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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

M E M O R A N D U M

AGENDA

Colorado Natural Resources Trustees Meeting
March 28, 2018, 2:00 pm to 3:00 pm
Conference Call
Participants # 1-877-820-7831
Participant Passcode: 285327#

Open Session

1. Approval of Minutes from December 18, 2017 Meeting – 5 minutes

Action Item:

Review and approve minutes from December 17, 2018 meeting

Document:

Draft Minutes from December 17, 2018 meeting

2. Rocky Mountain Arsenal Foundation Fund – Amendment to Adams County 88th Avenue Project – (David Banas, Ed Perkins, Susan Newton) – 10 minutes

Action Item:

Consider resolution reallocating money and reducing the grant amount in the approved 88th Avenue Project

Documents:

Memo from David Banas

Draft resolution

Requested revised budget

3. Rocky Mountain Arsenal Foundation Fund – Amendment to Commerce City Sand Creek Project (David Banas, Ed Perkins, Susan Newton) – 10 minutes

Action Item:

Consider resolution allocating additional money to Commerce City's Sand Creek project

Documents:
Memo from David Banas
Draft resolution

4. Blue Tee – (David Banas, Jason King, Doug Jamison, Ed Perkins) – 5 minutes

Action Item:
None

Document:
Confidential Memo from David Banas

Executive Session

5. Blue Tee – 15 minutes

Open Session

6. Blue Tee – Report from Executive Session - 5 minutes

Action Item:
Provide direction on Blue Tee settlement discussions

ITEM 1

**Colorado Natural Resource Damages Trustees
Meeting Minutes
December 18, 2017**

(Approved: _____)

In Attendance:

TRUSTEES

Cynthia Coffman, Attorney General
Bob Randall, Executive Director, Colorado Department of Natural Resources (DNR)
Martha Rudolph, Director of Environmental Programs, Colorado Department of Public Health and Environment (CDPHE)

STAFF

Laura Chartrand, Deputy Attorney General, Natural Resources and Environment Section (NRE)
David Kreuzer, First Assistant Attorney General, NRE
David Banas, Senior Assistant Attorney General, NRE
Kendall Griffin, Assistant Attorney General, NRE
Jennifer Robbins, Assistant Attorney General, NRE
Laura Kelly, Paralegal, NRE
Susan Newton, CDPHE
Monica Sheets, CDPHE
Doug Jamison, CDPHE
Ed Perkins, Colorado Parks and Wildlife (CPW)
Jackie Corday, CPW

PUBLIC

Jamie Holmes, Abt Associates, Boulder
Cincere Eades, Denver Parks and Recreation
Paul Frohardt, Sand Creek Regional Greenway Partnership
Beth Nobles, Sand Creek Regional Greenway Partnership
Jeff Edson, Edson Ecosystems, LLC
Chris Lidstone, Lidstone & Associates, Inc.
Wendy Hawthorne, Groundwork Denver

Open Session

Attorney General Coffman called the meeting to order at 1:05 p.m. on December 18, 2017. The meeting's purpose was to brief the Trustees on the current status and issues relating to Natural Resource Damages (NRD) projects and to request direction and/or approval for various actions.

After attendees introduced themselves, Director Rudolph noted that her title was incorrect in the draft minutes from the June 30, 2017 Trustee meeting. Director Randall moved that the minutes from the June 30, 2017, meeting be approved, with the correction. Director Rudolph seconded the motion, and the motion was unanimously approved.

Suncor

Kendall Griffin updated the Trustees regarding the \$1.8 million Suncor settlement received in 2015. The NOI/Scoping Document was finalized in early August 2017. A public meeting was held in October, and the public was allowed to submit comments until November 30 (a few comments were received). The Federal and State Trustee staff is hoping to have the Solicitation for Project Proposals (SPP) in place by mid-February 2018.

Rocky Mountain Arsenal Recovery Fund – Platte Farm Open Space

David Banas updated the Trustees regarding a 2014 grant for Groundwork Denver to restore the Platte Farm Open Space. As the project developed, it became clear that it made more sense for the City and County of Denver (CCOD) to lead the restoration instead of Groundwork Denver, and therefore, a new resolution is needed so that CCOD can receive the funding directly. A Memorandum of Understanding will be executed so that CCOD decisions are made in coordination with Groundwork Denver. Director Randall asked if the restored land would be part of Denver Parks and Recreation. Ms. Eades confirmed that CCOD has a current purchase agreement with Xcel that does not include grant funds. Director Randall also asked which entity would provide the matching funds and he was informed that Groundwork Denver would still supply its share of matching funds.

