

CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

LEORA JOSEPH
Chief of Staff

FREDERICK R. YARGER
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STATE OF COLORADO
DEPARTMENT OF LAW

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Office of the Attorney General

M E M O R A N D U M

AGENDA

Colorado Natural Resources Trustees Meeting
October 9, 2018, 2:00 pm to 4:00 pm
Colorado Attorney General's Office
Room 1C

Open Session

1. Approval of Minutes from March 28, 2018 Meeting – 5 minutes

Action Item:

Review and approve minutes from March 28, 2018 meeting

Document:

Draft Minutes from March 28, 2018 meeting

2. Rocky Mountain Arsenal Foundation Fund 6th and Coal – 10 minutes (David Banas, Susan Newton, Ed Perkins)

Action Item:

None

Documents:

Memo from David Banas

3. Rocky Mountain Arsenal Recovery Fund – Sand Creek Regional Greenway Partnership Project – 15 minutes (David Banas, Susan Newton, Ed Perkins)

Action Item:

Consider SCRGP request to reallocate money to Denver and Aurora Projects

Documents:

Memo from David Banas

Draft resolution approving reallocating funds to Aurora

Draft resolution approving reallocating funds to Denver

4. Suncor – 15 minutes (David Banas, Susan Newton, Ed Perkins)

Action Item:

Consider project proposals

Document:

Memo from David Banas

Draft resolution approving projects

5. Small Spills Best Management Practices - 5 minutes (David Banas, Susan Newton, Jackie Corday)

Action Item:

None

Documents:

Memo from David Banas

CPW two-page information card

6. Money Remaining in NRD Accounts – 10 minutes (Jennifer Robbins, Susan Newton, Doug Jamison)

Action Item:

Consider resolution concerning management of NRD accounts

Documents:

Memo from Jennifer Robbins

Draft resolution

7. Rocky Mountain Arsenal Foundation Fund – Thornton Project – 5 minutes (David Banas, Susan Newton, Ed Perkins)

Action Item:

Consider resolution re-authorizing Thornton's expired project approval

Documents:

Memo from David Banas

Draft resolution

8. Idarado – 10 minutes (Jennifer Robbins, Doug Jamison)

Action Item:
Consider project proposals

Documents:
Memo from Jennifer Robbins
Draft Resolution

9. Rocky Flats – 5 minutes (Dan Miller)

Action Item:
Consider project proposal

Document:
Memo from Lindsay Masters
Draft resolution

10. Blue Tee – 5 minutes (David Banas, Jason King, Doug Jamison)

Action Item:
Consider consent decree

Documents:
Memo from David Banas
Consent decree (Confidential)

11. Fountain Creek – 5 minutes (Jennifer Robbins, Susan Newton, Ed Perkins)

Action Item:
Consider next steps

Document:
Attorney-Client Confidential Memo from Jennifer Robbins and supporting documents

Executive Session

12. Fountain Creek – 10 minutes

Action Item:
Consider next steps

Document:
Confidential Memo from Jennifer Robbins

Open Session

13. Fountain Creek – 5 minutes

Action Item:
Consider next steps

AGENDA #1

**Colorado Natural Resource Damages Trustees
Meeting Minutes
March 28, 2018**

(Approved: _____)

In Attendance:

TRUSTEES

Melanie Snyder, Chief Deputy 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 Banas, Senior 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
Mindi May, CPW

PUBLIC

Marc Pedrucci, Adams County Parks & Open Space
Brian Murphy, CDM Smith (consultant for Adams County)
Mike Brown, Commerce City Parks & Operations
Traci Ferguson, Commerce City Parks & Recreation

Open Session

This meeting was held via conference call. Chief Deputy Attorney General Melanie Snyder called the meeting to order at 2:01 p.m. on March 28, 2018. 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.

Chief Deputy Snyder welcomed the other participants on the phone and introductions were made. Director Randall moved that the minutes from the December 18, 2017, meeting be approved, Director Rudolph seconded the motion, and the motion was unanimously approved.

Rocky Mountain Arsenal Foundation Fund – Amendment to Adams County 88th Avenue Project

Mr. Banas stated that, in 2012, the Trustees approved funding from the RMA Foundation Fund in the amount of \$1.75 million for a land restoration project proposed by Adams County (88th Avenue), and in 2017, the Trustees approved Adams County’s request to amend the budget to redirect \$295,000 from shoreline restoration to water quality improvements. He then introduced Mark Pedrucci of Adams County who requested to revise the budget again, according to the revised budget attached to the proposed resolution. The revised budget would reduce the total requested amount by \$550,000 and would reallocate money within the approved budget (Task 8) to increase funding for revegetation and landscaping. Mr. Pedrucci explained that a partnership with Metro Wastewater Reclamation District (MW) allowed them to deliver a better project at a reduced price, as MW covered most of the earthwork costs. Director Rudolph inquired about the details of the partnership with MW. Mr. Pedrucci introduced Brian Murphy who is the lead consultant for the 88th Avenue Project, as well as the lead consultant for MW’s habitat improvement project being done in tandem with the 88th Avenue Project. Mr. Murphy explained that MW’s habitat improvements program has been ongoing through an MOU with CDPHE, CPW, and EPA that was signed nearly 15 years ago. Mr. Banas noted that he has recently received a letter from the Northwest Greenway Corridor (NGC) indicating its approval of the current request, as the consent decree and the resolution requires.

Director Rudolph moved to approve the resolution (as revised to correct a mathematical error and to add clarifying language) adopting the revised budget. Director Randall seconded the motion, and the motion was unanimously approved.

Rocky Mountain Arsenal Foundation Fund – Amendment to Commerce City Sand Creek Project

Mr. Banas stated that, in 2012, the Trustees approved funding from the RMA Foundation Fund in the amount of \$2.6 million for Commerce City to purchase and restore land along Sand Creek, and Commerce City is now requesting additional funding in the amount of \$228,523 to complete revegetation of the properties. He noted the receipt of a letter from NGC approving the project, and then introduced Traci Ferguson of Commerce City. Ms. Ferguson explained that restoration projects for the two acquired properties (Sand Creek 1 and Sand Creek 2) are well into remediation, and the increased funding request is related to irrigation and landscaping.

Director Randall asked if the additional funding is needed because the costs of revegetation increased, or because other areas of the budget increased thereby leaving the revegetation budget underfunded. Ms. Ferguson replied that other parts of the project took longer than anticipated and several items escalated in costs over the last six years. Director Rudolph noted that, due to the reduction of costs for the 88th Avenue Project just approved, there is adequate funding available. Ms. Ferguson stated that Commerce County will continue to meet its matching funds obligations with any increased amount of funding. In response to Director Randall, Mr. Banas confirmed that the funds were available for this request, and there were no other anticipated demands or cost overruns from the RMA Foundation Fund. Mr. Perkins also confirmed that CPW is unaware of any pending requests.

Chief Deputy Snyder asked if the NGC had approved both of these requests pursuant to the original resolutions, and Mr. Banas responded affirmatively saying that the approval letters will be attached to the resolutions. Chief Deputy Snyder also asked Ms. Ferguson if she was confident in their financial reassessment of the project. Ms. Ferguson stated that they were confident that this request for revegetation is the last piece of the project.

Director Rudolph moved to approve the resolution (as revised to add clarifying language) to provide additional funding for the Commerce City Sand Creek Project. Director Randall seconded the motion, and the motion was approved unanimously.

Mr. Banas explained the procedure for an executive session by separate conference call, after which the open session would resume by using the previous conference call instructions.

Executive Session

Chief Deputy Snyder noted one agenda item was subject to attorney-client privilege, and therefore called for an executive session pursuant to C.R.S. § 24-6-402(3)(a)(II). At 2:24 p.m., Director Randall moved to begin the executive session to allow the Trustees to discuss privileged topics concerning Blue Tee Corp. Director Rudolph 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 3:04 p.m., Director Rudolph moved to end the executive session, Director Randall 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 Blue Tee Corp. Discussion was limited to that item and no final decisions were made.

Mr. Banas explained the process for obtaining signatures on the two resolutions which were approved by the Trustees. At 3:07 p.m., Director Rudolph moved to adjourn the meeting, Director Randall seconded the motion, and the motion was unanimously approved.

AGENDA #2

CYNTHIA H. COFFMAN
Attorney General

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Office of the Attorney General

October 9, 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

BACKGROUND

In 2012, the Trustees approved a set of Northeast Greenway Corridor (NGC) projects for the \$10 million in the Rocky Mountain Arsenal Foundation Fund. One of those projects included a \$2 million dollar grant to Aurora to acquire – together with approximately \$6 million in matching funds from the City of Aurora, Adams and Arapahoe Counties, the Trust for Public Land (TPL) and GOCO – 265 acres of property for open space. This purchase included the “6th and Coal” property, a 168-acre parcel along Coal Creek in Aurora. This property is protected by a conservation easement held by Arapahoe County.

