

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	
)	Case No. 2:15-cv-00087
INDIANA HARBOR BELT RAILROAD COMPANY,)	
INDIANA HARBOR BELT RAILROAD COMPANY)	Judge Joseph S. Van Bokkelen
LOCOMOTIVE 3801, and)	
INDIANA HARBOR BELT RAILROAD COMPANY)	Magistrate Judge John E. Martin
LOCOMOTIVE 3802,)	
)	
Defendants.)	

STIPULATION AND AGREED JUDGMENT

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the United States Department of the Interior (“DOI”) National Park Service (“NPS”), filed a Verified Complaint in this matter pursuant to the System Unit Resources Protection Act (“SURPA” or the “Act”), 54 U.S.C. §§ 100721-100725, against Indiana Harbor Belt Railroad Company (“IHBRR”) and its locomotives; IHBRR Locomotive 3801 (“Locomotive 3801”) and IHBRR Locomotive 3802 (“Locomotive 3802”) (collectively, the “Defendants”).

B. The United States in its Verified Complaint seeks recovery of system unit resource damages and response costs that resulted from fires at the Indiana Dunes National Lakeshore on March 10, 2012, and March 11, 2012.

C. The Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Verified Complaint.

D. The Parties recognize, and the Court by entering this Stipulation and Agreed Judgment (“Stipulation”) finds, that this Stipulation has been negotiated by the Parties in good faith and implementation of this Stipulation will avoid prolonged and complicated litigation between the Parties, and that this Stipulation is fair, reasonable, and in the public interest.

E. NOW, THEREFORE, with the consent of the Parties, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to SURPA, 54 U.S.C. § 100723(a), and 28 U.S.C. §§ 1331 and 1345. Venue lies in this District

pursuant to 28 U.S.C. § 1391. This Court also has personal jurisdiction over the Defendants.

For purposes of this Stipulation, or any action to enforce this Stipulation, Defendants consent to the Court's jurisdiction over this Stipulation and any such action, and over Defendant and consents to venue in this judicial district.

2. For purposes of this Stipulation, Defendants agree that the Verified Complaint states claims upon which relief may be granted pursuant to 54 U.S.C. § 100723.

III. PARTIES BOUND

3. This Stipulation is binding upon the United States and upon Defendants and their successors and assigns. Any change in ownership or corporate or other legal status of Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Defendants' responsibilities under this Stipulation.

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Stipulation, terms used in this Stipulation that are defined in SURPA or in regulations promulgated under SURPA shall have the meaning assigned to them in SURPA or in such regulations. Whenever terms listed below are used in this Stipulation or its appendices, the following definitions shall apply solely for purposes of this Stipulation.

A. “Day” or “day” shall mean a calendar day. In computing any period of time under this Stipulation, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

B. “Defendants” shall mean Indiana Harbor Belt Railroad Company, Indiana Harbor Belt Railroad Company Locomotive 3801, Indiana Harbor Belt Railroad Company Locomotive 3802, and their successors.

C. “DOI” shall mean the United States Department of the Interior and its successor departments, agencies, or instrumentalities.

D. “DOJ” shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

E. “Effective Date” shall mean the date upon which the approval of this Stipulation and Agreed Judgment is recorded on the Court’s docket.

F. “Lakeshore” shall mean Indiana Dunes National Lakeshore, a unit of the United States national park system.

G. “NPS” shall mean the United States National Park Service and its successor departments, agencies, or instrumentalities.

H. “Paragraph” or “¶” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

I. “Parties” shall mean the United States and the Defendants.

J. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

K. “Stipulation” shall mean this Stipulation and Agreed Judgment.

L. “United States” shall mean the United States of America acting on behalf of DOI and NPS.

M. “Verified Complaint” shall mean the complaint filed by the United States in this Action.

V. OBJECTIVES

5. The objectives of the Parties in entering into this Consent Decree are to reimburse NPS for response costs and damages it incurred and to resolve the claims of the United States against the Defendants as provided in this Consent Decree.

VI. PAYMENT OF COSTS

6. Within 30 days of the Effective Date, Defendants shall pay the sum of \$72,500, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

7. Defendants shall make the payment in accordance with instructions provided to Defendants by the United States following the Effective Date. The payment instructions will be provided by the United States to:

Joel Cornfeld
Indiana Harbor Belt Railroad Co.
2721 161st Street
Hammond, IN 46323-1099
(219) 989-6781
joel.cornfeld@ihbrr.com

At the time of payment, Defendants shall send notice that the payment has been made to:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Karen Battle
Environmental Quality Division
National Park Service
U.S. Department of the Interior
1201 Oak Ridge Drive
Fort Collins, CO 80525

Such notice shall state the payment is for the costs owed pursuant to the Stipulation in *United States v. Indiana Harbor Belt Railroad Co. et al.* and shall reference the civil action number and DOJ case number 90-5-1-1-11105.