Director Rudolph moved to approve the resolution to transfer funding for the Platte Farm Open Space from Groundwork Denver to CCOD. Director Randall seconded the motion, and the motion was unanimously approved.

Rocky Mountain Arsenal Recovery Fund and Lowry Landfill – Bluff Lake

David Banas updated the Trustees regarding previously approved funding (from two separate funds) for Bluff Lake Nature Center (BLNC) to line Bluff Lake and shore up the dam. The project was contingent on BLNC following laws regarding water rights and water quality. Mr. Banas informed the Trustees that BLNC has not acquired the water rights to store water, nor a discharge permit to put recycled water into the lake. Trustee staff is working with BLNC to resolve these problems. Director Randall inquired about when the grant will lapse and how that affects the water rights and water quality issues. Susan Newton explained that the grant will not expire for another two years. Director Rudolph suggested that a meeting involving all the parties would be beneficial.

Fountain Creek Truck Rollover

David Banas reminded the Trustees that this matter is in response to a tanker truck rollover from August 2016 and noted that it would be discussed in Executive Session.

Summitville – Restoration Projects

Jennifer Robbins updated the Trustees on the Solicitation for Project Proposals (SPP) that was published in March 2017, and again in August, for additional restoration projects. The Trustee Council reviewed three project proposals, however, the project involving the construction of a new boat ramp was not moving forward, so the proposed resolution before the Trustees includes only two projects. Ms. Robbins briefly described the “Rediscovering the Alamosa River Watershed Project,” which is an educational outreach effort to promote fishing and recreational

activities. Chris Lidstone presented a PowerPoint that described the project submitted by the Alamosa River Watershed Restoration Foundation. Mr. Lidstone explained the primary goals of the project, which include addressing health and safety hazards and reconnecting the Alamosa River to the floodplain. Mr. Lidstone confirmed that matching funds are available.

Director Rudolph and Director Randolph inquired about the boat ramp project, and whether, if the proposed resolution was approved, there would still be funds available for the boat ramp in the future. Ms. Robbins confirmed that additional funds would still be available in the future. David Banas confirmed that the funding amount in the proposed resolution was revised to reflect only the two projects discussed. Director Randolph also inquired about whether educational outreach is an allowable use of funds, to which Ms. Robbins explained that the Master Plan created for developing restoration projects in the Alamosa River watershed allowed for such an expenditure.

Director Randall moved to approve the revised resolution. Director Rudolph seconded the motion, and the motion was unanimously approved.

Summitville – In-Stream Flow Project

Jennifer Robbins updated the Trustees on the In-Stream Flow Project which was approved by the Trustees in 2007, and provided funds to Alamosa RIVERKEEPER® for the purchase of senior water rights through a contract with Valle Del Sol Community Center. Ms. Robbins explained that the contract with Valle Del Sol Community Center expires on December 31, 2017, and Alamosa RIVERKEEPER® would like to continue the project through a new contract with the Alamosa River Foundation. Because the acquisition of senior water rights has been difficult, Trustee staff asked for guidance on whether to continue this project, and if so, whether a new RFP is necessary. Ms. Robbins noted that this item would be discussed further in Executive Session.

West Creek Projects

Jennifer Robbins noted that, after the truck rollover in 2012, the Federal and State Trustees received just under \$100,000 from Groendyke Transportation, Inc. Trustee staff have identified three projects that were included in a Draft Assessment and Restoration Plan (DARP). The comment period for the DARP ended on November 30, 2017 and no comments were received. The three projects for which Trustee approval is needed include: 1) the improvement of fisherman access with the installment of two fence styles; 2) the improvement of fish habitat to increase habitat diversity and improve habitat conditions; and 3) the management of invasive, non-native species (this project obtained additional funding from the Department of the Interior (DOI) Catalyst Fund to meet its budget).

Director Rudolph moved to approve the resolution to use the West Creek settlement to fund these three project proposals. Director Randall seconded the motion, and the motion was unanimously approved.

States NRD Alliance

Jennifer Robbins and Susan Newton informed the Trustees of the benefits from participating in the States Natural Resource Damages Alliance (SNRDA). Ms. Newton noted that Trustee staff has attended several meetings and found that the exchange of information regarding restoration, including federal updates, has been valuable. Director Randall asked if there were membership dues and Ms. Robbins confirmed that there are no membership dues and participation is voluntary. The Trustees agreed that SNRDA was a worthwhile group and endorsed the idea that Trustee staff continue to participate and attend meetings.

Small Spill Best Management Practices Work Group

David Banas informed the Trustees about the Work Group's progress and that it hopes to have a draft guidance document completed for the next Trustees' meeting. Mr. Banas asked if the Trustees had any questions, or would like to provide any input, prior to finalizing the document. The Trustees stated their support for the Work Group's efforts.

Federal NRD Regulations

Jennifer Robbins reported that both the Comprehensive Environmental Resource Compensation and Liability Act (CERCLA) and the Oil Pollution Act (OPA) regulations will be going through some amendments under the current federal Administration, and that the DOI and the National Oceanic and Atmospheric Administration (NOAA) will be soliciting comments. Because these regulations play in integral part in the NRD assessments performed by the State, Trustee staff recommended that comments be provided related to proposed modifications and impacts such modifications might have. The Trustees agreed that Trustee staff should monitor and engage in these conversations.

Executive Session

Attorney General Coffman noted two agenda items previously discussed were subject to attorney-client privilege, and therefore called for an executive session pursuant to C.R.S. § 24-6-402(3)(a)(II). At 1:50 p.m., Director Randall moved to begin the executive session to allow the Trustees to discuss privileged topics concerning: 1) the Fountain Creek Truck Rollover; and 2) Summitville In-Stream Flow Project. Attorney General Coffman seconded the motion, and the motion was unanimously approved. Such discussion, being attorney-client privileged, is authorized under C.R.S. § 24-6-402(3)(a)(II) and C.R.S. § 24-6-402(d.5)(1)(B). The executive session was digitally recorded. No other business was conducted, and no minutes were taken.

At 2:10 p.m., Director Randall moved to end the executive session, Attorney General Coffman seconded the motion, and the motion was unanimously approved, whereupon executive session was ended.

Open Session

For the record, Deputy Attorney General Chartrand stated that, pursuant to the Open Meetings Law, C.R.S. § 24-6-402(3)(a), the Trustees discussed legal issues in the Executive Session regarding: 1) the Fountain Creek Truck Rollover; and 2) Summitville In-Stream Flow Project. Discussion was limited to those items and no decisions were made.

Fountain Creek Truck Rollover

Attorney General Coffman reported that the Trustees discussed recent CORA requests submitted by Manweiler Trucking.

Summitville – In-Stream Flow Project

The Trustees directed Trustee staff to move forward with an investigation about the feasibility of this project, and if needed, come back with a proposed new contract because the current contract expires on December 31, 2017. Jennifer Robbins added that the current resolution has no timeframe and does not refer to a specific contract, so a new resolution is not necessary at this time.

Rocky Mountain Arsenal Recovery Fund and Foundation Fund

Since the Trustees approved projects for the Northeast Greenway Corridor in 2012, CPW and CDPHE have been administering the contracts to complete the projects. Ed Perkins provided a status report on land acquisition projects, noting that 85% of projects have been completed. Susan Newton provided a status report on restoration projects, noting that 50% of projects have been completed.

At 2:20 p.m., Director Randall moved to adjourn the meeting, Director Rudolph seconded the motion, and the motion was unanimously approved.

ITEM #2

CYNTHIA H. COFFMAN
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Office of the Attorney General

March 28, 2018

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Rocky Mountain Arsenal Foundation Fund – Adams County 88th Avenue Project

BACKGROUND

In 2012, as part of the Rocky Mountain Arsenal Foundation Fund projects proposed collectively by the Northeast Greenway Corridor group (“NGC”), the Trustees approved Adams County’s “88th Avenue” project. Generally, this project proposed Adams County acquire a 246 acre property and restore its riparian forest and upland habitat. The project was projected to cost approximately \$3.1 million, of which \$1.75 million was to be funded by the Foundation Fund. In April 2017, the Trustees approved Adams County’s request to amend the budget to redirect \$295,000 from shoreline restoration to water quality improvements.

UPDATE

Adams County has requested to revise the budget again, according to the attached proposed budget. This will reduce the total requested amount by \$550,000 and will reallocate money within the approved budget.

Marc Pedrucci from Adams County will attend the March 28, 2018 meeting conference call to answer questions. The requested revised budget is included as an attachment to the draft resolution.

RECOMENDATION

Trustees staff recommend you approve Adams County's request to modify their budget, subject to Adams County receiving approval in writing from the NGC.

**COLORADO NATURAL RESOURCE TRUSTEES
RESOLUTION MARCH 28, 2018
CONCERNING ADAMS COUNTY'S 88TH AVENUE PROJECT**

WHEREAS, the Colorado Natural Resource Trustees ("Trustees") are responsible for the management and direction of Colorado's natural resource damages program;

WHEREAS, the Trustees are responsible for administering State funds to restore, replace or acquire the equivalent of injured natural resources;

WHEREAS, the Rocky Mountain Arsenal ("RMA") natural resource damages ("NRDs") settlement established a fund of \$10 million ("Foundation Fund") for Northeast Greenway Corridor ("NGC") projects;

WHEREAS, on July 31, 2012, the Trustees approved a set of projects proposed by the NGC for the Foundation Fund, including \$1.75 million for Adam's County's "88th Avenue" project;

WHEREAS, on April 14, 2017, the Trustees approved Adam's County's request to amend the budget in the 88th Avenue project to redirect \$295,000 of approved funds from shoreline restoration to water quality improvements;

WHEREAS, Adams County now requests to amend the approved budget pursuant to the attached budget. The net budget for the project would be reduced by \$715,000 and the request from the Foundation Fund would be reduced by \$550,000;

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows:

The Trustees do hereby approve Adams County's request to amend the budget in the 88th Avenue project pursuant to the attached amended budget and subject to delivering to Trustee staff a letter of approval from the NGC. This approval authorizes the Colorado Department of Natural Resources to enter into a funding agreement with Adams County, which shall expire on or before July 31, 2019.

Cynthia H. Coffman,
Colorado Attorney General

Date

Martha Rudolph,
Director of Environmental Programs, CDPHE

Date

Robert Randall, Executive Director, DNR

Date

DRAFT

Requested Amended Budget - 88th Avenue Open Space Restoration and Enhancement								
Components	4-14-2017 Trustee Approved Budget	Revised Total Cost	Funding by source	Sources	Request from Trustees (Foundation Fund)	Match that Meets NRDs Criteria	Total Match	Total Metro Wastewater Match
Task 1: Design and Engineering Services	\$ 250,000.00	\$ 640,000	\$ 315,000	Adams County Parks			\$ 315,000	
			\$ 250,000	Adams County Open Space Grant			\$ 250,000	
			\$ 75,000	Urban Drainage and Flood Control District			\$ 75,000	
Task 2: Recreation Site Improvements: See Below	\$ 500,000.00	\$ 410,000	\$ 200,000	Adams County Open Space Grant			\$ 200,000	
			\$ 80,000	CO Parks & Wildlife: Fishing is Fun Grant			\$ 80,000	
			\$ 70,000	Adams County Parks			\$ 70,000	
			\$ 60,000	Urban Drainage and Flood Control District			\$ 60,000	
<u>Habitat Restoration, Replacement & Enhancement</u>								
Task 3: South Pond Fishery and Shoreline Improvements: Earthwork, Vegetation Plantings	\$ 550,000.00	\$ 200,000	\$ 175,000	NRD	\$ 175,000			
			\$ 25,000	Adams County Parks		\$ 25,000	\$ 25,000	
			\$ 350,000	Metro Wastewater **funds not committed under NRD contract				\$ 350,000.00
Task 4: Re-routing of Trail and Restoration of Old South Platte River Trail Area: Lowering Bank	\$ 475,000.00	\$ 300,000	\$ 200,000	NRD	\$ 200,000			
			\$ 100,000	Adams County Open Space Grant		\$ 100,000	\$ 100,000	
			\$ 175,000	Metro Wastewater **funds not committed under NRD contract				\$ 175,000.00
Task 5: South Platte River Floodplain Connection and Water Quality Improvements: Side Channel Spillways for South Pond	\$ 875,000.00	\$ 380,000	\$ 200,000	NRD	\$ 200,000			
			\$ 180,000	Urban Drainage and Flood Control District		\$ 180,000	\$ 180,000	
			\$ 495,000	Metro Wastewater **funds not committed under NRD contract				\$ 495,000.00
Task 6: South Platte River Channel Improvements	\$ 250,000.00	\$ 230,000	\$ 100,000	NRD	\$ 100,000			
			\$ 130,000	Urban Drainage and Flood Control District		\$ 130,000	\$ 130,000	
			\$ 20,000	Metro Wastewater **funds not committed under NRD contract				\$ 20,000.00
Task 7: North Pond Shoreline Restoration: Earthwork, Vegetation Planting				NRD				
				Adams County Open Space Grant				
Task 8: Riparian Forest & Upland Habitat Enhancement: Invasive Removal, Vegetation Plantings	\$ 200,000.00	\$ 525,000	\$ 525,000	NRD	\$ 525,000			
Totals	\$ 3,100,000.00	\$ 2,685,000	\$ 3,725,000		\$ 1,200,000	\$ 435,000	\$ 1,485,000	\$ 1,040,000
						NRD Leverage	Total Leverage	Total MWRD Leverage
						36%	124%	28%

