

PHIL WEISER
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RALPH L. CARR
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STATE OF COLORADO
DEPARTMENT OF LAW

AGENDA

Colorado Natural Resources Trustees Meeting

May 11, 2023

9:00 am to 11:00 am

Location:

Ralph L. Carr Judicial Building
1300 Broadway, Denver CO
Room: 8th Floor Dunbar Room

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 February 17, 2023 Meeting – 5 minutes

Action Item:

- (1) Review and approve minutes from February 17, 2023 meeting

Document:

- (1) Draft minutes from February 17, 2023 meeting

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

Action Items: None

Document:

- (1) Budget Spreadsheet

4. Bonita Peak Mining District – (Emily Splitek) – 10 minutes

Action Item:

(1) Approve/Deny the Settlement Agreement

Document:

(1) Settlement Agreement

5. Summitville – (Emily Splitek, Susan Newton, Cindy Medina) – 15 minutes

Action Items: None

Documents: None

6. California Gulch – (David Banas, Susan Newton, Ed Perkins) – 10 minutes

Action Item:

(1) Approve/Deny Fourmile Creek Property Acquisition

Documents:

(1) Memo from David Banas

(2) Fourmile Creek Property Acquisition description

(3) Draft Fourmile Creek Acquisition Resolution

7. Beaver Brook Creek – (Jason King) – 5 minutes

Action Items: None

Documents: None

8. Annual Trustee Training – (Lukas Staks, David Banas) – 20 minutes

Action Items: None

Documents: None

Executive Session

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

Action Items: None

Documents: None

Open Session

10. Report from Executive Session – (Lukas Staks) – 1 minute

Action Items: None

Documents: None

ITEM #1
NO DOCUMENT

ITEM #2

Colorado Natural Resource Damages Trustees
Meeting Minutes
February 17, 2023
(Approved _____)

In Attendance:

TRUSTEES

Phil Weiser, Attorney General

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

Trisha Oeth, 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)

Lukas Staks, Senior Assistant Attorney General, NRE

David Kreutzer, First Assistant Attorney General, NRE

David Banas, Senior Assistant Attorney General, NRE

Jason King, Senior Assistant Attorney General, NRE

Shelley Hickerson, Assistant Attorney General, NRE

Tracie White, CDPHE

Doug Jamison, CDPHE

Jennifer Talbert, CDPHE

Susan Newton, CDPHE

Melody Mascarenez, CDPHE

Robert Harris, DNR

Mindi May, DNR

OTHER STATE STAFF

Laura Kelly, Senior Paralegal, NRE

Savannah Padilla, Administrative Assistant, NRE

FELLOWS AND INTERNS

Skye Walker, Attorney General Fellow

MacKenzie Herman, Attorney General Fellow

Riley Varner, NRE Intern

Jamie Brown, Governor's CiviCo Fellow

Sarah Maxted, Governor's CiviCo Fellow

Sam Knaizer, Governor's CiviCo Fellow

Sharon Schneider, Governor's CiviCo Fellow

Open Session

Trustee Weiser called the hybrid meeting (held in Carr Building and via Teams) to order at approximately 2:00 p.m. on February 17, 2023. 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.

Trustee Weiser welcomed the Governors' CiviCo Fellows and explained the special interdisciplinary nature of the NRD program.

Agenda

David Kreutzer and David Banas suggested that the Presentation Concerning Board Practices and Bylaws be postponed given the recent change in General Counsel to the Trustees. Trustee Brannon moved that the Agenda as amended be approved. Trustee Oeth seconded the motion, and the motion was unanimously approved.

Minutes

Trustee Weiser presented the minutes from the December 9, 2022, Trustee Meeting. Trustee Brannon moved to approve the December 9, 2022 minutes. Trustee Oeth seconded the motion, and the motion was unanimously approved.

Budget Update

Jennifer Talbert reported that the budget includes a settlement amount received in the North Saint Vrain matter. She also noted that the Rocky Flats account has a zero balance so it will be removed in the next report.

CORA Request

Mr. Kreutzer gave notice to the Trustees that the law firm representing the Kinross Gold Company submitted a CORA request to the Attorney General's Office for documents relating to the Bonita Peak Mining District and that responsive documents will be provided as required.

