

COLORADO NATURAL RESOURCES

TRUSTEES MEETING

JUNE 18, 2020

10:00 AM TO 11:30 AM

LOCATION: ZOOM MEETING

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
ERIC R. OLSON
Solicitor General
ERIC T. MEYER
Chief Operating Officer



**STATE OF COLORADO
DEPARTMENT OF LAW**

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Natural Resources and
Environment Section

AGENDA

Colorado Natural Resources Trustees Meeting

June 18, 2020

10:00 am to 11:30 am

Location: Zoom Meeting

Link to Meeting: <https://zoom.us/j/93870538170>

Note: A hyperlink to the meeting will be emailed to Trustees and staff and will be posted on the Trustee website:

<https://coag.gov/office-sections/natural-resources-environment/trustees/whats-new/>

Open Session

1. Approval of Minutes from April 9, 2020 Meeting – 5 minutes

Action Items:

(1) Review and approve minutes from April 9, 2020 meeting

Document:

(1) Draft Minutes from April 9, 2020 meeting

2. Rocky Mountain Arsenal Updates – (David Banas, Susan Newton, Ed Perkins) - 10 minutes

Action Items: none

Document:

(1) Memo from David Banas

3. Summitville Updates – (Emily Splitek, Susan Newton, Ed Perkins) - 5 minutes

Action Items: none

Document:

(1) Memo from Emily Splitek

4. California Gulch – (David Kreutzer, Susan Newton, Ed Perkins) - 10 minutes

Action Items:

- (1) Consider Memorandum of Understanding with United States Fish and Wildlife Service

Documents:

- (1) Memo from David Kreutzer
- (2) Final Draft of MOU

5. Idarado – (Doug Jamison, Jason King) – 5 minutes

Action Items: none

Documents:

- (1) Memo from Doug Jamison

6. NRD Funds Discussion – (Jennifer Talbert) – 10 minutes

Action Items: none

Documents: none

7. Update on HB18-1198 (Concerning Best Practices for Boards and Commissions) Discussion (Amy Beatie, David Kreutzer, David Banas) – 5 minutes

Action Items: none

Documents:

- (1) Memo from David Banas

Executive Session

8. Bonita Peak Mining District Discussion

Action Items: none

Documents: none

Open Session

9. Report from Executive Session

ITEM 1

Colorado Natural Resource Damages Trustees
Meeting Minutes
April 9, 2020
(Approved _____)

In Attendance:

TRUSTEES

Phil Weiser, Attorney General
Dan Gibbs, Executive Director, Colorado Department of Natural Resources (DNR)
John Putnam, Director of Environmental Programs, Colorado Department of Public Health and Environment (CDPHE) (Trustee Designate representing CDPHE Executive Director Jill Hunsaker Ryan)

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
Emily Splitek, Assistant Attorney General, NRE
Jennifer Talbert, CDPHE
Doug Jamison, CDPHE
Susan Newton, CDPHE
Ed Perkins, Colorado Parks and Wildlife, DNR (CPW)
Robert Harris, CPW

OTHER STATE STAFF

Jennifer Opila, CDPHE
Melody Mascarenaz, CDPHE
Mindi May, CPW
Laura Kelly, Paralegal, NRE
Dan Graeve, Administrative Assistant, NRE

GUESTS

Laura Archuleta, United States Fish and Wildlife Service
Adam Beh, Central Colorado Conservancy
Aaron Kindle, Central Colorado Conservancy
Cindy Medina, Alamosa Riverkeeper

Open Session

Attorney General Weiser called the meeting to order at approximately 10:00 a.m. on April 9, 2020. The meeting was held via Zoom due to COVID-19. 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

Attorney General Weiser presented the minutes from the January 16, 2020 Trustee Meeting. Director Gibbs moved to approve the minutes, Director Putnam seconded the motion, and the motion was unanimously approved.

Rocky Mountain Arsenal

David Banas provided updates on three recipients of Rocky Mountain Arsenal NRD funds.

First, Mr. Banas noted that in 2014, the Trustees allocated \$3,086,942 from the RMA Recovery Fund for Commerce City's Second Creek Project, contingent on Trustee staff approval of a final proposal. Mr. Banas reported that Commerce City submitted a proposal to Trustee staff in February 2020, and Trustee staff is working with Commerce City to develop the final proposal to present at the June 2020 Trustee Meeting. Attorney General Weiser inquired about the amount of the allocation. Mr. Banas explained that the overall project cost is approximately \$10 million, towards which the Trustees have allocated approximately \$3 million.

Second, Mr. Banas noted that in 2014, the Trustees allocated \$433,260 from the RMA Recovery Fund for Environmental Learning for Kids ("ELK") to restore a 5.5 acre abandoned lot in the Montbello neighborhood of Denver. Mr. Banas explained that the ELK project established upland prairie habitat as part of their larger project to create an environmental learning center for underserved urban youth. Susan Newton reported that she toured the site in March and was impressed with the complete transformation of the lot and how it facilitates environmental education. She indicated ELK will submit a final construction completion report this spring and suggested the site might be worthy of a Trustee site visit in the future.

Third, Mr. Banas noted that in 2014, the Trustees allocated \$605,946 from the RMA Recovery Fund for the Bluff Lake Nature Center ("Bluff Lake") to reinforce the dam, line the lake to retain year-round stormwater, and purchase recycled water from Denver Water. Mr. Banas stated that Bluff Lake, which covers approximately 123 acres, became an outdoor nature center in the middle of the Stapleton neighborhood after Stapleton Airport was decommissioned. He added that after the dam was built, Bluff Lake determined there was no need to line the lake, so Bluff Lake intends to present a proposal at the June 2020 Trustee Meeting to use the remaining \$318,000 to purchase recycled water. Attorney General Weiser inquired about the complexity of purchasing recycled water. Ms. Newton explained the administrative difficulties of purchasing recycled water to fill a lake, and if the issue cannot be resolved by June, Bluff Lake might request to use the funds to develop a water augmentation program.

California Gulch

David Banas reported that Trustee staff plans to present the updated California Gulch Memorandum of Understanding with federal Trustees ("MOU") for Trustee review at the June 2020 Trustee Meeting. In the meantime, Trustee staff intends to obtain approval from Trustees for all projects going forward, as required by the updated, but not yet signed, MOU.

In that spirit, Mr. Banas provided background on a proposal submitted by the Central Colorado Conservancy ("CCC") tentatively named the Arkansas River Community Preserve Acquisitions Project ("Preserve Project"). Trustee staff determined the Preserve Project is consistent with the

Restoration Plan and Environmental Assessment for the Upper Arkansas River Watershed and recommended funding of the Preserve Project with the conditions described in the proposed resolution. The proposal requests \$760,050 from the California Gulch NRD fund to help purchase ten parcels, and to establish conservation and public access easements on eleven parcels (one parcel is already owned by CCC), comprising 160 acres along approximately two miles of the Arkansas River in Lake County.

Mr. Banas introduced Adam Beh from CCC who provided details of the proposal and some background regarding how growth and development in rural areas such as Lake County is affecting wildlife. Mr. Beh explained that the conservation and public access easements will provide recreational opportunities for fishing, hunting, and wildlife watching. Attorney General Weiser inquired about CCC's history, regional coverage, and a potential site visit in the future. Director Gibbs introduced Aaron Kindle, Vice President of CCC's Board of Directors, who expressed his support for the proposal. Director Putnam inquired about trail access points and signage. Mr. Beh responded that the budget includes a stewardship fund during Phase II to assess whether trail development is feasible.

Director Gibbs moved to approve the resolution to allocate \$760,050 for the Arkansas River Community Preserve Acquisitions Project. Director Putnam seconded the motion, and the motion was unanimously approved.

Summitville

Emily Splitek explained that due to COVID-19, the in-person stakeholder meeting in Alamosa, previously scheduled for March 18, 2020, was postponed. Instead, a conference call was held on April 3, 2020, to keep stakeholders engaged and informed. Ms. Splitek facilitated a conversation with about 20 participants about what restoration projects were most important to the community. She also provided the stakeholders with an overview and guidance document for the project solicitation process. Ms. Splitek stated approximately \$550,000 remains in the Summitville NRD fund from the original \$5 million. Despite COVID-19, she reported the consensus of the stakeholders was to plan projects sooner rather than later. Therefore, Trustee staff will work on a new Solicitation for Project Proposals ("SPP") within the next month with a goal to start projects by summer 2021.

Cindy Medina of Alamosa Riverkeeper joined the Zoom meeting and expressed appreciation for Ms. Splitek's support and guidance during the stakeholder conference call. Ms. Medina voiced her concerns about credibility in the NRD funding and contracting process, given recent misunderstandings about funding allocations for the Summitville In-Stream Flow Project. Attorney General Weiser thanked Ms. Medina for her feedback and acknowledged the need for accurate accounting concerning all NRD projects. He stated the Trustees would ensure transparent, clear, and publicly available accounting information at future Trustee meetings. Deputy Attorney General Amy Beatie, as counsel for the Trustees, confirmed that the Trustees will require an accounting for all NRD projects at each Trustee meeting going forward, and noted that capable staff at the AGO, DNR and CDPHE are working to improve the NRD contracting process.

