

## **MEMORANDUM OF AGREEMENT PUGET SOUND ENERGY – CRYSTAL MOUNTAIN 2006 OIL SPILL**

This Memorandum of Agreement (MOA or Agreement) is entered into by and between the following governmental entities: the Muckleshoot and Puyallup Tribe(Tribes), the National Oceanic and Atmospheric Administration (NOAA), the United States Department of the Interior (DOI), the State of Washington, and the United States Department of Agriculture (USDA), collectively referred to as the "Trustees."

### **I. BACKGROUND**

On Friday, November 3, 2006, Puget Sound Energy (PSE) experienced a diesel fuel spill at its Crystal Mountain generation facility, near the Crystal Mountain ski area, located on National Forest System Land in Pierce County, Washington. Environmental spill response crews in the area were mobilized, first by PSE and then by state and federal regulatory agencies, to secure the area, to limit the migration of the diesel fuel, and to commence recovery of approximately 18,000 gallons of oil that was released. The Trustees and PSE have entered into a Consent Decree settling Trustee natural resource claims concerning the spill.

### **II. PURPOSE**

The purpose of this MOA is to establish a process for coordinating and cooperating in the implementation of the Consent Decree, including 1) development of a draft and final Restoration Plan to restore, replace or acquire the equivalent of those resources; and 2) planning, designing, implementing, and monitoring restoration actions utilizing proceeds of the settlement. This MOA provides a framework for such coordination and cooperation between the Trustees, for managing natural resource damage recoveries, and for implementing joint damage assessment and restoration actions.

### **III. AUTHORITY**

The Trustees enter into this MOA in furtherance of and in accordance with their respective responsibilities and authorities as natural resource trustees pursuant to, the Oil Pollution Act, 33 U.S.C. Section 2701, *et seq.* (OPA); the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, Subpart G; Section 311(f) of the Clean Water Act, 33 U.S.C; the Washington State Water Pollution and Control Act, Chapter 90.48 RCW; the Washington State Oil and Hazardous Substance Spill Prevention and Response Act, Chapter 90.56 RCW; and other applicable laws and regulations to act as Trustees for natural resources affected by releases of petroleum products at or from the Puget Sound Energy – Crystal Mountain (PSE-Crystal Mtn.) Spill. The following officials are the signatories to this MOA

1. Tribal Chairman, Muckleshoot Tribe
2. Tribal Chairman, Puyallup Tribe
3. Special Counsel for Natural Resources, for NOAA

4. Director; Recreation, Lands and Mineral Resources, U.S.D.A. Forest Service, Pacific Northwest Region
5. Regional Director, U.S. Fish and Wildlife Service, authorized official for the Department of the Interior.
6. Director, Washington Department of Ecology

#### **IV. SCOPE**

This MOA is intended to address the assessment and recovery of damages for, and the restoration of natural resources injured, destroyed or lost as a result of, the PSE-Crystal Mtn. Oil Spill.

#### **V. TRUSTEE COORDINATION**

The USDA, DOI, NOAA, State, and Tribes agree to coordinate any damage assessment activities and restoration actions to fulfill their responsibilities as trustees under applicable federal, state, and tribal laws and regulations.

#### **VI. CONFIDENTIALITY**

The status of the parties as co-Trustees requires that they carry out their damage assessment and settlement negotiation process in a coordinated fashion and that they protect the integrity of the claim determination and analysis process and the confidentiality of information and strategies. The Trustees agree to share among each other certain confidential information, legal strategies and theories, documents, and other confidences (Confidential Information) regarding the assessment and collection of natural resource damages associated with the PSE-Crystal Mtn. 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 or permitted. The attorney-client and attorney work product privileges are intended to remain attached to Confidential Information so shared and exchanged and the sharing and exchange of such Confidential Information does not waive any privilege attaching thereto or to any Confidential Information not shared or exchanged. Each Trustee agrees not to reveal to any person not party to this Agreement, to the extent permitted by applicable law (including the Washington State Public Records Act, Chapter 42.56 RCW), any such Confidential Information without the prior written consent of the party who contributed or caused the same to be contributed to the joint effort.

