

MEMORANDUM OF AGREEMENT
FOR THE
JOHN DAY RIVER HYDROCHLORIC ACID SPILL
NATURAL RESOURCE DAMAGE RESTORATION

This Memorandum of Agreement (MOA or the "Agreement") is between the Oregon Department of Fish and Wildlife, on behalf of the State of Oregon, the United States Department of the Interior (DOI), and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) (collectively referred to as the "Trustees")

I. PURPOSE

This MOA is entered into to ensure the coordination and cooperation of the Trustees in the expenditure of jointly recovered funds for the restoration, replacement and/or acquisition of equivalent natural resources which have been injured as a result of a spill of hydrochloric acid into the John Day River on February 8, 1990.

II. AUTHORITY

The following officials are the signatories to this MOU:

1. The Director, Department of Fish and Wildlife of the State of Oregon.
2. The Director of the Office of Environmental Affairs of the Department of the Interior.
3. The Chairman of the Confederated Tribe of the Umatilla Indian Reservation.

III. SCOPE

This MOU is intended to address natural resources damaged on and after February 8, 1990, at approximately 9:30 a.m., when a tanker truck owned and operated by Thatcher Trucking Company, Salt Lake City, Utah, skidded off of Highway 395 and rolled down the embankment into the North Fork of the John Day River at river mile 56.8. The accident occurred just south of the Camas Creek Bridge near the town of Dale, Oregon, and immediately above the mouth of Camas Creek. The truck was carrying approximately 5,000 gallons of 35.2 percent solution of hydrochloric acid. After the truck rolled into the river, hydrochloric acid began to leak

through a ruptured disk on the pressure valve. An estimated 3,500 gallons or 33,500 lbs of acid was discharged into the North Fork of the John Day River. The acid flowed slowly downstream of the accident site and resulted in extensive mortality of anadromous and resident fish species, salmonid alevins, aquatic plants, aquatic invertebrates, and possibly other resources for which the State, CTUIR and DOI are Trustees.

IV. RESTORATION TRUST FUND

The Trustees recognize that \$275,000 dollars will be deposited in an account in the Registry of the Federal District Court pursuant to the consent decree for the John Day Acid Spill. This MOA is intended to guide the use of those funds, hereinafter referred to as the "Trust Fund". No money shall be expended from the Trust Fund except to the extent that such expenditure is consistent with this MOA and the Consent Decree.

V. JOHN DAY RESTORATION COMMITTEE

- A. A John Day Restoration Committee ("Committee") will be established to review and select restoration activities to be funded with monies available in the Trust Fund. Each of the Trustees will have representatives on the Committee, but only one representative of each trustee will be designated by the respective trustee as a voting member of the Committee.
- B. Representatives on the Committee should be technically competent in fish habitat issues and knowledgeable of John Day River basin fisheries and habitat needs.
- C. Use of Trust Fund Money
 - 1. The Trust Fund shall be spent on only restoration, replacement or acquisition of equivalent resources injured in the John Day Spill. This will entail habitat restoration and/or enhancement programs for anadromous and resident fish in the North Fork John Day River and tributaries to mitigate for the fish losses resulting from the spill. Emphasis will be placed on riparian systems/habitat recovery through land and easement purchases and riparian fencing and in kind exchanges for riparian lands. Selected projects shall

¹ DOI's representative will be appointed by the Regional Director, Region 1, Fish and Wildlife Service. That representative shall consult and coordinate with the Portland Area Office, Bureau of Indian Affairs.

be consistent with the Salmon and Steelhead Production Plan for the John Day Subbasin, Northwest Power Planning Council, September 1, 1990.

2. Trust Funds will not be spent on additional natural resource damage studies, monitoring or any compensation for Trustee administrative work or participation on the Committee, including salaries of any Tribal, State or Federal employee.
- D. The Trustees can seek matching funds to increase leveraging opportunities for the Trust Fund. However, the availability of matching funds is not a prerequisite for the implementation of Trust Fund restoration projects.
- E. Decisions by the Committee shall be through consensus. Trust Fund money on a selected project will not be spent until consensus is reached on that project.

VI. DISPUTE RESOLUTION

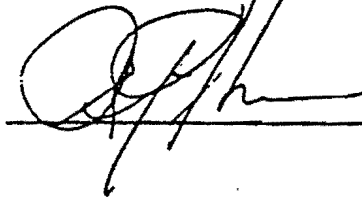
All decisions of the Trustees under this agreement shall be by consensus. In the event that consensus is not reached by the voting representatives of the Committee, the Committee should conduct extensive good faith discussions directed toward obtaining consensus among all Trustees. In the event consensus can not 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.

VII. 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. This Agreement shall continue in effect until terminated by agreement of all the Trustees.
- B. Commitment of Resources. Nothing in the Agreement shall be construed as obligating the United States, the Tribe, the State, 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 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. No Member of or Delegate to Congress shall be admitted to any share or part of this Agreement, or to any benefit that may arise from this Agreement.

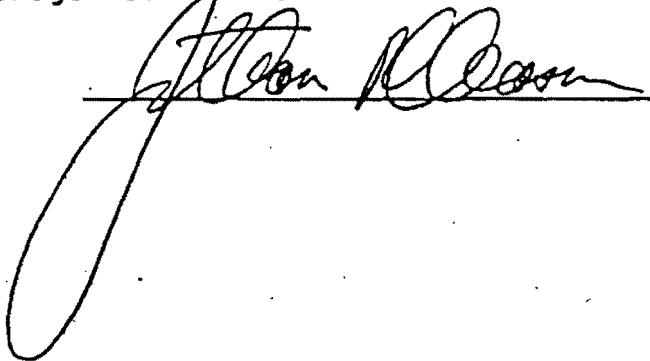
The State of Oregon, Oregon Department of Fish and Wildlife in its capacity as a natural resource Trustee, hereby approves this Memorandum of Agreement for the John Day River Hydrochloric Acid Spill Natural Resource Damage Restoration.

A handwritten signature in dark ink, appearing to be "D. H.", written over a horizontal line.

Date

Jun 7, 1992

The United States Department of the Interior in its capacity as a natural resource Trustee, hereby approves this Memorandum of Agreement for the John Day River Hydrochloric Acid Spill Natural Resource Damage Restoration.

 Date JUNE 8, 1992

The Confederated Tribes of the Umatilla Indian Reservation in its capacity as a natural resource Trustee, hereby approves this Memorandum of Agreement for the John Day River Hydrochloric Acid Spill Natural Resource Damage Restoration.



Date 6-10-92

Elwood H. Patawa, Chairman
Board of Trustees

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION