



CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney
General

MELANIE J. SNYDER
Chief of Staff

DANIEL D. DOMENICO
Solicitor General

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

STATE OF COLORADO
DEPARTMENT OF LAW

**Office of the Attorney
General**

AGENDA

Colorado Natural Resources Trustees Meeting
November 4, 2016, 3:00 pm to 5:00 pm
Location: AGO Room 1B

Open Session

1. Approval of Minutes from November 4, 2015 Meeting – 5 minutes

Action Item:

Review and approve minutes from November 4, 2015 meeting

Document:

Draft Minutes from November 4, 2015 meeting

2. Suncor Update (Kendall Griffin, Susan Newton, Ed Perkins) - 5 minutes
3. Rocky Mountain Arsenal Recovery Fund Adams County Replacement Project (David Banas, Susan Newton, Ed Perkins) – 10 minutes

Action Item:

Adams County's request to approve funding for Willow Bay project

Documents:

Adams County Willow Bay Property Acquisition Project Proposal

Draft Resolution approving Willow Bay Property Acquisition Project Proposal

4. Summitville Update and Request for Project Approval (Jennifer Robbins, Doug Jamison) – 10 minutes

Action Items:

Review and approve new projects in the Alamosa River Watershed with the remaining Summitville NRD funds; approve extending MOU with the US

Documents:

2002 MOU between State and Department of Interior

2007 Trustee Resolution extending MOU

Draft Resolution approving new projects and approving extension of MOU with US

5. Security-Widefield Water Quality (David Banas, Susan Newton, Ed Perkins) – 5 minutes
6. Fountain Creek Truck Rollover (David Banas, Susan Newton, Ed Perkins) - 5 minutes
7. Manweiler Trucking Arkansas River Truck Rollover (David Banas, Susan Newton) - 5 minutes
8. Bonita Peak Mining District NPL Site (David Banas, Susan Newton, Melynda May, Doug Jamison) - 10 minutes

Document:

CDPHE Data Gap Analysis

Executive Session

9. Bonita Peak Mining District NPL Site - 10 minutes
10. Suncor – 5 Minutes
11. Rocky Mountain Arsenal Foundation Fund Adams County Replacement Project - 5 minutes
12. Security-Widefield – 5 minutes
13. Fountain Creek Truck Rollover - 5 minutes
14. Manweiler Trucking Arkansas River Truck Rollover - 5 minutes

Open Session

15. Bonita Peak Mining District NPL Site Report from Executive Session – 5 minutes
16. Suncor Report from Executive Session – 5 minutes
17. Rocky Mountain Arsenal Foundation Fund Adams County Replacement Project - 5 minutes

Action Item:

Vote on Adams County's request to approve funding for Willow Bay project

18. Security-Widefield Report from Executive Session – 5 minutes
19. Fountain Creek Truck Rollover Report from Executive Session - 5 minutes
20. Manweiler Trucking Arkansas River Truck Rollover Report from Executive Session - 5 minutes

AGENDA #1

Colorado Natural Resource Damages Trustees
Meeting Minutes
November 4, 2015

In Attendance:

TRUSTEES

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

STAFF and OTHERS

Casey Shpall, Deputy Attorney General, Natural Resources and Environment Section (NRE)
David Kreutzer, First Assistant Attorney General, NRE
David Banas, Assistant Solicitor General, NRE
Jennifer Robbins, Assistant Attorney General, NRE
Kendall Griffin, Assistant Attorney General, NRE
Jason King, Senior Assistant Attorney General, NRE
Susan Newton, CDPHE
Monica Sheets, CDPHE
Ed Perkins, DNR
Mindi May, Colorado Parks and Wildlife
Marc Pedrucci, Adams County Parks
Wade Shelton, Trust for Public Lands (TPL)
Paul Frohardt, Northeast Greenway Coalition (NGC)
Kate Kramer, Northeast Greenway Coalition (NGC)
Gordon Robertson, Denver Parks and Recreation
Cincere Eades, Denver Parks and Recreation
David Blake, Chief Deputy Attorney General
Jenn Anderson, Legislative Liaison, Attorney General's Office

Attorney General Coffman called the meeting to order at 9:30 a.m. on November 4, 2015. The meeting's purpose was to brief the Trustees on the current status and issues relating to Natural Resource Damages (NRD) sites and to request direction and/or approval for various actions.

Attorney General Coffman moved that the minutes from the April 2, 2015, meeting be approved with corrections. Director Rudolph seconded the motion, and the motion was unanimously approved.

Suncor

Kendall Griffin provided an update regarding the Suncor settlement, consent decree and MOU which requires the State and Federal Trustees to work cooperatively to create a Restoration Plan.

Ms. Griffin stated that, since the last Trustee meeting, State and Federal representatives had agreed upon a Restoration Plan which incorporates both the State and Federal processes for selecting restoration projects.

Rocky Mountain Arsenal Foundation Fund – Denver Replacement Project

The City and County of Denver (CCOD) submitted a Foundation Fund Project Application which requests \$500,000 to expand and enhance the Westerly Creek Greenway. David Banas confirmed that \$500,000 from the Foundation Fund is available for this project. Mr. Banas introduced Paul Frohardt of the Northeast Greenway Coalition who stated NGC's support of CCOD's request for additional funding. Mr. Banas then introduced Cincere Eades of Denver Parks and Recreation who presented an update on the current Westerly Creek project in northeast Denver and details of the replacement project. Ms. Eades indicated that additional funding of \$500,000 was required to complete this project due to a 30-50% increase in construction costs and that matching funds in the amount of \$125,000 were already secured. Ms. Eades pointed out that the request also includes an amendment to the Lowry Landfill Superfund NRD allocation to change the project boundaries in order to ensure that Denver is not receiving NRD funds for the same project from both the Foundation Fund and the Lowry Landfill Fund.

Director Rudolph inquired about the width of the proposed greenspace, water quality, and aquatic life. Deputy Director Randall noted that, while there were some discrepancies in the required amount of matching funds over the course of the project, he was comfortable with the current match.

Rocky Mountain Arsenal Recovery Fund – Adams County Request to Amend Conditions of Approval

David Banas provided a summary of the request to amend conditions submitted by Adams County, which would allow two existing oil and gas leases to continue. He then introduced Marc Pedrucci of Adams County Parks and Wade Shelton of the TPL. Mr. Pedrucci explained that Adams County has been working in partnership with the TPL on two land acquisitions, Willow Bay and the 10365 Property. This request concerns the 10365 Property, where there are two existing oil and gas leases. According to Mr. Pedrucci and Mr. Wade, one lease is not in production, although the lease remains in effect by the lease owner paying a nominal royalty to the landowner. The other lease remains in active production, but is in steady decline and not expected to produce beyond 2018. Mr. Pedrucci and Mr. Wade explained that the lease owners can keep the leases active, continue to pay royalties, and while it is unlikely, they could potentially re-drill at a later date. They indicated that there is no current soil or groundwater contamination and regulations would require that any future drilling be remediated, so in their view, the overall conservation would not change if the leases continued. In a related note, each lease required a bond in the amounts of \$70,000 and \$60,000, respectively, to be used for remediation.

Mr. Wade indicated that they could potentially acquire the leases or in the alternative they could place a conservation easement and deed restrictions on the property. While the current drilling is vertical, Deputy Director Randall inquired about the potential for horizontal drilling. Mr.

Pedrucci acknowledged that horizontal drilling would be possible and, while re-drilling would cause some interim surface disturbance, a conservation easement and deed restrictions would prevent any new surface developments. Director Rudolph commented that under the current leases, the lease owner can develop additional surface if desired. Director Rudolph also noted that the current lease includes a compliance order which could indicate past non-compliance. Adams County and the TPL stated their belief that the risks involved with amending the conditions of approval are heavily outweighed by the benefits of having additional managed open space. Mr. Pedrucci mentioned that the County has plans for limited public use including a public trail. Ms. Shpall inquired about the cost to acquire and extinguish the leases. Mr. Pedrucci stated that one lease owner had asked \$60,000, while the other lease owner was not interested in selling at this time.

Proposed Bill Allowing CDPHE to Expend Money from the Hazardous Substances Response Fund (HSRF) to Pursue Oil Pollution Act (OPA) Cases and To Deposit Recovered Funds in the Natural Resource Damages Recovery Fund (NRDRF)

David Banas provided a brief summary of the Trustees' previous direction related to pursuing a legislative change to the Hazardous Substance Response Fund and Natural Resource Damage Recoveries Fund. Attorney General Coffman introduced Jennifer Anderson, Legislative Director for the Attorney General's Office. Ms. Anderson explained that the legislative representatives from CDPHE, DNR and the AGO have had preliminary discussions with stakeholders, including representatives from oil & gas, waste management and municipalities, and they have said that, as long as the scope of the legislation is limited to moving funds from one place to another and the title of the bill reflects that limited scope, they would not likely oppose the bill. The legislative representatives from CDPHE, DNR and AGO agree that the best way to move the bill forward is to bring it before the Joint Budget Committee ("JBC") and request that they bring it as a committee bill. In order for it to be a JBC bill, it must receive a unanimous vote from the six members of that committee. Such a vote would take place at the JBC's January 2016 meeting. Deputy Director Randall noted that he had heard the same thing from his legislative liaison, Gaspar Perricone. Ms. Anderson suggested that the proposed bill be presented to the JBC for sponsorship through one or all of the departments' fiscal analysts for consideration by the JBC. Director Rudolph noted that the Trustees have been working on this solution for a long time and that it would be helpful to vote in support of moving forward with proposing this legislation to the JBC.

Gold King Release Update

Ms. Shpall provided some background on similar NRD situations. She explained that cleanup work on the Gold King release is being done now, but she was not aware of any natural resource damages assessment. Deputy Director Randall shared that it was his understanding that there are no contemporaneous or acute damages, but there might be ongoing chronic impacts in which case attribution would be difficult because releases are happening continuously. It was agreed that many governmental and nonprofit entities are doing water quality testing following the Gold King release. Attorney General Coffman asked whether the Trustees need an independent assessment of environmental impacts and whether Trustee staff should study the benefits and costs of an independent assessment. Ms. Shpall explained the continuum of cleanup and

remediation and that NRD's involvement would be at the end of the continuum, after a "back end" assessment was conducted in order to make communities whole. It was noted that federal tort claims are currently being filed for private injuries and that the EPA extended the deadline to file to 180 days. Ms. Shpall mentioned that it is necessary to distinguish between an individual tort claim and public damage. She further noted that NRD's causation requirement means that the damages must be traced to a responsible party and, in such cases, proving liability could mean a costly trial.