For Summitville, Jennifer Talbert explained there are two currently encumbered NRD contracts (the Alamosa River Watershed Restoration Foundation Project and the Rediscovering the Alamosa River Project) which total approximately \$1.1 million. The funding for both of these contracts is not included in the \$550,000 that is available for a future SPP. Ms. Talbert acknowledged the discrepancy in the amount of funds between what remained on the In Stream Flow Contract and what is available now for future projects identifying that the projects awarded from the 2017 SPP repurposed the In Stream Flow funds. Ms. Talbert also clarified comments made by Cindy Medina confirming that funding for the Rediscovering the Alamosa River Project, which is currently under contract, has already been approved by the Trustees, and that funding is available and will remain available for the project through the contract terms.

Susan Newton and Emily Splitek offered their assistance to Ms. Medina regarding the existing contracted project. Attorney General Weiser reiterated that it is the Trustee's mandate to oversee NRD funds, and the accounting of those funds will be captured in a publicly available document.

NRD Funds Discussion

Jennifer Talbert explained that software changes, staff turnover, and loss of institutional knowledge have resulted in some discrepancies in accounting and inefficient tracking of NRD funding and contracts. Since taking on her new role at CDPHE, she has been working to alleviate concerns about transparency and accountability. To that end, she noted that CDPHE is initiating several new measures to improve efficiency in accounting for NRD projects, such as:

- Designation of Ms. Talbert's position as the point person for oversight and accountability of NRD funding.
- Creation of an accounting spreadsheet, in conjunction with CDPHE contracting staff for additional oversight.
- Creation of a contract tracking spreadsheet to ensure that all requirements of a NRD contract are being met.
- Trustee staff review of the NRD budget on a monthly basis to ensure that contracts are being encumbered properly and milestones within each contract are being met.
- Provide an opportunity for the Trustees and the public to review these spreadsheets at future Trustee meetings.

Attorney General Weiser expressed his appreciation for Ms. Talbert's diligence in improving the NRD funding process with a straightforward approach and integrity. He asserted that having financial documentation for Trustee review is imperative for the NRD program to function effectively. Director Putnam also expressed his gratitude for Ms. Talbert's work on this critical initiative to ensure transparency in the accounting of funds.

Jennifer Opila, Director of CDPHE's Hazardous Materials and Waste Management Division requested confirmation that CDPHE staff did not in any way mismanage funds. Ms. Talbert responded that the specific issue regarding the Summitville NRD fund was that contracted funds in the approximate amount of \$1.7 million were not marked as encumbered at the time, so that an SPP was issued in 2017 for funds that should have been marked as encumbered. She assured Ms. Opila that no actual funds were lost or missing, nor did over-spending occur. The result was that contracted funds for the In-Stream Flow Project were inadvertently reallocated to other

Summitville projects. Attorney General Weiser concurred that funds were not mismanaged, but a lack of transparency and clarity led to miscommunications.

Update on House Bill 18-1198

Deputy Attorney General Beatie reminded the Trustees that the Legislature passed House Bill 18-1198 in 2018 which is intended to ensure that the State's Boards and Commissions adopt appropriate written documents and receive appropriate training. She noted that Trustee staff have the responsibility of ensuring the Trustees' compliance. For example, Trustee staff will ensure the identification of policies which need to be in writing, completion of annual requirements, and the utilization of best practices. Ms. Beatie informed the Trustees that they will be asked to review associated documents at the next few Trustee meetings, and possibly participate in training about the Trustee's role as a member of a State Board or Commission. David Kreutzer added that the larger AGO has been working on more broadly applicable guidance for HB 18-1198, and Trustee staff may incorporate that guidance at a later time. Ms. Beatie confirmed the Trustees are already substantially in compliance, but there is a need for a more formal structure to be compliant with the legal requirements.

Attorney General Weiser and Deputy Beatie thanked the AGO team for working together to successfully arrange the Trustee's first video meeting. On behalf of CDPHE, Director Putnam thanked staff and members of the public for meeting by video to help our front-line medical workers and first responders, while also keeping the People's business moving forward.

At approximately 11:05 a.m., Director Gibbs moved to adjourn the meeting, Director Putnam seconded the motion, and the motion was unanimously approved.

ITEM 2

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
ERIC R. OLSON
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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

June 18, 2020

M E M O R A N D U M

TO: Colorado Natural Resources Trustees
FROM: David Banas
RE: Rocky Mountain Arsenal Updates

BACKGROUND

Over the past 8 years, the Trustees have allocated approximately \$27 million from the two Rocky Mountain Arsenal funds: the Rocky Mountain Arsenal Recovery Fund, managed by CDPHE, and the Rocky Mountain Arsenal Foundation Fund, managed by DNR.

UPDATE

This memo provides updates on recent developments with two recipients of Arsenal funds: Commerce City and the Bluff Lake Nature Center.

