

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

Natural Resources and
Environment Section

AGENDA

Colorado Natural Resources Trustees Meeting

August 30, 2021

12:30 pm to 2:30 pm

**Location: National Mining Hall of Fame and Museum
120 West Ninth Street, Leadville, Colorado**

Teleconference:

Zoom Call-in Information

<https://us02web.zoom.us/j/86369538256>

Meeting ID: 863 6953 8256

**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 June 30, 2021 Meeting – 5 minutes

Action Item:

(1) Review and approve minutes from June 30, 2021 meeting

Document:

(1) Draft Minutes from June 30, 2021 meeting

2. New Matters Update – NRD Contracting – (David Kreutzer) – 10 minutes

Action Items: None

Documents: None

3. California Gulch – Public Comment – (Susan Newton) – 60 minutes

Action Items: None

Documents: None

4. North Saint Vrain – (Jason King, Melynda May, Doug Jamison) – 10 minutes

Action Item:

- (1) Consider MOU with USFWS

Document:

- (1) Memo from Jason King
(2) Draft MOU with USFWS

Executive Session

5. Bonita Peak Mining District (Emily Splitek) – 15 minutes

Action Items: None

Documents: None

6. Custodial Fund Ballot Initiative – (Amy Beatie) – 10 minutes

Action Items: None

Documents: None

Open Session

7. Report from Executive Session

Action Item: None

Documents: None

ITEM #1

Colorado Natural Resource Damages Trustees
Meeting Minutes
June 30, 2021
(Approved _____)

In Attendance:

TRUSTEES

Phil Weiser, Colorado Attorney General

Ginny Brannon, Director, Division of Reclamation, Mining & Safety, Colorado Department of Natural Resources (DNR)

Shaun McGrath, Director of Environmental Programs, 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

Jason King, Senior Assistant Attorney General, NRE

Emily Splitek, Assistant Attorney General, NRE

Doug Jamison, CDPHE

Jennifer Talbert, CDPHE

Susan Newton, CDPHE

Melody Mascarenez, CDPHE

Ed Perkins, Colorado Parks and Wildlife (CPW)

Robert Harris, CPW

Mindi May, CPW

OTHER STATE STAFF

Laura Kelly, Paralegal, NRE

Dan Graeve, Administrative Assistant, NRE

NRE INTERNS

Johnsie Wilkinson

Andrea Hall

Kyle Howe

PUBLIC

Eric Richer, CPW (as recipient of NRD funds)

Tracie Ferguson, City of Commerce City

Kara Edewaard, City and County of Denver

Open Session

Trustee Weiser called the meeting (held via Zoom) to order at approximately 1:00 p.m. on June 30, 2021. The meeting's purpose was to brief the Trustees on the current status of issues relating to Natural Resource Damages (NRD) projects, and to request direction and/or approval for various actions

Minutes

Trustee Weiser presented the minutes from the March 24, 2021 Trustee Meeting. Trustee Brannon noted that Eric Richer of CPW should be listed as a recipient of NRD funds, and that CPW will hold only a public access easement at the California Gulch site. After Trustee McGrath noted two typographical errors, Trustee Brannon moved to approve the March 24, 2021 minutes as amended. Trustee McGrath seconded the motion, and the motion was unanimously approved.

Budget Update

Jennifer Talbert presented the budget update and noted that “Trustee Awarded Amounts” do not always match the “Contract” amounts because there is a delay while CDPHE finalizes contracts. Therefore, the “Remaining Available Funds” might include some funds that have already been awarded but for which the contracts have not yet been finalized.

California Gulch

Eric Richer presented an overview of the Upper Arkansas River Habitat Restoration Project and the Final Site Assessment. This Project (a ten-year project on 11 miles of the Arkansas River and Lake Fork) addressed bank erosion, channel morphology, and trout habitat. Mr. Richer provided details regarding restoration treatments, monitoring targets, monitoring results, a budget summary, and future maintenance recommendations.

Suncor

Mindi May explained a report from a spill involving sheen on Sand Creek downstream from Suncor. The Colorado State Patrol’s Hazardous Materials Program took the lead on the initial report. CPW followed up with another inspection and found no harm to wildlife or fish. Trustee McGrath noted that CDPHE also visited the site and found the sheen was fairly limited in scope. CDPHE is working with Suncor to prevent such releases in the future.

North Saint Vrain

Jason King reported on a spill in late April involving a gasoline tanker truck rollover that released approximately 1,500 gallons of gasoline into the North St. Vrain River on Highway 36 near Lyons. EPA mobilized quickly to contain the spill and clean up contaminated soils, but the gasoline went quickly downstream killing fish and other aquatic wildlife. Mr. King reported that EPA and CPW conducted sampling after the spill and noted that further discussion will take place in Executive Session.

Contracting

Mr. Kreutzer explained the need to quickly respond to spills by having early samples taken by contractors and the benefits of a Master Task Order Contract (instead of a lengthy set contract process). He anticipates entering into these macro-level contracts with two or three contractors that are familiar with taking early samples, identifying injuries, calculating damages, and testifying as experts if needed. A Master Task Order Contract has no dollar amount or deliverables, but is a framework for attaching task orders and statements of work. Mr. Kreutzer added that a Request for Proposals will be issued in anticipation of awarding possibly more than one contract. An earlier plan had been to issue Preferred Vender MTOCs to two NRDs contractors the Trustees have used in the past.

California Gulch – Solicitation for Project Proposals (SPP)

Susan Newton reported that a new SPP for the remaining amount in the California Gulch fund was issued and nine proponents registered to submit proposals. Trustee staff will evaluate proposals this Fall and expects to present recommendations at the December 2021 Trustee Meeting.

Standard Metals

Mr. King reported that Trustee Representatives are ready to solicit projects for the Crested Butte/Gunnison County area near the Standard Mine (“Crested Butte”), but guidance is needed from the Trustees about how funding should be allocated. The current amount of approximately \$460,000 reflects proceeds from a complex settlement with Standard Metals in the late 2000s which addressed multiple sites in the Crested Butte and Silverton areas. Mr. King described the complicated history of settlement negotiations that allocated funding according to a Memorandum of Understanding among agencies, but it did not distinguish funding between the Bonita Peak Mining District (BPMD) (formerly known as Upper Animas or Silverton) and funding for Crested Butte. He added that, while the Superfund remedy in Crested Butte is nearly complete, the cleanup at BPMD is in early stages and could take ten years or more to complete.

Trustee staff suggested three options for how the Trustees could allocate these funds. Discussion ensued about the timing of restoration work at the two areas and the associated opportunity costs. It was noted that the Trustees can re-visit how they allocate this funding should circumstances change or they receive especially attractive proposals. Trustee McGrath moved to follow the staff recommendation of a 50/50 allocation between BPMD and Crested Butte. Trustee Brannon seconded the motion, and the motion was unanimously approved.

Rocky Mountain Arsenal Recovery Fund and Foundation Fund – Montbello Open Space Environmental Learning for Kids (ELK) Center

Susan Newton gave a presentation about a groundbreaking ceremony on June 9, 2021, for the ELK Center, a community center and classroom in the restored Montbello Open Space. Ms. Newton provided a brief history of the RMA settlement and described the components of the ELK Project including the restoration of the property to naturalized upland prairie habitat and an outdoor classroom.

Rocky Mountain Arsenal Recovery Fund – Platte Farm Open Space Project

Kara Edewaard gave a presentation about the Platte Farm Open Space Project, funded by the RMA Recovery Fund. Ms. Edewaard provided a brief history of this five-acre brownfield property near the Globeville neighborhood. The Project created a low maintenance open space area where Globeville residents and visitors of all ages and abilities could recreate, exercise, and reconnect with nature.

Rocky Mountain Arsenal Recovery Fund and Foundation Fund – Remaining Funds

Mr. Kreutzer indicated that there is a need to issue a new SPP to allocate the remaining funds in the RMA Recovery Fund and the RMA Foundation Fund. Pursuant to the RMA Consent Decree, the RMA Recovery Fund is administered by CDPHE, but the RMA Foundation Fund is administered by DNR with certain restrictions. Ms. Talbert clarified that there is approximately \$7 million in the Recovery Fund and approximately \$900,000 in the Foundation Fund. Trustee

staff proposed amending the Consent Decree to consolidate the funds, so that CDPHE has contracting authority and can issue an SPP that follows the usual NRD process.

Trustee Weiser moved to have Trustee staff endeavor to amend the RMA Consent Decree to consolidate funds and contracting authority at CDPHE so a new SPP can be issued to allocate the entire amount of remaining RMA funds of approximately \$7.9 million. Trustee Brannon seconded the motion, and the motion was unanimously approved.

Summitville – Site Visit

Emily Splitek presented a history of the Summitville settlement and how the Trustees have awarded approximately \$5 million in NRD projects to restore the Alamosa River watershed. As part of the contracting close-out process, Ms. Splitek and Ms. Newton recently visited two sites where restoration was completed in 2019 (the Muniz Reach and the Quintana Reach upstream from Capulin). Ms. Splitek presented photos and construction details of the restoration work done in 2019, as well as work currently being done pursuant to recent Trustee resolutions.

Executive Session

Deputy AG Beatie recommended the Trustees make a motion to go into Executive Session to consider Agenda Items Nos. 13, 14 and 15 on the Trustee Meeting agenda. She stated the Executive Session is authorized pursuant to section 24-6-402(3)(a)(II) and (III), C.R.S. and other laws that allow the Trustees to enter Executive Session for specific purposes. At approximately 2:20 p.m., Trustee Brannon moved to begin an Executive Session to discuss Agenda Item Nos. 13, 14, and 15. Trustee Weiser seconded the motion, and the motion was unanimously approved. The Executive Session was digitally recorded.

At approximately 2:50 p.m., Trustee McGrath moved to end the Executive Session, Trustee Brannon seconded the motion, and the motion was unanimously approved, whereupon Executive Session was ended.

Open Session

Report from Executive Session

Deputy AG Beatie stated that pursuant to statute, the Trustees went into Executive Session to consider Agenda Item Nos. 13, 14 and 15. The discussion during Executive Session was limited to those items and no formal action was taken.

Upcoming Events

The Trustees agreed to meet on August 30, 2021 in Leadville and to keep the previously scheduled September 30, 2021 meeting on the schedule. They also agreed to extend the previously scheduled December 1, 2021 meeting to three hours if needed.

At approximately 3:00 p.m., Trustee Brannon moved to adjourn the meeting. Trustee Weiser seconded the motion, and the motion was unanimously approved.

ITEM #4

PHIL WEISER
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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

August 19, 2021

TO: Colorado Natural Resources Trustees

FROM: Jason King

RE: Memorandum of Understanding with U.S. Fish and Wildlife Service for the North St. Vrain Creek Tanker Spill

BACKGROUND

Trustee representatives recently negotiated the attached Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (FWS). The MOU ensures cooperation of the State and Federal Trustees regarding injured natural resources from a tanker truck rollover that discharged oil into North St. Vrain Creek near Lyons, Colorado on April 27, 2021. The FWS Mountain-Prairie Regional Director is the authorized official to act on behalf of the federal Trustee agency (U.S. Department of the Interior) and is the signing party to the MOU. Colorado and federal Trustees entered into similar MOUs in 2008 for California Gulch NRD and in 2013 for the West Creek oil spill. The key provisions to the MOU are:

Objectives (§ V, p. 3) and Trustee Council Formation (§ VI, p.3)

The MOU provides a framework for coordination among the Trustees in conducting natural resource damage assessment and restoration (NRDAR) activities related to the North St. Vrain oil discharges. It forms a Trustee Council comprised of representatives from the three state Trustee agencies (Jason King, Jennifer Talbert, and Ed Perkins) and the FWS (Laura Archuleta) to act on behalf of the Trustees in carrying out NRDAR activities. Authorized activities include: entering into contracts with consultants and contractors to provide services for the Council; developing a Damage Assessment and Restoration Plan (DARP) with sufficient public involvement; and overseeing implementation of on-the-ground restoration actions.

Council Decision-making (§ VIII, p. 5)

Council decisions will require unanimous approval of all four Council members and carry out the Trustees' mutual goals of restoring, replacing, and acquiring the

equivalent of the injured natural resources and services. If unanimous agreement cannot be reached, the MOU provides dispute resolution through elevating matters to senior managers within the Trustees agencies.

Communications with Responsible Parties (§ IX, p. 6)

Trustees and Council members agree to coordinate communications with responsible parties for matters related to the North St. Vrain NRDAR by providing each other with notice and an opportunity to participate in discussions. If circumstances warrant, an individual Trustee or Council member may communicate separately with a responsible party, provided they notify the others and summarize the communication.

Confidentiality (§ XIV, p. 7)

Public sharing of scientific data will be the general policy of the Trustees. However, the MOU recognizes oral and written communications that are privileged attorney-client communications, attorney work product, deliberative process privilege, joint interest exception to waiver, joint enforcement privilege, or protected by other applicable privileges will be protected from disclosure to the extent possible under applicable Federal and State law.

RECOMMENDATION FOR ACTIONS

Trustee representatives recommend the Trustees sign the attached MOU creating the North St. Vrain Trustees Council and establishing a framework to guide NRDAR activities.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF THE INTERIOR
IN THE CONDUCT OF NATURAL RESOURCE DAMAGE ASSESSMENT AND
RESTORATION FOR OIL DISCHARGES INTO NORTH ST. VRAIN CREEK

I. INTRODUCTION

This Memorandum of Understanding (MOU) is between the State of Colorado (State), by and through the Colorado Trustees, defined in Section II, and the U.S. Department of the Interior (DOI) (collectively referred to as the “Trustees”). This MOU is entered into to ensure the coordination and cooperation of the Trustees in initiating and conducting assessment and restoration activities, including natural resource damage assessment and restoration (NRDAR) activities related to natural resources and services under their trusteeship injured as a result of the release of oil into the North St. Vrain Creek on April 27, 2021.

II. PARTIES

The following persons, which act on behalf of the public as Trustees for natural resources and services, are parties to this MOU:

- A. Colorado Natural Resources Trustees (Colorado Trustees) as designated by Colorado Governors in 1990 and 2006:
 - 1. The Executive Director of the Colorado Department of Public Health and Environment (CDPHE);
 - 2. The Executive Director of the Colorado Department of Natural Resources (DNR); and
 - 3. The Attorney General within the Colorado Department of Law (DOL).
- B. United States Department of the Interior (DOI) (Federal Trustee), represented by the United States Fish and Wildlife Service (FWS). The Regional Director, Mountain-Prairie Region, FWS, is the Authorized Official for DOI and the Federal Lead Administrative Trustee.

These parties are referred to throughout this MOU individually as “Party” or collectively as “Trustees” or “Parties.”

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

The Federal Trustee's representative is referred to throughout this MOU as the "Federal Council Member." The Colorado Trustees' representatives are referred to throughout this MOU as the "State Council Members." The Federal Council Member and State Council Members are collectively referred to as the "North St. Vrain Oil Spill Council" or "Council."

III. AUTHORITY

The Trustees enter this MOU pursuant to the authorities provided to Natural Resource Trustees in the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*, the Federal Water Pollution Control Act, 330 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act NDRA Regulations, 15 C.F.R. Part 990. In addition, the Federal Trustee enters into this MOU pursuant to the authority provided in Subpart G of the National Contingency Plan, 40 C.F.R. §§ 300.600 *et seq.*, and Executive Order 12580, 3 C.F.R., 1987 Comp. p. 193, 52 Fed. Reg. 2923 (January 23, 1987), as amended by Executive Order 12777 (56 Fed. Reg. 54757 (October 19, 1991)).

IV. DEFINITIONS

Unless a term is expressly defined in this MOU, all terms shall have the same meaning as in the Oil Pollution Act or 15 C.F.R. § 990.30.

Whenever the following terms are used in this MOU, they have the following meanings:

- A. "North St. Vrain Discharges" means the discharge of oil from a tanker truck which overturned on U.S. Highway 36 at Apple Valley Road on April 27, 2021 and spilled into the North St. Vrain Creek.
- B. "Assessment and restoration activities" means all activities from the pre-assessment phase to the restoration implementation phase of the North St. Vrain NRDAR process as set forth in the Oil Pollution Act Regulations, 15 C.F.R. Part 990.
- C. "Unanimous approval," as used in VIII.A of this MOU, is defined as an affirmative vote by each Council Member or an affirmative vote by three of four Council Members with one abstention.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

V. PURPOSE AND OBJECTIVES

- A. The purpose of this MOU is to provide a framework for coordination and cooperation among the Trustees in the conduct of NRDAR activities that the Trustees will undertake associated with the North St. Vrain Discharges. The Trustees commit to share joint responsibilities regarding the planning and implementation of pre-assessment, assessment and restoration activities.
- B. The Trustees shall coordinate their efforts to meet their respective natural resource trustee responsibilities. The Trustees' objectives include, but are not limited to, the following:
 - i. Forming a Council that implements natural resource damage assessment activities for the benefit of the public for those resources under the jurisdiction of the Trustees;
 - ii. Coordinating the efforts of the Trustees in implementing the natural resource damage assessment process, consistent with 15 C.F.R. Part 990;
 - iii. Coordinating Council activities with response and NRDA-related activities; and
 - iv. Developing and implementing a joint Damage Assessment and Restoration Plan (DARP) for the restoration of natural resources and services injured due to the North St. Vrain Discharges pursuant to applicable laws.

VI. ORGANIZATION OF THE COUNCIL

To implement this MOU, the Trustees create the North St. Vrain Oil Spill Council (Council).

Each of the three Colorado Trustees and the Federal Trustee will delegate one primary Council Member who may designate at least one alternate Member to the Council. No later than twenty (20) working days after the final execution of this MOU, each party shall notify the other parties of the names, addresses, email addresses, and phone numbers of that party's primary and alternate Council Members, and the party's legal counsel. 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. Each party shall notify the other parties of any changes in that party's primary or alternate Council Member within twenty (20) business days. The Council may seek advisory participation from

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

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

VII. POWERS, DUTIES, AND RESPONSIBILITIES

A. Council

On behalf of the Trustees, the Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the procedures contained in Section VIII (Decision-Making). Subject to Section VIII, the Council and each Trustee, in its discretion, may take actions it determines are necessary to fulfill the Trustees' responsibilities under, and to effectuate the purpose of, applicable Federal and State law. Any Council Member may request a meeting of the full Council. The Council, in accordance with applicable laws and policies, is authorized to take the following actions to meet the Trustees' NRDAR responsibilities:

1. Conduct assessment and restoration activities regarding natural resource damages for injury to, destruction of, or loss of natural resources and Services, including those of cultural significance;
2. Arrange for the letting of contracts, through one or more of the Trustees, with consultants or contractors best qualified to provide services to the Council and Trustees;
3. Oversee the development and implementation of the Damage Assessment and Restoration Plan, and ensure public notice, opportunity for public input, and consideration of all public comments prior to preparing the final Damage Assessment and Restoration Plan consistent with the Oil Pollution Act NRDA Regulations, 15 C.F.R. Part 990. Implementation includes, but is not limited to, oversight of restoration actions and associated monitoring and adaptive management;
4. Maintain records and documents by each agency that is party to this MOU, in support of its NRDAR activities relating to the North St. Vrain Discharges, and provide such documents on request by the Council in support of conducting the cooperative Trustee NRDAR, and as needed to document agency costs. Delegate specific duties to individual Council Members. Certain duties set out below are hereby delegated to the Lead Administrative Council

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

Members for specific projects.

B. Lead Administrative Council Members

There shall be two co-lead Administrative Council Members: a State Council Member from the Colorado Department of Law; and the Federal Council Member from the DOI. The co-lead Administrative Council Members may delegate any of their duties to another Council Member with the concurrence of the Council. The co-lead Administrative Council Members or their delegates shall carry out the following duties:

1. Coordinate and monitor all aspects of assessment and restoration activities;
2. Schedule, provide notice of, prepare agendas for, and document general meetings of the Council;
3. Act as the central contact points for the Council with regard to the Response Agencies, other agencies, the public, and any responsible parties or their agents;
4. Establish and maintain records and relevant documents regarding activities conducted under this MOU, and, with the assistance of all Council Members, establish and maintain any administrative record that is required;
5. Perform routine administrative duties supporting the implementation of NRDAR activities under this MOU; and
6. Carry out any other duties as directed by the Council.

VIII. DECISION-MAKING

A. Consensus of Members

Council decisions shall require unanimous approval of the Members, as defined in Section IV.C. Decision-making deliberations will focus upon the Trustees' mutual goals of restoring, rehabilitating, replacing, and acquiring the equivalent of the injured natural resources and services, rather than on individual Trustees' control or trusteeship over those resources.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

B. Record of Council Decisions

The decisions made by the Council shall be recorded in writing, either by resolution signed by the Council, or in minutes approved as to content and form. The Council shall memorialize all Trustees' decisions authorizing expenditures of received settlement funds in signed Trustees' 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.

C. Dispute Resolution

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. When dispute resolution is invoked, the Council Members agree to elevate the matter in dispute within their agencies within ten (10) business days of the notice triggering dispute resolution. The Parties 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.

Each Council Member agrees to raise any comments or concerns regarding such project(s) to the Council and to initially work within the Council to resolve differences before raising them in a public forum or during a formal public comment period.

IX. COMMUNICATION WITH RESPONSIBLE PARTIES

The Trustees and Council Members agree that they will coordinate communications with responsible parties or their agents for matters related to the NRDAR for the North St. Vrain Discharges. No Trustee or Council Member will discuss these matters with the responsible parties without first providing the other Trustees or Council Members with notice and an opportunity to participate in such discussions as appropriate. This provision shall not preclude a Trustee or Council Member from having separate communications with potentially responsible parties on matters within the scope of the MOU where circumstances warrant, provided that each Trustee or Council Member notifies the other Trustee or Council Member and summarizes the substance of the communication.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

X. RESERVATION OF RIGHTS

Nothing in this MOU, implies any signatory government is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over natural resources or services. All Trustees understand that this document is not intended to create or waive any legal rights or obligations among the Trustees or any other person or entity not a party to this Agreement. Nothing contained herein is intended or shall be construed to limit any Trustee's authorities under applicable law.

XI. CONFLICT OF INTEREST

A Council Member will abstain from discussing and voting on any issue coming before the Council in which that Member has a personal financial interest. In such cases, the Council Member shall identify this conflict to the Council prior to consideration and voting on the issue(s), and the Member will be replaced with an alternate for voting on the issue on which there is a conflict.

XII. MEETINGS

Council meetings need not be held in person and may be convened by any method of communication the Council chooses. If a Council Member is unable to travel to a meeting, that Council Member may participate by telephone or video conference.

XIII. RECORD MAINTENANCE

Each Council Member agrees to maintain adequate records on behalf of their Trustee that documents the reasonable assessment costs each has incurred in connection with and arising from the NRDAR process, assessment, and pursuit of any claims for injury to natural resources, for the purpose of recovery of such costs when appropriate.