#### **VII. REPLACEMENT /RESTORATION FUNDS**

- A. The Trustees will receive funds under the Consent Decree for the purpose of restoring natural resources and/or natural resource services injured, destroyed, or lost as a result of the PSE-Crystal Mtn. Spill. The Trustees have determined that the appropriate place for the deposit of the funds is into the DOI Natural Resource Damage Assessment and Restoration (NRDAR) Fund. The depository into the NRDAR Fund will be referred to as

the PSE-Crystal Mtn. NRDAR Fund. Any interest earned on the money deposited into the PSE-Crystal Mtn. NRDAR Fund shall be credited to that fund and shall be subject to the terms of this MOA. No money shall be expended from the PSE Crystal Mtn. NRDAR Fund except to the extent such expenditure is consistent with this MOA, the Consent Decree, or other agreement which embodies a settlement between the Trustees and PSE, and any applicable law.

**B. Use of PSE-Crystal Mtn. NRDAR Funds**

1. The funds in the PSE-Crystal Mtn. NRDAR Fund shall be spent on planning and implementing actions to restore, replace or acquire the equivalent of resources and resource services injured, destroyed or lost by the PSE-Crystal Mtn. Oil Spill.
2. To the extent practicable, the Trustees will use the funds in the PSE-Crystal Mtn. Fund for natural resource restoration or replacement activities within close proximity to the PSE-Crystal Mtn. Spill site and within the same river system so as to provide equivalent habitat, resources and services.
3. The funds in the PSE-Crystal Mtn. NRDAR Fund will only be spent in compliance with applicable state, federal, and tribal laws and regulations.
4. The Trustees' goal is to minimize the amount of the funds placed in the PSE-Crystal Mtn. NRDAR Fund that are spent on administrative charges and expenses. Administrative charges and expenses may include, but are not limited to, salary, travel and overhead of Trustee committee members and trustee staff costs associated with administering the PSE-Crystal Mtn. NRDAR Fund and managing the Trustee decision-making and restoration implementation process.
5. Funds in the PSE-Crystal Mtn. NRDAR Fund shall not be used on additional natural resource damage assessment studies, unless the Trustees agree that such further assessment activities are necessary for the fulfillment of their trustee responsibilities.

**VIII. TRUSTEE COUNCIL**

A. There is established a Trustee Council ("Council"), which shall be the mechanism through which the Trustees will coordinate their restoration related activities regarding the PSE-Crystal Mtn. Spill. Each of the Trustees may have more than one representative on the Council, but only one representative of each Trustee will be designated by the respective Trustee as a voting member of the Council. Within 30 days of the effective date of this Agreement, each Trustee shall provide the name of its voting member and an alternate voting member to the Lead Administrative Trustee.

**B. The Council shall be responsible for:**

1. Planning and implementing restoration actions to benefit the natural resources that have been injured by releases of petroleum products at or from the PSE-Crystal Mtn. Spill;
2. Authorizing disbursements from the PSE-Crystal Mtn. NRDAR Fund;
3. Deciding other matters relating to the use, handling and accounting of funds, goods and in-kind services recovered or made available as a result of the resolution of natural resource damage claims regarding the PSE-Crystal Mtn. Spill;

4. Adopting such bylaws, statements of Council policy or position, cost accounting procedures or cost reimbursement guidelines consistent with this Agreement as are needed to carry out this Agreement or to implement the Consent Decree;
5. Facilitating Trustee review and comment on plans, proposals and work products;
6. Facilitating Trustee development and implementation of any restoration activities within the scope of this MOA;
7. Facilitating the development of joint Trustee restoration positions for recommendation to authorized Trustee officials and other decision-makers; and
8. Approving contractor selection, scopes of work, plans, budgets and deliverables for damage assessment and restoration actions within the scope of this MOA.

