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**STATE OF COLORADO
DEPARTMENT OF LAW**

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Natural Resources and
Environment Section

AGENDA

**Colorado Natural Resources Trustees Meeting
February 17, 2023
2:00 pm to 4:00pm**

Location:
Ralph L. Carr Judicial Building
1300 Broadway, Denver CO
Room: 1F

Note: A hyperlink to a Microsoft Teams 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. Approve Agenda – 1 minute
2. Approval of Minutes from December 9, 2022 Meeting – 5 minutes

Action Item:

- (1) Review and approve minutes from December 9, 2022 meeting

Document:

- (1) Draft minutes from December 9, 2022 meeting

3. Budgets Update – (Jennifer Talbert) - 5 minutes

Action Items: None

Document:

- (1) Budget Spreadsheet

4. North Saint Vrain – (Jason King, Melynda May) – 5 minutes

Action Items:

- (1) Ratify the settlement document
- (2) Consider press release

Document:

- (1) Release and Settlement Agreement

5. West Creek – (Jennifer Talbert) – 5 minutes

Action Items: None

Documents: None

Executive Session

6. Vail/Mill Creek – (Jason King) – 10 minutes

Action Items: None

Documents: None

7. Bonita Peak Mining District – (David Kreutzer, David Banas, Emily Splitek) – 15 minutes

Action Items: None

Documents: None

Open Session

8. Report from Executive Session – (Amy Beatie) – 1 minute

Action Items: None

Documents: None

9. Presentation Concerning Board Practices and Bylaws – (Amy Beatie) – 15 minutes

Action Items: None

Documents: None

10. Briefing on Incidents Staff Has Investigated – (David Banas, Melynda May, Susan Newton) – 5 minutes

Action Item: None

Documents: None

11. Schedule 2023 Trustee Meetings – (David Banas) – 5 minutes

Action Item: None

Documents: None

12. NRD Creative Expressions Video – (Susan Newton) – 5 minutes

Action Item: None

Documents: None

ITEM #1

NO DOCUMENT

ITEM #2

Colorado Natural Resource Damages Trustees
Meeting Minutes
December 9, 2022
(Approved _____)

In Attendance:

TRUSTEES

Phil Weiser, Attorney General

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

Tracie White, Director, Hazardous Materials and Waste Management Division, Colorado Department of Public Health and Environment (CDPHE), Trustee-Designate

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

Jason King, Senior Assistant Attorney General, NRE

Emily Splitek, Assistant Attorney General, NRE

Shelley Hickerson, Assistant Attorney General, NRE

Jennifer Talbert, CDPHE

Susan Newton, CDPHE

Ross Davis, CDPHE

Melody Mascarenez, CDPHE

Ed Perkins, Colorado Parks and Wildlife, DNR (CPW)

Robert Harris, CPW

Mindi May, CPW

OTHER STATE STAFF

Laura Kelly, Paralegal, NRE

Savannah Padilla, Administrative Assistant (NRE)

Johnie Abad, Assistant to Executive Director Gibbs

FELLOWS

MacKenzie Herman, Attorney General Fellow

Skye Walker, Attorney General Fellow

PUBLIC

Ashley Bembenek, Coal Creek Watershed Coalition

Open Session

Trustee Weiser called the hybrid meeting (held in Carr Building, Room 1F and via Zoom) to order at approximately 9:00 a.m. on December 9, 2022. 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. All attendees introduced themselves.

Agenda

Trustee Weiser asked for a motion to approve the Agenda. David Kreutzer proposed to amend the Agenda so that 2023 Trustee Meetings (Agenda Item #12(1)) could be discussed first while Trustee Gibbs' scheduler was in attendance. Director Brannon moved to approve the Agenda as amended, Director White seconded the motion, and the motion was unanimously approved.

Schedule for 2023 Trustee Meetings

Discussion ensued about when and where to hold four Trustee Meetings in 2023. It was decided that the Trustees would meet on February 17, 2023, 2:00-4:00 p.m. and November 14, 2023, 1:00-3:00 p.m. (both meetings in Denver). Additionally, the Trustees agreed to hold a meeting in April/May in Alamosa; and another meeting in July/August in Durango.