ITEM #3

CYNTHIA H. COFFMAN
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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

March 28, 2018

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Rocky Mountain Arsenal Foundation Fund – Commerce City Sand Creek Project

BACKGROUND

In 2012, as part of the group of projects the Trustees approved for the \$10 million Rocky Mountain Arsenal Foundation Fund, the Trustees granted Commerce City \$2.6 million to purchase and restore land along Sand Creek. This project's budget included \$1.15 million in matching funds. Commerce City needs additional funding to complete revegetation of the properties.

UPDATE

Due to increases costs, Commerce City requests to amend their approved project pursuant to the attached budget. Specifically, Commerce City requests an additional \$228,523 from the Foundation Fund to complete irrigation and landscaping in the Sand Creek 1 and Sand Creek 2 project areas. Traci Ferguson from Commerce City will attend the March 28, 2018 meeting conference call to answer questions.

RECOMMENDATION

Trustee staff recommends you approve Commerce City's request to modify their budget, subject to Commerce City delivering to Trustee staff approval in writing from the NGC.

ATTACHMENTS

Budget for additional restoration work.

**COLORADO NATURAL RESOURCE TRUSTEES
RESOLUTION MARCH 28, 2018
CONCERNING COMMERCE CITY'S SAND CREEK 1 AND SAND
CREEK 2 PROJECTS**

WHEREAS, the Colorado Natural Resource Trustees (“Trustees”) are responsible for the management and direction of Colorado’s natural resource damages program;

WHEREAS, the Trustees are responsible for administering State funds to restore, replace or acquire the equivalent of injured natural resources;

WHEREAS, the Rocky Mountain Arsenal (“RMA”) natural resource damages (“NRDs”) settlement established a fund of \$10 million (“Foundation Fund”) for Northeast Greenway Corridor (“NGC”) projects;

WHEREAS, on July 31, 2012, the Trustees approved a set of projects proposed by the NGC for the Foundation Fund, including \$2.6 million for Commerce City’s “Sand Creek 1” and “Sand Creek 2” projects;

WHEREAS, Commerce City now requests an additional \$228,523 to complete restoration of these properties, pursuant to the attached budget.

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows:

The Trustees do hereby approve Commerce City’s request for an additional \$228,523 from the Foundation Fund to complete restoration of the “Sand Creek 1” and “Sand Creek 2” properties, pursuant to the attached budget. This approval is conditioned upon Commerce City delivering to Trustee staff a letter of approval from the NGC.

[This space intentionally left blank]

Cynthia H. Coffman,
Colorado Attorney General

Date

Martha Rudolph,
Director of Environmental Programs, CDPHE

Date

Robert Randall, Executive Director, DNR

Date

DRAFT

March 2018 Proposed Budget - Grant Funding Allocation Summary - Sand Creek Properties						
Task	Description	Total Cost	Funding by Source	Request from Trustees (Foundation Fund)	Match that Meets NRDs Criteria	Other Match
1	Construction Mgmt/ Project Mgmt	\$ 326,550.00	Commerce City			\$ 326,550.00
2	Removals, Grading & Excavation	\$ 140,425.00	Commerce City			\$ 140,425.00
3	ET Cover Construction	\$ 1,752,974.75	NRD	\$ 1,160,000.00		
			Commerce City		\$ 142,974.75	
			Adams County Open Space		\$ 450,000.00	
4	Planting & Revegetation	\$ 228,523.00	NRD	\$ 228,523.00		
5	Monitoring Well Replacement	\$ 20,000.00	Commerce City			\$ 20,000.00
	<i>Subtotal</i>	\$ 2,468,472.75				
6	Contingency	\$ 119,145.79	Commerce City			\$ 119,145.79
	Totals	\$ 2,587,618.54		\$ 1,388,523.00	\$ 592,974.75	\$ 606,120.79
				Leverage	42.71%	86.36%