UPDATE

As part of infrastructure improvements, the alignment for 6th Avenue Parkway has been shifted slightly northward, impacting 2.27 acres of the 6th and Coal property. Aurora’s contractor, ERO Resources, has calculated the value of the impacted acreage at approximately \$197,000. Instead of providing small monetary refunds to their partners proportional to their investment in the original acquisitions, Aurora proposed to leverage these funds with an additional \$285,000 to purchase another 19.41-acre parcel along the Triple Creek Greenway Corridor. Staff has been working with Aurora and the Trust for Public Land to ensure this acquisition meets NRD goals and requirements, to review the easement, and to review the property and the due diligence documents and title work.

RECOMMENDATION

Because Arapahoe County, not the State, holds the conservation easement on the 6th and Coal property, the Trustees do not need to approve this plan to mitigate changes to the conservation easement or acquire property as replacement for the affected 2.27 acres. This memo and agenda item are informational only.

ACTION ITEMS

None.

ATTACHMENTS

None.

AGENDA #3

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Office of the Attorney General

October 9, 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 Recovery Fund

BACKGROUND

In 2014, the Trustees approved a set of projects proposed by the Northeast Greenway Corridor (NGC), and other groups, for the approximately \$17.4 million in the Rocky Mountain Arsenal Recovery Fund. One of the projects granted the Sand Creek Regional Greenway Partnership (SCRGP) \$921,475 to restore up to 12 identified properties in the metro area. The resolution approving this project requires that, as preconditions for receiving the funds, SCRGP must rank the 12 properties and receive Trustee staff approval for the final restoration plan(s).

UPDATE

SCRGP has determined it is not able to meet the Trustees' preconditions. Instead, SCRGP requests the Trustees use the \$921,475 allocated to it to fund projects proposed by Aurora and Denver. The Aurora project would use \$421,000 of NRD funds plus matching funds to restore habitat on 85 acres – 65 of which previously used NRD funds for acquisition and 17 of which comprise the mitigation acquisition discussed in agenda item 2. The Denver project would use \$500,000 in NRD funds plus matching funds to restore 36 acres near 8101 E. 40th Avenue along the north side of Sand Creek. The NGC supports this request. The SCRGP, Aurora and Denver will make presentations at the Trustee meeting.

RECOMMENDATION

Staff recommend approving the request of the SCRGP, Aurora, Denver and the NGC to reallocate the \$921,475 previously allocated to the SCRGP.

ACTION ITEMS

Consider two resolutions reallocating to Aurora and to Denver the \$921,475 previously allocated to SCRGP.

ATTACHMENTS

Draft resolution approving reallocation of \$421,000 to Aurora
Draft resolution approving reallocation of \$500,000 to Denver

**COLORADO NATURAL RESOURCE TRUSTEES
RESOLUTION OF OCTOBER 9, 2018
CONCERNING SCRGP'S RELINQUISHMENT OF PREVIOUSLY
ALLOCATED \$421,000 AND REALLOCATION TO THE CITY OF
AURORA**

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, in 2014, the Trustees approved a set of projects proposed by the Northeast Greenway Corridor ("NGC"), and other groups, for the approximately \$17.4 million in the Rocky Mountain Arsenal Recovery Fund;

WHEREAS, one of the approvals granted the Sand Creek Regional Greenway Partnership ("SCRGP") \$921,475 to restore up to 12 identified properties in the metro area;

WHEREAS, the SCRGP, the NGC and the City of Aurora now request the Trustees reallocate \$421,000 from the previously allocated SCRGP \$921,475 grant to the City of Aurora to fund the "Restoring Bird Habitat in the Confluence Open Space and Confluence OS South Areas" project.

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

The Trustees do hereby approve the request of the SCRGP, the NGC and the City of Aurora to reallocate \$421,000 from the previously allocated SCRGP \$921,475 grant to the City of Aurora to fund the "Restoring Bird Habitat in the Confluence Open Space and Confluence OS South Areas" project ("the Proposal"), subject to the following conditions:

- 1) This approval expires five years from the date of the execution of this resolution.
- 2) Release of the Funds is contingent on the City of Aurora contributing matching funds to the project pursuant to the Proposal and consistent with the Trustees' matching funds policy.
- 3) Release of the Funds is contingent on Trustee staff review and approval of the City of Aurora's final budget and final restoration plan.