(1) Commerce City

In 2014, the Trustees allocated \$3,086,942 from the Recovery Fund to fund Commerce City's Second Creek Project. The approval was contingent on staff approval of a final project proposal. Commerce City did not submit a final proposal and the approval expired in November 2019.

In February 2020, Commerce City submitted a revised proposal. After reviewing the proposal, staff had questions about the environmental benefits of the project. Staff met with Commerce City in March 2020. On this call, staff committed to working with Commerce City to help develop a project to present at the June 2020 Trustee meeting.

In April 2020, Commerce City submitted a new draft of their February proposal. Staff reviewed this proposal and determined the project does not meet NRD criteria. Specifically, it is still not clear that the project restores, replace or acquires the equivalent of natural resources injured at the Rocky Mountain Arsenal, and instead appears to provide primary value to a local drainage and infrastructure project.

On May 21, 2020, staff sent Commerce City a letter explaining how the project does not meet NRD criteria. The letter suggested Commerce City either submit additional information to demonstrate the value of the benefits to natural resources anticipated by their project, or develop a different project more aligned with NRD goals for the Trustees' consideration.

(2) Bluff Lake Nature Center

In 2014, the Trustees allocated the Bluff Lake Nature Center \$605,946 from the Recovery Fund (which Bluff Lake combined with a \$501,481 allocation from the Lowry Landfill settlement) to reinforce the Bluff Lake Dam, line Bluff Lake to retain year-round storm water, and to purchase reclaimed water from Denver Water. After reinforcing the Dam, Bluff Lake determined it would not be necessary to line the lake. As discussed at the January 2020 Trustee meeting, Bluff Lake has been unable to finalize a deal with Denver Water.

Bluff Lake has proposed to use the remaining funds – approximately \$318,000 – to continue to work to purchase recycled water. Specifically, Bluff Lake seeks to use NRD money to fund planning and to fund legal fees – activities the Trustees typically do not fund with NRD money.

Bluff Lake submitted a project proposal in May 2020. Staff is reviewing this proposal and anticipates making a recommendation to the Trustees at the September 2020 Trustee meeting.

RECOMMENDATION FOR ACTIONS

None.

ATTACHMENTS

None.

ITEM 3

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
ERIC R. OLSON
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ERIC T. MEYER
Chief Operating Officer



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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

June 2, 2020

M E M O R A N D U M

TO: Colorado Natural Resources Trustees
FROM: Emily Splitek
Assistant Attorney General
RE: Summitville NRD

BACKGROUND

At the October 2019 meeting, the Trustees requested that staff organize a meeting in Alamosa to give stakeholders in the community an opportunity to weigh in on how the remaining \$500,000 in settlement funds should be spent. Staff worked to set up a meeting for March 18, 2020 at the Rio Grande Water Conservancy District office in Alamosa. Staff invited about 60 people to the meeting, and expected 20-30 people to attend. Due to Covid-19, this meeting was postponed. We had a call with stakeholders on April 3, 2020 and advised them that further details on the funding allocation process would be forthcoming.

UPDATE

The Solicitation for Project Proposals (SPP) was published on May 11, 2020 in the San Luis Valley Courier. Staff also sent the SPP to stakeholders via email. Project proposals will be due by July 31, 2020. Staff will work to review them with the goal of having recommendations to the Trustees by the December 2020 Trustee meeting.

ITEM 4

PHIL WEISER
Attorney General
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Chief Operating Officer



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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

March 26, 2020

M E M O R A N D U M

TO: Colorado's Natural Resource Trustees
FROM: David Kreutzer, First Assistant Attorney General
RE: California Gulch Memorandum of Understanding with Federal Trustees

BACKGROUND

The Colorado Trustees requested we update our Memorandum of Understanding ("MOU") with the federal Trustees to align with our usual practice whereby Colorado's Trustees approve individual projects. The previous MOU delegated this approval to the Trustee Council, comprised of Colorado Trustee staff and federal Trustee staff.

UPDATE

Federal and Colorado Trustee staff reached agreement on an updated MOU, which incorporates the Colorado Trustees' preference that they, rather than staff, approve individual projects. Additionally, at the United States Forest Service's request, the MOU will expire and need to be revisited in five years.

RECOMMENDATION FOR ACTIONS

Staff recommends the Trustees approve the attached MOU.

ATTACHMENTS

Final MOU between the Colorado Trustees and the federal Trustees.