North Saint Vrain

Jason King reported that the full amount of damages (approximately \$245,000) was received from the trucking company's insurance company and deposited into a NRD account.

Trustee Brannon moved to ratify the settlement agreement resolving NRD claims in the North St. Vrain matter. Trustee Oeth seconded the motion, and the motion was unanimously approved. The Trustees also approved the issuance of a press release concerning this matter.

West Creek

Jennifer Talbert reminded the Trustees that a 2012 tanker spill into West Creek resulted in the recovery of just under \$100,000 in 2015. She updated the Trustees on the three projects that were awarded to restore natural resources. Two of the three projects were completed in the fall of 2022 (installation of fence ladders and management of invasive species). The remaining project (fish habitat improvement and diversity) is nearly finished.

Introduction of New General Counsel

Deputy AG Beatie introduced Senior Assistant Attorney General Lukas Staks who will serve as General Counsel to the Trustees going forward.

Executive Session

Deputy AG Beatie recommended the Trustees make a motion to go into Executive Session to consider Agenda Items No. 6 and 7 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 2:25 p.m., Trustee Brannon moved to begin an Executive Session to discuss Agenda Item Nos. 6 and 7. Trustee Oeth seconded the motion, and the motion was unanimously approved. The Governors' CiviCo Fellows were asked to leave the room during the Executive Session. The Executive Session was digitally recorded.

At approximately 2:52 p.m., Trustee Brannon moved to end the Executive Session, Trustee Oeth seconded the motion, and the motion was unanimously approved, whereupon Executive Session was ended.

Open Session

Deputy AG Beatie stated that pursuant to statute, the Trustees went into Executive Session to consider Agenda Item Nos. 6 and 7. The discussion during Executive Session was limited to that item and no formal action was taken.

Schedule 2023 Meetings

Trustee Weiser explained that, despite best efforts, it became too difficult to schedule on-the-road meetings in Alamosa and Durango for spring/summer of 2023. However, he suggested the Trustees consider potential site visits to these regions if schedules allow. Staff will work on confirming dates for May and August Trustee meetings.

Briefing on Incidents Staff has Investigated

David Banas explained that CDPHE and DNR receive approximately one to six "spill line" reports a day. Some are immediately discounted by staff because they did not involve a hazardous substance or petroleum product, or the amount of the spill was too small. However, Trustee staff reported on three incidents in the last quarter that rose to the next level of concern and prompted staff investigations. While concerning, staff investigations did not identify NRD claims for these particular incidents due to lack of impact or unknown responsible parties. Staff assured the Trustees that all significant spill line reports are investigated and considered as they relate to NRD claims.

NRD Creative Expressions Video

Susan Newton presented a NRD-focused video created for CDPHE's Remediation Program's employee appreciation event.

At approximately 3:10 p.m., Trustee Brannon moved to adjourn the meeting. Trustee Oeth seconded the motion, and the motion was unanimously approved.

ITEM #3

Last modified 4/24/2023

Natural Resource Damages Accounts

NRD Matter	Bonita Peak	California Gulch	Fountain Creek	Idarado	Lowry	N. St. Vrain
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
Total NRD dollars spent	\$0.00	\$8,928,044.87	\$0.00	\$1,561,412.98	\$1,257,894.52	\$0.00
Account Balance as of 12/23/22	\$1,629,451.61	CDPHE DOI \$5,560,246.10 \$1,120,170	\$365,767.41	\$203,585.81	\$686,141.92	\$247,644.08
Trustee Resolution Date	NONE	12/10/2021 & 3/17/2022	4/23/2019	6/24/2019	NONE	NONE
Current Trustee awarded amount	\$0.00	\$6,306,119.00	\$365,767.41	\$287,000.00	\$0.00	\$0.00
Current Contract Encumbrances	\$0.00	\$771,867.80	\$0.00	\$168,200.00	\$0.00	\$0.00
Remaining available funds	\$1,629,451.61	\$4,788,378.30 \$1,120,170	\$365,767.41	\$35,385.81	\$686,141.92	\$247,644.08
Settlement Restrictions	NO	YES	NO	NO	YES	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
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

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	\$5,144,896.92	\$708,191.40	\$1,158,798.29
Account Balance as of 12/23/22	\$8,490,568.89	\$1,496,221.93	\$23,686.59	\$473,440.39	\$245,161.50	\$562,358.67	\$212,822.08
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	\$1,322,907.99	\$550,000.00	\$30,000.00	\$0.00	\$862.27	\$510,353.00	\$202,938.00
Remaining available funds	\$7,167,660.90	\$946,221.93	-\$6,313.41	\$473,440.39	\$244,299.23	\$52,005.67	\$9,884.08
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	Negative balance is based on contract terms of up to \$30K if 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

Agreement Between Colorado and the United States to Settle Potential CERCLA Natural Resource Damages Claims of Colorado

WHEREAS, on August 5, 2015, more than three million gallons of acid mine drainage containing heavy metals from the Gold King Mine located in San Juan County, Colorado, were released into downstream waters including the Animas and San Juan Rivers during a removal site evaluation by the United States Environmental Protection Agency (“EPA”);

WHEREAS, several lawsuits pertaining to the Release were filed and then consolidated as part of the multi-district litigation captioned as *In re Gold King Mine Release in San Juan County, Colorado on August 5, 2015*, 1:18-md-02824 (D.N.M.) (the “MDL”);

WHEREAS, EPA has listed the Bonita Peak Mining District Superfund Site (“Site”) encompassing the Gold King Mine on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”);

WHEREAS, EPA is currently implementing CERCLA response actions to assess and respond to the commingled release of hazardous substances into surface water from the Gold King Mine and from historic mining activities within the Site;

WHEREAS, the State of Colorado (“Colorado”), the United States of America, the Sunnyside Gold Corporation (“SGC”) and the Kinross Gold Corporation previously entered into a consent decree pertaining to the Site, which consent decree expressly reserved all rights of the Colorado Natural Resource Trustees (“Trustees”) and of the Federal Natural Resource Trustees with respect to CERCLA Natural Resource Damages (“NRD”) claims under CERCLA Section 107, 42 U.S.C. § 9607. *See In re Gold King Mine Release*, ECF No. 1629 (Apr. 28, 2022) ¶ 27.c, *corrected for unrelated reasons by MDL ECF No. 1634* (Apr. 29, 2022);

WHEREAS, the State of Colorado, acting through the Trustees, also entered into a separate consent decree resolving SGC’s liability to Colorado for NRD resulting from the release of hazardous substances from the Site. *See In re Gold King Mine Release*, ECF No. 1453 (Feb. 18, 2022);

WHEREAS, the State of Colorado, acting through the Trustees, alleges that releases in the Site, including the Gold King Mine release and releases from mines on federal lands, have caused injury to natural resources in Colorado;

WHEREAS, the State of Colorado, acting through the Trustees, and the United States of America (“Settling Parties”) have determined that settlement of Colorado’s potential CERCLA NRD claims against the United States under the terms set forth in this Settlement Agreement, without any admission of liability as to any factual or legal issue, is in the public interest and in the interest of the Settling Parties, and is the most appropriate means of resolving those potential claims;

NOW, THEREFORE, the Settling Parties hereby agree to the following:

1. **Definitions**

Any term in the Settlement Agreement that is defined in CERCLA or in regulations promulgated at 43 C.F.R. Part 11 and 40 C.F.R. Part 300 will have the meaning assigned to them in CERCLA or such regulations unless otherwise expressly defined below:

- a. **Site** shall mean the Bonita Peak Mining District Superfund Site in San Juan County, Colorado, EPA Docket ID No. EPA-HQ-OLEM-2016-0152, as published in the Federal Register on September 9, 2016, 81 Fed. Reg. 62397. The definition for this Site shall be construed to include all areas of the Site ever defined or described by EPA for purposes of or in relation to the National Priorities List, 40 C.F.R. Part 300, including any further expansion of such Site as may in the future be determined by EPA.
- b. **Site Contamination** shall mean any releases or threatened releases of hazardous substances that occurred or are occurring on or before the Effective Date at or from mining-related sources in Colorado within the BPMD.
- c. **CERCLA** shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.
- d. **CERCLA Natural Resource Damages** shall mean any damages recoverable on behalf of the public for injury to, destruction of, or loss or impairment of Natural Resources as set forth in 42 U.S.C. § 9607(a)(4)(C), including but not limited to: (i) the costs of assessing such injury, destruction, loss of use, or impairment; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of identifying, planning, implementing, and monitoring such restoration, rehabilitation, replacement or acquisition activities; (iv) compensation for injury, destruction, loss of use, or impairment of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.
- e. **Colorado Natural Resources Trustees** shall mean the Colorado Attorney General and the executive directors of Colorado's Department of Public Health and the Environment and Department of Natural Resources, who collectively serve as Colorado's Natural Resource Trustees and as such, have authority to bring claims for NRD on behalf of Colorado.
- f. **Colorado Project Selection Guidance** shall mean the guidance document titled "Colorado Natural Resource Damages Restoration Project Selection Process and Administration of the Colorado Natural Resource Damage Recovery Fund," as revised on September 16, 2022, and available at: <https://coag.gov/app/uploads/2022/09/2022-NRD-Project-Selection-Guidance.docx.pdf>.
- g. **Effective Date** shall mean the date on which this Settlement Agreement is signed by the last Settling Party.
- h. **EPA** shall mean the United States Environmental Protection Agency.

Final draft approved for signature by the United States on March 16, 2023

- i. **Federal Natural Resource Trustees** shall mean, among others, the United States Department of the Interior and the United States Forest Service.
- j. **Natural Resources** shall have the meaning provided in 42 U.S.C. § 9601(16).
- k. **Restoration Plan** shall mean a plan for use by Colorado of some or all of the funds paid into the Escrow Account by the United States pursuant to Paragraph 3, that has been adopted consistent with the requirements of 42 U.S.C. § 9611(i) and 43 C.F.R. § 11.93.
- l. **Settling Parties** shall mean Colorado, acting through the Colorado Natural Resources Trustees, and the United States. **Settling Party**, when used in the singular, shall mean either Colorado or the United States.
- m. **United States** shall mean the United States of America and all of its agencies, instrumentalities and officers.

2. Payment for CERCLA natural resource damages.

- a. As soon as reasonably practicable after the Effective Date of this Settlement Agreement, the United States shall pay to the Colorado Natural Resource Trustees, on behalf of Colorado, the sum of \$5,000,000. Such payment shall be made by electronic funds transfer to the Natural Resource Damage Recovery Fund established pursuant to Colo. Rev. Stat. § 25-16-104.7, and specifically to the account identified below. Colorado shall provide to the United States by the Effective Date, or as soon as possible thereafter, any other information necessary to process the electronic funds transfer.

Bank Name: Wells Fargo

Bank Address: 1675 Broadway, Suite 2700, Denver, CO 80202

Account Name: Treasurer State of Colorado

Account Number: 4120280912

ABA for Wires & ACHs: 121000248

Type of Account: Checking

- b. Colorado and the United States agree that all funds disbursed from the payment made by the United States pursuant to this Paragraph shall be utilized by Colorado to restore, replace, and/or acquire the equivalent of allegedly injured Natural Resources at or in connection with the Site, consistent with CERCLA's authorized uses of recovered damages as specified in 42 U.S.C. § 9607(f)(1), pursuant to a publicly reviewed Restoration Plan as set forth in 42 U.S.C. § 9611(i) and the CERCLA Natural Resource Damage Assessment and Restoration regulations at 43 C.F.R. § 11.93. Colorado and the United States mutually acknowledge that, in addition to developing a publicly reviewed Restoration Plan, Colorado intends to apply the Colorado Project Selection Guidance. Colorado and the United States agree that Colorado may use a portion of the payment made by the United States pursuant to this Paragraph to fund the development of the Restoration Plan.

