



Notice of Intent to Conduct Restoration Planning
(Pursuant to 15 C.F.R. Section 990.44)
January, 2015 Yellowstone River Oil Spill

SUMMARY: On January 17, 2015, the Poplar Pipeline, which is owned and operated by Bridger Pipeline, LLC, of Casper, Wyoming, discharged at least 30,000 gallons of Bakken crude oil into the Yellowstone River just upstream of Glendive, Montana. At the time of the discharge, the Yellowstone River and its shoreline were experiencing winter conditions and were covered partially in ice and snow. The resulting crude oil spill entered the Yellowstone River and continues to adversely affect and threaten natural resources within the jurisdictions of the United States and the State of Montana.

Oil sheen was reported at least as far downstream as Crane, Montana (59 river miles downstream from the pipeline crossing). (POLREP #12, USEPA, 2015). Ice on the Yellowstone River prevented cleanup of most of the oil. The oil remained in the river from January 17, 2015 through at least the time that the ice started to break up in mid-March 2015. During some or all of this time period, oil was present in the Yellowstone River throughout the water column. A second phase of the release occurred in mid-March during ice-out (i.e., the time that the ice began to break up during spring thaw). Oil was found on the shoreline through early April 2015. The oil caused exceedances of surface water quality standards contained in Montana's "Circular DEQ-7 Montana Numeric Water Quality Standards" in the Yellowstone River.

NATURAL RESOURCE TRUSTEES: Pursuant to Section 1006 of the Oil Pollution Act ("OPA"), 33 U.S.C. § 2706, federal and state trustees for natural resources are authorized to (1) assess natural resource injuries resulting from a discharge of oil or the substantial threat of a discharge, as well as response activities associated with clean-up of the oil, and (2) develop and implement a plan for restoration, rehabilitation, replacement, or acquisition of the equivalent, of such injured resources. The following agencies (collectively, "the Trustees") are designated natural resources trustees under OPA. For this Incident, the federal trustee is the United States Department of the Interior, represented by the U.S. Fish and Wildlife Service and the State trustee, in accordance with 40 C.F.R. § 300.605 and 33 U.S.C. § 2706(b)(3), is the Governor of the State of Montana. The Governor of the State of Montana is represented by the Montana

Natural Resource Damage Program, an entity within the Montana Department of Justice. Federal trustees are designated pursuant to the National Contingency Plan, 40 C.F.R. § 300.600 and Executive Order 12,777. The U.S. Fish and Wildlife Service and the State of Montana are Co-Lead Administrative Trustees. In addition to acting as a trustee for this Incident under OPA, the State of Montana is also acting pursuant to its applicable state laws and authorities, including, without limitation, the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), 75-10-701, MCA, *et seq.*

RESPONSIBLE PARTY: As defined by OPA, the identified Responsible Party for this Incident is Bridger Pipeline, LLC (“Bridger”). Bridger is also an identified potentially liable person pursuant to Section 75-10-715, MCA. Pursuant to 15 C.F.R. §§ 990.14(c) and 990.44(d), concurrent with this Notice of Intent to Conduct Restoration Planning (“Notice”), the Trustees have invited Bridger to participate in a Natural Resource Damage Assessment (“NRDA”).

PREASSESSMENT PHASE: In January 2015, the Trustees began the preassessment phase of the NRDA in accordance with 15 C.F.R. Part 990, Subpart D, to determine if the Trustees had jurisdiction to pursue restoration under OPA, and, if so, whether it was appropriate to do so. During the preassessment phase, the Trustees collected and analyzed and are continuing to collect and analyze the following: (1) data reasonably expected to be necessary to make a determination of the Trustees’ jurisdiction or a determination to conduct restoration planning, (2) ephemeral data, and (3) information needed to design or implement restoration and assessment activities as part of the restoration planning phase. The Trustees collected water, sediment, and fish samples (muscle tissue, major organs, gills, blood, bile, and reproductive organs), and evaluated information related to potential feasible restoration alternatives and assessment activities, as discussed below, pursuant to 15 C.F.R. §§ 990.44(4) & (5).