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 CALIFORNIA GULCH SUPERFUND SITE

I. INTRODUCTION

This Memorandum of Understanding (“MOU”) is entered into between the Federal and State officials (the “Parties”) who, pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) § 101, 42 U.S.C. § 9601 or the CERCLA Natural Resource Damage Assessment Regulations (“43 C.F.R. Part 11”), act on behalf of the public as trustees for natural resources injured, or potentially injured, by the release of hazardous substances from the California Gulch Superfund Site. The MOU is intended to govern the Parties’ efforts to coordinate and cooperate in carrying out their respective responsibilities to restore, replace, or acquire the equivalent of the said natural resources, using funds received by the parties pursuant to the Consent Decrees approved by the U.S. District Court for the District of Colorado in the consolidated cases of State of Colorado v. ASARCO Incorporated, et al., Civil Action No. 83-C-2388, and United States v. Apache Energy and Minerals Company, et al., Civil Action No. 86-C-1675. A MOU for this purpose was first entered into in 2008. This MOU revises that 2008 MOU and replaces that 2008 MOU in its entirety, thereby rendering it terminated, without nullifying or otherwise affecting any actions that took place thereunder.

II. PARTIES

The following agencies 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. United States Department of the Interior (“DOI”) represented by:
 - 1. U.S. Fish and Wildlife Service (“USFWS”);
 - 2. Bureau of Land Management (“BLM”);
 - 3. Bureau of Reclamation (“BOR”);

E. United States Department of Agriculture, U.S. Forest Service (“USFS”).

These Parties are collectively referred to as the “Federal and State Trustees.”

DOI bureaus (USFWS, BLM, BOR) and USFS are collectively referred to as the “Federal Trustees.” The Federal Trustees’ representatives are referred to as the “Federal Council Members.”

CDPHE, DNR and DOL are collectively referred to as the “State Trustees.” The State Trustees’ representatives are referred to as the “State Council Members.”

These Parties’ representatives are referred to throughout this MOU as “Council” and “Council Members.” The DOI has delegated to the USFWS Region 6 (Mountain Prairie) Regional Director the authorities of the DOI Secretary for DOI natural resource trustee concerns related to this Site. Thus, the USFWS Regional Director is DOI’s Authorized Official and serves as lead for the DOI bureaus involved in this MOU.

For the purposes of this MOU, the DOI USFWS represents the U.S. Forest Service’s natural resource trustee interests related to the Site.

III. DEFINITIONS

- A. “California Gulch Site” or “Site” is defined as the California Gulch National Priorities List Site located in and near Leadville, Colorado, as well as 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 defined in 43 C.F.R. § 11.14(11). Restoration may include replacement or acquiring the equivalent of resources injured by releases from the Site.
- C. The term “Restoration Plan” means a plan developed by the Council that describes and evaluates options for restoring, replacing or acquiring the equivalent of resources injured by releases from the Site.
- D. “Unanimous approval” is defined as an affirmative vote by each Council Member or an affirmative vote by five of six Council Members with one abstention. As indicated in Part IX of this MOU, each of the State Council Members will have 1 vote for a total of 3 State votes, and each of the DOI bureaus Council Members will have 1 vote, for a total of 3 Federal votes.
- E. Unless a term is expressly defined in this MOU, all terms shall have the same meaning as in (“CERCLA”) or (“43 C.F.R. Part 11”).

IV. AUTHORITIES

The Parties are natural resource trustees pursuant to the CERCLA, 42 U.S.C. §§ 9601-9675; 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 principal responsible parties at the Site, Resurrection Mining, Newmont, ASARCO and the Res-ASARCO Joint Venture, settled the Trustees' Natural Resource Damage ("NRD") claims. Pursuant to those settlements, the Federal and State Trustees will have an allowance in the ASARCO bankruptcy proceedings of \$10 million. Resurrection Mining and Newmont ("Res/Newmont") agreed to pay \$10.5 million to resolve all outstanding NRD liability. Thus far, the Federal and State Trustees have spent approximately \$8M on projects to restore, acquire or replace injured natural resources.

The Consent Decrees resolving NRD claims require ASARCO and Res/Newmont to split their payments 50/50 between the State and Federal governments. The State placed its recovery in the Colorado NRD Recovery Fund ("Colorado Fund") as a separate and segregated interest-bearing custodial account within the State Treasury, after reimbursing funding sources for past assessment costs. DOI placed its recovery in the DOI NRDAR Fund ("Federal Restoration Account") as a segregated interest-bearing account, after reimbursing funding sources for past assessment costs. The Federal and State Trustees further agreed that the State and DOI would be responsible for routine management of the Colorado Fund and the Federal Restoration Account, respectively, according to these Agencies' established policies.

The Federal and State Trustees hereby agree that funds in the Colorado Fund and Federal Restoration Account will be used to restore natural resources in the upper Arkansas River watershed, in accordance with federal law. The Federal and State Trustees further agree to coordinate the use of funds from both accounts. The Federal and State Trustees agreed to reimburse their past (pre-settlement) assessment costs with their respective shares of settlement recoveries.