XIV. CONFIDENTIALITY

The Trustees agree that it is generally in the public interest that scientific data arising out of their review of the injury to natural resources and services caused by the North St. Vrain Discharges be made public. Public sharing of scientific data, wherever possible, will be the general policy of the Trustees. However, all parties to this MOU recognize that oral and written communications that are privileged attorney-client communications, attorney work product, deliberative process privilege, joint interest

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

exception to waiver, joint enforcement privilege, or protected by other applicable privileges (or a combination thereof) (“Privileged Communications”) will be protected from disclosure to the extent possible under applicable Federal and State law.

Nothing in this MOU is intended as, nor shall it be construed to be, a general waiver of any attorney-client privilege, joint enforcement privilege, deliberative process privilege, or any protection afforded under the work product doctrine or any other doctrine or privilege under applicable law that has been or may be asserted in this matter and shall be without prejudice to any assertion of privilege or protection as to other documents or communications concerning the same or similar subject matter(s).

The parties to this MOU further agree that whenever a request for production of any written communication is received pursuant to any applicable Federal or State law, the request will be forwarded for response to the Trustee or Trustees whose representatives or consultants originally generated or substantially contributed to the record requested. If that Trustee or those Trustees determine to release any communication that another Trustee believes should be withheld on grounds that it is a Privileged Communication, then the matter shall be submitted to the Council for resolution. Nothing contained herein shall be construed as requiring a Trustee or the Council to release Privileged Communications.

XV. LIMITATION

Nothing in this MOU shall be construed as obligating the United States, the State of Colorado, or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XVI. THIRD-PARTY CHALLENGES OR APPEALS

Nothing in this MOU may serve as the basis of any third-party challenges or appeals or creates any rights or causes of action in any persons or entities.

XVII. MODIFICATION OF AGREEMENT

This MOU may be modified in writing if all Parties approve.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

XVIII. TERMINATION AND WITHDRAWAL

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. At any time that the Trustees determine that the purposes set forth in this MOU have been satisfied, the MOU may be terminated. In the event any Trustee withdraws from the MOU, such withdrawal must be in writing and provided to the other parties to this MOU at least thirty days in advance of the withdrawal. All documents maintained by the withdrawing Trustee pursuant to Section XIII must be provided to the Lead Administrative Council Member that maintains records.

In the event of the withdrawal of any Trustee or the termination of this MOU, the Trustees shall give a full and complete accounting to the Council of all restoration funds received, deposited, held, disbursed, managed, expended, or otherwise controlled by a Trustee in any joint or separate account as a result of the North St. Vrain Discharges, pursuant to this MOU.

The duty of the Trustees and Council Members to maintain the confidentiality of Privileged Communications shall continue and survive the withdrawal of a Trustee or termination of this MOU.

XIX. SEVERABILITY

The terms of this MOU are severable. If any term or condition of this MOU is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms and conditions.

XX. EXECUTION: EFFECTIVE DATE

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU and be retained by the Lead Administrative Council members that maintain records. The date of execution shall be the date of the signature of the last Trustee to sign the MOU.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

**STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO
TRUSTEES**

[PRINTED NAME]: _____

[TITLE]: _____

[SIGNATURE]: _____

DATE: _____

[PRINTED NAME]: _____

[TITLE]: _____

[SIGNATURE]: _____

DATE: _____

[PRINTED NAME]: _____

[TITLE]: _____

[SIGNATURE]: _____

DATE: _____

MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF COLORADO AND
THE UNITED STATES DEPARTMENT OF INTERIOR

**UNITED STATES DEPARTMENT OF INTERIOR, THROUGH THE UNITED STATES
FISH AND WILDLIFE SERVICE**

[PRINTED NAME]: _____

[TITLE]: _____

[SIGNATURE]: _____

DATE: _____