

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
ERIC R. OLSON
Solicitor General



**STATE OF COLORADO
DEPARTMENT OF LAW**

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

Natural Resources and
Environment Section

AGENDA

Colorado Natural Resources Trustees Meeting
January 16, 2020, 10:00 am to 12:00 pm
Location: Colorado Department of Natural Resources,
1313 Sherman Street, Denver, Room 318

Open Session

1. Approval of Minutes from October 10, 2019 Meeting – 5 minutes

Action Items:

(1) Review and approve minutes from October 10, 2019 meeting

Documents:

(1) Draft Minutes from October 10, 2019 meeting

2. Small Spill Program (David Banas, Melynda May) – 10 minutes

Action Items: None

Documents:

(1) Memo from David Banas

3. Blue Tee Settlement (David Banas, Jennifer Talbert) – 10 minutes

Action Items: Consider proposal re allocating fund interest

Documents:

(1) Memo from David Banas and Jennifer Talbert

4. California Gulch (Dan Rosenberg, Ed Perkins, Susan Newton) – 15 minutes

Action Items: None

Documents:

(1) Memo from Dan Rosenberg

5. Rocky Mountain Arsenal – Bluff Lake Presentation (David Banas, Ed Perkins, Susan Newton) – 10 minutes

Action Items: None

Documents:

(1) Memo from David Banas

6. Denver Presentation Regarding Bear Creek Project (David Banas, Susan Newton, Ed Perkins) – (10 minutes)

Action Items: None

Documents:

(1) Memo from David Banas

7. Denver Presentation Regarding Westerly Creek (David Banas, Ed Perkins, Susan Newton) – 10 minutes

Action Items: None

Documents:

(1) Memo from David Banas

8. Summitville (Jennifer Talbert, Dan Rosenberg, Ed Perkins) – 10 minutes

Action Items: None

Documents:

(1) Memo from Dan Rosenberg

Executive Session

9. Bonita Peak Mining District (David Banas, Amy Beatie) – 15 minutes

Action Items: None

Documents:

(1) Memo from David Banas

Open Session

10. Report from Executive Session- 5 minutes

AGENDA #1

Colorado Natural Resource Damages Trustees
Meeting Minutes
October 10, 2019
(Approved _____)

In Attendance:

TRUSTEES

Phil Weiser, Attorney General
Dan Gibbs, Executive Director, Colorado Department of Natural Resources (DNR)
Jill Hunsaker Ryan, Executive Director, Colorado Department of Public Health and Environment (CDPHE)

TRUSTEE STAFF

Amy Beatie, Deputy Attorney General, Natural Resources and Environment Section (NRE)
David Kreutzer, First Assistant Attorney General, NRE
David Banas, Senior Assistant Attorney General, NRE
Dan Rosenberg, Assistant Attorney General, NRE
Jennifer Talbert, CDPHE
Doug Jamison, CDPHE
Susan Newton, CDPHE
Ed Perkins, Colorado Parks and Wildlife, DNR (CPW)
Laura Kelly, Paralegal, NRE

OTHER STATE STAFF

Melody Mascarenaz, CDPHE

PUBLIC

Barbara Chongtoun, Mile High Flood District
Mike Sarmento, Mile High Flood District
Pat Schuler, City of Aurora
Jeff Shoemaker, Greenway Foundation
Ashleigh Quillen, DHM Design
Carrie Kasnicka, Trust for Public Land
Ronald Crawford, Overland Park Neighborhood Association

Open Session

Attorney General Weiser called the meeting to order at approximately 10:00 a.m. on October 10, 2019. The meeting's purpose was to brief the Trustees on the current status of issues relating to Natural Resource Damages (NRDs) projects, and to request direction and/or approval for various actions.

Minutes

After the attendees introduced themselves, Attorney General Weiser presented the minutes from the June 24, 2019 Trustee Meeting. Director Gibbs moved to approve the minutes, Director Hunsaker Ryan seconded the motion, and the motion was unanimously approved.