VI. PURPOSE

The purpose of this MOU is to provide a framework and process for coordination and cooperation among the Federal and State Trustees in using funds received from the settlements identified in Section V., and interest earned on the funds, to restore injured or potentially injured natural resources in the upper Arkansas River watershed. Under the 2008 MOU, and based on public outreach and research, the Federal and State Trustees identified in a 2010 Restoration Plan a series of potential restoration projects in the Arkansas River watershed. The Federal and State Trustees approved allocation of \$12,745,000 (see Trustee Council Resolution 10-02) to fund projects identified in the 2010 Restoration Plan. Under this MOU, the Federal and State Trustees expect to develop additional 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 Council is authorized to review the progress of approved projects and to identify additional restoration projects in accordance with applicable laws and consistent with this MOU. All projects the Council identifies will be submitted to the Federal and State Trustees for approval prior to funding.

VII. ORGANIZATION - NATURAL RESOURCE COUNCIL AND LEAD ADMINISTRATIVE MEMBER

A. Upper Arkansas River Natural Resource Council

To implement and achieve the stated purposes of this MOU, there is hereby renewed and renamed the Upper Arkansas River Natural Resource Council.

Each of the Parties, except the USFS, have delegated one primary Council Member who may designate at least one alternate Council Member to the Council. Each Council Member shall notify the other Council Members of the names, addresses, email addresses, and telephone numbers of the primary and alternate Council Member(s). Communications regarding Council business shall be addressed to the primary Council Member and, unless the Council Member directs otherwise, copied to the alternate Council Members. Council Members shall also notify the other Council Members of any changes in that party's primary or alternate Council Member(s).

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 Council Member

The DOI-USFWS will serve as the Lead Administrative Council Member and the Council Member may appoint one state agency to serve as the alternate Lead Administrative Council Member, for the purpose of handling administrative matters of the Council. The duties of the Lead Administrative Council Member shall include: scheduling meetings of the Council and notifying Council Members of those meetings in a timely manner; preparing agendas for those meetings; acting as a central contact point among members of the Council; establishing a system for and maintaining records and relevant documents; preparing and circulating minutes of Council meetings; and other administrative duties as directed by the Council Members. The Lead Administrative Council Member shall be responsible for informing the other Council Members of all pertinent developments in a timely manner. The Lead Administrative Council Member and alternate Council Members may delegate any of their duties to another Council Member. The duties carried out by the Lead Administrative Council Member do not provide the Lead Administrative Council Member with decision-making rights beyond those normally held by each Council Member.

VIII. POWERS, DUTIES, AND RESPONSIBILITIES

The Council Members shall coordinate with each other with regard to Council activities necessary to fulfill the purpose of this MOU.

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

- A. Identify 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 for implementation in accordance with the criteria developed by the Council and in accordance with a Restoration Plan, and any applicable federal laws, after consideration of public comment;
- B. Develop new Restoration Plan(s). Any Plans for restoration projects to be paid for with federal funds will comply with the National Environmental Policy Act. Any Plan selected by the Federal and State Trustees will be provided to the public for comment;
- C. Recommend final projects receiving unanimous approval as defined in Section III.C to the Federal and State Trustees for their approval;
- D. After Federal and State Trustee approval, arrange, through one or more of the Council Members' agencies, contracts with professional consultants, technical or otherwise, or any other parties as the Council deems necessary;
- E. Promote partnerships in the funding and implementation of proposed projects;
- F. After Federal and States Trustees' approval of funding, fund selected projects from the Colorado Fund and the Federal Restoration Account;
- G. Implement and oversee implementation of restoration projects;
- H. Monitor the management and evaluate the effectiveness of projects that have been implemented;
- I. Provide information to the public at all phases of the process, including reporting on the effectiveness of projects that have been implemented;
- J. Coordinate with CDPHE and U.S. EPA regarding the ongoing remediation at the Site;
- K. Oversee and review the management and administration of funds in the Colorado

Fund and the Federal Restoration Account;

- L. Appoint committees and subcommittees, as necessary, for the efficient operation of the Council; and
- M. Perform any other functions necessary in accordance with the purpose of this MOU.

IX. DECISION MAKING

For Council decision-making, each of the State Council Members shall have one vote, for a total of three votes, which shall be cast by the State Council Members' primary Council Member, or in the absence of the primary Council Member, by an alternate Council Member or by proxy. The Federal Council Members to this agreement shall have a total of three votes that shall be cast by the three voting DOI bureaus' primary Council Members, or in the absence of the primary Council Members, by alternate Council Members or by proxy. The USFS will vote through the DOI USFWS Council Member.

The Federal and State Trustees agree that the Council decisions pursuant to this MOU shall require unanimous approval of the voting Council Members, as defined in Section III.D. The decisions made by the voting Council Members shall be recorded in writing, either by resolution signed by the voting Council Members, or in minutes approved as to content and form. The voting Council Members shall memorialize all decisions regarding expenditures of received settlement funds in signed Council resolutions. The budget and other documents describing the work to be conducted will be attached to the resolutions and maintained in the records of the Council.