- 4) Release of the Funds is contingent on compliance with all laws and regulations, including but not limited to: State and Federal laws, local ordinances, permitting and zoning requirements and water rights requirements.

Cynthia H. Coffman,
Colorado Attorney General

Date

Martha Rudolph,
Director of Environmental Programs, CDPHE

Date

Robert Randall, Executive Director, DNR

Date

DRAFT

**COLORADO NATURAL RESOURCE TRUSTEES
RESOLUTION OF OCTOBER 9, 2018
CONCERNING SCRGP'S RELINQUISHMENT OF PREVIOUSLY
ALLOCATED \$500,000 AND REALLOCATION TO THE CITY AND
COUNTY OF DENVER**

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, in 2014, the Trustees approved a set of projects proposed by the Northeast Greenway Corridor ("NGC"), and other groups, for the approximately \$17.4 million in the Rocky Mountain Arsenal Recovery Fund;

WHEREAS, one of the approvals granted the Sand Creek Regional Greenway Partnership ("SCRGP") \$921,475 to restore up to 12 identified properties in the metro area;

WHEREAS, the SCRGP, the NGC and the City and County of Denver ("CCOD") now request the Trustees reallocate \$500,000 from the previously allocated SCRGP \$921,475 grant to the CCOD to fund the "Sand Creek Restoration" project, dated September 20, 2018.

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

The Trustees do hereby approve the request of the SCRGP, the NGC and the CCOD to reallocate \$500,000 from the previously allocated SCRGP \$921,475 grant to the CCOD to fund the "Sand Creek Restoration" project (the Proposal), subject to the following conditions:

- 1) This approval expires five years from the date of the execution of this resolution.
- 2) Release of the Funds is contingent on the CCOD contributing matching funds to the project pursuant to the Proposal and consistent with the Trustees' matching funds policy.
- 3) Release of the Funds is contingent on Trustee staff review and approval of CCOD's final budget and final restoration plan.

- 4) Release of the Funds is contingent on compliance with all laws and regulations, including but not limited to: State and Federal laws, local ordinances, permitting and zoning requirements and water rights requirements.

Cynthia H. Coffman,
Colorado Attorney General

Date

Martha Rudolph,
Director of Environmental Programs, CDPHE

Date

Robert Randall, Executive Director, DNR

Date

DRAFT

AGENDA #5



CYNTHIA H. COFFMAN
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**Office of the Attorney
General**

October 9, 2018

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Natural Resource Damages Small Spill Response Committee Update

BACKGROUND

The Small Spills Committee has been working to develop a response policy for small spills of petroleum and small releases of hazardous substances, such as those that occur in a truck rollover.

UPDATE

We have met several times since the last Trustee meeting and made progress on four issues:

- 1) CPW has finalized a two-page laminated card that will soon be distributed to Area Aquatic Biologists, Area Wildlife Managers, and District Wildlife Managers to keep in their vehicles. The card, which is attached to this memo, generally identifies actions CPW staff should take in the immediate response to a small spill.
- 2) Staff are developing a decision tree for immediate responses to small spills. The decision tree begins with notification of a spill and ends with deciding whether to hire a contractor to assist with NRD sampling. We have a draft decision tree and will have a final version for the next Trustee meeting.

- 3) Staff are developing a scope of work for standing contracts with NRD contractors so we can respond more quickly to a small spill. This scope of work will be finalized this calendar year.
- 4) CPW is coordinating training for staff on responses to small spills.

RECOMMENDATION

None.

ACTION ITEMS

None.

ATTACHMENTS

CPW 2-page small spill response document.

FISH KILL QUICK REFERENCE

EMERGENCY CONTACTS	
Statewide	
Emergency: 911	Mindi May (Water Quality Coord.): 303-809-4684
CDPHE Spill Line (regular hrs): 1-877-518-5608	Pete Cadmus (Toxicologist): 970-420-8467
EPA Spill Line (after hrs): 1-800-424-8802	CO State Patrol (District 1 & 2): 303-239-4500, 719-288-2650
Area 1 Specific	
Sr. Aquatic Bio: Jeff Spohn 303-981-3634	Regional Manager: Mark Leslie 303-291-7203
Area Aquatic Bio: Tyler Swarr 720-576-9782	Area Wildlife Manager: Mark Lamb 303-291-7241
Park County	Jefferson County
Sheriff's Office: Fred Wegener 719-836-4101	Sheriff's Office: Jeff Shrader 303-277-0211
Other:	Other:
Clear Creek County	Gilpin County
Sheriff's Office: Rick Albers 303-679-2376	Sheriff's Office: Bruce Hartman 303-582-5500
Environmental Health Dept.: 303-679-2428	Other:

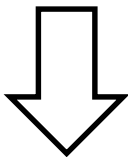
PERSONAL SAFETY!!