Under the NRDA regulations applicable to OPA, 15 C.F.R. Part 990 (“NRDA regulations”), the Trustees prepare and issue a Notice if the Trustees determine conditions that confirm the jurisdiction of the Trustees and the appropriateness of pursuing restoration of natural resources have been met.

Pursuant to 15 C.F.R. § 990.44, this Notice announces that the Trustees have determined to proceed with restoration planning to fully evaluate, assess, quantify, and develop plans for restoring, rehabilitating, replacing, or acquiring the equivalent of natural resources injured and losses resulting from the Incident. The restoration planning process will include the collection of information that the Trustees determine is appropriate for identifying and quantifying the injuries and losses of natural resources, including natural resource services, and to determine the need for, and type and scale of restoration actions.

SUPPLEMENTARY INFORMATION:

DETERMINATION OF JURISDICTION: The Trustees make the following findings pursuant to 15 C.F.R. § 990.41:

1. The rupture of a 12-inch diameter pipeline owned by Bridger on or about January 17, 2015, near Glendive, Montana, resulted in the discharge of at least 30,000 gallons of oil into and

upon navigable waters as well as adjoining shorelines, which constitutes an “Incident” within the meaning of 15 C.F.R. § 930.30.

2. The Incident, a rupture of pipeline, was not permitted or authorized under a permit or license issued under federal, state, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, *et seq.*

3. Natural resources under the trusteeship of the State of Montana and the United States may have been, or may be, injured as a result of the Incident, including, but not limited to, fish and other aquatic organisms, birds (including migratory birds), wildlife, surface water and riverine aquatic habitat, and supported biota, including fish, terrestrial habitat, shoreline habitat, and supported biota adjacent to the river, and the natural resource services provided by these resources. Discharged oil and the response activities to address the discharges of oil have resulted in adverse effects on natural resources and impaired natural resource services that those resources provide. The full extent of potential injuries is currently unknown.

The Trustees have determined that they have jurisdiction to pursue restoration under OPA. The State of Montana also has jurisdiction to pursue restoration under CECRA, including Section 75-10-715(2)(b), MCA.

DETERMINATION TO CONDUCT RESTORATION PLANNING: Pursuant to 15 C.F.R. § 990.42(a), the Trustees determined that:

1. Observations and data collected pursuant to 15 C.F.R. § 990.43 demonstrate that injuries to natural resources and the natural resources services have resulted from the Incident; however, the nature and extent of such injuries has not been fully determined at this time. The Trustees have been conducting, and continue to conduct activities to evaluate injuries and potential injuries within these categories. More information on these resource categories is and will be available in the administrative record (as defined below). The full nature and extent of injuries will be determined during the injury assessment phase of restoration planning.

As part of its preassessment activities, the Trustees have identified a number of categories of trust resources where injuries have resulted or are likely to result from the Incident. Categories of natural resources that are or are likely to be lost, injured, and/or threatened as a result of discharged oil and associated response activities include, but are not limited to:

- Fish (including the federally listed endangered pallid sturgeon), reptiles, and mussels, and associated habitat: Gill, kidney, and liver abnormalities have been identified in fish samples. Further, polycyclic aromatic hydrocarbons (PAHs) were found in fish muscle tissue from fish collected downstream of the spill. Other receptors also potentially exposed and injured, along with their habitat, include but are not limited to: reptiles, including turtles, and mussels.
- Birds: injury to birds, including the bald eagle (federally protected by the Bald and Golden Eagle Protection Act), waterfowl, shorebirds, and raptors along with their habitat.

- Shoreline habitat: injury to shorelines, including vegetated and unvegetated shorelines, which provide various habitat functions to aquatic and terrestrial species. For example, on shorelines below the spill, oil was allowed to degrade over time. Additionally, damage to the shoreline occurred during certain response activities.
- Human use: Natural resource services may include, without limitation, lost and diminished use and non-use values, including but not limited to fishing and other recreational uses. For example, fishing and other recreational uses were prohibited, curtailed, or otherwise adversely affected, either directly or indirectly on or adjacent to the Yellowstone River. A fish consumption advisory was issued in the days after the spill, and the advisory was not lifted until April 13, 2015.