Final draft approved for signature by the United States on March 16, 2023

3. **Interest accrual.** If payment by the United States to the Escrow Account pursuant to Paragraph 2 is made later than 90 days after the Effective Date, such payment shall include interest at the rate then prescribed pursuant to section 107(a) of CERCLA, running from the Effective Date.
4. **Availability of funds.** Payment to be made by the United States pursuant to this Settlement Agreement is subject to the availability of funds appropriated for such purpose. No provision of the Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.
5. **Colorado's release and covenant not to sue the United States.** Colorado, acting through the Colorado Natural Resources Trustees, hereby releases, discharges, and covenants not to assert any and all claims of any kind that it may have had, or may now or hereafter have, against the United States for CERCLA Natural Resource Damages resulting from Site Contamination. This Paragraph shall take effect on the Effective Date of this Settlement Agreement. Nothing in this Paragraph or any other provision of this Settlement Agreement is intended or shall be construed to resolve alleged liability for any release or threatened release of hazardous substances other than those defined as Site Contamination in Paragraph 1.b.
6. **No admission of liability.** This Settlement Agreement shall not constitute or be construed as an admission by either Settling Party with respect to any question of fact or law, nor is it an admission of violation by either Settling Party of any law, rule, regulation or policy.
7. **No effect on third parties.** Nothing in this Settlement Agreement shall bind, obligate, or otherwise create any rights or duties applicable to or enforceable by, or impose any limitations or conditions upon, any person or entity that has not signed the Agreement, nor shall the Agreement be construed to make such person or entity a third-party beneficiary of the Agreement.
8. **No effect on claims and defenses other than between Colorado and the United States.** This Settlement Agreement does not resolve and is without prejudice to, and each Settling Party expressly reserves, any and all rights with respect to claims and defenses between each Settling Party and any third parties.
9. **EPA discretion.** Nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded to EPA under general principles of administrative law, or under any other statutes, regulations or policies
10. **Notices.** Any notices as required under the Settlement Agreement shall be provided in writing, via electronic mail, as follows:

As to Colorado:

Final draft approved for signature by the United States on March 16, 2023

Colorado Department of Law
Natural Resources and Environment Section
Attn: Emily Splitek, Senior Assistant Attorney General
Hazardous Waste, Solid Waste, and CERCLA Litigation Unit
1300 Broadway, 7th Floor
Denver, CO 80203
Email: Emily.Splitek@coag.gov

As to the United States:

United States Environmental Protection Agency
Office of Regional Counsel
Attn: Paul Logan, Senior Assistant Regional Counsel
Legal Counseling and FOIA Branch
1595 Wynkoop Street (8ORC-LE-C)
Denver, CO 80202
Email: Logan.Paul@epa.gov

Chief, Environmental Defense Section
United States Department of Justice
P.O. Box 7611
Washington, DC 20044
Email: brian.lynk@usdoj.gov
(Communications shall refer to “DJ# 90-11-6-20816”)

11. **Amendments.** This Settlement Agreement may only be amended by subsequent written and signed agreement of the Settling Parties.
12. **Complete agreement.** This Settlement Agreement was negotiated between Colorado and the United States in good faith and at arm’s length, and contains all terms and conditions agreed upon by the Settling Parties. Any statements or representations, oral or otherwise, between the Settling Parties or their respective counsel that are not expressly included herein are specifically superseded by this Agreement and shall have no force or effect. The Settling Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning or interpretation of this Agreement.
13. **Counterpart original agreements.** This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed an original agreement and all of which shall constitute one agreement. The execution of one counterpart by either Settling Party shall have the same force and effect as if that Settling Party had signed all other counterparts.

Final draft approved for signature by the United States on March 16, 2023

14. **Settlement authority.** Each individual signing this Settlement Agreement on behalf of a Settling Party hereby certifies that such individual has been duly authorized to bind such Settling Party to this Agreement by signing it.

FOR THE UNITED STATES OF AMERICA:

_____, 2023

TODD KIM
Assistant Attorney General
Environment & Natural Resources Division

By:

BRIAN H. LYNK
Senior Trial Counsel
Environmental Defense Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

FOR COLORADO, ACTING THROUGH THE COLORADO NATURAL RESOURCES TRUSTEES:

_____, 2023

By:

MARY EMILY SPLITEK
Senior Assistant Attorney General
Hazardous Waste, Solid Waste, and CERCLA
Litigation Unit
Colorado Department of Law
1300 Broadway, 7th Floor
Denver, CO 80203

ITEM #5

NO DOCUMENT

ITEM #6

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney
General



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STATE OF COLORADO
DEPARTMENT OF LAW

May 11, 2023

M E M O R A N D U M

TO: Colorado Natural Resources Trustees

FROM: David Banas, Senior Assistant Attorney General

RE: California Gulch: Fourmile Creek Property Acquisition

BACKGROUND

In 2020, the Trustees entered into a Memorandum of Understanding (MOU) with the federal trustee agencies for the injured natural resources at the California Gulch Superfund Site in Lake County, Colorado to jointly administer settlement funds held by the State and by the United States Department of Interior. The MOU requires State Trustee approval before any State or federal funds are administered.

