

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL FROM THE COMMISSIONER OF  
ENVIRONMENTAL CONSERVATION**

VALDEZ FISHERIES DEVELOPMENT	)	
ASSOCIATION, INC.; PRINCE WILLIAM	)	
SOUND REGIONAL CITIZENS' ADVISORY	)	
COUNCIL; PRINCE WILLIAM SOUND	)	
AQUACULTURE CORPORATION; and	)	OAH No. 17-1218-DEC
CITY OF VALDEZ,	)	OAH No. 17-1219-DEC
	)	
Requesters,	)	
	)	
v.	)	
	)	
ALASKA DEPARTMENT OF ENVIRONMENTAL	)	
CONSERVATION, DIVISION OF SPILL	)	
PREVENTION & RESPONSE,	)	
	)	
Respondent.	)	
	)	

---

**SETTLEMENT AGREEMENT**

This settlement agreement ("Settlement Agreement"), dated January 16, 2019, is between Prince William Sound Regional Citizens' Advisory Council ("PWSRCAC"), Prince William Sound Aquaculture Corporation, Valdez Fisheries Development Association, Inc., the City of Valdez (collectively "Requesters"), and the State of Alaska, Department of Environmental Conservation ("ADEC"), Division of Spill Prevention and Response ("SPAR") and Alyeska Pipeline Service Company ("Alyeska") (individually "Party," collectively "Parties").<sup>1</sup>

---

<sup>1</sup> Party and Parties is used to define signatories. Each individual Requester, SPAR, and Alyeska are signatories and Parties to this Settlement Agreement. ADEC is not a signatory or a Party to this Settlement Agreement.

## RECITALS

A. The Parties engaged in mediation before Mediator Dana Fabe on December 12, 2018, to resolve the above-captioned administrative appeals.

B. The mediation resulted in the resolution among the Parties of the disputes in the above-captioned administrative appeals on the terms set forth in this Settlement Agreement.

C. Through this Settlement Agreement, the Parties have agreed to engage in a collaborative process for a five-year pilot period ("Pilot Period"), on the terms and conditions set forth below, for the purpose of reaching consensus on all suggested amendments to the Solomon Gulch Hatchery and Valdez Duck Flats Sensitive Area Protection Mobilization Decision Matrix initially developed in 1997 ("1997 Decision Matrix") contained in the Valdez Marine Terminal ("VMT") Spill Response and Contingency Plan ("C-Plan") ("Collaborative Process").

## SETTLEMENT AGREEMENT

The Parties agree and stipulate as follows:

**1. Stay of Pending Administrative Appeals.** The Parties agree to stay the above-captioned administrative appeals in Case Nos. OAH No. 17-1218-DEC and OAH No. 17-1219-DEC, which were consolidated for adjudicatory hearing before Administrative Law Judge Mandala. The Parties agree the Decision Regarding Valdez Fisheries Development Association's November 21, 2017, Request for Stay issued by Commissioner Larry Hartig on December 29, 2017 ("Stay"), shall remain in effect, and Alyeska and SPAR agree to withdraw any pending motion or request to lift the Stay and

not to file any motion or request to lift the Stay during the period the Parties have agreed to maintain the 1997 Decision Matrix. The Parties further agree to dismiss the above captioned administrative appeals upon the ADEC's issuance of a final decision amending the 1997 Decision Matrix.

**2. Maintenance of the 1997 Decision Matrix.** The Parties agree the 1997 Decision Matrix will remain in effect until the Collaborative Process is complete, Alyeska has proposed an amendment to the VMT C-Plan regarding the 1997 Decision Matrix based on the Collaborative Process, and ADEC has issued a final decision on Alyeska's proposed amendment after the first Collaborative Process.