2. The response actions did not address and are not expected to address all injuries resulting from the discharges of oil. The U.S. Environmental Protection Agency entered into a Unified Command with Bridger Pipeline, LLC and Montana Department of Environmental Quality. The Unified Command was established on January 19, 2015, at the Dawson County Disaster and Emergency Service Center in Glendive, MT. The Unified Command was responsible for directing response activities, including cleanup of oil from the Yellowstone River. It is estimated that approximately 2,520 gallons of the oil discharged into the Yellowstone River and its shoreline were recovered (POLREP #12, USEPA, 2015).

3. While response activities were initiated soon after the Incident, the circumstances surrounding the Incident prevented recovery of the vast majority of the discharged oil. As a result, the Trustees anticipate that the response activities alone were unable to prevent injuries to natural resources. In addition, some of the response activities caused injuries to natural resources and the natural resource services provided, including but not limited to birds, wildlife, shoreline habitat, and the services provided by these natural resources.

Interim losses have occurred, and are likely to occur in the future until baseline conditions are restored. In addition, there have been and will continue to be losses of and diminution of the human uses and non-use values of the resources resulting from the impacts to the natural resources and from the response activities themselves.

4. Feasible restoration actions exist to address the natural resource injuries and losses, including lost human uses, resulting from the discharges of oil. Potential restoration actions relevant to the expected injuries include, but are not limited to improving water quality by reducing sources of contamination to the river, and restoring, rehabilitating, replacing, or acquiring riparian habitat; bird habitat, including breeding, nesting, and foraging habitat; and fish habitat, including improving connectivity. Assessment procedures are available to scale the appropriate amount of restoration required to offset these ecological and human use service losses. During the restoration planning phase, the Trustees, in accordance with 15 C.F.R. Part 990, Subpart E, will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft restoration plan for public review and comment.

5. Potential assessment procedures to evaluate the injuries further may include, but are not limited to laboratory studies to evaluate the impact on fish (including pallid sturgeon) from extended exposure to oil in a cold weather environment. Other assessment procedures may include modeling to determine the impact on migratory birds. Further or different assessment procedures may be identified during the restoration planning phase conducted in accordance with 15 C.F.R. Part 990, Subpart E.

Based upon these determinations, the Trustees intend to proceed with restoration planning for the Incident.

ADMINISTRATIVE RECORD: The Trustees have opened an administrative record in compliance with 15 C.F.R. § 990.45. The administrative record is publicly accessible and includes documents that served as a basis for the Trustees' determination to conduct restoration planning. The administrative record will continue to be augmented with additional information over the course of the NRDA process and include documents considered by the Trustees during the preassessment, assessment, and restoration planning phases of the NRDA performed in connection with the Incident.

The administrative record is available at the following locations in electronic format:

http://www.cerc.usgs.gov/orda_docs/CaseDetails?ID=1121

<https://dojmt.gov/lands/yellowstone-river-oil-spill-january-2015/>

OPPORTUNITIES FOR PUBLIC INVOLVEMENT: The Trustees invite the public to participate in restoration planning for this Incident in accordance with 15 C.F.R. § 990.14(d). This Notice is being made available to the public pursuant to 15 C.F.R. § 990.44(c). The Trustees will provide opportunities for public involvement in the restoration planning for this Incident. The opportunities for public involvement will be addressed in future notices and announcements.

ADOPTION BY FEDERAL AND STATE NATURAL RESOURCE TRUSTEES: The undersigned, on behalf of their agency or government as designated Natural Resource Trustees, hereby adopt the foregoing. This document may be signed in counterparts. A copy with all original executed signature pages affixed shall constitute the original.

SIGNATURES:

STATE OF MONTANA



Tim Fox
Attorney General
State of Montana

20 October 2016

Date

FOR THE UNITED STATES DEPARTMENT OF INTERIOR

Noreen Walsh
Regional Director
U.S. Fish and Wildlife Service, Region 6

Date

SIGNATURES:

STATE OF MONTANA

Tim Fox
Attorney General
State of Montana

Date

FOR THE UNITED STATES DEPARTMENT OF INTERIOR



Noreen Walsh
Regional Director
U.S. Fish and Wildlife Service, Region 6

10/21/2016

Date