Minutes

Trustee Weiser presented the minutes from the September 16, 2022 Trustee Meeting. Director White asked that the word *Acting* be removed from Trustee Oeth's title. Director Brannon moved to approve the September 17, 2022 minutes as amended. Director White seconded the motion, and the motion was unanimously approved.

Budget Update

Jennifer Talbert provided a budget update noting that there were no structural changes since the last Trustee Meeting.

Standard Metals

Jason King reported that the Trustees are being asked to approve the *Gossan Restoration Project Proposal* in Gunnison submitted by the Coal Creek Watershed Coalition. The proposal requests the full amount of \$230,000 from the Standard Metals NRD Fund which the Trustees apportioned for projects near Crested Butte. Mr. King added that the project will decrease metals-laden run-off and improve water quality in Coal Creek, it has support of stakeholders and matching fund donors, and Trustee staff recommends approval. He introduced Ashley Bembenek of the Coal Creek Watershed Coalition who provided a detailed presentation of the project.

Director Brannon moved to approve funding in the amount of \$230,000 for the Coal Creek Watershed Coalition's *Gossan Restoration Project Proposal*. Director White seconded the motion, and the motion was unanimously approved. At Mr. King's request, the Trustees expressed approval to go forward with a press release.

Summitville

Emily Splitek provided some background on Trout Unlimited's (TU) *Alamosa River Instream Flow Project, Phase II*, which was approved by the Trustees on January 21, 2021. She reported that the current TU proposal is approaching the two-year deadline to enter into a contract to perform the work, but TU has been unable to identify matching funds. Ms. Splitek explained that the Trustees were being asked to approve a resolution for a one-time extension of six months (to July 21, 2023) for TU to enter into a contract, and that Trustee staff recommends approval. If approved, Trustee staff will review the modified proposal to ensure it meets the original proposal intent and CDPHE will enter into a contract with TU within the next six months.

Director Brannon moved to approve an extension of the deadline for TU to enter into a contract with the State to July 21, 2023 for the *Alamosa River Instream Flow Project, Phase II*. Director White seconded the motion, and the motion was unanimously approved.

Ms. Splitek also alerted the Trustees that Cindy Medina plans to present at the next Trustee Meeting regarding a previously-funded project called Rediscovering the Alamosa River Watershed, which supported fishing opportunities for students in the Alamosa River.

Finally, Ms. Splitek presented a video prepared by Stantek, a NRD contractor, titled “Coming Together to Restore a Colorado Treasure – the Alamosa River” which illustrated how NRD funding has contributed to environmental and ecological restoration of the river and featured Susan Newton.

Executive Session

Deputy AG Beatie recommended the Trustees make a motion to go into Executive Session to consider Agenda Items #8, #9, and #10 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 9:40 a.m., Director Brannon moved to begin an Executive Session to discuss Agenda Items #8, #9, and #10. Director White seconded the motion, and the motion was unanimously approved. The Executive Session was digitally recorded.

At approximately 10:10 a.m., Director White moved to end the Executive Session. Director Brannon seconded the motion, and the motion was unanimously approved, whereupon Executive Session was ended. It was noted that no members of the public were in the Zoom waiting room at the close of the Executive Session.

Open Session

Report from Executive Session

Deputy AG Beatie stated that pursuant to statute, the Trustees went into Executive Session to consider Agenda Items #8, #9, and #10. The discussion during Executive Session was limited to those items and no decisions were made.

Trustee Training

David Banas reminded the Trustees that the By-Laws of the Colorado Natural Resources Trustees, adopted in 2021, included a series of training requirements. The Trustees agreed that it would be best to incorporate these trainings into a future regularly scheduled Trustee Meeting.

At approximately 10:15 a.m., Director Brannon moved to adjourn the meeting. Director White seconded the motion, and the motion was unanimously approved.