Executive Session

Attorney General Coffman noted four 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 11:20 a.m., Attorney General Coffman moved to begin the executive session to allow the Trustees to discuss privileged topics concerning the CCOD replacement project, the Adams County request to amend conditions of approval, proposed OPA legislation, and possible natural resource damages resulting from the Gold King release. Deputy Director Randall seconded the motion, and the motion was unanimously approved. Such discussion, being attorney-client privileged, is authorized under C.R.S. section 24-6-402(3)(a)(II) and C.R.S. section 24-6-402(d.5)(1)(B). The executive session was digitally recorded. No other business was conducted, no minutes were taken. At 12:45 p.m., Deputy Director Randall moved to end the executive session, Attorney General Coffman seconded the motion, and it was unanimously approved, whereupon executive session was ended.

Open Session

Ms. Shpall stated for the record the Trustees discussed legal issues concerning the CCOD replacement project, the Adams County request to amend conditions of approval, proposed OPA legislation, and possible natural resource damages resulting from the Gold King release.

Director Rudolph moved: 1) to amend the Lowry Landfill Superfund NRD allocation made to CCOD for the Westerly Creek project with the conditions that the State contract be revised to redefine the project area as described by the CCOD in its proposal today, and that CCOD work with Trustee staff to revise the budget showing that 50% matching funds meet the Trustee guidance document requirements where at least 25% of the match be used towards NRD-related improvement; 2) to approve the current request by CCOD for the allocation of \$500,000 from the Rocky Mountain Arsenal Foundation Fund; and 3) to direct Trustee staff to prepare two resolutions to memorialize these approvals. Attorney General Coffman seconded the motion, and the motion was unanimously approved.

Attorney General Coffman expressed the Trustees' concerns regarding the request submitted from Adams County to amend the conditions of approval of funding from the Rocky Mountain Arsenal Recovery Fund so that existing oil and gas leases may continue. Attorney General Coffman suggested that Adams County attempt to re-negotiate the acquisition of the leases. Attorney General Coffman reminded Adams County and the TPL that NRD funds may be used to purchase such leases. Director Rudolph also expressed the Trustees' concerns about the broad rights under the two existing oil and gas leases and agreed that the leases needed to be

extinguished or a more restrictive surface use agreement needed to be negotiated. Attorney General Coffman moved that Trustee staff work with Adams County and the TPL on those suggested actions as the Trustees would like the project to succeed. Deputy Director Randall seconded the motion, and the motion was unanimously approved.

Deputy Director Randall moved that the Trustees direct Trustee staff and agency legislative liaisons to pursue a change to state law which will allow CDPHE to expend funds from the HSRF to investigate and pursue OPA NRD claims and to deposit recovered funds in the NRDRF. Deputy Director Randall noted that he and Director Rudolph reserved the right to modify this approval based upon discussions with the DNR and CDPHE management. Director Rudolph seconded the motion, and the motion was unanimously approved.

Attorney General Coffman moved that the Trustees direct Trustee staff to analyze the universe of evidence-quality data from the Gold King release and determine whether additional data is needed to assess natural resource damages. If data gaps are identified, Trustee Staff should make a recommendation about the feasibility and estimated cost of an independent natural resources injuries assessment by an outside contractor. Director Rudolph seconded the motion, and the motion was unanimously approved.

At 1:00 p.m., Director Rudolph moved to adjourn the meeting, Deputy Director Randall seconded the motion, and the motion was unanimously approved.

AGENDA #3

Northeast Greenway Corridor



Rocky Mountain Arsenal Natural Resource Damages (NRDs) Recovery Fund **Project Funding Application Packet**

Page 1: Project Submittal Summary Information:

**Rocky Mountain Arsenal Natural Resource Damages
Recovery Fund Project Application**

Project Name: Willow Bay Property Acquisition

Brief Project Description (this information may be posted on the website):

The purchase of a 163-acre open space property that contains important riparian and wetland habitat adjacent to and abutting the South Platte River in Adams County. This property is known as "Willow Bay" and is along the east bank of the South Platte River within the city limits of Brighton. This parcel consists of approximately 163 acres of riparian and upland habitat, wetlands, and surface water. The property contains a 100-acre lake that resulted from gravel mining prior to 1980, and therefore is exempt from evaporative loss augmentation requirements per S.B. 90-120. This acquisition will preserve important South Platte River habitat and will add to the 2,500 acres of open space (fee owned and conservation easements) that Adams County has permanently preserved as open space along the South Platte River.

Project Applicant: Adams County Parks & Open Space Department

Point of Contact: Marc Pedrucci
Name: Adams County Parks & Open Space Dept.
Address: 9755 Henderson Road, Brighton, CO 80601
Phone: 303.637.8014
Email: mpedrucci@adcogov.org

Approximate Amount of NRD Funding Requested: \$3,685,901

Anticipated Matching Fund Sources, Value and Status: (1) Adams County Open Space Sales Tax Grant, \$3,000,000 – The County will apply for an ADCO Open Space Grant in the Fall 2016 grant cycle (application due August 1, grant awards to be announced in November 2016). (2) Great Outdoors Colorado – Protect Initiative, \$3,000,000 – Adams County and the Trust for Public Land submitted a "concept paper" for this funding initiative and has been informed by GOCO that we will be asked to submit a full application in Fall 2016 (applications due November 4, grant awards to be announced December 8). (3) Adams County Open Space Sales Tax distributions, \$400,000 – The County intends to use a portion of our distribution of the ADCO Open Space Sales Tax (30% shareback) to apply towards the Willow Bay acquisition. (4) Urban Drainage & Flood Control District(UDFCD) – We have been informed by UDFCD that they intend to contribute floodplain preservation funds to this acquisition, but we have not been informed of the contribution amount.

Signature of Authorized Representative of the Applicant:

Name: Marc Pedrucci
Date: 10/17/16

Page 2: Compliance with Screening Criteria:

Projects must first meet the Screening Criteria below to be considered.

Check all that are met by the project proposed in this application:

- ✓ The project must restore, enhance, replace, or acquire the equivalent of the natural resources (and/or their ecological services) that were injured by hazardous substance releases from the Rocky Mountain Arsenal (See Project Application Guidelines, pages 5 to 9, below).
- ✓ The project must be located in the vicinity of the Rocky Mountain Arsenal, or demonstrate an ecological nexus to the injured natural resources (i.e., provide benefit to local ecology or habitat).
- ✓ The project must be consistent with the legal requirements for the use of NRD funds. NRDs funds may be used to augment existing or ongoing projects that meet the NRDs criteria so long as they do not duplicate current activities, and address the restoration objectives.
- ✓ The project must be consistent with the objectives and goals of the Rocky Mountain Arsenal National Wildlife Refuge¹.
- ✓ The project must comply with laws, including local ordinances and zoning.
- ✓ The project must be consistent with the protection of public health and safety.
- ✓ The project must be consistent with local and regional planning, including resource management plans.
- ✓ The project must provide matching funds. At a minimum, the proposal must include matching funds or in-kind services equaling at least 25 percent of the total project cost.

¹ The Rocky Mountain Arsenal CMP is available online at: (<http://www.fws.gov/mountain-prairie/planning/ccp/co/rkm/rkm.html#Documents>).

Page 3: Project Map

Insert a .pdf map (with an aerial photo base) at 11 x 17 showing:

- Project characteristics and boundary
- Existing natural resources
- Other existing physical conditions
- Other nearby projects planned or in progress by your agency
- Existing zoning of the project area (1 mile radius)
- Comprehensive Plan designations of the project area (1 mile radius)

Attach to the application a digital copy of the project map, with above layers in ArcGIS shapefiles.

Map provided as separate document.

Pages 4-13: Response to the Evaluation Criteria:

In addition to the Screening Criteria above, the Northeast Greenway Corridor Working Group, in collaboration with representatives for Colorado's Trustees, has developed other Evaluation Criteria. These criteria will be used to evaluate project submittals. Use up to 10 pages to respond to the following Evaluation Criteria:

1. Environmental

- a. Amount of benefit to the damaged natural resources
 - Surface water
 - Groundwater systems
 - Soils
 - Biological resources (fish and other aquatic biota, wildlife, terrestrial and aquatic vegetation and associated habitats, wetlands)
 - b. Addresses a critically important local or regional environmental resource
 - c. Proximity and/or connectivity to regional natural system (riparian, uplands)
 - d. System-focus (multiple resources and/or actions)
- a. Amount of benefit to the damaged natural resources

Surface water:

This project will benefit surface water in a variety of ways. First, the primary goal of this project is to preserve a former gravel pit lake that is 100 surface acres in size. Since this acquisition will be required to have a conservation easement placed on it, the surface water will be preserved in perpetuity and will prevent any physical alterations to the shoreline that would alter the surface acreage. Second, while this project is only requesting funds for acquisition and not for restoration, the County fully intends to restore and stabilize the eroded shorelines of this lake, which will reduce erosion and improve water quality. Finally, other anticipated restoration efforts including enhancing wetlands surrounding the lake and making water quality improvements in the Second Creek channel upstream of the lake will also improve water quality.

Groundwater systems:

The enhancement and restoration of wetlands and riparian areas within the project area which is immediately adjacent to the South Platte River will benefit alluvial groundwater systems along the river by promoting and improving infiltration during and after high flows. Wetland and riparian communities in these areas will also benefit groundwater by improving groundwater quality.

Soils:

First, the anticipated restoration efforts that will be conducted after acquisition of the Willow Bay property will improve soils by reducing scouring and erosion during high flow periods. Second, by acquiring and placing a conservation easement on the property, we will be prohibiting most

types of soil disturbances that could otherwise occur.

Biological resources:

The Willow Bay property contains critical wildlife habitat and migration corridors that will be preserved along the South Platte River and Second Creek. As a former gravel pit with average depths in the 20-25 feet range, the lake provides an excellent fishery for numerous warm water species as well as aquatic bird species including white pelicans, great blue herons, bald eagles, and other species that utilize the lake and associated wetlands. Combined with the riparian habitat along the South Platte River, and the uplands on the southern and eastern sides of the lake, this property is a haven for wildlife including white-tailed deer, wild turkeys, coyotes, and birds including migratory songbirds, waterfowl, and raptors.

Much of the upland areas of the Willow Bay property are disturbed sites due to previous gravel mining operations, and contain a variety of noxious weeds. After acquiring the property, the County will implement a noxious weed control program. This will reduce weed populations, and allow native grasses to compete and help restore short-grass prairie habitat. Approximately 40 acres of short-grass prairie habitat have potential for restoration.

- b. Addresses a critically important local or regional environmental resource

The Willow Bay acquisition is directly adjacent to the South Platte River, the largest and most ecologically diverse drainage in the Denver metro area. As a result, the importance of preserving a large undeveloped open space property with a 100-acre lake along the South Platte cannot be understated. This project would enhance and complement the open space and open water that has already been preserved along the South Platte to the south and north of Willow Bay, and prevent fragmentation of an important wildlife corridor.