UPDATE

The federal Bureau of Land Management (BLM) has requested that \$69,750 of the Department of Interior settlement funds be used for the acquisition of 18 mining claims in the upper Arkansas River watershed along Fourmile Creek in Teller County. These parcels would be donated to the BLM and the acquisition costs limited to BLM's processing of the donation. Total acreage of the acquisition would be approximately 225 acres with 0.80 miles of perennial fishery habitat. BLM believes this donation is worth approximately \$500,000.

The parcels would fill in a large private land inholding surrounded by BLM managed lands. With these parcels in public ownership, they could be managed for the enhancement of recreation, enhancement of opportunities to manage visual resources, along with intensive fishery and wildlife habitat management. The attached project description further describes the property.

RECOMMENDATION FOR ACTIONS

Staff recommends the Trustees approve the expenditure of these funds.

ATTACHMENTS

- (1) Fourmile Creek Property Acquisition description
- (2) Draft Resolution approving expenditure of funds

The BLM is requesting that a portion of the Department of Interior funds from the Upper Arkansas River Watershed NRDA settlement be used for the acquisition of 18 mining claims ([Figure 1](#)) in the upper Arkansas River watershed along Fourmile Creek in Teller County ([Figure 2](#)). These parcels would be donated to the BLM and the acquisition costs limited to BLM's processing of the donation. Total acreage of the acquisition would be approximately 225 acres with 0.80 miles of perennial fishery habitat.

The parcels would fill in a large private land inholding surrounded by BLM managed lands. With these parcels in public ownership, they could be managed for the enhancement of recreation, enhancement of opportunities to manage visual resources, along with intensive fishery and wildlife habitat management. [Photos A-C](#) show the character of the parcels.

In addition, the parcels have Potential for Mexican Spotted Owl, golden eagle, Penstemon degeneri, Townsend's big-eared bat, fringed myotis, and northern goshawk habitat, hunting grounds, or roosting areas. The entire acquisition area is located in severe winter range for deer and elk. Severe winter range is a part of the overall range where 90% of the individuals are located when the annual snowpack is at its maximum and/or temperatures are at a minimum in the two worst winters out of ten. Through acquisition of this land, the continuity of BLM acreage comprised of severe winter range for elk and deer is enhanced. As a result, the potentially negative effects on wildlife from a decrease in useable habitat or habitat fragmentation from development are avoided. The land acquisition would provide additional hunting opportunities for both deer, elk and turkey.

The acquisition of these parcels would not only give additional access to .8 miles Four Mile Creek, a popular fishing area, but also would open access to a small, isolated parcel of BLM managed lands that is currently an island inholding completely surrounded by private property. Construction of additional roads and trails will not be required to facilitate the recreational activities since the natural state of the area is the main attraction and provides the pristine outdoor experience that visitors seek when traveling from nearby urban areas.

Creation of a larger, more contiguous area of BLM-managed public land is also more conducive to using fire as a management tool to improve and enhance ecological conditions and reduce wildfire risk. The creation of a larger block of public land reduces the potential for BLM jurisdictional fires to damage private lands and improvements, and it would reduce the potential for cost share agreements with county and state agencies. It can also provide more options for fire managers to utilize suppression or management tactics that provide for firefighter safety. In the case of this acquisition, the fragmented land ownership pattern surrounding, and adjacent to, these parcels would make suppression activities difficult, and use of managed fire for resource enhancement under ideal weather and fuel conditions would be very challenging.

An appraisal done in 2020 for a larger area that included these parcels indicates that the approximate value of these parcels is approximately \$500,000. We anticipate the total project costs to total \$69,750 as outlined in Table 1.