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

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

Whether a restoration project or projects is selected for joint funding or funding by either the Federal or State Trustees, each Council Member agrees to raise any comments or concerns regarding such project(s) to the Council and to work within the Council to resolve differences before raising them in a public forum or during a formal public comment period.

The Council Members understand that there may be disagreements about whether a specific, proposed project qualifies as restoration or is otherwise a project appropriate to be selected for implementation. In the event of such disagreements, the Council Members may elevate the matter within their respective agencies under the dispute resolution mechanism described above. As an alternative, the dissenting Federal or State Trustees may agree to defer to the proponent's interpretation and approve the project on the condition that the project be funded entirely from the proponent's funds.

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

Council meetings may be convened by Council Members coming together or by telephone conference call. If a Council Member is unable to travel to a meeting, that Council Member may participate by telephone conference.

Prior to the implementation or funding of any projects included in a Restoration Plan identified by the Council, the State Council Members shall submit the Restoration Plan to the State Trustees for approval.

Prior to the implementation or funding of any projects included in a Restoration Plan identified by the Council, the Federal Council Members will submit the Restoration Plan to the DOI Authorized Official for approval after receiving concurrence from BLM, BOR, and USFS.

X. FUNDS

The Federal and State Trustees intend to administer the settlement proceeds received and coordinate expenditures of those funds in a cooperative manner. The Federal and State Trustees agree that these funds shall be used for restoration projects consistent with a Restoration Plan that is approved by the Federal and States Trustees. Under this MOU, the Federal and State Trustees will establish procedures for the financial operations of the Council. These procedures may include: arranging contract administration through a Trustee agency, directing disbursements from the State and federal 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 Fund, and the DOI, in managing the Federal Restoration Account, shall follow all applicable rules and regulations pertaining to these accounts.

The Federal and State Trustees also agree that NRD settlement proceeds may be used by the Federal and State Trustees for their expenses related to this MOU. These funds will be used solely for work related to the Site in a manner consistent with state or federal regulations, policies and guidelines. Council Members shall provide the Council with an annual status and accounting report on their use of these funds. The State and Federal Trustees, annually and on an ongoing basis, will carefully review expenditures to confirm that no more money than

necessary is being used for administrative costs rather than restoration projects.

The Federal and State Trustees agree that if there are additional recoveries on the Trustees' claims, the recovered sums may be added to the Colorado Fund and the Federal Restoration Account, depending on the terms of the associated consent decree. If any additional funds are added to these accounts from future recoveries, 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 Council and provides that the Council may establish procedures for disbursing the funds in the Colorado Fund and the Federal Restoration Account, it does not provide for services between the Federal and State Trustees. In that regard, this MOU is neither a fiscal nor a funds obligation document. Any transfer of funds between the Parties shall be handled in accordance with applicable laws, regulations, and procedures including those for government procurement. Such transfers or activities will be outlined in separate agreements that shall be made in writing by duly authorized representative of the Parties and shall be independently authorized by the Federal and State Trustees pursuant to appropriate statutory authority. Also, nothing in this MOU shall be construed as obligating the Federal and State 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 Federal and State Trustees acknowledge that the restoration planning pursuant to this MOU may involve confidential Federal and State Trustee or Council deliberations, and agree to maintain such confidentiality to the extent authorized by law. As a rule, the Council will implement a general policy of making the results of such deliberations and the Federal and State Trustees' or Council's technical information available to the public, whenever possible. The Federal and State Trustees also agree that information subject to public disclosure under the Freedom of Information Act and the Colorado Open Records Act and that are not otherwise protected by an exemption under those two statutes shall be released. The Federal and State Trustees agree to notify the other Federal or State Trustees in writing of each request for information no more than five (5) working days from the date the request is received.

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 Parties or any other persons not a party to this MOU. Nothing in this MOU is intended to imply that any signatory Party is in any way abrogating or ceding any responsibility or authority inherent in its trusteeship over natural resources, nor its prerogatives regarding agency appropriated funds or staff.
- 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 Parties to this MOU.
- E. **Withdrawal.** Any Party may withdraw from this MOU at any time upon 30 days written notice to the other Parties. Within 60 working days of withdrawing, said Party will provide a full and complete status report of all project work and an accounting of all project funds they have been allocated.
- 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 remains in effect for fifteen (15) years from the date of last signature or until terminated by mutual agreement or if a Party withdraws pursuant to XII.E. In the event of termination of this MOU, each Party agrees to cooperate in preparing a full and complete accounting and status report of all accounts managed by the Trustees.