Greenway Foundation Project – Shattuck Fund

Jeff Shoemaker, Executive Director of the Greenway Foundation, provided an overview of the Foundation's proposal for a restoration project located along the east bank of the South Platte River downstream of West Evans Avenue and West Florida Avenue. The Greenway Foundation has partnered with the Mile High Food District and Denver Parks and Recreation for the restoration project. Mr. Shoemaker introduced Ashley Quillen of DHM Design and Barbara Chongtoua of the Mile High Flood District. Ms. Quillen gave a detailed presentation of the technical aspects of the project which will include a site assessment and restoration design, followed by construction and post-construction phases. She indicated the plan will restore the wetland, riparian, and upland vegetation, and greatly improve the functionality of the stream corridor. Ms. Chongtoua explained the timeline for the project as it relates to NRD funding approval. Ronald Crawford, President of the Overland Park Neighborhood Association and Board Member of Trout Unlimited, provided historical context and comments in support of the project proposal.

Director Gibbs asked about the management strategy for noxious weeds and whether it is harmful to the aquatic life of the river. Discussion ensued about aquatic herbicides that are licensed for riparian zones and have a short-lived soil shelf life. Attorney General Weiser asked about the exact amount remaining in the Shattuck fund. Jennifer Talbert confirmed that it was at least \$57,000. Deputy Attorney General Beatie confirmed that the proposed resolution awards all remaining funds from the Shattuck fund and all available interest.

Director Hunsaker Ryan moved to approve the resolution releasing the remaining Shattuck funds and available interest to the Greenway Foundation. Director Gibbs seconded the motion, and the motion was unanimously approved.

Triple Creek Project – Rocky Mountain Arsenal Fund

Attorney General Weiser welcomed Pat Schuler from the City of Aurora and Carrie Kasnicka from the Trust for Public Land who provided historical background about the Triple Creek Project. Ms. Schuler noted that in 2014, the Trustees approved \$3,685,901 from the Rocky Mountain Arsenal Foundation and Recovery Funds for the City of Aurora to purchase property along the Triple Creek Corridor for open space along trail and stream corridors. Ms. Schuler further explained that most of the properties were purchased, and the contract between CDPHE and Aurora expired at the close of 2018 with \$623,901 remaining unused. Ms. Schuler stated there are additional properties Aurora would like to purchase with the remaining funds, but because the original 2014 Trustee resolution will expire November 17, 2019, Aurora was requesting a one-year extension.

Director Gibbs moved to approve the resolution extending the Triple Creek Project approval to November 17, 2020. Director Hunsaker Ryan seconded the motion, and the motion was unanimously approved.

Summitville Instream Flow Project

Jennifer Talbert provided historical background about the Summitville Mine Superfund NRD settlement, which was approved by the Trustees in 2005 and resulted in a five million dollar award to be shared among the State of Colorado; the U.S. Department of Interior; and the U.S. Fish and Wildlife Service (“USFWS”). In 2007, the State and Federal Trustees approved three projects in the Alamosa River Watershed, one of which was the Alamosa River In-Stream Flow (ISF) Project for the purpose of purchasing 10 c.f.s.¹ of senior water rights for in-river use for fish and wildlife. Ms. Talbert explained that, between 2007 and 2017, 2.5 c.f.s. of senior water rights in the Alamosa River were purchased and conveyed to the Colorado Water Conservation Board at a cost of approximately \$50,000 (it was noted that CDPHE retains approximately \$1,545,000 in the fund). The contract to complete the ISF Project expired on December 31, 2017, and the State Controller concluded that the project proponent could not enter into a new contract without a new Request for Proposals (“RFP”). Ms. Talbert reported that, despite the slow progress of the ISF Project, Trustee staff has determined that it remains viable due to a change in climate, more available stakeholders, and increased interest.

Trustee staff recommended, and the Trustees approved, the use of available Summitville NRD funds previously allocated to the ISF Project to create an RFP for projects that restore streamflow and habitat and provide resources for infrastructure upgrades to benefit the Alamosa River. Attorney General Weiser expressed concern that a large amount of the funding has not yet been used when the project was approved over ten years ago. He opened up discussion about how to continue this project with more oversight, accountability, and urgency. A lengthy discussion ensued wherein the Trustee staff explained the past lack of interest (despite broadening the scope of the project) and the perceived lack of available stakeholders in the San Luis Valley with the skills and experience to complete NRD projects. Attorney General Weiser inquired about ways to provide technical and administrative support to communities outside the metro area. More discussion ensued about whether project proposals can include consulting costs for this type of expertise. Doug Jamison noted that the Trustees have funded design and administrative costs in the past, and the Trustees have great discretion in the implementation of NRD statutes. David Banas clarified that the NRD process is guided by CERCLA, and there is no Colorado law regarding NRD implementation.

Ideas were exchanged about potential sources of expertise and Jennifer Talbert suggested holding a stakeholder meeting in Alamosa to discuss various options. The Trustees expressed a desire to hold such a stakeholder meeting in conjunction with a spring 2020 Trustee Meeting in Alamosa, but ultimately decided that the stakeholder meeting should be scheduled sooner.

Heron Pond Project - Rocky Mountain Arsenal

David Banas stated that the Heron Pond Project, proposed by the City of Denver, is another Rocky Mountain Arsenal NRD project that was approved in 2014 by the Trustees in the amount of \$741,788. Susan Newton noted that the project includes the conversion of about seven acres from Kentucky bluegrass to habitat-friendly wildland. She explained that the contract is almost written, but the approval process experienced delays including a technical problem at CDPHE. The contract will likely be finished by the deadline of November 17, 2019, but Trustee staff

¹ Cubic feet per second.

thought it would be prudent to extend the deadline by one year to ensure CDPHE and Denver have sufficient time to finalize the contract.

Director Gibbs moved to extend the Heron Pond Project approval to November 17, 2020. Director Hunsaker Ryan seconded the motion, and the motion was unanimously approved.

Suncor

David Banas provided an update on the Suncor settlement in which the State and USFWS jointly received \$1.23 million. He explained that the Trustees approved two projects at their October 2018 meeting, but because some of the funds are held by USFWS, the project approval is contingent, in part, on completion of the federal NEPA process. After several months of delay, USFWS has published their draft NEPA document and the public comment period ends October 26, 2019.

California Gulch Memorandum of Understanding

David Banas provided historical context for the 2008 Memorandum of Understanding (“MOU”) with the Federal Trustees for the California Gulch Superfund Site near Leadville. He explained that the State and Federal Trustees coordinate in selecting projects funded by approximately \$20 million recovered from ASARCO in NRD damages. Trustee staff has drafted a new MOU which standardizes language, clarifies the document, and authorizes staff to issue a new RFP because many of the old projects are no longer viable.

Attorney General Weiser inquired about how much money has been spent to date, and how much remains in the fund. Jennifer Talbert stated that approximately \$7 million remain unencumbered in the fund. Doug Jamison noted that the State of Colorado and federal government each received \$10 million, with the MOU stating that the State and Federal Trustees generally spend equal amounts of money. Mr. Jamison explained that approximately \$5-6 million has been spent, but interest has accrued over time making it a challenge to spend down the funds. He agreed to bring information to the January 2020 Trustee Meeting about how funds have been spent to date.

Attorney General Weiser returned to the concept of a Trustee Meeting outside of the metro area, and suggested the Trustees consider meeting in Leadville due to the significance of these projects. David Banas added that the Leadville NRD projects have been very successful and Trustee staff would recommend that the Trustees visit that region. It was decided that staff will plan for the June 2020 Trustee Meeting to be held in Leadville.

Attorney General Weiser asked Trustee staff if they could have some project proposals ready to approve at the June 2020 Trustee Meeting. David Banas requested, and received Trustee approval, to write and issue a new RFP before the January 2020 Trustee Meeting, if possible. Ed Perkins inquired about whether a new RFP can be issued under the existing MOU. Attorney General Weiser suggested that Trustee staff can solicit projects under the existing MOU, and after a new MOU is executed, the Trustees can approve those projects under the new MOU.

Based on these discussions, staff offered to revise the current draft MOU, working with their federal counterparts, and bring it to the January 2020 Trustee Meeting for approval.

Small Spill Program

David Banas provided an update on the Small Spill Program which is developing a process for responding to small spills defined as petroleum spills between 2,000 and 20,000 gallons and hazardous substance spills with a potential NRD claim (decided on a case-by-case basis). Mr. Banas noted that he has been working with CPW to establish a list of contractors to respond immediately to conduct field samples and determine whether to begin a NRD investigation. Staff has also developed a task list for prospective contractors. He requested, and received, Trustee approval to continue working with AGO contracting experts to move the process forward.

Other Business

In response to the Trustees' request for guidance documents adopted by their predecessors, David Banas presented *Guidance: Colorado Natural Resource Damages Restoration Project Selection Process and Administration of the Colorado Natural Resource Damage Recovery Fund (November 17, 2014)*. He explained that the document was developed by Trustee staff from lessons learned primarily in the administration of the Rocky Mountain Arsenal, Shattuck, and Lowry funds. Mr. Banas noted that the document also serves as a resource document for the public.

Deputy Attorney General Beatie provided some general legal advice regarding conflicts of interest. A question arose at the June 2019 Trustee Meeting about whether a Trustee, as Executive Director of a State agency, should recuse him/herself from approving a project when that State agency is also a contributor to the same project. In such a situation, Ms. Beatie stated she would advise the Trustee to disclose the Agency contribution, but the Trustee would not need to recuse him/herself. Director Gibbs asked whether the Agency contribution is limited to funding, or whether it also includes staff time. Ms. Beatie responded that the conflicts policy is designed to identify financial interests in decision-making and would not include staff time.

The Trustees set Trustee Meetings for January 16, 2019, 10:00-12:00 and April 9, 2019, 10:00-12:00; and plan to set a meeting in Leadville for late June 2020.

At approximately 11:40 a.m., Attorney General Weiser moved to adjourn the meeting, Director Hunsaker Ryan seconded the motion, and the motion was unanimously approved.

AGENDA #2

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

ERIC T. MEYER
Chief Operating Officer



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

STATE OF COLORADO
DEPARTMENT OF LAW

January 16, 2020

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Small Spill Program Update

BACKGROUND

CDPHE and CPW respond quickly to releases of petroleum and hazardous substances from a cleanup perspective. For the last several years, however, NRD staff has been working to develop a process for responding to small spills from the NRD perspective. As a result, staff from the three Trustee agencies monitor the CDPHE spill hotline daily. We are now working to establish a list of contractors we can contact immediately after a spill to conduct field sampling to help us determine whether to begin an NRD investigation.

UPDATE

We have developed a task list for prospective contractors and have been working with AGO contracting experts to create a work order or contract that we can use to keep contractors on retainer in different regions of the state.

Mindi May and I met twice in November 2019 with AGO's contract writer, Kris Kellim, and provided him with two drafts of a task list for developing a contract or work order. Additionally, David Kreutzer met with Melissa Moynham on December 4 and I spoke again with Mr. Kellim on that date. As of January 7, 2019, AGO contracting is still drafting a contract or work order.

AGENDA #3

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

ERIC T. MEYER
Chief Operating Officer



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

STATE OF COLORADO
DEPARTMENT OF LAW

January 16, 2020

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Blue Tee

BACKGROUND

On February 12, 2018, the United States Department of Justice notified Colorado of an impending multi-state, multi-party CERCLA settlement with the Blue Tee Corp. and Brown Strauss, Inc. (BT-BS). BT-BS are successors in interest to American Zinc, Lead and Smelting Co. (AZL) who operated hard rock mines and smelters at 23 sites in 5 states. AZL operated one mine in the Bonita Peak Mining District (BPMD) near Silverton from 1946 to 1950. As settlement progressed, we discovered the potential for another Colorado claim against Blue Tee for mining conducted near Ouray.

Plaintiff parties include states, tribes, EPA and federal land management agencies. All parties asserted either response costs reimbursement or NRD claims under CERCLA §§ 107 and 113. Because of the relatively small amount of our claim compared to the federal government and other parties, we allowed the Department of Justice to coordinate the prosecution of this case.

In October 2018, the Colorado Trustees (acting for the NRD claims) and CDPHE (acting for the response cost claims) approved a settlement amount of approximately \$450,000 to settle all of Colorado's NRD and response cost claims. The Trustees and CDPHE agreed to allocate this money between NRD and response costs at a later date. The settlement was delayed by approximately one year while third parties who share liability with BT-BS challenged the sufficiency of the settlement amount.

UPDATE

The Court dismissed the third party claims and entered the consent decree on September 13, 2019. Colorado will receive approximately \$469,000 in six installments over the next five years. CDPHE received the first payment of approximately \$275,000 in October 2019.

The Natural Resources Trustees and CDPHE will have to determine how to allocate this money between response costs and NRD restoration projects in the BPMD. (The settlement includes approximately \$31,500 dedicated to response costs near Ouray that are not related to the allocation discussed in this memo.)

CDPHE believes the money should remain in the general settlement fund (14X) which allows it to be used for remedial activities and would allow it to be transferred to the NRD fund at a later date. (CDPHE is not permitted to move funds from the NRD fund to the general settlement fund.) However, before CDPHE spends any money on remedial activities, they would seek Trustee approval to spend a specific dollar amount on specific activities. Meanwhile, if money becomes available for NRD projects in the BPMD in an amount enough to make project solicitation cost effective, or if an NRD project presents itself, then staff would consult the Trustees about funding such a process or project.

ACTION ITEM

Discuss CDPHE's requests for managing Blue Tee settlement funds.

AGENDA #4

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

ERIC T. MEYER
Chief Operating Officer



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

STATE OF COLORADO
DEPARTMENT OF LAW

December 31, 2019

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: Daniel Rosenberg
Assistant Attorney General

RE: California Gulch MOU with Federal Trustees

BACKGROUND

In 2008, the Colorado Trustees entered into a Memorandum of Understanding with the Federal Trustees, led by the United States Fish and Wildlife Service (USFWS), to coordinate selecting projects to fund with the approximately \$20 million recovered from ASARCO and other parties for natural resource damages occurring at the California Gulch superfund site near Leadville. The MOU is unique in that it delegates to staff the authority through a Trustee Council to select projects to fund from a list of potential projects and project categories (Masterplan).

In the following years, the Colorado and Federal Trustees' staff have funded projects restoring habitat and waterways in and around the upper Arkansas River.

At the October 10, 2019 Trustee Meeting, the Trustees stated their desire to hold their June meeting in Leadville and to tour some of the completed projects.

UPDATE

At the October 10, 2019 Trustee Meeting, the Trustees directed staff to draft a new MOU that no longer delegates decision-making authority to the Trustee staff. The Colorado Trustees staff have edited the MOU and are working with their Federal Trustee staff counterparts to finalize an MOU. Colorado Trustees staff expects to provide a revised MOU to the Trustees for their approval in April 2020.

USFWS and CDPHE continue to work on accounting for the funds that have been spent to date. CDPHE expects to be able to provide the amount the State has spent

at the January 2020 meeting. USFWS has promised to provide a spreadsheet accounting for the amounts spent by the State and Department of the Interior on the various projects in February 2020.

In December 2019, USFWS and CDPHE discussed at a Trustee Council meeting the current status of ongoing projects and which projects from the Masterplan are feasible to pursue. The Trustee Council expects a proposal from Central Colorado Conservancy to acquire additional land for inclusion in a conservation easement and may be able to present the expanded land acquisition request to the Trustees in April. Trustees staff expects to be able to bring new projects to the Trustees for approval in June 2020.

RECOMMENDATION FOR ACTIONS

The Trustees staff recommends no actions at this time.

AGENDA #5

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

ERIC T. MEYER
Chief Operating Officer



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

STATE OF COLORADO
DEPARTMENT OF LAW

January 16, 2020

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Rocky Mountain Arsenal Bluff Lake Project

BACKGROUND

The Trustees allocated the Bluff Lake Nature Center (Bluff Lake) approximately \$657,000 as part of the 2014 allocation of \$17.4 million Rocky Mountain Arsenal Recovery Fund. The projects fortify the Bluff Lake dam, line the Lake and help the Bluff Lake Nature Center acquire recycled water for the Lake.

UPDATE

Bluff Lake will attend the Trustee meeting to inform the Trustees on their work to date and to discuss their intentions moving forward.

AGENDA #6

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

ERIC T. MEYER
Chief Operating Officer



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

STATE OF COLORADO
DEPARTMENT OF LAW

January 16, 2020

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Denver Bear Creek Project

BACKGROUND

In 2013, the Trustees allocated Denver approximately \$114,500 for restoration work in Bear Creek.

UPDATE

To complete its obligations under the Bear Creek contract, Denver will present a project close-out report at the Trustee meeting.

AGENDA #7

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

ERIC T. MEYER
Chief Operating Officer



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

STATE OF COLORADO
DEPARTMENT OF LAW

January 16, 2020

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas
Senior Assistant Attorney General

RE: Denver Westerly Creek Projects

BACKGROUND

Over the past six years, the Trustees have allocated Denver approximately \$2.8 million to perform river restoration work in Westerly Creek from three separate NRD funds:

- approximately \$1.8 million as part of the 2014 allocation of the Rocky Mountain Arsenal Recovery Fund;
- \$500,000 from the Rocky Mountain Arsenal Foundation Fund in 2015; and
- \$500,000 from the Lowry Landfill NRD Settlement in 2015.