C. The Trustee Council shall consist of one voting member from each of the Trustees. Other representatives of each Trustee may attend meetings and participate in the deliberations of the Trustee Council. A Trustee may designate different individuals to serve as its Trustee Council representative regarding the different activities that are the subject of this MOA. All decisions of the Trustees under this Agreement shall be by consensus. Consensus means the affirmative vote of each Trustee Council representative or an affirmative vote by five of the six Trustee Council representatives with one abstention. In the event that consensus is not reached by the voting representatives of the Council, the Council should conduct extensive good faith discussions directed toward obtaining consensus among all Trustees. In the event consensus cannot be reached, the matter in dispute shall be presented to higher level officials of the Trustees for resolution. The Trustees may adopt further procedures for dispute resolution.

Trustee Council decisions will be recorded in writing, either by resolution signed by the voting representatives or in minutes approved as to form and content by the voting representatives. Provided, however, that all decisions authorizing the expenditure of funds or the acceptance of work as satisfying in-kind contribution obligations shall be memorialized in a Trustee Council resolution signed by the voting representatives. All records of Trustee Council decisions, plus copies of any supporting documents, shall be maintained in the administrative record.

#### **IX. LEAD ADMINISTRATIVE TRUSTEE**

- A. For purposes of facilitating the exchange of information and the coordination of positions among the Trustees, one Trustee shall be designated the Lead Administrative Trustee. Determination of the Lead Administrative Trustee shall be by consensus of the Trustees.
- B. The Lead Administrative Trustee shall be responsible for:
  1. Scheduling of meetings of the Trustees and preparation of proposed agendas for those meetings;
  2. Acting as a central contact point for the Trustees where needed to facilitate

communication between the Trustees and PSE;

3. Preparation of such minutes, resolutions, and other documents as needed to record actions and decisions of the Council;

4. Maintenance of the administrative record covering the assessment and resolution of natural resource damage claims for the PSE-Crystal Mtn. Spill and the planning and implementation of efforts to restore injured natural resource; and

5. Such other duties as are agreed upon by the Trustees.

C. Designation of a Lead Administrative Trustee shall not preclude the Trustees' determination on a case-by-case basis to assign responsibility for specific tasks to another Trustee.

D. The Trustees agree that the U.S. Fish and Wildlife Service shall initially serve as Lead Administrative Trustee. The Trustees may by consensus change the designation of Lead Administrative Trustee without the need for an amendment to this Agreement. Such a change in the designation of Lead Administrative Trustee shall be confirmed in a writing signed by the appropriate representatives of all Trustees.

#### **X. DISPOSITION OF EXCESS FUNDS**

In accordance with section 1006(f) of OPA, 33 U.S.C. § 2706(f), sums recovered for natural resource damages in excess of amounts required for implementation of restoration actions and reimbursement of damage assessment costs shall be deposited in the Oil Spill Liability Trust Fund established by 26 U.S.C. § 9509 (OPA Fund).

#### **XI. MISCELLANEOUS PROVISIONS**

A. Effective Date; Amendment and Termination. This Agreement shall be effective when executed by all of the Trustees and may not be amended except by written agreement of all Trustees. A Trustee may give 30 days' written notice to terminate its participation in this Agreement. Upon such termination and withdrawal of any Trustee, the Agreement shall continue to be effective as to the remaining Trustees. *Provided, however,* it is the intent of the Trustees that the provisions of Section VI. Confidentiality of this MOA regarding the use and maintenance of Confidential Information shall survive the termination of this MOA.

B. Commitment of Resources. Nothing in this Agreement shall be construed as obligating USDA, Forest Service, NOAA, DOI, FWS, the State of Washington, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

C. Reservation of Rights. It is recognized that each Party to this Agreement has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or treaty or otherwise, except as specifically agreed herein, and that nothing in this Agreement waives or forecloses the exercise of any such rights, powers or remedies.

D. Modification of Agreement. Modification of this MOA must be in writing and approved by all Trustees currently party to this MOA.