The safety of yourself and those around you is the top priority throughout this entire process!

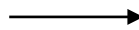
Step 1: Notify Important Contacts



- **911** if human safety is threatened
- **Report Spills to Mindi May**
- **CDPHE (State) Spill Report Line** to report spill (after hours: leave message)
- **EPA (National) Spill Line** if after hours and immediate response is needed.
- **Local law enforcement/fire department** if discharge is unknown or hazardous
- **Other relevant CPW personnel** for assistance (contacts in chart above, park managers, public info officer, etc.)



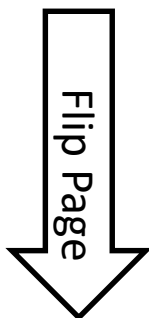
Step 2: Obtain "Fish Kill Kit"



If kit not on hand, the following basic materials from a nearby store can be substituted:

- **Plastic Sample Bags** – large Ziploc, garbage size, etc. depending on size of wildlife to be collected
- **Gloves & eye protection**
- **Pencil, marker, paper**
- **Camera & GPS** – cell phone camera and geotagging will work

For instructions on taking water samples, call Mindi May or Pete Cadmus (see emergency contacts).



Step 3: Assess the Fish Kill/Spill

Do you know the cause of the fish kill?

Yes

Non-hazardous – sewage, potable water, food product, etc.

Proceed, but use gear that protects eyes and skin from contact with water

Hazardous – chemical, fuel, O&G produced water substance from vehicle with placard, etc.

Keep a safe distance, wait for further instruction from emergency first responders. Meanwhile, make observations from a safe distance.

Natural Causes – winter kill, algal bloom, low oxygen, etc.

Contact aquatic biologist, further investigation may not be needed

No

Wait until hazmat emergency first responders can tell you more. Meanwhile, make observations from a safe distance.

Step 4: Document Observations

Required: At minimum, fill out observation checklist titled “Mandatory” as completely as possible (upstream and downstream of kill).

Additional checklist sheets are provided for observing additional downstream sites beyond the minimum required. **More info is better!**

TAKE PHOTOS & VIDEOS!! (see checklist)

Step 5: Collect, tag, and submit evidence

- Wildlife mortalities (tag: species, collection location)
- Water samples (call Pete Cadmus or Mindi May)
- Conduct interviews

Refer to Administrative Directive W-5 for complete protocols on above steps, follow-up investigation, and report preparation.

Current as of September, 2018

AGENDA #6

CYNTHIA H. COFFMAN
Attorney General

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Natural Resources and
Environment Section

October 10, 2018

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Dormant Money in Natural Resource Damage Fund Subaccounts

BACKGROUND

CDPHE maintains funds recovered by the Trustees to compensate the State for injuries to natural resources in separate site-specific interest bearing subaccounts within the Natural Resource Damage Recovery Fund created by section 25-16-104.7, C.R.S. The Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) and the Oil Pollution Act of 1990 (“OPA”) require the Trustees use these funds only to restore, replace or acquire the equivalent of injured resources. The Fund statute further limits use of the funds by requiring the Trustees use the money in each subaccount consistent with any conditions in the federal court consent decree that awarded the Trustees those funds.

In 2017, the Trustees directed staff to determine how much dormant money – that is, money for which staff has determined no viable projects exist – remains in the Fund subaccounts and recommend how the Trustees should use this money. In response, staff conducted a three-step analysis of the subaccounts in the Fund. First, we determined how much money remains in each subaccount. Second, we determined which subaccounts contain dormant money. Finally, we determined what limitations exist in the consent decree for each subaccount.

Staff expected the result of this analysis to make available upwards of \$100,000 in dormant money. However, after analyzing all the factors, staff has determined less than \$10,000 in dormant money not subject to limiting consent decrees exists in the Fund.

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Staff therefore recommends we periodically reevaluate and report to the Trustees on the dormant money issue and make a recommendation on how to use this money when a significant sum has amassed.

ACTION ITEMS

None.