UPDATE

To complete its obligations under the three Westerly Creek contracts, Denver will present a consolidated project close-out report at the Trustee meeting.

AGENDA #8

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

ERIC R. OLSON
Solicitor General

ERIC T. MEYER
Chief Operating Officer



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

STATE OF COLORADO
DEPARTMENT OF LAW

December 31, 2019

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: Daniel Rosenberg
Assistant Attorney General

RE: Summitville Stakeholder Meeting and In Stream Flow Project

BACKGROUND

In 2000, the Summitville Mine Superfund Natural Resource Damages were settled between the State of Colorado and the United States Natural Resource Trustees, which includes the Department of Interior and US Fish and Wildlife Service, with the primary responsible party, Robert Friedland. The NRD settlement resulted in a five million-dollar award to be shared between the State and Federal Trustees. In 2007, the State Trustees and the Federal Trustees approved three NRD projects in the Alamosa River Watershed to be funded by the Summitville Mine Superfund Site Natural Resource Damages. One of those projects was the Alamosa River In-Stream Flow (ISF) project for the purpose of purchasing senior water rights in the Alamosa River and transferring them to the Colorado Water Conservation Board for in-river use for fish and wildlife. The ISF project proposal was submitted by Alamosa RIVERKEEPER®. However, the contract for performance and funding was between CDPHE and Valle del Sol Community Center, acting as the 501(c)(3)/fiscal agent on behalf of the Alamosa RIVERKEEPER. Between 2007 and 2017, 2.5 c.f.s. of senior water rights in the Alamosa River were purchased and conveyed to the Colorado Water Conservation Board totaling approximately \$50,000.

On December 31, 2017, the contract to complete the ISF project expired on its terms and Valle del Sol Community Center expressed its desire to terminate its involvement with the ISF project. Alamosa RIVERKEEPER® expressed its desire to continue the ISF Project through the acquisition of future water rights. However, the state controller determined it could not enter into a new contract without violating the state procurement and fiscal rules. Specifically, because the previous contract from 2007 expired, the controller could not determine the same terms for a

new contract with a new entity were based on fair and reasonable prices in the current market as required by Colorado Revised Statutes, Title 24 Article 103 Part 2. Accordingly, for the project to continue, the State would need to issue a new Request for Proposal.

In addition to the ISF project, the Alamosa River Watershed Restoration Foundation and engineer Christ Lidstone (via two different companies) have been performing restoration of riparian habitat with NRD funds for approximately the last ten years. The restoration has focused on returning meanders to the Alamosa River as well as erosion control.

At the October 10, 2019 Trustee meeting, Trustees Staff represented that it retained approximately \$1,545,000.00 of these funds. Since that meeting, Trustees Staff determined that only approximately \$500,000 is available. The previous estimate did not account for funds that had already been obligated for the continued restoration of riparian habitat.

Additionally, at the October 10, 2019 meeting, the Trustees directed Trustees Staff to arrange a stakeholder meeting in Alamosa to determine how the funds would best be spent moving forward, and to potentially issue new RFPs.

UPDATE

The Trustees Staff have arranged for a March 18, 2020 stakeholder meeting in Alamosa at the Rio Grande Water Conservation District's Office. Staff are contacting stakeholders regarding the meeting and have largely received positive feedback. The plan for the meeting is to discuss: (1) the status of projects identified in the Masterplan, and (2) the projects the stakeholders would like to see pursued going forward. The projects could be new ideas or can come from those already identified in the Masterplan. After the stakeholder meeting, Trustees Staff will produce a new RFP for projects related to the Alamosa River.

One stakeholder inquired whether Trustees and/or Amy Beatie will attend the meeting as they would consider hosting a get together prior to the meeting. In addition, Mr. Lidstone offered to provide a tour of the most recent riparian restoration that has been performed.

RECOMMENDATION FOR ACTIONS

The Trustees Staff request the commission reaffirm that they still wish to hold a stakeholder meeting given the reduction in available funds.