XIII. FOR USFS PURPOSES THE FOLLOWING PROVISIONS ARE REQUIRED:

- A. **NONBINDING AGREEMENT.** This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service

obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- B. **MEMBERS OF U.S. CONGRESS.** Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly
- C. **FREEDOM OF INFORMATION ACT (FOIA).** Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information Regulation (5 U.S.C. 552).
- D. **TEXT MESSAGING WHILE DRIVING.** In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperatives, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- E. **DEBARMENT AND SUSPENSION.** Parties shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the Parties or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

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

Jill Hunsaker Ryan
Executive Director, Colorado Department of Public Health
and Environment

Date

Dan Gibbs
Executive Director,
Colorado Department of Natural Resources

Date

Philip J. Weiser
Attorney General, State of Colorado

Date

Noreen Walsh
Regional Director, U.S. Fish and Wildlife Service
Department of the Interior Unified Regions 5 and 7
Authorized Official, U.S. Department of the Interior,
Upper Arkansas River NRDAR

Date

JENNIFER EBERLIEN

Digitally signed by JENNIFER
EBERLIEN
Date: 2020.03.27 17:05:47 -06'00'

Jennifer Eberlien
Acting Regional Forester,
U.S. Forest Service, Region 2

3/27/2020

Date

The authority and format of this agreement have been reviewed and approved for signature.

REBECCA CUTHBERTSON Digitally signed by REBECCA CUTHBERTSON
Date: 2020.03.24 13:42:10 -06'00'

Rebecca Cuthbertson
U.S. Forest Service Grants Management Specialist

3/24/2020

Date

Principal Contacts

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United States Department of Agriculture, U.S. Forest Service

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ITEM 5



COLORADO

**Hazardous Materials
& Waste Management Division**

Department of Public Health & Environment

Memorandum

To: Colorado Natural Resources Trustees

From: Doug Jamison/Ross Davis

CC: Jennifer Talbert and David Banas

Date: June 04, 2020

RE: Idarado NRD Projects

In 2018 and 2019 CDPHE approached the Natural Resource Damage (NRD) Trustees for approval of one acquisition and two restoration projects. These projects were approved with signed resolutions and will consume the remaining Idarado NRD funds. A brief status update and funding awarded is provided below.

The Trust for Land Restoration (TLR) developed a proposal to acquire 104 acres for land for conservation purposes. CDPHE has executed a 5 year contract with TLR for \$92,000. The estimated total project cost is \$292,000. Funds will only be disbursed into an escrow account to assist in the payment for the land. TLR has approached the seller and is currently negotiating a purchase price. A phase one environmental impact assessment has been commissioned. TLR is regularly providing updates to CDPHE.

The Uncompahgre Watershed Partnership (UWP) developed a proposal to restore alpine habitat to assist in water quality improvements in the Uncompahgre River watershed. CDPHE has executed a 5 year contract for \$76,200 plus account interest with UWP to conduct this work. The total project cost is \$198,000. UWP has started pre construction water quality monitoring associated with this work. UWP is regularly providing updates to CDPHE as they become available.

The Town of Telluride has approached CDPHE with an alternative plan to reclaim the Idarado fluvial tailings located at Society Turn. This alternative plan also included significant river restoration to further protect the reclaimed tailings from erosion. CDPHE has executed a 5 year contract for \$118,800 of Idarado NRD funds to assist Telluride in completion this project. The total project cost is \$3.3 million. It is anticipated that this project will start and finish this year, 2020. CDPHE is currently waiting on a final construction schedule.



As previously mentioned these projects will exhaust the remaining Idarado NRD funds. Anyone who is interested in additional information on these projects can contact Ross Davis at ross.davis@state.co.us.





ITEM 7

PHIL WEISER
Attorney General
NATALIE HANLON LEH
Chief Deputy Attorney General
ERIC R. OLSON
Solicitor General
ERIC T. MEYER
Chief Operating Officer



STATE OF COLORADO
DEPARTMENT OF LAW

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

Office of the Attorney General

June 18, 2020

M E M O R A N D U M

TO: Colorado Natural Resources Trustees
FROM: David Banas
Senior Assistant Attorney General
RE: HB 18-1198 Update

BACKGROUND

HB 18-1198, codified in section 24-3.7-102, C.R.S., requires many state boards and commissions to adopt bylaws and policies, and to obtain annual training, concerning a variety of best practices and procedures.

UPDATE

Although HB 18-1198 arguably does not apply to the NRD Trustees, the Trustees have recognized that they could benefit from adopting many of the best practices and procedures outlined in the law. Amy Beatie, David Kreutzer and I have been meeting to draft bylaws and policies and to developing an annual training plan for the Trustees. We plan to present these documents for Trustee approval at the September 2020 Trustee meeting.