- c. Proximity and/or connectivity to regional natural system (riparian, uplands)

The Willow Bay property is directly adjacent to the South Platte River, the largest riparian corridor in the Denver metro area. Therefore it is both proximate and connected to a regional natural system.

- d. System-focus (multiple resources and/or actions)

There are numerous natural resources that will be acquired and preserved by the property acquisition of Willow Bay. These natural resources include open water, groundwater, upland habitat, wetlands, and the riparian habitat of both the South Platte River and Second Creek.

2. Connectivity to the Arsenal

- a. Proximity to the Rocky Mountain Arsenal
- b. Ecological or geographical connection to the Rocky Mountain Arsenal
- a. Proximity to the Rocky Mountain Arsenal

The proposed Willow Bay property acquisition is located approximately 5 miles northwest of the RMA. Willow Bay is 4 miles directly west of Barr Lake State Park, and is located at the confluence of Second Creek and the South Platte River.

b. Ecological or geographical connection to the Rocky Mountain Arsenal

Willow Bay has an ecological and hydrological connection to the RMA due to Second Creek, which runs from the northeast corner of the RMA to the Willow Bay property. Further connectivity to regional natural systems include the fact that along the South Platte River corridor, which includes Barr Lake and the RMA, is the central flyway of migratory waterfowl in the western United States. The South Platte River and connected natural systems are critical stopover locations for a wide variety of birds.

The South Platte River is the largest and most ecologically important drainage in the Denver Metropolitan area. Most of the creeks and drainages in the Denver metro area flow into the South Platte River. The 100 year floodplains of the drainages and water bodies are critical to regional open space systems; they handle the runoff from developed lands, contain wetlands and riparian zones, and provide essential wildlife movement corridors to connect the fragmented habitats.

3. Project Feasibility

- a. Demonstrated high likelihood of success, technically feasible and procedurally sound
- b. Project completion (identified project timeline and completion date. Shovel ready.)
- a. Demonstrated high likelihood of success, technically feasible and procedurally sound

The Willow Bay acquisition has a very high likelihood of success for numerous reasons. First, Adams County has partnered with the Trust for Public Land (TPL) to help facilitate this acquisition. TPL has a proven track record of being able to complete complex open space projects, and they have been a partner with Adams County on nine (9) open space projects along the South Platte River since 2000. Second, TPL has recently executed an Option Agreement with the Willow Bay owners to acquire this property in fee. Third, Adams County has a dedicated open space sales tax program that allows for acquisition of important open space properties like Willow Bay, and the County will be able to contribute significant matching funds to this project. And finally, we have been notified by GOCO that we will be asked to submit a full Protect Initiative grant application in November 2016. Although GOCO funding has not been awarded, we are cautiously optimistic that we will receive GOCO funding because Willow Bay is an incredible property with great potential for natural resource restoration and passive recreation opportunities.

- b. Project completion (identified project timeline and completion date. Shovel ready.)

As mentioned above, the property is currently under contract for purchase by TPL and a closing date of April 2017 is being targeted. TPL has contracted for an appraisal of the property, a survey is underway, and other due diligence items including a Phase I environmental report and title commitment review will occur in 2016 and 2017.

4. Sustainability

- a. Degree to which benefits to natural resources will be sustained over the long term, based on project design.
 - b. Identify the amount of, and responsible party for, permanent support (e.g. maintenance) and protection (e.g. land ownership or easements) to be provided to a project area.
-
- a. Degree to which benefits to natural resources will be sustained over the long term, based on project design.

The benefits to natural resources will be ensured over the long term in a various ways. First, the NRD Trustees will require a conservation easement to be granted by Adams County to an approved neutral third party as a condition of receiving NRD Recovery Funds monies. Adams County Open Space Policies & Procedures also require a conservation easement to be granted for passive open space acquisitions, and if GOCO funding is received for Willow Bay they would also require a conservation easement on the property. The conservation easement will identify the Conservation Values for the property and ensure that the property is developed and managed in a manner that will sustain and benefit the natural resources.

Second, in addition to a conservation easement being placed on the property, Willow Bay will also be required to have a land management plan to ensure good resource management and stewardship of the property. The management plan will address all facets of natural resource management including noxious weed control, erosion control, forestry, re-vegetation of disturbed sites, and restoration of various habitats including wetlands, riparian areas, and short-grass prairie.

- b. Identify the amount of, and responsible party for, permanent support (e.g. maintenance) and protection (e.g. land ownership or easements) to be provided to a project area.

Adams County was created in 1902, encompasses 759,000 acres, and had a 2010 population of 441,000 residents. The annual budget for Adams County is \$441,000,000. The responsibility for management, permanent support and project implementation will reside with Adams County Parks & Open Space Department (POSD).

The POSD provides parks and recreation opportunities for county residents through the acquisition, construction and maintenance of county parks, trails, open space and facilities. The POSD provides the following services: planning, management, and maintenance of the county parks system including the Regional Park/Fairgrounds; manages public park buildings, open space and lake areas, trail systems and developed parks; noxious weed management; administers the Adams County Open Space Sales Tax Program, the Conservation Trust Fund, and the POSD portion of the General Fund; and provides education and outreach via the Adams County CSU Cooperative Extension.

The POSD accomplishes this with 40 full time employees with an additional 30 temporary employees hired for seasonal maintenance work. The POSD has an annual budget of approximately \$3.7 million dollars to accomplish its goals. Parks maintains its entire portfolio of fee owned lands at a high level of service, including trash removal and vandalism repair, noxious weed management, maintenance and replacement of park visitor amenities and facilities, natural

resource inventories and planning. Protection and enforcement of County owned and managed and facilities is conducted by the Adams County Sheriff's Office.

5. Cohesive Regional Plan

- a. Demonstrate how the project contributes to an integrated regional restoration plan

The Willow Bay property is located along the South Platte River. The South Platte River ecosystem consists of cottonwood forests, seasonal emergent wetlands, wet meadows, oxbows, man-made lakes and reservoirs, sandbars and short grass prairie habitat. This extensive complex supports an amazing abundance of migratory wetland dependent bird species and is a primary wildlife movement corridor.

Acquisition of the Willow Bay property would contribute significantly to accomplishing the goals of the South Platte River Heritage Corridor Plan. This Plan provides a strategic framework for preserving and enhancing the natural, cultural, and recreational qualities of the river corridor through Adams County. The project focuses on a 17-mile stretch of the South Platte within Adams County from Commerce City to Brighton and seeks to protect and restore its special qualities. The Heritage Plan outlines a strategic action plan that protects and enhances natural areas, provides new recreational opportunities to the public, forges new public-private partnerships to foster enhanced restoration and reclamation of gravel mining areas, establishes an environmental education program focusing on the river system, and protects key agricultural lands.

The Willow Bay property is specifically identified for protection in the South Platte River Heritage Corridor Plan. The Plan states "One of the key sites identified for protection is the 200-acre Willow Bay property. The site was identified by the CDOW as one of two pilot project sites to assess the feasibility of creating an 'urban aquatic resource.' In the CDOW's concept paper it stated that the Willow bay site '...has a potential for enhancing environmental education, outdoor recreation, watching wildlife and aquatic habitat preservation goals of the South Platte corridor in the northern Denver Metro area.' Willow Bay offers the potential for both protecting a relatively large body of water (100 acres) with its associated habitat, and providing a quality fishing resource in close proximity to urban areas."

Willow Bay – NRD Trustee Questions

1. Some further detail about the increase in property price from the time the original proposal and the current agreed upon price.

The reason for the increase in the purchase price is the result of additional appraisal work that the Trust for Public Land (TPL) undertook with Adams County and the Sellers in order to ensure that we had a fair price that was an accurate reflection of the property's fair market value, and that would meet the appraisal requirements of the NRD Trustees, GOCO, Adams County, and TPL. This appraisal work was needed in order to bridge a substantial difference between the County's appraisal (Hunsperger & Weston, 2014),

which indicated a fair market value of \$6 million, and the Seller's appraisal (Wild Rose Appraisers, 2014), which indicated a fair market value of \$16 million. We had hoped that the Seller's would agree to sell for the lower value, but once it was clear that they would not, we enlisted TPL to help resolve the issue.

Towards that end, TPL hired Hegarty & Gerken Appraisers to evaluate both appraisal reports, so that all parties could understand why they had such dramatic differences in value and identify a path forward that would meet everyone's standards and requirements. As a firm that is regularly hired to review appraisal reports on behalf of GOCO and has extensive experience in water rights and land appraisals, Hegarty & Gerken was the ideal firm to tackle these questions. Upon reviewing both reports, they reached the following conclusions:

- The fair market value of the property is ultimately based not only on the development value of the land and water rights based on the real estate and water rights markets, but also the value of the reservoir for water storage, and for the additional sand and gravel that would be removed from the reservoir in order to make it suitable for water storage. As a result, a fair and accurate appraisal of the property would need to account not only for the value of the land and water rights, but also the value of the additional sand and gravel resources and the cost of excavating and preparing the site for water storage. In order to determine the latter two items, an engineering firm would need to evaluate the property.
- The County's appraisal took the appropriate approach to the land and water rights valuation, but the appraisal firm did not have the expertise needed to evaluate the sand and gravel resources or the cost of excavating and preparing the site. They were also not contracted to consult an engineering firm, as that would add an additional \$25 – \$30,000 to the appraisal costs. As a result, they essentially “punted,” indicating that additional research would need to be completed to answer those questions.
- The Seller's appraisal also took the appropriate approach to the land and water rights valuation, but took a “best case scenario” approach to determining the value of the additional sand and gravel resources, and the cost of excavating and preparing the site. This resulted in an extremely high value that would not pass any appraisal review by the County, TPL, GOCO or the NRD Trustees without an engineering study to back it up. As a result, you had an appraisal with an extremely high value that was not justifiable.
- Hegarty & Gerken consulted with another land and water appraisal firm, McCarty Land & Water Valuation, who has similar expertise in land and water rights valuations, and would be the only logical choice as a GOCO review appraiser if

Hegarty & Gerken appraised the property for a GOCO funded acquisition. McCarty Land & Water Valuation agreed that Hegarty & Gerken's recommendation was the appropriate method to appraise the property, and TPL consulted with GOCO staff to ensure that they agreed with the approach as well. This gave the Seller enough confidence that working with Hegarty & Gerken was the best way to determine the true fair market value of the property, and if a transaction was workable for both parties.