**3. Collaborative Process.** Following ADEC's final decision on a proposed amendment of the VMT C-Plan regarding the 1997 Decision Matrix after the first Collaborative Process, the Parties hereby agree to engage in the Collaborative Process prior to submission of any subsequent amendment of the 1997 Decision Matrix for the Pilot Period set out in Section 3(f). This includes any amendment proposed by Alyeska to whatever instrument may have replaced the 1997 Decision Matrix as a result of the first Collaborative Process. For any future Collaborative Process the Parties agree to use similar and reasonable procedures and timelines to those used for the first Collaborative Process. The Collaborative Process shall be guided by the following principles:

a. Goal. The goal of the Collaborative Process is to reach consensus on how to ensure the protection of the Solomon Gulch Hatchery and Valdez Duck Flats ("Collaborative Process") consistent with applicable statutes and regulations.

b. Facilitation. The Collaborative Process shall be facilitated. The facilitator for the Collaborative Process shall be selected by mutual agreement of Alyeska and Requesters. Should Alyeska and Requesters fail to reach mutual agreement in choosing a facilitator, Alyeska and Requesters shall each select a facilitator who, together, shall select another person to act as facilitator. Final selection of the facilitator shall be completed within sixty (60) days of the execution of this Settlement Agreement for the first Collaborative Process. Alyeska and Requesters agree to share all facilitator's costs in two equal shares.

c. Participants. Each Party may choose to attend the Collaborative Process with up to two representatives, plus any federal and state government entities. The representatives for each Party may be whomever the Party may choose, except that, at least one representative for each Party shall have decision making authority and no representative may be legal counsel. Any representative may, however, consult with legal counsel at any time during the Collaborative Process. To the degree reasonable scheduling permits, each Party shall maintain the same selected representatives throughout each Collaborative Process to promote efficiency and continuity.

d. Information. The Collaborative Process is intended to be based upon the transparent sharing and use of technical and scientific information among the Parties. Such information shall include the following: (1) Requesters will have access to Alyeska's spill trajectory modeling also known as the OILMAP (including information necessary to understand and use such programs such as the inputs and runs used for oil trajectory modeling as well as manuals and reasonable access to personnel necessary to

understand and apply such programs), although that modeling information and the trajectories provided will be limited in their use to the use in the work group, and any data developed by either side and all data or trajectory developed or reviewed or used in that collaborative process by either side would be able to be used in any comments on/or challenge to appeals of an amendment to be approved, (2) a recording anemometer to monitor and record real-time wind direction and speed at the VMT with such information to be collected and maintained by PWSRCAC and shared real-time with Alyeska and the public, (3) a current meter to monitor and record real-time current direction and speed in the Port of Valdez including at the VMT in the exclusionary zone with such information to be collected and maintained by PWSRCAC and shared real-time with Alyeska and the public, at a location that allows for accurate measuring of currents and wind as those conditions affect oil movements but does not interfere with tanker movements or VMT operations, and (4) such other relevant information as may be agreed by Parties. Alyeska agrees to provide access to the VMT to PWSRCAC to permit it to install and maintain the anemometer and current meter at locations most relevant to gathering information regarding oil spill trajectories from the VMT. Alyeska and PWSRCAC agree to devote their best efforts to having the anemometer and the current meter in place within sixty (60) days from the execution of this Settlement Agreement. The current meter may involve a temporary current meter buoy at the VMT as soon as possible that is later replaced by a land-based meter. The Parties agree the information provided by Alyeska pursuant to Section 3(d)(1) of this Settlement Agreement relating to oil modeling may only be used for the purposes of the Collaborative Process or in appeals related to

the VMT C-Plan. The Parties also agree that the information recorded and maintained by PWSRCAC pursuant to Section 3(d)(2) and (3) of this Settlement Agreement relating to wind and current direction and speed shall be publicly available.

e. First Collaborative Process. The Parties agree the first Collaborative Process shall be concluded by November 15, 2019, absent mutual agreement among the Parties.

f. Pilot Period. The Pilot Period during which the Parties agree to use the Collaborative Process shall commence upon execution of this Settlement Agreement and remain in place for a period of five (5) years after ADEC approves the 2019 VMT C-Plan application for renewal. During the Pilot Period, the Collaborative Process shall apply as set out in Section 3, including any amendment proposed in the 2024 VMT C-Plan renewal application. The Parties intend to extend the Pilot Period if the Collaborative Process proves successful.

**4. No Limitation on Future Proposed Amendments.** With the exception of the agreement to engage in the Collaborative Process as stated above, no Party shall be limited in any manner in its right to make any proposal concerning the protection of the Solomon Gulch Hatchery and Valdez Duck Flats.

**5. Amendments.** This Settlement Agreement may be modified, amended, or supplemented only by a written instrument executed by all Parties.

**6. Signatories.** The signatories hereby represent and warrant that they have full authority to execute this Settlement Agreement on behalf of their respective Parties.