ITEM #3

Natural Resource Damages Accounts

NRD Matter	Bonita Peak	California Gulch	Fountain Creek	Idarado	Lowry	N. St. Vrain	Rocky Flats
Total Settlement amount	\$1,600,000.00	\$10,000,000.00	\$345,000.00	\$1,000,000.00	\$1,606,930.00	\$245,305.00	\$10,000,000.00
Total NRD dollars spent	\$0.00	\$8,928,044.87	\$0.00	\$1,561,412.98	\$1,257,894.52	\$0.00	\$10,000,000.00
Account Balance as of 12/23/22	\$1,617,598.53	CDPHE DOI \$5,551,442.91 \$1,120,170	\$363,106.72	\$202,104.87	\$681,426.00	\$245,305.00	\$0.00
Trustee Resolution Date	NONE	12/10/2021 & 3/17/2022	4/23/2019	6/24/2019	NONE	NONE	10/9/2018
Current Trustee awarded amount	\$0.00	\$6,306,119.00	\$363,106.72	\$287,000.00	\$0.00	\$0.00	\$0.00
Current Contract Encumbrances	\$0.00	\$803,588.50	\$0.00	\$168,200.00	\$0.00	\$0.00	\$0.00
Remaining available funds	\$1,617,598.53	\$4,747,854.468 \$1,120,170	\$363,106.72	\$33,904.87	\$681,426.00	\$245,305.00	\$0.00
Settlement Restrictions	NO	YES	NO	NO	YES	NO	NO
Type of Restriction	None	Funds must be used in accordance with Restoration Plans developed by the State and USFWS	None	None	2 settlements - both requiring a groundwater nexus to the South Platte	None	National Defense Authorization Act
Interest and explanations		Segregated Funds. Interest not earmarked for site.	Interest goes to CPW to include in Chilcott Diversion Project, no remaining funds available	Interest goes to the Governor's Basin Restoration Project, no remaining funds available		Settlement from December 2022	This account is now closed and will not appear on future budgets

Natural Resource Damages Accounts

NRD Matter	RMA Recovery Fund	RMA Foundation Fund	Shattuck	Standard Metals	Summitville	Suncor	Uravan
Total Settlement amount	\$17,400,000.00	\$10,000,000.00	\$1,250,000.00	\$415,368.00	\$5,000,000.00	\$1,230,000.00	\$1,000,000.00
Total NRD dollars spent	\$12,147,471.70	\$8,697,832.00	\$1,272,904.00	\$0.00	\$5,138,440.58	\$708,191.40	\$1,126,224.45
Account Balance as of 12/23/22	\$8,450,356.76	\$1,488,990.93	\$23,514.29	\$469,996.46	\$251,617.84	\$558,267.91	\$245,395.92
Trustee Resolution Date	3/24/2021	3/28/2018	3/17/2022	12/9/2022	1/21/2021	6/9/2022	3/24/2021
Current Trustee awarded amount	\$5,707,087.93	\$1,388,523.00	\$30,000.00	\$0.00	\$1,171,620.00	\$1,267,454.00	\$270,000.00
Current Contract Encumbrances	\$1,344,467.33	\$550,000.00	\$0.00	\$0.00	\$8,249.53	\$510,353.00	\$237,138.00
Remaining available funds	\$7,105,889.43	\$938,990.93	\$23,514.29	\$469,996.46	\$243,368.31	\$47,914.91	\$8,257.92
Settlement Restrictions	NO	NO	NO	NO	YES	NO	NO
Type of Restriction	None	Foundation Fund can only be used with NGC	None	Money received through settlement with insurance company - no NRD requirements	All money must be spent in the Alamosa River Watershed	None	None
Interest and explanations	Recovery Fund- Trustees agreed to work with NGC for restoration projects	Waiting for Amended Consent Decree to reallocate funds to RMA Recovery Fund	No remaining funds available	\$230K awarded to Coal Creek Watershed; remaining funds for Silverton area	Interest awarded to TU, no remaining funds available	TU interested in using interest not previously awarded	Interest awarded to WEEDC, no remaining available funds

ITEM #4

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Agreement") is made by and entered into on December 16, 2022 by **the State of Colorado, acting through the Executive Director of the Colorado Department of Public Health and Environment, the Executive Director of the Colorado Department of Natural Resources, and the Attorney General of the State of Colorado, who collectively serve as the "Colorado Natural Resources Trustees** ("Claimant"). This Agreement arises from a release of oil from a MTY Trucking, LLC tanker truck into the North St. Vrain Creek on April 27, 2021 and a claim for natural resource damages pursuant to the Oil Pollution Act, 33 U.S.C. §§ 2701-2762 (the "Claim") asserted by Claimant against **MTY Trucking, LLC** (the "Insured"). The Claim is identified by General Star Indemnity Company as Claim Number G10063212 and Great West Casualty Insurance as Claim Number R08689L ("Insurers")