Thanks to all of this additional research, the Seller agreed to work with TPL and Hegarty & Gerken to complete a preliminary evaluation of the property in the late summer of 2015. Hegarty & Gerken contracted with an engineering firm that specializes in this work to get a preliminary estimate of value of the likely sand and gravel resources and the cost of excavating and preparing the site. That preliminary estimate was completed in January 2016 and concluded that the likely appraised fair market value of the property is \$10 million. TPL was able to convince the Sellers to agree to sell the property at that price, to donate any additional value should the property appraise for more than \$10 million, and codified that into a formal option agreement securing the purchase in April 2016. Finally, both TPL and the County have hired Hegarty & Gerken to complete a formal appraisal of the property, which includes the additional engineering study, at a cost of \$54,000.

2. Further detail about the project's budget (including any non-NRD match and NRD match). Detail about non-NRD vs. NRD match monies are included in our guidance document here.

The project is well positioned to more than meet NRD's minimum match requirement of at least 50% of the project funding comes from other sources. Specifically, the \$10 million purchase price will be funded as follows:

- \$3.3 million – Adams County Open Space Funds (secured)
- \$3 million – GOCO Protect Grant (Concept Paper approved, formal application due in early November, grant decision in mid-December)
- \$3.7 million – NRD Trustees
- Should the property appraise for more than \$10 million, all additional value will be donated (e.g. - \$11 million appraised value = \$10 million purchase price, with a \$1 million land value donation)

As a result, should the property appraise for \$10 million, NRD Funds would fund 37% of the project costs, with Adams County and GOCO funding 63% of the project costs.

3. A map of the new project area. Attached.



4. The proposal mentions “passive” recreational opportunities on the site. We assume this means non-motorized activities, but could you provide a little more detail? Would there be any need for infrastructure to support those activities?

Some of the passive recreational opportunities that are anticipated on the site include hiking, picnicking, and wildlife viewing. The South Platte River Trail is planned to be developed on the west side of the lake in the near future and would be a non-motorized multi-use trail that would allow bicycling, equestrian use, hiking, and other passive uses.

The 100-acre lake affords the opportunity for a variety of water-based recreation, and the County and the Trust for Public Land feel that non-motorized uses would be the most appropriate. Canoeing, kayaking, paddleboarding, fishing, and possibly swimming are some of the passive recreational activities that may be allowed on the site.

There would be a need for infrastructure to support these passive recreational opportunities. Basic amenities such as a parking lot, restrooms, trash receptacles, and

signage would be required to facilitate public access. Additional recreational infrastructure could include picnic shelters and tables, grills, soft-surface and concrete trails, fishing piers, boats dock, a swim beach, boat ramps, and possibly other improvements. Please understand this is only a list of possible and likely improvements, but any actual improvements would be developed only after a master planning process with input from the community. Also please note that we are requesting NRD funds **ONLY** for the acquisition of the Willow Bay property, and that any future recreational development would be accomplished with non-NRD funds – and of course subject to any restrictions placed on the property via the deed of conservation easement.

**Rocky Mountain Arsenal Natural Resource Damages (NRDs)
Foundation & Recovery Fund
Project Application Guidelines**

Allocation of NRD Funds

Federal law requires that all NRDs funds be used only to restore, enhance, replace, or acquire the equivalent of injured natural resources. NRDs funds are specifically designated for construction-type restoration projects and land/easement acquisition; NRDs funds may not be used for planning, environmental studies, or administrative-type projects, for responsibilities assumed under other regulatory programs, for reimbursements or repayments of pre-existing obligations, or for long-term administration and operations and maintenance (O&M).

Target: Natural Resources of the Rocky Mountain Arsenal

The following natural resources were injured, destroyed or lost as a result of the release of hazardous substances from the Rocky Mountain Arsenal Superfund Site:

- Surface water
- Groundwater systems (aquifers, groundwater-surface water interactions)
- Geologic resources (i.e., soil)
- Biological resources (i.e., fish and other aquatic biota, wildlife, terrestrial and aquatic vegetation) and associated habitats
- Wetlands

Approaches to Restore, Enhance, Replace, or Acquire

To be eligible for NRDs funds, projects must provide benefits to the target natural resources (above) using one or more of the following approaches:

- *Restoration.* An injured resource can be included in the project even if the impact to it occurred from some other cause than the Rocky Mountain Arsenal operations. Examples include, but are not limited to:
 - restoration of native vegetation in an existing grassland degraded by erosion and invasive non-native vegetation to improve wildlife habitat, groundwater recharge, and surface water quality protection
 - restoration of wetlands to reduce storm flow and increase infiltration, thereby reducing evaporative losses, increasing the quantity of available groundwater, and restoring groundwater-surface water interaction.
- *Enhancement.* Improving a resource that, while not in need of complete restoration, may be enhanced to increase the environmental benefits of that resource. Examples are similar to the above, but to a lesser extent.

- *Replacement/Acquisition.* Replacement or acquisition of natural resources equivalent to those injured or lost as a result of historic operations at the Rocky Mountain Arsenal Superfund Site. Examples include, but are not limited to purchase of fee or conservation easement to preserve:
 - wetlands, riparian areas, and other ecosystems;
 - open space to be maintained in a natural state for protection of water quality and wildlife habitat.
 - existing habitat at high risk of development (i.e., would result in the loss of high value wildlife habitat and/or groundwater recharge).
 - protective buffers or core areas of high wildlife value.

Screening Criteria

Projects must first meet Screening Criteria to be considered.

The Screening Criteria listed below were developed by the Trustees to eliminate those projects that are clearly inconsistent with law and with the requirements of the Trustees.

1. The project must restore, replace, or acquire the equivalent of the natural resources (and/or their ecological services) that were injured by hazardous substance releases from the Rocky Mountain Arsenal.
2. The project must be located in the vicinity of the Rocky Mountain Arsenal, or demonstrate an ecological nexus to the injured natural resources (i.e., provide benefit to local ecology or habitat).
3. NRDs funds may be used to augment existing or ongoing projects that meet the NRDs criteria so long as they do not duplicate current activities, and address the restoration objectives.
4. The project must be consistent with the objectives and goals of the Rocky Mountain Arsenal National Wildlife Refuge².
5. Comply with laws, including local ordinances and zoning.
6. Protect public health and safety.
7. Be consistent with local and regional planning, including resource management plans.
8. Provide matching funds. At a minimum, the proposal must include matching funds or in-kind services equaling at least 25 percent of the total project cost.

² The Rocky Mountain Arsenal CMP is available online at: (<http://www.fws.gov/mountain-prairie/planning/ccp/co/rkm/rkm.html#Documents>).

Evaluation Criteria

In addition to the Screening Criteria above, the Northeast Greenway Corridor Working Group, in collaboration with representatives for Colorado's Trustees, has developed other Evaluation Criteria, which are listed in the Application Form. These criteria will be used to evaluate various project submittals.

Considerations Regarding Matching Funds and In-Kind Services

Should an Applicant fail to secure committed matching funds prior to commencement of the work, such that the project's viability is compromised, the following actions may be taken:

- The project may be put on hold for a designated time period to give the Applicant additional time to secure other funds;
- The project may be scaled back to match the amount of funding available (if multiple funding sources were proposed and the Applicant was able to secure most but not all of the matching funds); or
- The NRDs funding may be cancelled in total, and the funds allocated to projects next in line.

Implementation of Selected Restoration Projects

Proposers will be expected to implement the projects in accordance with the budget and schedule submitted in the proposal. Changes to the projects must be approved by the Trustees or their designees, and must meet the criteria for project selection. The Department of Public Health and Environment (CDPHE) will be responsible for project oversight and agency coordination. The CDPHE may delegate oversight responsibilities if it desires.

Administrative Responsibilities

The Department of Public Health and Environment will initiate and finalize administrative procedures for fund expenditure.

State Contractual Requirements

Generally, the recipient will carry out the project under a multi-year, line item, cost-reimbursement contract with the State of Colorado. The contractor will be reimbursed for actual incurred costs, not to exceed the contract value.

Anticipated Timeline and Key Dates (see website for official timeline and deadlines)³

- February 1, 2012 -- Recovery Fund project solicitation; applications available
- February 8, 2012 -- Workshop for interested applicants --~~4:30~~ 3:00 p.m., [Rocky Mountain Arsenal Wildlife Refuge Visitor Center](#)
- April 11, 2012 -- Recovery Fund project applications due
- April – May 2012 -- Project evaluations and development of Northeast Greenway Corridor Restoration Plan with specific recommendations for Foundation Fund projects and general recommendations for Recovery Fund projects

³ Please see <http://northeastgreenwaycorridor.org/> for up-to-date information and any changes to this schedule.

- June 29, 2012 -- Northeast Greenway Corridor Restoration Plan submitted to State NRD Trustees and posted on website, with proposed Foundation and Recovery Fund projects
- July 2012 to July 2017 -- Trustees decide on funding for Foundation Fund projects and implement a process to determine recipients of Recovery Fund monies

**COLORADO NATURAL RESOURCE TRUSTEES
RESOLUTION NOVEMBER 4, 2016
CONCERNING ADAMS COUNTY'S WILLOW BAY PROPERTY
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 Rocky Mountain Arsenal ("RMA") natural resource damages ("NRDs") settlement established a fund of \$10 million for Northeast Greenway Corridor projects ("Foundation Fund") and a fund of \$17.4 million for NRDs projects ("Recovery Fund");

WHEREAS, on November 17, 2014, the Trustees approved an integrated set of resource restoration projects proposed by the Northeast Greenway Corridor Advisory Committee ("NGC") for the Recovery Fund monies, including approving Adams County's request for \$3,685,901 to acquire two parcels totaling 224 acres along the South Platte River, subject to several conditions;

WHEREAS, the November 17, 2014 resolution approving Adams County's request for money recognized "the Recovery Fund money is not available until interest earned on the Fund repays the Hazardous Substances Response Fund and the State General Fund for the approximately \$2.2 million in litigation expenses incurred by the State in pursuing its NRD claim against Shell Oil Company and the United States Army";

WHEREAS, as of October 2016, approximately \$490,000 in litigation expenses remains to be repaid;

WHEREAS, on February 27, 2014, the Trustees agreed in principle to the Northeast Greenway Corridor Working Group's ("NGC") proposal for each NGC project proponent to pay a percentage of the remaining litigation expenses to "unlock" the Recovery Fund money sooner than the interest will repay the litigation expenses;

WHEREAS, due to increases in property values in the region, Adams County now seeks to amend their request for money pursuant to their Willow Bay Property Acquisition project application, dated 10/17/2016, which requests

\$3,685,901 to purchase a 163 acre open space property abutting the South Platte River in Adams County;

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

The Trustees do hereby approve release of \$3,685,901 (“Funds”) from the RMA NRD Recovery Fund to be applied toward Adams County’s (“Proponent”) project as described in its “Willow Bay Property Acquisition” proposal (“Proposal”), dated October 17, 2016, subject to the following conditions:

- 1) This approval expires five years from the date of execution of this resolution.
- 2) Release of the Funds is contingent on the Proponent contributing matching funds to the project pursuant to the Proposal and consistent with the Trustees’ matching funds policy;
- 3) Prior to release of any of the Funds, interest on the Recovery Fund must fully repay the litigation expenses or the Proponent must repay litigation expenses in an amount and manner determined by the Trustees’ staff;
- 4) Any land acquired with the Funds must be encumbered by a conservation easement that has been reviewed and approved by the Trustees’ staff. The conservation easement:
 - a. must include an agricultural use plan or management plan;
 - b. must prohibit disturbance of the surface of the property during any extraction of subsurface oil and gas;
 - c. must prohibit further mining of sand and gravel;
- 5) 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, Deputy Director, DNR

Date

DRAFT

AGENDA #4

RESOLUTION OF THE SUMMITVILLE NATURAL RESOURCES TRUSTEES

WHEREAS, a Memorandum of Understanding (MOU) between the Federal and State Natural Resources Trustees (Trustees) was duly signed, executed, and became effective June 19, 2002; and

WHEREAS, the MOU by its terms, specifically paragraph XII.G, expires on December 31, 2006, but may be extended an additional five years by written agreement of all Trustees; and

WHEREAS, the Trustees desire to extend the MOU an additional five years to continue the cooperation, oversight, and project recommendation, selection, and implementation activities that are occurring among the Trustees, the Trustees' Council and the local community; and

WHEREAS, sections IX and X of said MOU provide for the expenditure of funds from the Federal Summitville Restoration Account, which resides with the Restoration Fund Manager, Department of the Interior, and the State Summitville NRD Trust Fund, for the funding of specific projects to restore, replace, or acquire the equivalent of natural resources damaged by hazardous substance releases from the Summitville Mine;

WHEREAS, the Alamosa River Watershed Master Restoration Plan (Master Plan) has been developed under the supervision of and in cooperation with the Trustees' Council and has been approved by the undersigned Trustees in accordance with paragraph VIII(A) of the MOU;

WHEREAS, the Master Plan has identified three "tiers" of restoration projects;

WHEREAS, the Trustees' Council has diligently developed the Solicitation for Proposals for Phase I of the project implementation contemplated in the Master Plan and has received and evaluated three such proposals within the last year; and

WHEREAS, the Trustees' Council and the "Working Group" established by the Council to evaluate proposals for Phase I to implement restoration projects selected in the Master Plan, have unanimously recommended that the Trustees approve funding for three Phase I projects identified in Tiers 1 and 2 of the Master Plan, for an amount totaling \$2,354,325; and

WHEREAS, the three projects identified above are captioned as the "Alamosa River In Stream Flow" project, the "Alamosa River Watershed Restoration" project, and the "Public Land Alamosa River Watershed Restoration" project, and as they are more particularly described in Appendix A attached hereto; and

WHEREAS, the three projects identified above and recommended by the Trustees' Council meet the criteria established by the Trustees for natural resources restoration in the Alamosa River Watershed;

NOW THEREFORE,

BE IT RESOLVED that the MOU is hereby extended for five years to be terminated on December 31, 2011, unless further extended by the Trustees by written agreement; and

BE IT FURTHER RESOLVED that a total of \$2,354,325 from the respective Federal and State NRD's funds described above is authorized in equal amounts from each fund (\$1,177,162.50 from each fund) for the three Phase I projects described above and in attached Appendix A, and that these funds be allocated among the three projects in the amounts set forth in Appendix A; and

BE IT FURTHER RESOLVED that negotiations be conducted by the Council and its representatives within in the Colorado Department of Public Health & Environment (CDPHE) with the three project proponents described above and in the manner set forth in Appendix A in the sections within each described project identified as "Comments" and "Contingency;" and

BE IT FURTHER RESOLVED by the State Trustees that CDPHE, as the contracting agency for these three projects, request a waiver of the State's Fiscal Rule 2-2 governing the use of advance payments in compliance with the requirements of C.R.S. 24-30-202(1), (3) for the reasons identified in Appendix A for the Alamosa River In Stream Flow Project and the Alamosa River Restoration Project.

FOR THE UNITED STATES TRUSTEES

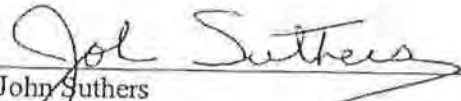
Sally Wisely
for Sally Wisely
Sally Wisely
State Director, Bureau of Land Management,
United States Department of the Interior

Date: 2-8-07


Rick Cables
for Rick Cables
Rick Cables
Regional Forester, Rocky Mountain Region,
United States Forest Service
United States Department of Agriculture

Date: 2/12/07

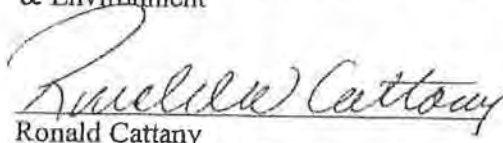
FOR THE STATE OF COLORADO TRUSTEES


John Suthers
Attorney General
State of Colorado

Date: Jan 3, 2007
*effective as of expiration of
MOU on 12/31/06*


Dennis Ellis
Executive Director
Colorado Department of Public Health
& Environment

Date: Jan 3, 2007


Ronald Cattany
Director, Division of Reclamation, Mining, and Safety,
Colorado Department of Natural Resources

Date: January 3, 2007

APPENDIX A

Summary of Proposals Alamosa River Natural Resource Damage Recovery Fund Trustee Review

ALAMOSA RIVER WATERSHED RESTORATION MASTER PLAN

In preparation for issuing the Solicitation for Project Proposals, the Federal and State cooperative Trustee Council contracted with MWH Americas, Inc. to write the '*Alamosa River Watershed Restoration Master Plan*' (Master Plan) dated July 2005. The Trustee Council, authorized under the Comprehensive Environmental Response, Compensation, and Liability Act (December 1980), is seeking to restore natural resources harmed in connection with impacts from the Summitville Mine, using natural resource damages (NRD) obtained in settlement from a responsible party. The Master Plan summarized current environmental conditions, and developed restoration solutions to the identified problems in the Alamosa River basin, which will lead to a healthier watershed. The scope of the Master Plan includes the entire watershed, with the exception of the Summitville Mine Superfund Site. The focus of the Master Plan included:

- River and watershed health
- Protection of Resources
- Restoration of impacted natural resources
- Bio-Diversity
- Resource services to the public

Specific projects were identified and ranked and then combined into a watershed restoration strategy, with the purpose of implementing the best combination of projects to obtain the watershed restoration vision.

The Trustee Council determined that it would allocate in 2 phases the total of \$5 million in damages, in order to ensure the success of restoration projects in addressing the Council's goals, the effectiveness in using the available funds, and to maximize access to matching funds. Phase 1 would allocate up to \$2.5 million, one half of which (\$1.25 million) would come from the State account and one half (\$1.25 million) from the Federal account.

WORK GROUP

A work group for the Alamosa River NRD was organized in August 2006, subordinate to the Trustee Council, consistent with the Solicitation for Project Proposals. The work group members consisted of the following nine individuals:

Cindy Medina, Alamosa River Foundation
Alan Miller, Alamosa River Watershed Restoration Foundation
Ray Lara, Community Representative
Tressesa Martinez, Conejos County Government
Paul Meyer, U. S. Department of the Interior, Bureau of Land Management

Laura Archuleta, U.S. Department of the Interior, Fish and Wildlife Service
 Dan Scheppers, Colorado Department of Public Health and Environment
 David Bird, Colorado Division of Reclamation, Mining and Safety
 Steve Brown, Colorado Attorney General Office

The process for procuring projects to accomplish the trustees' restoration goals by using the Alamosa River Natural Resource Damages is described in the Solicitation for Project Proposals (SFPP) dated December 2005. The work group met periodically to discuss the submittals. The review was conducted in conformance with the criteria set forth in the SFPP. Work group members who submitted proposals were recused from evaluating their own proposals. Each member evaluated each proposal, unless recused, in accordance with the ranking criteria discussed in the 'Alamosa River Watershed Natural Resource Damages, Solicitation for Project Proposals 06-HAZ0001' and completed the evaluation sheet included with the Solicitation for Project Proposals.

A prospective offerors site visit was conducted on April 26, 2006. Meetings with the prospective offerors and the community were held on August 2 and September 20, 2006. Initial proposals were submitted on September 6, 2006 and final revised proposals were submitted on October 30, 2006. The work group met on September 27, 2006 and November 2, 2006. Three respondents submitted proposals, all of which met the minimum criteria. These were later reviewed and found to be eligible for NRD funding. A summary of the funding request is as follows:

Alamosa River In Stream Flow Project

	Total	NRD Fund	Match Fund
Phase I	\$4,520,500	\$1,774,000	\$2,746,500
Phase II	\$2,569,000	\$660,000	\$1,909,000

Note: Phase II funds will not be authorized at this time. Budget and funding request for Phase II is a projected estimate. Numbers will be refined after Phase I is completed. A separate proposal will be submitted for Phase II and when the Solicitation of Project Proposals for the second funding cycle is available.

Alamosa River Watershed Restoration

Total	NRD Fund	Match Fund
\$1,083,800	\$500,000	\$624,300

Public Land Alamosa River Watershed Restoration

Total	NRD Fund	Match Fund
\$160,650	\$80,325	\$80,325

TOTAL	NRD FUND	MATCH FUND
\$5,831,750	\$2,354,325	\$3,451,125

Note: The total requested budget for this first round of the SFPP does not include the Alamosa River In Stream Flow Project Phase II fund request.

Total funds made available to Round 1 of the '*Alamosa River Watershed Natural Resource Damages, Solicitation for Project Proposals 06-HAZ0001*' is \$2,500,000. Thus, the requested NRD funds are available to fund the projects in full.

ALAMOSA RIVER NATURAL RESOURCE DAMAGE PROJECT SUMMARY

The following provides a project summary and description. The work group recommends approval for funding of the projects presented with consideration of contingencies.

Alamosa River In Stream Flow Project

The proposal by the Alamosa River Keepers is for a project valued at \$7,089,000 that is, divided into Phase Phase II and I. Phase 1, valued at \$4,520,500, requests \$1,774,500 in NRDA funds and includes \$2,746,500 in matching funds. Phase II, valued at \$2,569,000, requests \$660,000 in NRDA funds and includes \$1,909,000 in matching funds. Because of the costs, complexity, and time requirements of this project, the project proponents were asked to provide a comprehensive plan including both funding phases.

