Notice of Intent to Conduct Restoration Planning (Pursuant to 15 CFR Section 990.44) July 1, 2011 Yellowstone River Oil Spill

SUMMARY: On or about July 1, 2011, a 12-inch diameter pipeline owned by the ExxonMobil Pipeline Company ruptured near Laurel, Montana, resulting in the discharge of crude oil into the Yellowstone River and floodplain. The discharge is estimated to have been approximately 63,000 gallons, and continues, along with associated response activities, to adversely affect and threaten natural resources within the jurisdictions of the United States and the State of Montana.

NATURAL RESOURCE TRUSTEES: Pursuant to section 1006 of the Oil Pollution Act ("OPA"), 33 U.S.C. §§ 2701, *et seq.*, 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 and response activities, and (2) develop and implement a plan for restoration of such injured resources. The following agencies (collectively, "the Trustees") are designated natural resources trustees under OPA and are currently acting as trustees for this Incident: the federal trustee is the United States Department of the Interior, as represented by the Bureau of Land Management and the U.S. Fish and Wildlife Service; State trustee is the Governor of the State of Montana, in accordance with 40 CFR 300.605. Federal trustees are designated pursuant to the National Contingency Plan, 40 CFR Section 300.600 and Executive Order 12777. The U.S. Bureau of Land Management 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, 75-10-701, MCA, *et seq*.

RESPONSIBLE PARTY: As defined by OPA, the identified Responsible Party for this Incident is the ExxonMobil Pipeline Company ("EMPCo"). In August 2012, consistent with 15 CFR 990.14(c), the Trustees entered into a memorandum of agreement (MOA) with EMPCo governing cooperative tasks, and funding through March 31, 2013, per an amendment to the MOA. The Trustees have to date coordinated certain data collection activities with EMPCo.

Concurrent with the publication of this Notice, the Trustees are inviting EMPCo to further participate in the Natural Resource Damage Assessment ("NRDA") process.

PREASSESSMENT PHASE: In July, 2011, the Trustees began the preassessment phase of NRDA in accordance with 15 CFR 990.40, 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.

Under the NRDA regulations applicable to OPA, 15 CFR Part 990, the Trustees prepare and issue a Notice of Intent to Conduct Restoration Planning ("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 CFR 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, replacing or acquiring the equivalent of natural resources injured and losses resulting from the Incident. The restoration planning process will include 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 have made the following findings pursuant to 15 CFR 990.41:

1. The rupture of a 12-inch diameter pipeline owned by EMPCo on or about July 1, 2011 near Laurel, Montana, resulted in the discharge of oil into and upon navigable waters of Montana and the United States as well as adjoining shorelines, including, but not limited to, the Yellowstone River, floodplain, shoreline, wetlands and other riparian areas, islands, fields, pastures, bottomlands, grasslands, and shrublands, all of which constitutes an "Incident" within the meaning of 15 CFR 930.30.

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

3. Natural resources under the trusteeship 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, large woody debris piles, aquatic habitat, terrestrial habitat, 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; however, natural resources and natural resource services that have been impacted include, but are not limited to:

- Riverine aquatic habitat and supported biota, including fish
- Terrestrial habitat and supported biota
- Birds
- Large woody debris piles
- Services provided by natural resources

The Trustees have determined that they have jurisdiction to pursue restoration under OPA and, for the State Trustee, also under State law.

DETERMINATION TO CONDUCT RESTORATION PLANNING: Pursuant to 15 CFR 990.42(a), the Trustees determined that:

1. Observations and data collected pursuant to 15 CFR 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 identified numerous categories of impacted and potentially impacted resources, including but not limited to, fish and other aquatic organisms, birds (including migratory birds), wildlife, large woody debris piles, aquatic habitat, terrestrial habitat, and the services provided by these natural resources. 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 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.

2. Response activities were initiated soon after the spill. The United States Environmental Protection Agency issued a unilateral administrative order to EMPCo for response activities on July 6, 2011. The Environmental Protection Agency led the response, which was undertaken by EMPCo, in coordination with the State of Montana and other federal agencies. Response activities involved over 1,000 personnel engaged in cleanup and shoreline assessment of approximately 11,000 acres and 85 miles. Response activities may continue to a lesser degree pursuant to an administrative order on consent issued by the Montana Department of Environmental Quality in February 2012.

These response actions have not addressed and are not expected to address all injuries resulting from the discharges of oil. It is estimated that little of the estimated 63,000 gallons of oil discharged into the Yellowstone River and floodplain was recovered.

Response activities included, but were not limited to: deployment of booms and sorbent pads; cutting of vegetated and shrub/scrub on or along shorelines, floodplains, and riverbanks; removal of dead (unattached) oiled vegetation and small debris; removal and cutting of large woody debris; use of heavy equipment including all-terrain vehicles and other vehicles; treatment with dust fixative; and natural attenuation.

3. While response activities were initiated soon after the Incident, the response activities alone have been unable to prevent injuries to many natural resources, and the circumstances surrounding the Incident prevented recovery of the vast majority of the discharged oil. In addition, some of the response activities have caused or are likely to cause injuries to natural resources and the natural resource services provided, including but not limited to, fish and other aquatic organisms, birds (including migratory birds), wildlife, large woody debris piles, aquatic habitat, terrestrial habitat, and the services provided by these natural resources.

Interim losses have occurred, and are likely to occur in the future, and these injuries will continue until baseline conditions are achieved. 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. As noted previously, the full nature and extent of injuries have not yet been determined but 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 where injuries have resulted, or are likely to result from the Incident. These categories include, but not limited to:

- Fish, reptiles, and amphibians: Natural resources have been and may continue to be lost, injured and/or threatened as a result of discharged oil, including, without limitation, injury to fish and fish habitat, including, but not limited to, gill abnormalities and external lesions and ulcers on surviving fish. Other receptors and their habitats were also potentially exposed and injured, including but not limited to: reptiles (including turtles) and amphibians (including frogs).

- Birds: Natural resources have been and continue to be lost, injured and/or threatened as a result of discharged oil and associated response activities, including, without limitation, injury to birds, including the American White Pelican, a State species of concern, owls and other cavity nesting birds, and bird habitat. Other receptors also potentially lost, injured and/or threatened, along with their habitat, include but are not limited to: passerine birds, waterfowl, shorebirds, and raptors.

- Floodplain habitat: Natural resources have been and continue to be lost, injured and/or threatened as a result of discharged oil and associated response activities, including, without limitation, injury to both bottomland/riparian lands, and grassland/shrubland. For example, on significant acreage, oil was allowed to degrade over time. Where response actions were taken, adverse effects occurred and continue to occur, for example, the use of heavy equipment (e.g., all-terrain vehicles, skid steers, excavators), and the building of staging grounds, footpaths, temporary roads, and vehicle tracks.

- Large Woody Debris Piles: One of the Yellowstone River's distinguishing attributes as the longest undammed river in the lower 48 states is the existence of large woody debris piles. Large woody debris piles play an important role in channel morphological processes and aquatic and riparian habitat formation, including cottonwood tree regeneration. Natural resources have been and continue to be lost, injured and/or

threatened as a result of discharged oil and associated response activities, including, without limitation, injury to large woody debris piles and cottonwood tree regeneration.

- Human use: Natural resource services have been and continue to be lost, injured and/or threatened as a result of discharged oil and associated response activities. These may include, without limitation, diminished and/or lost 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, at parks, fishing access sites, Bureau of Land Management property, and on or adjacent to the Yellowstone River.

5. Feasible restoration actions exist to address the natural resource injuries and losses, including lost human uses, resulting from the discharges of oil. 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 will evaluate potential restoration 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.

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

ADMINISTRATIVE RECORD FOR RESTORATION PLANNING: The Trustees have opened an administrative record in compliance with 15 CFR 990.45. The administrative record is publicly accessible and will include documents considered by the Trustees during the preassessment and restoration planning phases of the NRDA performed in connection with the Incident. The administrative record will be augmented with additional information over the course of the NRDA process.

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

- http://www.blm.gov/mt/st/en/info/yellowstonespill.html
  or http://blm.gov/dbld (redirect)

- https://doj.mt.gov/lands/yellowstone-river-oil-spill/

OPPORTUNITIES FOR PUBLIC INVOLVEMENT: The Trustees will be providing opportunities for public involvement in the restoration planning for this Incident in accordance with 15 CFR 990.14(d). 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:

FOR THE STATE OF MONTANA

Tim Fox
Attorney General

31 October 2013
Date

FOR THE UNITED STATES DEPARTMENT OF INTERIOR

Jamie Connell
Acting State Director
BLM Montana/Dakotas

10/29/12
Date