1. PAYMENT AND RELEASE. For and in consideration of the sum of **Two Hundred Forty-Five Thousand Three Hundred Five and 0/100 (\$245,305.00)** and other good and valuable consideration (the "Payment"), and intending to be legally bound, Claimant and each of its present or former directors, officers, partners, employees, agents, representatives, predecessors, successors and assigns (hereinafter, collectively, the "Releasor") do hereby release, satisfy, and discharge Insured and each employee presently or formerly associated or affiliated with Insured in any manner, and any partners, officers, agents, Insurers, heirs, administrators, successors and assigns of Insured (hereinafter collectively referred to as "Releasee") of and from any and all past, present or future claims, counterclaims, debts, causes of action, damages (including actual, consequential or punitive), demands, liabilities, suits, judgments, wrongful death claims, and disputes of any kind, whether actual or potential, known or unknown, based in law or equity, which Releasor ever may have had, had, has, presently may have or in the future may have against any of the Releasees, arising from any injuries or damages allegedly incurred by Releasor in connection with the Claim.

Notwithstanding any other provision of this Agreement or any prior agreement between or among the Claimant, the Insured or the Insurers: the Insurers may disclose information relating to this Agreement, and any information provided by Claimant or Claimant's Counsel, to the Insurers' accountants, auditors, Insurers and reinsurers and to government agencies as required by law.

2. NO ADMISSION OF LIABILITY. This Agreement is the result of a compromise and accord and shall not be considered an admission of liability or responsibility. This Agreement is a compromise and settlement of disputed claims, and is the product of arms-length negotiations.

3. TAXES. Releasor shall be responsible for all required reporting to the IRS and state taxing authorities relating to this matter. Any tax liability of Releasor to any federal, state or local taxing authority shall be Releasor's exclusive responsibility, and Releasor agrees to make no claim for the payment or reimbursement of any tax consequences resulting to Releasor as a result of any payment made pursuant to this Agreement.

4. ADVICE OF COUNSEL. Releasor has had the opportunity to receive the advice of legal counsel before entering this Agreement and is entering the Agreement freely and

voluntarily.

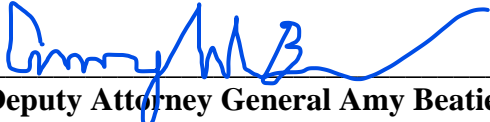
5. REVIEW OF AGREEMENT AND UNDERSTANDING. Releasor represents that Releasor has carefully read this Agreement and understands its terms and conditions without reservation. Releasor further acknowledges that in entering into this Agreement and making the aforesaid releases, Releasor is relying wholly upon Releasor's own judgment, belief, and knowledge, and that Releasor has not been influenced, to any extent whatsoever, by any representations or statements made by any other persons, firms, or corporations who are hereby released or by the Insurers.

6. INTEGRATION AND ENTIRE EFFECT. This Agreement contains the full understanding of the parties and supersedes all prior or contemporaneous agreements and understandings, written or oral, between them with respect to the subject matter hereof, and there are no representations, warranties, agreements or understandings other than those expressly contained herein. The terms of this Agreement are contractual and not a mere recital. This Agreement is not made for the benefit of, and may not be enforced by, any third party. It is fully understood that this is a final settlement and disposition of a dispute both as to the legal liability and as to the nature and extent of the injuries or damages which Releasor has allegedly sustained with respect to the Claim.

7. CORPORATE REPRESENTATIONS AND WARRANTIES. Releasor represents and warrants that:

- (a) the individual executing this Agreement on its behalf is fully authorized to sign on behalf of the Releasor for the purpose of duly binding the Releasor to this Agreement;
- (b) it has taken all necessary corporate, governmental and/or internal legal actions to duly approve the making and performance of this Agreement and that no further corporate or other internal approval is necessary;
- (c) the making and performance of this Agreement will not violate any provision of law or of any of the Releasor's articles of incorporation, charter, or by-laws; and
- (d) it is the sole owner and holder of the claims it is releasing herein and that it has not sold, transferred, conveyed, or assigned the same, or any interest therein or portion thereof, to any third party or entity.

* * * * *

By: 
Deputy Attorney General Amy Beatie
Counsel for
the Colorado Natural Resources Trustees

Date: 12/16/2022

ITEMS #5 – 12
NO DOCUMENTS