The Alamosa River In Stream Flow (ISF) Project combines two of the key projects identified in the Alamosa River Watershed Restoration Master Plan and Environmental Assessment to accomplish one of the main objectives of the Master Plan: improve the sustainability of flows in the Alamosa River downstream of Terrace Reservoir and upgrades the Terrace Reservoir spillway channel. The Project involves:

- Acquiring senior irrigation water rights on the Alamosa River
- Improving the Terrace Reservoir spillway to remove the State-imposed storage restriction
- Transferring the irrigation water rights to the Colorado Water Conservation Board (CWCB) for storage in Terrace Reservoir and in-stream flows in the downstream Alamosa River
- Operating Terrace Reservoir to store and release the newly acquired CWCB flows in accordance with an in-stream flow program

The Alamosa River ISF Project is proposed as a two-phase project. Phase I includes purchasing one or more senior irrigation water rights, transferring the water rights to the CWCB in-stream flow program through water court, and designing Terrace Reservoir spillway improvements. Phase II entails renovating the reservoir spillway, storing the in-stream flow water rights in Terrace Reservoir, and releasing the water rights to restore healthy flows in the Alamosa River. Completion of the entire project will improve the magnitude and duration of stream flows in the Alamosa River below Terrace Reservoir, improving environmental, water resource and recreation values and thereby restoring

and replacing resources damaged in the Alamosa River watershed by the Summitville Mine project.

Contingency

- 1. The described project will require an advance payment from the State to the submitting agency. The Trustees recommend that the State agency request a waiver of the State's Fiscal rule governing the use of advance payments in compliance with the requirements of C.R.S. 25-0203.*
- 2. An evaluation process will be developed such that funding is allocated according to a process approved by the Trustee Council. That is, the In-stream Flow group has suggested dividing Phase I into Part A and Part B. They will present and report to the Trustee Council at the completion of Part A, and the Trustee Council will then evaluate progress and authorize expenditures for Part B.*
- 3. It is the intention of the Trustee Council that the State's contract with the proponent will not be signed and initiated until the non-NRD matches are guaranteed by the funding entities. Matching funds for Part A must be approved before NRD funds will be made available for Part A. Matching funds for Part B must be approved before NRD funds will be made available for Part B.*

Alamosa River Watershed Restoration

The proposal by the San Luis Valley Resource Conservation & Development Council is for a project valued at \$1,083,800, which requests \$500,000 in NRDA funds and includes \$624,300 in matching funds.

The Alamosa River Watershed Restoration Foundation is a volunteer group of nine local landowners that formed in 1995 in response to serious problems on the Alamosa River.

These problems include:

- Channel straightening in the 1970s by the Army Corps of Engineers;
- Over-appropriation of water rights;
- Metal and acid spills from the Summitville Mine Site, located in the San Juan Mountains upstream on the Alamosa River, which occurred in the late 1980s and early 1990s, affecting downstream ecological features of the Alamosa River; and
- And recently, severe drought conditions in 2002 and 2005.

The following conditions have caused severe degradation of the river, and have impacted those who depend on it for their livelihood:

- The local groundwater table dropped as a result of the channel straightening, affecting wells, wetlands, and plants; the river became unstable and eroded adjacent riparian and agricultural landscapes;
- The riparian corridor was injured, including severe impacts to willows, thin-leaf alders, and cottonwoods, and total decimation of aquatic species historically found in the river;
- Historic water diversions and their structural components were affected by the acid drainage, eating through pipes in one year's time;

- Water levels for irrigation diversions and historic ditches were affected, including the moving and/or severe erosion of ditches;
- Completely decimating a two-mile stretch of cottonwood trees, which are now standing dead, and posing a danger from falling trees and/or lightning strikes;
- Affecting the ability of the river to carry sediment load, forcing the river to braid (divide) in some areas, move too fast in others, and erode banks, and causing sediment loads to aggrade in some areas.

The ARWRF seeks to remedy these impacts by continuing work begun in 1999, when the Foundation began the work of restoring the river channel, confining the river between stable banks, and allowing for more natural river meanders. The project provides riffle-pool-glide sequences that will restore areas for fish habitat, and includes revegetation in selected areas, in order to help restore the riparian corridor. As the river water begins to move in more historically natural ways, cottonwoods, willows, alders and other plants will have the conditions they need to replenish. And as the riparian corridor returns to a healthy system, aquatic species can be returned to the river.

The work scheduled for this section of the project includes approximately 2.6 miles of river corridor, located between County Road 8 (just north of the Post Office in the Town of Capulin) and County Road 10 to the east.

Comments

1. *River bed gravel must be removed to implement the project. Therefore there are issues with mining of the material, disposition and value, which would likely fall under the purview of the DRMS. There may be a potential in-kind contribution that the proponent should specify. Further, a permit may be required to remove the material, which the proponent should obtain prior to initiating the project.*
2. *The proponent shall specify how much upfront funding would be required in order to initiate the project, the schedule of payments and the tasks associated with each payment. Month by month cost requirement, which justifies the request for initiating funds, (escrow account - revolving fund) shall be specified.*
3. *There is the potential for the presence of Threatened and Endangered habitat (prior to Summitville). The proponent shall evaluate the baseline condition for the purpose of re-establishing the native habitat.*
4. *A full size set of design drawings shall be prepared and submitted for the contract.*

Contingency

1. *The described project will require an advance payment from the State to the submitting agency. The Trustees recommend that the State agency request a waiver of the State's Fiscal rule governing the use of advance payments in compliance with the requirements of C.R.S. 25-0203.*
2. *It is the intention that the contract with the proponent will not be made until the non-NRD match is approved or realized.*

Public Land Alamosa River Watershed Restoration

The proposal by the U.S. Forest Service (Rio Grande National Forest) is for a project valued at \$160,650, and requests \$80,325 in NRDA funds and includes \$80,325 in matching funds.

The project area is the Alamosa River from a point just above the confluence with Wightman Fork down to the Alamosa River Campground. The project would include five separate reaches on the River. Four areas with actively eroding stream banks would be stabilized, wetlands adjacent to the Alamosa River would be reestablished, aquatic habitat would be restored with the use of rock constructed cross-vanes and j-hooks and the river in one location would be reconstructed from its current braided condition into a single thread channel.

Comments

- 1. Forest Service will supply rock and in-kind services.*
- 2. CDPHE will contract directly with the construction contractor.*
- 3. USFS match will be procured by the CDPHE for use by CDPHE*
- 4. USFS will prioritize the five projects for funding/construction purposes.*
- 5. There are continued concerns of upstream non-permitted stream activity (Delbert Smith). Funding is contingent upon the assessment and design that eliminates any potential negative affect on the USFS projects.*
- 6. There are continued concerns with management of the bed load. The USFS will determine if the proposed project structures will result in movement of bed load downstream. And further, the USFS will determine if a sediment trap is necessary in the Site #1 project Wightman Fork confluence and if future maintenance is required.*
- 7. Future maintenance may require another project in the next round of Alamosa River NRD Solicitation of Project Proposals.*

Contingency

- 1. Funding for Reach 1 Project is contingent upon further design and assessment due to bed load above the Reach 1 project which could negatively impact it.*

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE STATE OF COLORADO,
THE UNITED STATES DEPARTMENT OF THE INTERIOR, AND
THE UNITED STATES DEPARTMENT OF AGRICULTURE**

**RELATING TO THE RESTORATION OF NATURAL RESOURCES
INJURED BY RELEASES OF HAZARDOUS SUBSTANCES FROM THE
SUMMITVILLE MINE SITE**

I. INTRODUCTION

The Trustees for the Summitville Mine Site hereby enter into this Memorandum of Understanding ("MOU"). The Trustees enter into this MOU to coordinate and cooperate in carrying out their respective responsibilities to restore, replace or acquire the equivalent of the natural resources injured or potentially injured as a result of the release of hazardous substances from the Site.

II. PARTIES

The following agencies, acting on behalf of the public as Trustees, are parties to this MOU:

- A. Colorado Department of Public Health and Environment ("CDPHE");
- B. Colorado Department of Natural Resources ("DNR");
- C. Colorado Department of Law ("DOL");
- D. U.S. Fish and Wildlife Service, U.S. Department of the Interior ("USFWS");
- E. Bureau of Land Management, U.S. Department of the Interior ("BLM");
- F. United States Department of Agriculture Forest Service ("Forest Service").

These parties are referred to throughout this MOU as "Participating Agencies," "Parties," or "Trustees." BLM is acting as the lead agency for the U.S. Department of the Interior agencies involved in this MOU.

III. DEFINITIONS

- A. "Summitville Mine Site" or "Site" is defined as the Summitville Mine National Priorities List Site located near Del Norte, in Rio Grande County, Colorado, and is identified by the U.S. EPA identification number COD983778432, together with all locations where waste materials from the Site have affected natural resources.
- B. Whenever the terms "natural resource," "restoration," " or "restore" are used in this MOU, they shall have the same meanings as the defined terms in 43 C.F.R. Part 11.
- C. The term "Restoration Plan" means a plan developed by the trustees that will describe and evaluate options for restoring, replacing or acquiring equivalent resources in the Alamosa River watershed. The Restoration Plan will consider recommendations by affected communities in the San Luis Valley.
- D. "Unanimous approval" is defined as an affirmative vote by each Trustee Council representative or an affirmative vote by five of the six Trustee council representatives and one abstention.
- E. Unless a term is expressly defined in this MOU, all terms shall have the same meaning as in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") § 101, 42 U.S.C. § 9601.

IV. AUTHORITIES

The parties to this MOU are natural resource trustees pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675 ("CERCLA"); Subpart G of the National Contingency Plan, 40 C.F.R. Part 300.600-615; 43 C.F.R. Part 11; Executive Order 12580; appointment by the Governor of the State of Colorado pursuant to federal law; and other applicable federal and state laws.

V. THE SETTLEMENT

The Trustees believe that hazardous substances released from the Site have affected natural resources under their trusteeship in the Alamosa River watershed. The United States and the State of Colorado filed a cost recovery action pursuant to CERCLA section 107 against several defendants in the federal court litigation captioned United States of America and the State of Colorado v. Robert M. Friedland, et al., No. 96-1213, District of Colorado. The principal defendant in that case, Robert M. Friedland, agreed to settle the claims against him in December 2000. Pursuant to that settlement, Mr. Friedland agreed to pay \$27,750,000 to the United States and the State of Colorado. Of this total, \$5,000,000 was designated for natural resource

damages. The remaining funds from the Friedland settlement have been provided to the State and to U.S. EPA for future remediation and operation and maintenance at the Site.

