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acting by and through its Department of Environmental Quality

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

THE STATE OF OREGON, acting by and  
through the OREGON DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

UNITED STATES OF AMERICA;  
DEPARTMENT OF THE ARMY; ARMY  
CORPS OF ENGINEERS,

Defendants.

Case No. 3:20-cv-01799

**COMPLAINT FOR CERCLA COST  
RECOVERY AND DECLARATORY  
JUDGMENT**

**DEMAND FOR JURY TRIAL**

Plaintiff the State of Oregon, acting by and through the Oregon Department of  
Environmental Quality (the “State of Oregon”), alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action for recovery of costs under Section 107 of the  
Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42  
U.S.C. § 9607 and under ORS 465.200 – 465.545, and its regulations at OAR 340-122-0010 to  
0140 (the “Oregon Cleanup Law”). The State of Oregon seeks to recover the un-reimbursed

costs it has incurred to date and that it continues to incur every month in connection with the historic, ongoing and threatened release of hazardous substances into the environment at, on, and from Bradford Island, which is located at the Bonneville Dam in the Columbia River (the “Site”) in Multnomah County, Oregon. The State of Oregon also seeks a declaration that the Voluntary Cleanup Agreement (the “Agreement”) executed by Defendants on February 18, 1998 is enforceable and that the CERCLA response costs and/or remedial action costs incurred by the State of Oregon and paid by defendants to date were properly paid to the State of Oregon.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action and the defendants pursuant to 28 U.S.C. § 1331 because this case involves a civil action arising under the laws of the United States including Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613. The Court has supplemental jurisdiction under 28 U.S.C. § 1367 over related state law claims, and under Sections 120(a)(1) and 120(a)(4) of CERCLA, 42 U.S.C. § 9620(a)(4), for state removal and remedial actions that apply to facilities owned or operated by a department, agency, or instrumentality of the United States. The Court also has authority to provide relief under the Declaratory Judgment Act, 28 U.S.C. § 2201.

3. Venue is proper in this District under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims arose, and the threatened and actual release of hazardous substances occurred and is occurring, within the District of Oregon. Assignment to the Portland Division of this District is proper pursuant to Local Rule 3-2(3) because a substantial part of the events or omissions giving rise to the claims occurred, or a substantial part of the property that is the subject of the action is situated within Multnomah County, which falls within the Portland Division.

### **PARTIES**

4. Plaintiff, the State of Oregon, is a sovereign state in the United States of America existing under the constitution of the State of Oregon. The Oregon Department of Environmental

Quality (“DEQ”) is an agency of the State of Oregon that is tasked with enforcing Oregon’s land, air, and water pollution laws. DEQ has authority pursuant to Section 104(d) of CERCLA, 42 U.S.C. § 9604(d), Section 120 of CERCLA, 42 U.S.C. § 9620(a)(4), and the Oregon Cleanup Law, ORS chapter 465, to ascertain the nature and extent of contamination at, from, and to the Site, and DEQ has the authority to ensure the implementation of an effective cleanup of the Site in a manner consistent with the requirements for review and approval of the cleanup of hazardous substances.

5. Defendants Department of the Army and the Army Corps of Engineers (the “Corps”) (collectively “Defendants”) are agencies of the Defendant United States; are the current owners and operators of the Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1); and owned and operated certain facilities on the Site at the time of disposal of hazardous substances at the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

### STATUTORY FRAMEWORK

6. The State of Oregon’s Legislative Assembly has found that: “(a) The release of a hazardous substance into the environment may present an imminent and substantial threat to the public health, safety, welfare and the environment; and (b) The threats posed by the release of a hazardous substance can be minimized by prompt identification of facilities and implementation of removal or remedial action.” ORS 465.200(1).

7. Following its findings in ORS 465.200(1), the State of Oregon’s Legislative Assembly has declared that:

(a) It is in the interest of the public health, safety, welfare and the environment to provide the means to minimize the hazards of and damages from facilities.

(b) It is the purpose of ORS 465.200 to 465.545 and 465.900 to:

(A) Protect the public health, safety, welfare and the environment; and

(B) Provide sufficient and reliable funding for the Department of Environmental Quality to expediently and effectively authorize, require or undertake removal or remedial action to abate hazards to the public health, safety, welfare and the environment.”

8. To achieve these environmental goals, the State of Oregon’s Legislative Assembly has authorized DEQ to:

“(a) [u]ndertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct removal or remedial action and to carry out the provisions of ORS 465.200 to 465.545 and 465.900; and (b) [r]ecover the state’s remedial action costs.” ORS 465.210(1) (the “Environmental Cleanup Program”).

The Environmental Cleanup Program protects human health and the environment by identifying, investigating, and remediating sites contaminated with hazardous substances. The program's objective is to improve sites to the point where no further cleanup action is necessary - as inexpensively and quickly as possible. The Environmental Cleanup Program specifically authorizes DEQ to participate in or conduct activities pursuant to CERCLA. ORS 465.210(2).

9. Similarly, section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in part:

“(1) the owner and operator of a vessel or a facility,  
(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . .  
(4) . . . shall be liable for –  
(A) all costs of removal or remedial action incurred by . . . a State . . .  
not inconsistent with the national contingency plan . . .”

10. CERCLA Section 101(21) defines “person” to include the United States. 42

U.S.C. § 9601(21).

11. CERCLA Section 120(a)(1) provides that the United States “shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 9607 of this title.” 42 U.S.C. § 9620(a)(1). Section 120(a)(4) of CERCLA provides that “[s]tate laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States.” 42 U.S.C. § 9620(a)(4).

12. CERCLA Section 101(9) defines “facility” to include “(A) any building, structure, installation, equipment, pipe or pipeline, (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located . . . .” 42 U.S.C. § 9601(9).

13. CERCLA Section 101(24) defines “remedial action” to include “those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. . . .” 42 U.S.C. § 9601(24).

### **FACTUAL ALLEGATIONS**

14. The Site is part of the Bonneville Dam complex, which is located on the Columbia River at River Mile (RM) 146.1, approximately 40 miles east of Portland, Oregon.

15. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and ORS 465.200(13).

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