

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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|----------------------------------|-------------------------------------------|----------|---------------------------|
| In Re: | Oil Spill by the Oil Rig | : | MDL NO. 2179 |
| | “Deepwater Horizon” in the | : | |
| | Gulf of Mexico, on | : | SECTION: J |
| | April 20, 2010 | : | |
| | | : | JUDGE BARBIER |
| This Document Relates to: | 10-3059, 10-4182, | : | |
| | 10-4183, 10-4536, 11-516, 13-2645, | : | MAG. JUDGE SHUSHAN |
| | 13-2646, 13-2749, 13-2813, | : | |
| | 13-4677, and 14-0614 | : | |

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**Notice of Filing of Stipulations (Phase III) Under the
“Framework for Early Restoration Addressing Injuries
Resulting from the Deepwater Horizon Oil Spill”**

The United States of America, the Natural Resource Damage (“NRD”) Trustees for the States of Alabama, Florida, Mississippi, Louisiana, and Texas, and BP Exploration & Production Inc. (“BP”) (collectively “Parties”) jointly provide this Notice. The United States, Alabama, and Louisiana previously provided the Court with a “Report” [Doc. 2239] about the administrative agreement entitled “Framework for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill” (hereinafter, “Framework Agreement”) [Doc. 2239-1].¹ The Framework Agreement calls for the Parties (specifically, those with claims filed in the MDL) to file with this Court a stipulation concerning each natural resource restoration project that BP has agreed to fund under the Framework Agreement. [Doc 2239-1 ¶ 13]. The United States,

¹ All five states are parties to the Framework Agreement and are signatories of the Stipulations, although only Alabama and Louisiana provided earlier Notices because the other three states, Mississippi, Florida, and Texas, were not then parties to MDL 2179. The States of Mississippi, Florida, and Texas have since entered appearances in the MDL.

Alabama, Louisiana, and BP previously filed an initial joint Notice concerning eight such Project Stipulations on June 6, 2012. [Doc. 6621], and a subsequent Notice concerning two such Project Stipulations on January 9, 2013 [Doc. 8194].

This Notice of 44 additional Project Stipulations is provided solely to inform the Court and the public about the filing of the Stipulations; no action is required or requested of this Court.

I. Background: NRDA and the Framework Agreement.

As set out in the previously-filed “Report” on the Framework Agreement, the Oil Pollution Act (“OPA”) calls for the designation of State and Federal “Trustees,” 33 U.S.C. § 2706(a), who are charged to assess natural resource damages resulting from the *Deepwater Horizon* oil spill (“Oil Spill”) and to prepare a plan for restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources. *See* 33 U.S.C. § 2706(c); 33 U.S.C. § 2706(d). OPA and the OPA regulations, 15 C.F.R. Part 990, require that restoration plans be adopted only after adequate public notice and opportunity for comment. 33 U.S.C. § 2706(c)(5). The Trustees and the responsible parties may enter into a settlement at any time, during or after the NRDA. 15 C.F.R § 990.25.

In the case of the Oil Spill, designated officials of the five Gulf Coast states, the National Oceanic and Atmospheric Administration, the United States Department of the Interior, the Secretary of the United States Department of Agriculture, and the Administrator of the United States Environmental Protection Agency are the relevant State and federal Trustees. The administrative NRD Assessment is proceeding apace, but the Trustees have not completed the

Assessment and are not yet ready to calculate or quantify all damages for injuries to natural resources resulting from the Oil Spill.

Meanwhile, the Trustees and BP sought to expedite efforts to restore natural resources and services known to have been injured as a result of the Oil Spill based on preliminary information developed in the NRD Assessment process. The Trustees and BP entered into the Framework Agreement, which called for the Trustees to select “early” restoration projects under OPA, and called for BP to fund such projects out of \$1 billion that BP set aside in trust for this purpose.

II. The Projects and Stipulations.

The Trustees have published a “Deepwater Horizon Oil Spill Programmatic and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement” (“Phase III Plan”), available at www.doi.gov/deepwaterhorizon. The Phase III Plan calls for 44 separate early restoration projects in Alabama, Florida, Louisiana, Mississippi, and Texas. The 44 projects provide for the enhancement and protection of ecological and recreational use services provided by the natural resources in the Gulf of Mexico.

As contemplated in the Framework Agreement, this Phase III Plan will be implemented in part through the Stipulations. ¶12. Thus, BP will fund these Trustee-selected restoration projects in exchange for the Trustees’ agreement on the types and amounts of “NRD Offsets” attributable to the projects. *See* Framework Agreement ¶¶ 8 – 11. The agreed upon Offsets will be used to determine the credit that will be applied for these projects against the Trustees’ ultimate assessment of natural resource injury. *Id.* The Parties have agreed to these 44

Stipulations, which must be filed with the Court for informational purposes. Framework Agreement ¶13. The Stipulations are attached, bundled into four exhibits.

III. How the Framework Agreement and Stipulations Relate to the Claims in the MDL.

The complaint in *United States v. BP Exploration and Production, Inc., et al.*, No. 2:10-cv-04536 (E.D. La., Dec. 15, 2010), sought declaratory judgment of liability under OPA for NRD; no claim for a specific amount of NRD was made and the United States asserted a reservation of rights to return later to seek an actual award of damages under OPA.²

The five Gulf Coast states have also filed complaints alleging claims under OPA: For Alabama: *State of Alabama v. BP P.L.C., et al.*, 10-4182; *State of Alabama v. Transocean, et al.*, 10-4183; *State of Alabama v. Anadarko Petroleum Corp. et al.*, 13-2645; *State of Alabama v. Transocean, et al.*, 13-2646; *State of Alabama v. BP P.L.C., et al.*, 13-2813; for Florida: *Vinyard et al. v. BP, et al.*, 14-0614; for Louisiana: *State of Louisiana v. Triton Asset Leasing, et al.*, 10-03059; *State of Louisiana v. BP, et al.*, 11-516; for Mississippi: *Hood v. BP, et al.*, 13-2749; for Texas: *State of Texas v. BP, et al.*, 13-4677.

At this time, neither the Stipulations nor this Notice requires any action by the Court. However, if the parties are unable to amicably resolve all NRD matters the Stipulations will be relevant to the amount of uncompensated NRD for which BP may be held liable (in this or some subsequent civil action).

² BP raised certain affirmative defenses to the United States' OPA claims, including BP's First Affirmative Defense regarding claim splitting. The Court's February 22, 2012, "Order and Reasons [As to the United States', Transocean's, and Anadarko's Cross-Motions for Partial Summary Judgment Regarding Liability under the CWA and OPA]" [Doc. 5809] addresses this issue. Nothing in the Framework Agreement or this filing is intended to waive or contradict in any manner any of the parties' respective positions as set forth in their pleadings or otherwise on the appropriate procedure for the adjudication of any NRD claims.

IV. Conclusion

The United States, the States of Alabama, Florida, Louisiana, Mississippi, and Texas, and BP jointly provide this Notice solely for informational purposes. When the Trustees and BP file any further stipulations under ¶ 13 of the Framework Agreement, the parties will make further informational or other filings with the Court, as appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document has been served on All Counsel by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 12, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF System, which will send a notice of electronic filing in accordance with the procedures established in MDL 2179, on this date: October 9, 2014.

Date: October 9, 2014

/s/ Steven O'Rourke
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