In January 2001, the Trustees and U.S. EPA entered into a Memorandum of Understanding "Concerning Allocation of Certain Settlement Proceeds In Connection With The Summitville Mine Superfund Site." Pursuant to that "Settlement MOU," the Trustees established two accounts to accept funds from the Friedland settlement. The State agreed to establish a Summitville Natural Resource Damages Trust Fund ("Colorado NRD Trust Fund") as a separate and segregated interest-bearing custodial account within the State Treasury. The Department of the Interior agreed to establish a Summitville Natural Resources Restoration Account ("Federal Restoration Account") as a segregated interest-bearing account within the Department of the Interior Restoration Fund. The Trustees agreed that the \$5,000,000 proceeds from the Friedland settlement would be divided equally between the Colorado NRD Trust Fund and the Federal Restoration Account. The Trustees further agreed that the State of Colorado and the Department of the Interior would be responsible for routine management of the Colorado NRD Trust Fund and the Federal Restoration Account, respectively, according to these agencies' established policies. The Trustees also agreed to coordinate the use of funds from both accounts. The United States District Court approved the Friedland settlement in June 2001. Mr. Friedland subsequently made full payment on the settlement. The Colorado NRD Trust Fund and the Federal Restoration Account then received electronic funds transfers of \$2,500,000 for each account.

In the Settlement MOU, the Trustees agreed that funds in the Colorado NRD Trust Fund and Federal Restoration Account would be used to restore, replace, or acquire natural resources in the Alamosa River watershed, in accordance with federal law. The parties also acknowledged that the Department of the Interior has no independent source of funding for implementing its responsibilities in the Summitville matter. The parties agreed that the Department of the Interior could use up to \$375,000 (7.5% of \$5,000,000) of the settlement proceeds to fund its restoration responsibilities in this matter. The Trustees also agreed to enter into a subsequent MOU (this MOU) to create a Summitville Natural Resource Trustee Council and to establish a decision making process for the Council.

VI. PURPOSE

The purpose of this MOU is to provide a framework for coordination and cooperation among the Trustees in using funds from the Friedland settlement to restore, replace, or acquire equivalent natural resources in the Alamosa River watershed. Under the framework in this MOU, the Trustees expect to develop projects to restore, replace or acquire the equivalent of natural resources that have been injured or potentially injured due to releases of hazardous substances from the Site. The Trustees also expect to encourage the development of these types of projects from the citizens in the San Luis Valley who have been affected by releases from the Site. The Trustees also expect to encourage proposals that include matching funds from other local, state, federal or private organizations. The Trustees expect that the projects will include

restoration and protection of aquatic and riparian habitat, as well as projects that compensate for lost use of public land. Under the framework in this MOU, the Trustees also expect to: develop criteria for screening and evaluating candidate projects; solicit and evaluate public input on candidate projects; select projects for implementation; fund selected projects from the Colorado NRD Trust Fund and the Federal Restoration Account; implement restoration projects; monitor the management and the effectiveness of projects that have been implemented; and provide information to the public at all phases of the process, including reporting on the effectiveness of projects that have been implemented. The Trustees commit to the expenditure of the settlement funds for feasibility studies and for the design, implementation, permitting (as necessary), monitoring and oversight of restoration projects, and for the costs of complying with the legal requirements necessary to conduct restoration planning, implementation and monitoring.

VII. ORGANIZATION - NATURAL RESOURCE TRUSTEE COUNCIL AND LEAD ADMINISTRATIVE TRUSTEE

A. Summitville Natural Resource Trustee Council

To implement this MOU, there is hereby created the Summitville Natural Resource Trustee Council (the "Trustee Council" or "Council"). The mission of the Trustee Council shall be to implement the Trustees' responsibilities to restore, replace or acquire the equivalent of natural resources injured or potentially injured by releases of hazardous substances from the Site into the Alamosa River watershed.

Each of the six participating agencies will appoint one primary representative and at least one alternate representative to the Council. Each of the six parties to this agreement shall have one vote that shall be cast by the party's primary representative, or in the absence of the primary representative, by an alternate representative or by proxy.

No later than twenty (20) working days after the final execution of this MOU, each Trustee shall notify the other Trustees of the names, addresses, email addresses, telephone numbers, and facsimile numbers of that Trustee's primary and alternate representatives to the Council. Communications regarding Council business shall be addressed to the primary representative and, unless the Council directs otherwise, copied to the alternate representatives. Each Trustee shall also notify the other Trustees of any changes in that Trustee's primary or alternate representatives.

The Council may seek advisory participation from members of the general public, from other federal, state or local agencies, and from any other entity as deemed appropriate by the Council.

B. Lead Administrative Trustee

The Council shall appoint one federal and one State member of the Council to serve as

Lead Administrative Trustees, for the purpose of handling administrative matters of the Council. The duties of the Lead Administrative Trustees shall include: scheduling meetings of the Council and notifying Council members of those meetings on a timely basis; preparing agendas for those meetings; acting as a central contact point for the Trustee Council; establishing and maintaining records and relevant documents; preparing and circulating minutes of Council meetings; and other administrative duties as directed by the Council. The Lead Administrative Trustees shall be responsible for informing the other Trustee Council members of all pertinent developments on a timely basis. The Lead Administrative Trustees may delegate any of their duties to another Trustee representative with the concurrence of the Council. Assigned duties do not provide the Lead Administrative Trustees with decision-making rights beyond those normally held by each Trustee.

VIII. POWERS, DUTIES, AND RESPONSIBILITIES

The Trustees shall coordinate with each other and shall authorize all Trustee activities necessary to restore, replace or acquire the equivalent of resources injured or potentially injured due to releases of hazardous substances from the Summitville Mine National Priorities List Site.

To the extent authorized by applicable laws and policies, the Council may take the following actions, among others, to implement the Trustees' natural resource responsibilities:

- A. Prepare and oversee the development and implementation of a plan (the "Restoration Plan") for the restoration of injured natural resources; and, perform any scientific and technical studies necessary for the Restoration Plan;
- B. Arrange through one or more of the Trustees contracts with professional consultants, technical or otherwise, that the Council determines are necessary;
- C. Develop projects to restore, replace or acquire the equivalent of resources that have been injured or potentially injured due to releases of hazardous substances from the Site;
- D. Encourage proposals by citizens in the San Luis Valley for projects to restore, replace or acquire the equivalent of resources that have been injured or potentially injured due to releases of hazardous substances from the Site;
- E. Develop criteria for screening and evaluating candidate projects;
- F. Solicit and evaluate public input on candidate projects;
- G. Promote partnerships in the funding and implementation of proposed projects;
- H. Select projects for implementation in accordance with the criteria developed by

the Council and in accordance with the Restoration Plan, and any applicable federal laws;

- I. Fund selected projects from the Colorado NRD Trust Fund and the Federal Restoration Account;
- J. Implement and oversee restoration projects;
- K. Monitor the management and evaluate the effectiveness of projects that have been implemented;
- L. Provide information to the public at all phases of the process, including reporting on the effectiveness of projects that have been implemented;
- M. Coordinate with CDPHE and U.S. EPA regarding the ongoing remediation at the Site;
- N. Oversee the management and administration of funds in the Colorado NRD Trust Fund and the Federal Restoration Account, including any funds that may be added to those accounts subsequent to funds from the Friedland settlement;
- O. Select Lead Administrative Trustees;
- P. Delegate specific duties to individual Trustees;
- Q. Appoint committees and subcommittees as necessary for the efficient operation of the Trustee Council;
- R. Make any necessary decisions related to any funds that may be added to the Colorado NRD Trust Fund and the Federal Restoration Account; and
- S. Perform any other functions necessary in accordance with the goals and intent of this MOU.

IX. DECISION MAKING

The Trustees agree that decisions implementing the MOU shall require unanimous approval of the Trustee Council representatives.¹ The voting representatives shall record

¹ As noted in the Definitions, "unanimous approval" is defined as an affirmative vote by each Trustee Council representative or an affirmative vote by five of the six Trustee Council representatives and one abstention.

decisions in writing, either by resolution signed by the voting representatives, or in minutes approved as to content and form. The voting representatives shall memorialize all decisions authorizing expenditures of funds from either the Colorado NRD Trust Fund or the Federal Restoration Account in a signed Trustee Council resolution. The budget and other documents describing the work to be conducted will be attached to the resolution and maintained in the records of the Trustee Council.

The Trustees agree that decision making deliberations will focus upon the Trustees' mutual goals of assessing, restoring, rehabilitating, replacing and/or acquiring the equivalent of the affected natural resources and services, rather than on individual Trustee control or trusteeship over those resources.

If the Trustee Council is unable to reach unanimous agreement on a matter under consideration, any Trustee may invoke dispute resolution by notifying the other Trustees in writing that it is doing so. When dispute resolution is invoked, the Council representatives agree to elevate the matter in dispute within their agencies within ten working days of the notice triggering dispute resolution. The parties expect that any matter in dispute will be resolved through informal discussions between senior managers within each Participating Agency. In the event that the Trustees are unable to resolve a dispute by elevating the matter within their agencies, the Council representatives will determine a process for resolving such dispute.

The parties understand that there may be disagreements about whether a specific, proposed project qualifies as restoration. (For the purposes of this paragraph, the terms "restoration" or "restore" shall mean any action or combination of actions to restore, replace or acquire the equivalent of injured natural resources and/or their services.) The parties further understand that there may be scenarios where: the State trustees wish to fund a proposed project; the proposed project fits within the State's interpretation of the term restoration; the federal trustees disagree; and, the federal trustees believe that the proposed project does not fit within the meaning of restoration. In this scenario, the trustees may elevate the matter within their respective agencies under the dispute resolution mechanism described above. As an alternative, the federal trustees may agree to defer to the State trustees' interpretation of the term restoration, and may agree to approve the project (absent any unrelated objections) on the condition that the project is funded entirely from the Colorado NRD Trust Fund. The parties also understand that the converse scenario could occur, where the federal trustees wish to fund a proposed project, but where the State trustees believe that the proposed project does not qualify as restoration. Again, in this scenario, the trustees may elevate the matter within their respective agencies under the dispute resolution mechanism described above. As an alternative the State trustees may agree to defer to the federal trustees' interpretation of the term restoration and agree to approve the project (absent any unrelated objections) on the condition that the project is funded entirely from the Federal Restoration Account.

A Council representative may vote by proxy when the primary and all alternate representatives are unavailable for a meeting. A proxy will have full voting rights of the primary representative.

Trustee Council meetings may be convened by telephone conference call. If a Council representative is unable to travel to a meeting, that representative may participate by telephone conference.