MOA for PSE-Crystal Mtn. NRDAR

For the Department of Agriculture  
USDA Forest Service

*Mary Wagner* REGIONAL FORESTER 2.6.09  
Name/Title/Date

Department of Commerce/NOAA

\_\_\_\_\_  
Name/Title/Date

For the Department of the Interior  
U.S. Fish and Wildlife Service

\_\_\_\_\_  
Name/Title/Date

Muckleshoot Indian Tribe:

\_\_\_\_\_  
Name/Title/Date

Puyallup Indian Tribe:

\_\_\_\_\_  
Name/Title/Date

For the State of Washington  
Washington Department of Ecology

\_\_\_\_\_  
Name/Title/Date

For the Department of Agriculture  
USDA Forest Service

\_\_\_\_\_  
Name/Title/Date

*Special Counsel 3/16/09*

Department of Commerce/NOAA

\_\_\_\_\_  
Name/Title/Date

For the Department of the Interior  
U.S. Fish and Wildlife Service

\_\_\_\_\_  
Name/Title/Date

Muckleshoot Indian Tribe:

\_\_\_\_\_  
Name/Title/Date

Puyallup Indian Tribe:

\_\_\_\_\_  
Name/Title/Date

For the State of Washington  
Washington Department of Ecology

\_\_\_\_\_  
Name/Title/Date

For the Department of Agriculture  
USDA Forest Service  
Mary Wager, Regional Forest

\_\_\_\_\_  
Name/Date

For the Department of Commerce/NOAA  
Craig O'Connor, Special Counsel for  
Natural Resources

\_\_\_\_\_  
Name/Date

For the Department of the Interior  
U.S. Fish and Wildlife Service  
*FOL*: Robyn Thorson, Region 1 Director

\_\_\_\_\_  
*David W. Wager* 3/3/09  
Name/Date

For the Muckleshoot Indian Tribe:  
Virginia Cross, Tribal Chairperson

\_\_\_\_\_  
Name/Date

For the Puyallup Indian Tribe:  
Herman Dillon, Tribal Chairperson

\_\_\_\_\_  
Name/Date

For the State of Washington  
Washington Department of Ecology  
Dale Jensen, Program Manager Spills Program

\_\_\_\_\_  
Name/Date



For the Department of Agriculture  
USDA Forest Service

\_\_\_\_\_  
Name/Title/Date

Department of Commerce/NOAA

\_\_\_\_\_  
Name/Title/Date

For the Department of the Interior  
U.S. Fish and Wildlife Service

\_\_\_\_\_  
Name/Title/Date

Muckleshoot Indian Tribe:

Charlotte Williams, Chairperson 3-6-09  
Name/Title/Date

Puyallup Indian Tribe:

\_\_\_\_\_  
Name/Title/Date

For the State of Washington  
Washington Department of Ecology

\_\_\_\_\_  
Name/Title/Date

For the Department of Agriculture  
USDA Forest Service

\_\_\_\_\_  
Name/Title/Date

Department of Commerce/NOAA

\_\_\_\_\_  
Name/Title/Date

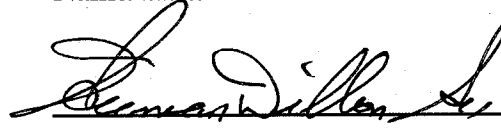
For the Department of the Interior  
U.S. Fish and Wildlife Service

\_\_\_\_\_  
Name/Title/Date

Muckleshoot Indian Tribe:

\_\_\_\_\_  
Name/Title/Date

Puyallup Indian Tribe:

 2/5/09  
\_\_\_\_\_  
Name/Title/Date

For the State of Washington  
Washington Department of Ecology

\_\_\_\_\_  
Name/Title/Date

For the Department of Agriculture  
USDA Forest Service

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Name/Title/Date

Department of Commerce/NOAA

\_\_\_\_\_  
Name/Title/Date

For the Department of the Interior  
U.S. Fish and Wildlife Service

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Name/Title/Date

Muckleshoot Indian Tribe:

\_\_\_\_\_  
Name/Title/Date

Puyallup Indian Tribe:

\_\_\_\_\_  
Name/Title/Date

For the State of Washington  
Washington Department of Ecology

*Donna Jean Spillo-Kayman King*  
\_\_\_\_\_  
Name/Title/Date 1-30-09