AGENDA #7

CYNTHIA H. COFFMAN
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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

October 9, 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 - Thornton

BACKGROUND

In 2012, the Trustees approved a set of projects proposed by the Northeast Greenway Corridor group for the \$10 million in the Rocky Mountain Arsenal Foundation Fund. One of these projects was Thornton's "Big Dry Creek" project for which the Trustees approved \$750,000 to acquire and restore approximately 130 acres along Big Dry Creek. As with the other Foundation Fund projects, this project approval was valid for five years – that is, until 2017.

UPDATE

Thornton's project approval expired in 2017. During that time, Thornton acquired the property with other money. In 2018, Thornton contacted DNR to begin the contracting process, planning to use the money only for restoration. Because its approval has expired, Thornton needs a new Trustee resolution approving its project. Staff and NGC believe this is appropriate and falls within the original scope of the project.

RECOMMENDATION

Staff recommends the Trustees re-approve Thornton's Big Dry Creek project.

ACTION ITEMS

Consider re-approving Thornton's Big Dry Creek project.

ATTACHMENTS

Draft resolution approving Thornton's Big Dry Creek project.

**COLORADO NATURAL RESOURCE TRUSTEES
RESOLUTION OF OCTOBER 9, 2018
CONCERNING CITY OF THORNTON “BIG DRY CREEK” 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, in 2012, the Trustees approved a set of projects proposed by the Northeast Greenway Corridor group (“NGC”) for the \$10 million in the Rocky Mountain Arsenal Foundation Fund;

WHEREAS, one of these projects was Thornton’s “Big Dry Creek” project for which the Trustees approved \$750,000 to acquire and restore approximately 130 acres along Big Dry Creek;

WHEREAS, this approval expired in 2017;

WHEREAS, since 2012, Thornton has acquired the property with money from other sources and now requests a new resolution approving funding of the restoration portion of its project;

WHEREAS, the NGC supports Thornton’s request.

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

The Trustees do hereby approve funding of Thornton’s “Big Dry Creek” project subject to the following conditions:

- (1) This approval is valid for five years;
- (2) This approval is conditioned on compliance with all laws and regulations, including but not limited to: State and Federal laws, local ordinances, permitting and zoning requirements, and water rights requirements;
- (3) This approval is contingent on Trustee staff review and approval of Thornton’s final restoration plan and budget.

Cynthia H. Coffman,
Colorado Attorney General

Date

Martha Rudolph,
Director of Environmental Programs, CDPHE

Date

Robert Randall, Executive Director, DNR

Date

DRAFT

AGENDA #8



CYNTHIA H. COFFMAN
Attorney General
DAVID C. BLAKE
Chief Deputy Attorney General
MELANIE J. SNYDER
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FREDERICK R. YARGER
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Natural Resources and
Environment Section

October 9, 2018

M E M O R A N D U M

TO: Colorado Natural Resources Trustees
FROM: Jennifer Robbins
RE: Idarado Superfund Site

BACKGROUND

As part of the 1992 Idarado Mine Consent Decree, the state received \$1M for natural resource damages, of which approximately \$230,000 remains available.

UPDATE

On August 31, 2018, the Trust for Land Restoration (“TLR”) submitted a proposal from the Idarado NRD fund to purchase 14 mining claims totaling 104 acres known as the Silver Mountain Mine. The proposal also intends to mitigate environmental issues on the property and donate the property to the County of Ouray with a conservation easement. The total project cost is estimated at \$330,000 and TLR is requesting \$92,000 from the NRD Fund. TLR will secure the remaining costs for the acquisition, environmental mitigation and conservation easement.

ACTION ITEMS

Staff requests the Trustees:

- 1) Approve the Trust for Land Restoration Proposal to acquire the Silver Mountain Mine for conservation

ATTACHMENTS

Trustee Resolution approving \$92,000 towards the Silver Mountain Mine acquisition

**COLORADO NATURAL RESOURCE TRUSTEES
RESOLUTION OCTOBER 9, 2018 CONCERNING
SILVER MOUNTAIN MINE ACQUISITION**

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 Idarado Mine Superfund Site natural resource damages (“NRDs”) settlement established a fund of \$1,000,000 for restoration projects; and

WHEREAS, the Trust for Land Restoration submitted a proposal requesting the State Natural Resource Trustees approve \$92,000 to fund a portion of the acquisition of 14 mining claims totaling 104 acres known as the Silver Mountain Mine.