X. FUNDS

Under the Friedland settlement described earlier in this MOU, the Trustees are administering the funds in the Colorado NRD Trust Fund and the Federal Restoration Account. The Trustees agree that these funds will be used for restoration projects consistent with a Restoration Plan approved by the Council. Under this MOU, the Trustees will establish procedures for the financial operations of the Council. These may include procedures for: submitting invoices to the Council; directing disbursements from the two accounts; withholding payment on matters in dispute; providing for periodic reporting on the status of the accounts; and, any other procedures that the Council deems necessary. The State of Colorado, in managing the Colorado NRD Trust Fund, and the Department of the Interior, in managing the Federal Restoration Account, shall follow all applicable rules and regulations pertaining to these accounts.

The Trustees also agree that, as provided for in the Settlement MOU, up to \$375,000 of the settlement proceeds may be used by the Department of the Interior for its expenses related to this MOU. Interior will use these funds for its work on the Summitville matter in a manner consistent with Department of the Interior regulations, policies and guidelines. These funds shall be drawn from the Federal Restoration Account. Interior shall provide the Council with an annual status and accounting report on its use of these funds.

The Trustees agree that for each disbursement made and each project that is funded, the portion of costs to be allocated from the Colorado NRD Trust Fund and from the Federal Restoration Account will be determined by the Trustees.

The Trustees agree that if there are additional recoveries on the Trustees' claims, the recovered sums may be added to the Colorado NRD Trust Fund and the Federal Restoration Account, depending on the terms of the consent decree. If any additional funds are added to these accounts from future recoveries, then they will be managed in accordance with this MOU and any procedures established under this MOU.

While this MOU establishes the framework for operations of the Trustee Council and provides that the Council will establish procedures for disbursing the funds in the Colorado NRD Trust Fund and the Federal Restoration Account, it does not provide for services between the Trustees. In that regard, this MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties shall be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement. Such endeavors will be outlined in separate agreements that shall be made in writing by duly authorized representatives of the

parties and shall be independently authorized by appropriate statutory authority. Also, nothing in this MOU shall be construed as obligating the Trustees to expend any funds in excess of appropriations authorized by law or to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

XI. CONFIDENTIALITY

The Trustees agree that it is generally in the public interest that scientific data arising out of their review of injuries to natural resources be released to the public. The Trustees will implement a general policy of making scientific data available to the public, wherever possible. The Trustees also agree that information subject to public disclosure upon request and pursuant to the Freedom of Information Act and the Colorado Open Records Act shall be released. All Trustees agree to notify the other Trustees in writing of each request for information no more than five (5) days from the date the request is received. In the event that any Trustee receives a request for documents under the Freedom of Information Act or the Colorado Open Records Act, the remaining Trustees agree to provide that Trustee with copies of any relevant documents that will allow that Trustee to accurately respond to the request.

XII. GENERAL PROVISIONS

- A. **Reservation of Rights.** All parties understand that this document is not intended to create any legal rights or obligations among the Trustees or any other persons not a party to this MOU. Nothing in this MOU is intended to imply that any signatory Trustee agency is in any way abrogating or ceding any responsibility or authority inherent in its trusteeship over natural resources.
- B. **Participation in Similar Activities.** This MOU in no way restricts the parties from participating in similar activities with other public or private agencies, organizations or individuals.
- C. **Third Party Challenges or Appeals.** Nothing in this MOU creates any right or cause of action in persons not a party to this agreement. Nothing in this MOU shall be construed as a basis for any third-party challenge or appeal.
- D. **Modification.** Modification of this MOU must be in writing and approved by all Trustees currently party to this MOU.
- E. **Withdrawal.** Any Trustee may withdraw from this MOU at any time upon 30 days written notice to the other Trustees. Any such withdrawal will terminate this MOU.
- F. **Execution and Counterparts.** This MOU may be executed in counterparts. A

copy with all original executed signature pages affixed shall constitute the original MOU.

- G. **Effective Date and Termination.** This MOU shall be in effect from the date of the signature of the last Trustee to sign the MOU and shall be effective through December 31, 2006. The Trustees may terminate the MOU by agreement before that date. The Trustees may also extend this MOU for an additional five year period by written agreement of all the Parties. In the event of termination of this MOU, each Trustee agrees to cooperate in preparing a full and complete accounting and status report of all accounts managed by the Trustees.

We, the undersigned authorized representatives, hereby agree to the terms and conditions set forth in this Memorandum of Understanding:

Jane E. Norton
Jane E. Norton
Executive Director, Colorado Department of
Public Health and Environment

5-28-02

Date

Ronald W. Cattany
Deputy Director, Colorado Department of
Natural Resources

Date

Ken Salazar
Attorney General, State of Colorado

Date

Ann J. Morgan,
Authorized Official, U.S. Department of the Interior

Date

Rick D. Cables
Regional Forester, U.S. Department of Agriculture
Forest Service

Date

We, the undersigned authorized representatives, hereby agree to the terms and conditions set forth in this Memorandum of Understanding:

Jane E. Norton
Executive Director, Colorado Department of
Public Health and Environment

Date

Ronald W. Cattany

Ronald W. Cattany
Deputy Director, Colorado Department of
Natural Resources

May 3, 2002

Date

Ken Salazar
Attorney General, State of Colorado

Date

Ann J. Morgan,
Authorized Official, U.S. Department of the Interior

Date

Rick D. Cables
Regional Forester, U.S. Department of Agriculture
Forest Service

Date

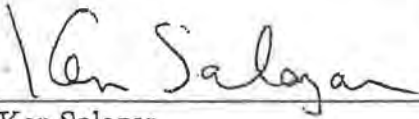
We, the undersigned authorized representatives, hereby agree to the terms and conditions set forth in this Memorandum of Understanding:

Jane E. Norton
Executive Director, Colorado Department of
Public Health and Environment

Date

Ronald W. Cattany
Deputy Director, Colorado Department of
Natural Resources

Date



Ken Salazar
Attorney General, State of Colorado

5/02/2002

Date

Ann J. Morgan,
Authorized Official, U.S. Department of the Interior

Date

Rick D. Cables
Regional Forester, U.S. Department of Agriculture
Forest Service

Date

We, the undersigned authorized representatives, hereby agree to the terms and conditions set forth in this Memorandum of Understanding:

Jane E. Norton
Executive Director, Colorado Department of
Public Health and Environment

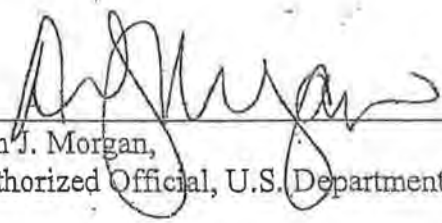
Date

Ronald W. Cattany
Deputy Director, Colorado Department of
Natural Resources

Date

Ken Salazar
Attorney General, State of Colorado

Date



Ann J. Morgan,
Authorized Official, U.S. Department of the Interior

Date

6-19-02

Rick D. Cables
Regional Forester, U.S. Department of Agriculture
Forest Service

Date



We, the undersigned authorized representatives, hereby agree to the terms and conditions set forth in this Memorandum of Understanding:

Jane E. Norton
Executive Director, Colorado Department of
Public Health and Environment

Date

Ronald W. Cattany
Deputy Director, Colorado Department of
Natural Resources

Date

Ken Salazar
Attorney General, State of Colorado

Date

Ann J. Morgan,
Authorized Official, U.S. Department of the Interior

Date

Rick D. Cables

for Rick D. Cables
Regional Forester, U.S. Department of Agriculture
Forest Service

29 May 02

Date

**COLORADO NATURAL RESOURCE TRUSTEES
RESOLUTION NOVEMBER 4, 2016
CONCERNING SUMMITVILLE NATURAL RESOURCE DAMAGES**

WHEREAS, by RESOLUTION 2012-01, effective *nunc pro tunc* to December 31, 2011, the United States and Colorado Natural Resource Trustees (“Trustees”) extended a 2002 Memorandum of Understanding (“MOU”) between the Trustees for an additional five year period that expires December 31, 2016 (Exhibit A);

WHEREAS, the MOU continues the cooperation, oversight, and project recommendation, selection, and implementation activities that are occurring among the Trustees, the Trustees' Council and the local community;

WHEREAS, sections IX and X of said MOU provide for the expenditure of funds for specific projects to restore, replace, or acquire the equivalent of natural resources damaged by hazardous substance releases from the Summitville Mine;

WHEREAS, in accordance with the MOU, the Trustees, in 2007, the Trustees created the Joint Federal/State Summitville Natural Resource Damage (“NRD”) Fund (split equally) to implement three restoration projects, including an allocation for "The Alamosa River Watershed Restoration Project" (the “Project”);

WHEREAS, the Project is generally described in Appendix A of the Resolution of the Summitville Natural Resource Trustees, signed by the Trustees in January and February 2007 (attached hereto as Exhibit B);

WHEREAS, significant work has been performed to improve the Alamosa River by restoring the river channel; confining the river between stable banks; and allowing for more natural river meanders in the two reaches of the Alamosa River previously approved by the Trustees;

WHEREAS, additional Summitville NRD funds are available to continue restoration in the Alamosa River Watershed;

WHEREAS, the Trustees have the discretion to expand the geographic area within the Alamosa River Watershed;

WHEREAS, in 2012, CDPHE entered into a contract with the Alamosa River

Watershed Restoration Foundation (“ARWRF”) for river restoration activities along two reaches of the Alamosa River in and near the Town of Capulin, Colorado. The contract provides for the reimbursement of professional engineering services and construction activities;

WHEREAS, additional work within the Alamosa River Watershed in the same geographic region and with a direct nexus to the restoration work completed through the 2007 NRD projects has been proposed by the AWRWF and is supported by the local communities;

WHEREAS, the existing ARWRF contract would include the expanded area approved by the Trustees and provide the necessary authority to contract for the additional restoration work;

WHEREAS, the United States Trustees have previously transferred all remaining federal Summitville NRD funds from the Federal Summitville Restoration Fund account into the State Summitville NRD Trust Fund account such that all Summitville funds are housed within the State account;

WHEREAS, there currently exists adequate funds in the State Summitville NRD Fund account to timely and fully fund the design plans and implementation of the proposed projects in the expanded geographic area; and

WHEREAS, the Trustees desire to continue the cooperative efforts among the United States Trustees and the Colorado Natural Resources Trustees through a new Memorandum of Understanding that mirrors the previous relationship of the State and Federal Trustees.

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

The Trustees agree to expand the geographic are of the Alamosa River Watershed Restoration Project to include additional channels located upstream from County Road 8 and authorize the expenditures of \$1.2 million to complete the proposed restoration projects;

and

The Trustees agree to enter in a new MOU with the United States to continue the cooperation, oversight, and project recommendation, selection, and implementation activities for five years with an expiration date of December 31, 2021.

Cynthia H. Coffman
Colorado Attorney General

Date

Martha Rudolph
Director of Environmental Programs, CDPHE

Date

Robert Randall
Executive Director, DNR

Date