8. Defendant shall not deduct any amounts paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

VII. STIPULATED PENALTIES

9. Defendants shall be liable for a stipulated penalty in the amount of \$1,000 per day for failure to pay costs in accordance with Section VI (Payment of Costs).

10. Stipulated penalties shall begin to accrue on the day that the payment is due under Paragraph 6 and shall continue to accrue until the Defendants pay the full amount (\$72,500 plus accrued interest, if any). Following United States' determination that Defendants have failed to pay costs in accordance with Paragraph 6, United States may give Defendants written notification and/or send Defendants a written demand for payment of the penalties. However, penalties shall accrue as provided in this Paragraph regardless of whether the United States has notified Defendants of a violation.

11. All penalties accruing under this Section shall be due and payable to the United States within 30 days after Defendants' receipt from the United States of a demand for payment

of the penalties. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 6.

12. If Defendants fail to pay stipulated penalties according to the terms of this Stipulation, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Stipulation.

VIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

14. This Stipulation and Agreed Judgment resolves the claims of the United States for the violations alleged in the Verified Complaint filed in this action through the date of the lodging.

15. The United States reserves all legal and equitable remedies available to enforce the provisions of this Stipulation. This Stipulation shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under any other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 14.

16. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based

upon any contention that the claims raised by the United States in the subsequent proceeding would or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 14.

17. This Stipulation does not limit or affect the rights of the Defendants or of the United States against any third parties, nor does it limit the rights of third parties against Defendants, except as otherwise provided by law.

18. This Stipulation does not create rights in, or grant any cause of action to, any third party not party to this Stipulation.

IX. RETENTION OF JURISDICTION

19. This Court retains jurisdiction over both the subject matter of this Stipulation and Defendants for the duration of the performance of the terms and provisions of this Stipulation, for the purpose of enabling any of the Parties to apply to the Court at any time for such further Judgment, direction, and relief as may be necessary or appropriate for the construction or modification of this Stipulation, or to effectuate or enforce compliance with its terms.

X. COSTS

20. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the costs or any stipulated penalties due but not paid by Defendants.

XI. LODGING AND OPPORTUNITY FOR COMMENT

21. This Stipulation shall be lodged with the Court for at least 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Stipulation disclose facts or

considerations that indicate that the Stipulation is inappropriate, improper, or inadequate.

Defendants consent to the entry of this Stipulation without further notice.

22. If for any reason the Court should decline to approve this Stipulation in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XII. SIGNATORIES/SERVICE

23. Each undersigned representative of the Defendants and the United States Department of Justice certifies that s/he is fully authorized to enter into the terms and conditions of this Stipulation and to execute and legally bind such Party to this document. This Stipulation may be signed in counterparts and its validity may not be challenged on that basis.

24. Defendants agree not to oppose entry of this Stipulation by this Court or to challenge any Provision of it unless the United States has notified Defendants in writing that it no longer supports entry of the Stipulation.

XIII. FINAL JUDGMENT


25. Upon entry of this Stipulation and Agreed Judgment by the Court, this Stipulation and Agreed Judgment shall constitute a final judgment between and among the United States and the Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.


HON. JOSEPH S. VAN BOKKELEN
United States District Judge

FOR PLAINTIFF THE UNITED STATES OF AMERICA

Dated: Nov. 17, 2015


THOMAS A. MARIANI, JR.
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
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U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044

Dated: November 18, 2015


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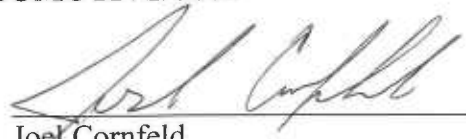
FOR U.S. DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE

Dated: 11/5/2015


Raymond M. Sauvajot
Associate Director
Natural Resource Stewardship and Science
National Park Service

FOR DEFENDANTS INDIANA HARBOR BELT RAILROAD COMPANY, INDIANA HARBOR BELT RAILROAD COMPANY LOCOMOTIVE 3801, AND INDIANA HARBOR BELT RAILROAD COMPANY LOCOMOTIVE 3802

Dated: 11/2/2015



Joel Cornfeld
General Counsel
Indiana Harbor Belt Railroad Company