the Tribe in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section IX (Covenant Not To Sue by Plaintiffs) or Section XII (Covenant by the Defendant).

XIV. Modification

25. Material Modifications. Material modifications to the Decree may be made only by written approval of the Parties and the approval of the Court.

26. Non-Material Modifications. Non-material modifications of the Decree may be made only by written approval of the Parties, and will become effective upon their filing with the Court.

XV. Notices

27. Whenever under the terms of this Decree notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses and facsimile numbers specified below, unless it is otherwise specifically provided in this Decree. Any change in the individuals designated by any Party must be made in writing to the other Parties. Any

correspondence submitted to the Plaintiffs shall include a reference to the case caption and civil action number of this action. All notices shall be sent by first-class mail and facsimile.

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Facsimile: (202) 514-0097

Richard G. McAllister
Special Attorney
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101
Facsimile: (206)-553-0163

Kurt Zimmerman
Attorney Advisor
NOAA OGC
501 West Ocean Boulevard
Suite 4470
Long Beach, CA 90802
Facsimile: (562) 980-4084

Barry Stein
United States Department of the Interior
Office of the Solicitor
500 NE Multnomah, Suite 607
Portland, OR 97232
Facsimile: (503)-231-2166

As to the Tribe:

Cynthia J. Starke
James D. Noteboom
KARNOPP PETERSEN LLP
1201 NW Wall Street
Suite 300
Bend, OR 97701-1957
Facsimile: (541) 388-5410

As to AEI:

Kevin S. Mapes, Esq.
101 SW Main Street, Suite 100
Portland, OR 97204-319
Facsimile: (503) 226-3910

XVI. Retention of Jurisdiction

28. This Court retains jurisdiction over both the subject matter of this Decree and the Parties for the duration of the performance of the terms and provisions of this Decree for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, and relief as may be necessary or appropriate to enforce compliance with its terms or to enable all of the Parties to apply to the Court for the material modification of this Decree. Nothing in this Decree shall be deemed to limit or alter the Court's power to enforce it.

XVII. Lodging and Opportunity for Public Comment

29. This proposed Decree shall be lodged with the Court for a period of thirty (30) days from date of lodging for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States, pursuant to 28 C.F.R. § 50.7, reserves the right to withdraw its consent if the comments regarding the Decree disclose facts or considerations which indicate that the Decree is inappropriate, improper, or inadequate. The Defendant consents to the entry of this Decree without any reservation.

30. If for any reason the United States withdraws its consent pursuant to Paragraph 29 or if the Court should decline to approve this Decree in the form presented, this agreement is

voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. Final Judgment

31. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the United States, the Tribe, and the Defendant.

XIX. Effective Date

32. The effective date of this Decree shall be the date this Decree is entered by the Court.

XX. Costs and Attorneys Fees

33. If the Settling Defendant fails to make any payment required under Section VI (Settlement of Claims for Civil Penalties, Damage Assessment Reimbursement and Natural Resource Damages) or Section VIII (Stipulated Penalties) of this Decree when due, including stipulated penalties, and the United States and/or the Tribe file(s) with the Court a motion to enforce this Decree or any other application for such payment, and: (1) the United States and/or the Tribe thereafter receives a payment; or (2) an order is issued directing payment of any portion of the amount sought by the United States and/or the Tribe; or (3) the action is settled in a manner in which the United States and/or the Tribe receives any portion of the amount sought, the Settling Defendant shall reimburse the United States and/or the Tribe for all costs arising from such motion, complaint or application, including but not limited to costs of attorney time.

34. The United States and the Tribe will use best efforts to coordinate among each other in any action to enforce this Decree.

35. The Defendant is entitled to assert any arguments or defenses, claims or counterclaims, available to it by law in an effort to mitigate such costs or fees.


XXI. Signatories/Service

36. The undersigned representative of the Defendant, as well as of the United States and the Tribe, certify that they are fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such parties to this document.

37. The Defendant hereby agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree.

38. The Defendant shall identify on the attached signature page the name, address, telephone number and facsimile number of an agent who is authorized to accept service of process, if served by both mail and facsimile, on behalf of such Defendant with respect to all matters arising under or relating to this Decree. The Defendant hereby agrees to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS 16 DAY OF May, 2006.



Honorable Ann L. Aiken
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters in to this Decree in the matter of United States v. American Energy, Inc., relating to the Beaver Butte Creek Gasoline Spill.

FOR THE UNITED STATES:



ELLEN M. MAHAN
Deputy Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611



NEIL J. EVANS
Assistant United States Attorney
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204-2902



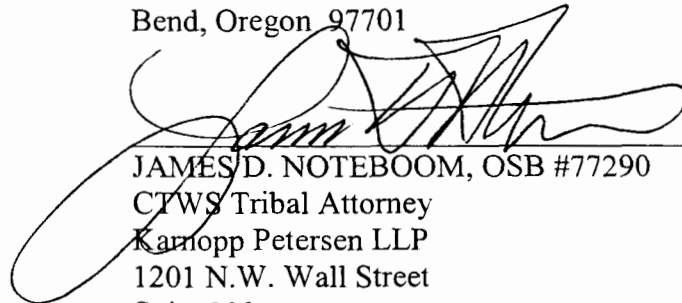
RICHARD G. McALLISTER
Special Attorney
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98101

THE UNDERSIGNED PARTY enters into this Decree in the matter of United States v. American Energy, Inc., relating to the Beaver Butte Creek Gasoline Spill.

FOR THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION:



CYNTHIA J. STARKE, OSB #01091
CTWS Tribal Attorney
Karnopp Petersen LLP
1201 N.W. Wall Street
Suite 300
Bend, Oregon 97701



JAMES D. NOTEBOOM, OSB #77290
CTWS Tribal Attorney
Karnopp Petersen LLP
1201 N.W. Wall Street
Suite 300
Bend, Oregon 97701

THE UNDERSIGNED PARTY enters into this Decree in the matter of United States v. American Energy, Inc., relating to the Beaver Butte Creek Gasoline Spill.

FOR AMERICAN ENERGY, INC.:

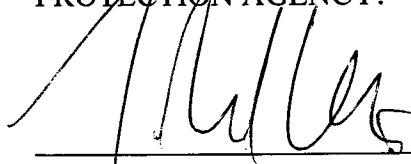
[Name] Doug Vernon
[Title] V.P.
[Address] P.O. Box 6869
Bend, OR 97708

Agent authorized to accept service on behalf of AEI:

NAME: _____
ADDRESS: _____
TELEPHONE NUMBER: _____

THE UNDERSIGNED PARTY enters into this Decree in the matter of United States, v. American Energy, Inc., relating to the Beaver Butte Creek Gasoline Spill.

FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY:



L. MICHAEL BOGERT
Regional Administrator
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, Washington 98101



EDWARD J. KOWALSKI
Regional Counsel
U.S. EPA Region 10
1200 Sixth Avenue
Seattle, Washington 98101