7. **Interpretation.** The language of this Settlement Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against any Party. No Party shall be deemed to be the drafter of this Settlement Agreement, and no provision of the Settlement Agreement shall be interpreted for or against any Party based upon a Party being deemed to be a drafter of the Settlement Agreement or any provision of the Settlement Agreement. Headings of articles and sections of this Settlement Agreement are solely for the convenience of the Parties and are not a part of this Settlement Agreement.

8. **Parties in Interest.** This Settlement Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns. Nothing in this Settlement Agreement, express or implied, is intended to confer upon any person or entity other than the Parties, or their successors or assigns, any rights or remedies under or by reason of this Settlement Agreement.

9. **Future Positions.** The Parties agree that this Settlement Agreement does not prevent the Parties from presenting or arguing in future cases their respective positions on issues that were raised or that might have been raised in Case Nos. OAH No. 17-1218-DEC and OAH No. 17-1219-DEC or any other proposed amendment or renewal to the VMT C-Plan.

10. **Negotiated Settlement.** The Parties expressly understand and agree that this Settlement Agreement constitutes a negotiated settlement for the sole purpose of resolving the matters agreed to herein. No Party shall be prejudiced or bound by this Settlement Agreement in any proceeding except as specifically provided herein, nor shall

any Party be deemed to have conceded, approved, accepted, agreed to, or consented to any concept, theory, or principle underlying or supposed to underlie any position taken by any other Party in the proceedings resolved by this Settlement Agreement. This Settlement Agreement shall not constitute an admission of liability or an admission against interest by any Party and shall not be cited or relied on as precedent by one Party to the detriment of the other in any proceedings other than those referenced herein, except to the extent necessary to enforce the provisions of this Settlement Agreement. Nothing in this Settlement Agreement changes, alters, or constitutes a waiver of the underlying terms of any agreements executed between Alyeska and PWSRCAC.

**11. Law of State of Alaska.** This Settlement Agreement shall be governed by and construed in accordance with Alaska law. The rights and obligations of this Settlement Agreement may be enforced in an action before the courts of the State of Alaska.

**12. Severability and Waiver.** The invalidity of any portion of this Settlement Agreement shall not affect the validity or enforceability of any other portion of this Settlement Agreement. The waiver of any term of this Settlement Agreement shall not constitute a waiver of any other provision or constitute a continuing waiver.

**13. Counterpart Signatures.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same agreement notwithstanding the fact that all Parties are not signatories to the original or the same counterpart.



14. **Signatures.** Being duly authorized, the Parties execute this Settlement Agreement as of the date first written above.

**REQUESTERS**

**PRINCE WILLIAM SOUND REGIONAL  
CITIZENS' ADVISORY COUNCIL**

By Joseph N. Levesque  
Printed Name Joseph N. Levesque  
Its Attorney

**PRINCE WILLIAM SOUND  
AQUACULTURE CORPORATION**

By Matthew T. Findley  
Printed Name Matthew T. Findley  
Its Attorney

**VALDEZ FISHERIES DEVELOPMENT  
ASSOCIATION, INC.**

By Mike H. Wells  
Printed Name Mike H. Wells  
Its Executive Director

**CITY OF VALDEZ**

By \_\_\_\_\_  
Jeremy O'Neil, Mayor

**Approved as to Form:**  
**VALDEZ CITY ATTORNEYS**

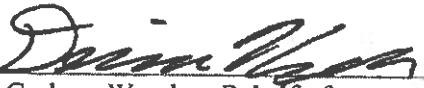
By Robin O. Brena  
Robin O. Brena, Alaska Bar No. 8410089  
Jake W. Staser, Alaska Bar No. 1111089

**ALYESKA PIPELINE SERVICE  
COMPANY**

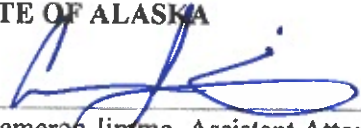
By Michael W. Seville  
Printed Name Michael W. Seville  
Its attorney

**SPAR**

**STATE OF ALASKA, DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION,  
DIVISION OF SPILL PREVENTION AND  
RESPONSE**

By   
Graham Wood on Behalf of  
Denise Koch, Director

**KEVIN CLARKSON  
ATTORNEY GENERAL FOR THE  
STATE OF ALASKA**

By   
Cameron Jimmo, Assistant Attorney  
General, Alaska Bar No. 1711055