

\$18.1 Million Oil Spill Judgment

Friday, December 12, 1997 — 3:30 p.m.

The California Department of Fish and Game (DFG) has just received the Notice of Entry of Judgment in the *American Trader* oil spill trial. Orange County Superior Court Judge William F. McDonald entered into judgment the jury's award of \$18.1 million under various State law provisions.

The DFG led the civil case against Attransco, owner of the oil tanker *American Trader*. The vessel sat on its own anchor in 1990, spilling over 400,000 gallons of crude oil into the ocean waters off Orange County. The oil that washed ashore sullied fifteen miles of the county's world-famous beaches. The jury awarded \$12.8 million in damages and \$5.3 million in fines.

The DFG has been the lead State agency pursuing this case, represented by the Office of the Attorney General with assistance from the private law firm of Hedges and Caldwell. Other State agencies involved as plaintiffs in this case include the Regional Water Quality Control Board - Santa Ana Region, Department of Parks and Recreation, State Lands Commission, and the Coastal Conservancy. Local agencies in the case include the Cities of Huntington Beach and Newport Beach, and the County of Orange.

The trial lasted just over two months, and concluded with a verdict being delivered on December 8, 1997. The jury found that Attransco should pay \$12.8 million in damages for lost recreational use of beaches and harbors that were closed to the public while the oil spill was cleaned-up. These funds will be held in a trust account managed by State and local governments. The plaintiff agencies will use the funds to improve the beaches and waterways, as well as other projects to benefit recreational users in Orange County.

The \$5.3 million in fines was levied for violation of California Water Code. In determining the amount of liability which may be imposed for such violations, the court must take into consideration the nature, circumstance, extent, and gravity (i.e.: consequences) of the violation, and the defendant's degree of culpability. It must also consider the violator's ability to pay. Attransco has already stated that payment of Water Code penalties would *not* put the company out of business.

In the nearly eight years since the spill, three other defendants — BP America, Trans-Alaska Pipeline Liability Fund, and Golden West Refining Co. — have settled with the agencies. Because the previous settlements provide \$3 million for specific injuries to fish and birds, those natural resource damages were not covered in the jury trial.

The *American Trader* oil spill — which occurred less than a year after the *Exxon Valdez* spill — prompted lawmakers at both the State and Federal levels to mandate oil spill prevention and response programs. At the time the spill occurred, California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act had just been introduced in the California Legislature.

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In Congress, the Oil Pollution Act of 1990 ("OPA-90") was being introduced and debated. The State Act created the Office of Oil Spill Prevention and Response (OSPR) as a division of the California Department of Fish and Game.

This case is the first time that a California jury has put a dollar figure on the loss of a day at the beach, boating on the ocean, or surfing in Orange County. In addition to valuing lost recreation, the jury considered the value of unquantifiable injuries to small wildlife and microorganisms, like plankton, when they set the penalty amount for this spill.

“It can be quite a complex process to place a value on what a lost surfing, boating, or fishing day is worth. It can be equally complex to value the ecological losses resulting from oil spills,” said Pierre duVair, an economist with OSPR. “I believe the jury found the information provided by the plaintiffs to be both reliable and reasonably accurate in documenting public losses resulting from the spill.”

In the next few weeks, the plaintiff agencies will seek reimbursement for the cost of pursuing this case. Attransco is expected to appeal the verdict, but DFG officials feel confident that they have established a solid record in the jury trial.

The OSPR and the local agency plaintiffs will coordinate the restoration planning effort with other agencies and interested parties, to ensure local concerns are addressed.

“The long struggle to insure that the State’s resources are fully restored has been given a big boost by this judgement”, said Pete Bontadelli, Administrator of the State Office of Oil Spill Prevention and Response. “The key, now, is to begin to make the money available to the appropriate agencies, both state and local, so that it can be used for specific projects designed to offset the losses that the State, its citizens, and resources were forced to bear from this spill.”

At the time of the *American Trader* oil spill, Bontadelli was Director of the DFG. “I believe the jury appropriately weighed the evidence presented and agreed — with the DFG, the other State agencies, and local governments — that there is a value to the use of our beaches, and to the food web that supports the recoveries for the wildlife, which had been obtained earlier in this case,” he continued. “Combined with the earlier settlement with British Petroleum, which addressed specific injuries to fisheries and birds, the total damages and penalties exceed \$21 million. Given the size and impacts of this spill, I’m pleased that Fish and Game was able to take the lead on behalf of the citizens of the State. I only hope that the defendants will not attempt to continue to play legal games that will delay further the restoration process that is already overdue from the impacts of this spill.”