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

The Trustees do hereby approve the release of \$92,000 from the Idarado NRD funds (“Funds”) to be applied towards the Trust for Land Restoration’s acquisition of the Silver Mountain Mine in accordance with its proposal dated August 31, 2018 and subject to the following conditions:

- 1) Release of the Funds is contingent upon Trust for Land Restoration contributing matching funds, which may be obtained through other state or federal grant programs, or otherwise;

- 2) Any land acquired with the Funds must be encumbered by a conservation easement that has been reviewed and approved by the Trustees' staff;
- 3) Release of the Funds is contingent upon compliance with all laws and regulations, including but not limited to: State and Federal laws, local regulations and ordinances, permitting and zoning requirements, and water rights requirements;
- 4) Prior to release of any Funds, Trust for Land Restoration must submit for review and approval by the Trustees' staff an environmental management plan;
- 5) Release of the Funds will be made directly to an escrow account of a qualified title company to be used to fund the property acquisition at closing; and
- 6) This resolution will expire October 8, 2020, and the funds will no longer be available, unless a contract consistent with this resolution is executed by this date.

Cynthia H. Coffman,
Colorado Attorney General

Date

Martha Rudolph,
Director of Environmental Programs, CDPHE

Date

Robert Randall, Executive Director, DNR

Date

AGENDA #9

MEMORANDUM

To: Colorado Natural Resources Trustees

From: Lindsay Masters, Environmental Protection Specialist, Colorado Department of Public Health and Environment's Hazardous Materials and Waste Management Division

Date: October 1, 2018

Subject: Final dispensation of remaining Rocky Flats Natural Resource Damages to Mile High Youth Corps

Background

Natural resources at the Rocky Flats Site were injured by historical releases of a variety of hazardous substances. Injured resources included groundwater, surface water, and biological resources, including prairie, riparian, and wetland habitats, and the wildlife associated with these habitats. Some damaged resources were restored during the cleanup, which was completed in 2006.

To date, millions of dollars of Rocky Flats natural resource damages ("NRD") settlement funds have been awarded to conservation programs in the vicinity of Rocky Flats, mostly to help acquire open space and subsurface mineral rights, and collect native seed and control weeds. Given the limited remaining NRD funds, the Trustees are being asked to dispose of 100% of the remaining NRD funds in the CDPHE account at this meeting - including any interest - so the account may be closed out.

Update

All Rocky Flats NRD contracted projects approved by the Trustees were finished by the end of 2017, and all other contractual obligations (invoicing, reporting) have been completed. The total amount disbursed from the fund was \$10,494,610. The total value of projects, including matching funds, equaled \$26,282,579.

A balance of approximately \$12,000 remains in the Rocky Flats NRD account for the following reasons: (1) Boulder Parks and Open Space provided a refund for failed seed propagation and (2) funds were not invoiced by Westminster, adding interest to the account.

Recommendation

Staff suggest giving the remainder of the Rocky Flats NRD funds to Mile High Youth Corps for noxious invasive plant control at Rocky Flats. The U.S. Fish and Wildlife Service (“USFWS”) and U.S. Department of Energy (“DOE”) staff also endorse this proposal.

Mile High Youth Corps is a local non-profit organization, headquartered in Denver, and funded by sources including government grants, foundation grants, fee-for-service contracts, and individual donations. Membership is diverse, reflecting the communities in which corpsmembers serve, with member ages between about 16 to 24 years old.

Current programs include land conservation, the oldest program at Mile High Youth Corps. The land conservation program focuses on crew-based environmental rehabilitation and habitat restoration projects. Recent projects include, but are not limited to, flood mitigation and restoration efforts and building affordable housing units while lowering water and energy usage in over 20,000 homes. Young adults may earn various certificates (e.g. First Aid/CPR) while gaining hands-on natural resources experience in this program.

Because the remaining NRD funds are relatively limited, CDPHE staff inquired whether USFWS would provide supplementary funds for the Mile High Youth Corps. (Mile High Youth Corps has been out over the last four years to help with noxious invasive plant control at Rocky Flats.) USFWS staff replied that the agency “can and will be using its own funds for the same purpose....Fair to say we will supplement.” (USFWS email, dated September 12, 2018 to CDPHE).

In sum, there are multiple sources of financial support to fund a noxious weed control project by Mile High Youth Corps. The remaining NRD funds will contribute to a well-established program that (1) directly benefits natural resources at the Rocky Flats Site by helping control harmful and invasive plant species on Colorado’s public lands, and (2) helps young adults explore a career in natural resources conservation.

Action Items

- Grant all remaining Rocky Flats NRD account funds to the Mile High Youth Corps to support noxious weed control projects, in conjunction with USFWS efforts.
- Approve closing out CDPHE’s Rocky Flats NRD account.
- Transfer the funds to Mile High Youth Corps directly (“straight pay”) to avoid overhead costs.

CC: Daniel Miller, AGO; David Banas, AGO; Robert Beierle, CDPHE; David Lucas, U.S. FWS; Scott Surovchack, U.S. DOE LM; Vera Moritz, U.S. EPA



**COLORADO NATURAL RESOURCE TRUSTEES
RESOLUTION OCTOBER 9, 2018
CONCERNING FINAL DISPENSATION OF REMAINING ROCKY
FLATS NATURAL RESOURCE DAMAGES**

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, releases of contaminants from Rocky Flats damaged and harmed natural resources, including groundwater, surface water and biological resources, including prairie, riparian, and wetland habitats, and the wildlife associated with these habitats;

WHEREAS, invasive and noxious plants in the Rocky Flats National Wildlife Refuge and its vicinity threaten the integrity of the native ecosystem (e.g. rare xeric tallgrass prairie);

WHEREAS, the Mile High Youth Corps is an experienced local land conservation non-profit for young adults, which for the past four years has assisted the U.S. Fish & Wildlife Service with noxious invasive plant control;

WHEREAS, the remaining Natural Resources Damages funds (approximately \$12,000) are relatively limited and overhead transfer costs and paperwork should be minimized by transferring funding directly to the Mile High Youth Corps.

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

The Trustees do hereby approve the transfer of 100% of all remaining Rocky Flats Natural Resources Damages funds – including any interest – directly to the Mile High Youth Corps for a noxious invasive plant control project with the U.S. Fish & Wildlife Service at Rocky Flats National Wildlife Refuge. This approval is valid up to \$15,000.

After this transfer of the remaining funds, the Rocky Flats Natural Resource Damages account with the Colorado Department of Public Health and Environment shall be closed.

Cynthia H. Coffman,
Colorado Attorney General

Date

Martha Rudolph,
Director of Environmental Programs, CDPHE

Date

Robert Randall, Executive Director, DNR

Date

DRAFT

AGENDA #10

CYNTHIA H. COFFMAN
Attorney General

MELANIE J. SNYDER
Chief Deputy Attorney General

LEORA JOSEPH
Chief of Staff

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Office of the Attorney General

October 9, 2018

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Blue Tee

BACKGROUND

On February 12, 2018, the United States Department of Justice notified Colorado of an impending multi-state, multi-party CERCLA settlement with the Blue Tee Corp. and Brown Strauss, Inc. (BT-BS). BT-BS are successors in interest to American Zinc, Lead and Smelting Co (AZL) who operated hard rock mines and smelters at 23 sites in 5 states. EPA first notified BT-BS of potential liability at the Bonita Peak Mining District (BPMD) superfund site in Colorado in November 2017, contributing to Colorado receiving such late notice of the potential settlement. AZL operated one mine in BMPD from 1946 to 1950. For context, BPMD is comprised of forty-seven acid generating mine waste sources that operated for approximately one hundred years. Plaintiff parties include states, tribes, EPA and federal land management agencies. All parties assert either response costs reimbursement or NRD claims under CERCLA §§ 107 and 113.

As settlement progressed, we discovered the potential for another Colorado claim against Blue Tee involving the former American Lead and Zinc Mill Site in Ouray County.

UPDATE

We have spent the summer working with DOJ to finalize the Consent Decree. Colorado will receive \$469,299.70 for Bonita Peak in installments over the next five years. The Trustees and CDPHE need to allocate this money between NRD and response costs. Colorado will also receive \$31,500 for Ouray response costs.

The attached Consent Decree is ready for the Trustees' signatures. The chart of Page 8 of the CD sets out the payments to each plaintiff. Colorado's payments can be found on pages 9 and 11. Section VIII, beginning on Page 19 contains the covenant not to sue. The Attorney General's Office has reviewed and approved this language.

RECOMMENDATION

Staff recommends the Trustees approve the Settlement and sign the Consent Decree.

ACTION ITEMS

We request the Trustees sign the Consent Decree.

ATTACHMENTS

Draft Consent Decree