Table 1

	NRDA request	Match	Project Total
Land Acquisition	\$0	\$500,000	\$500,000
Phase I ecological site assessment	\$10,000	\$0	\$10,000
Mapping/survey	\$15,000	\$0	\$15,000
Appraisal	\$15,000	\$0	\$15,000
Title commitment	\$9,500	\$0	\$9,500
NEPA	\$10,000	\$0	\$10,000
Project Management	\$10,000	\$0	\$10,000
Total	\$69,500	\$500,000	\$569,500

Figure 1- Map of Proposed Acquisition parcels

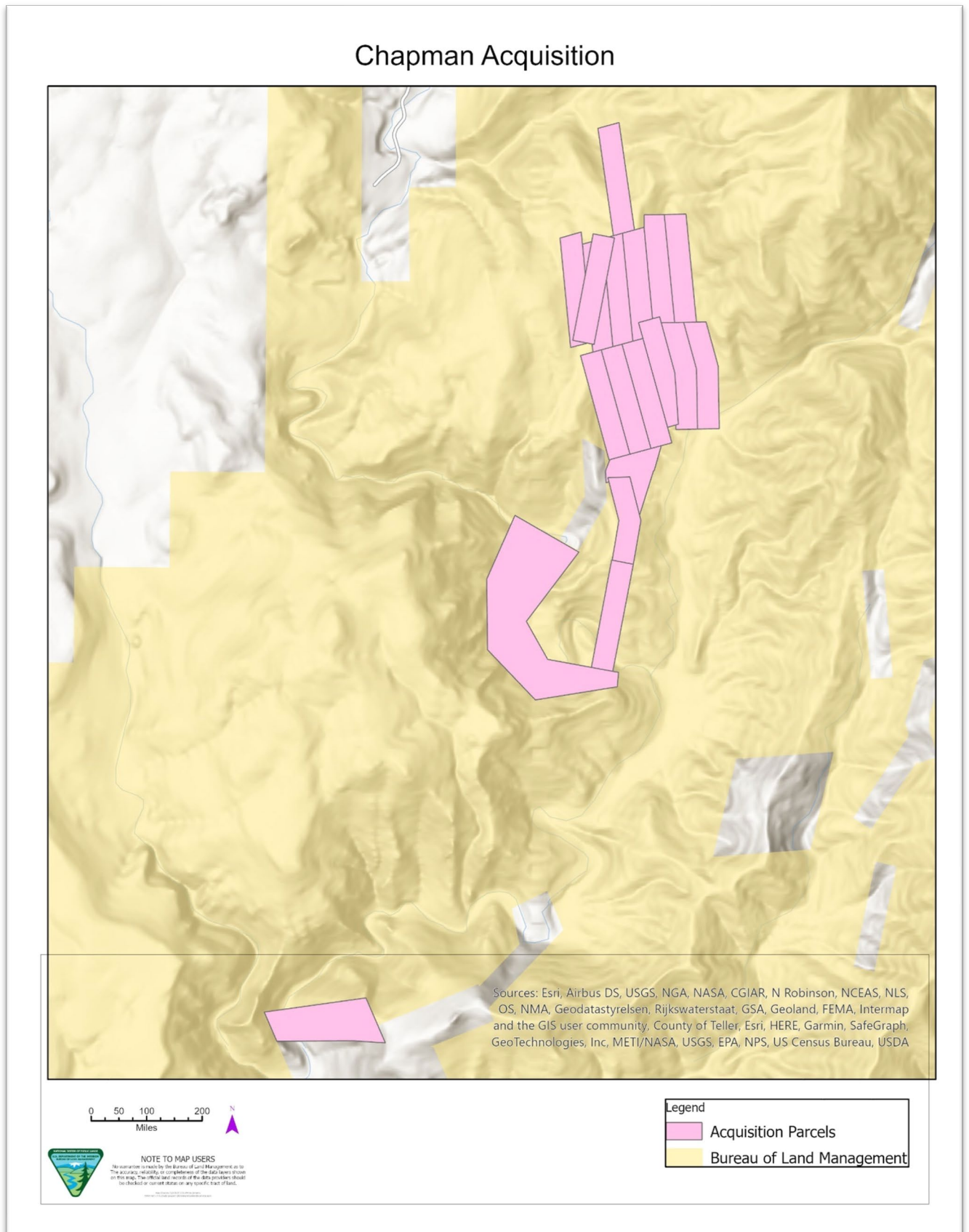


Figure 2- Vicinity Map

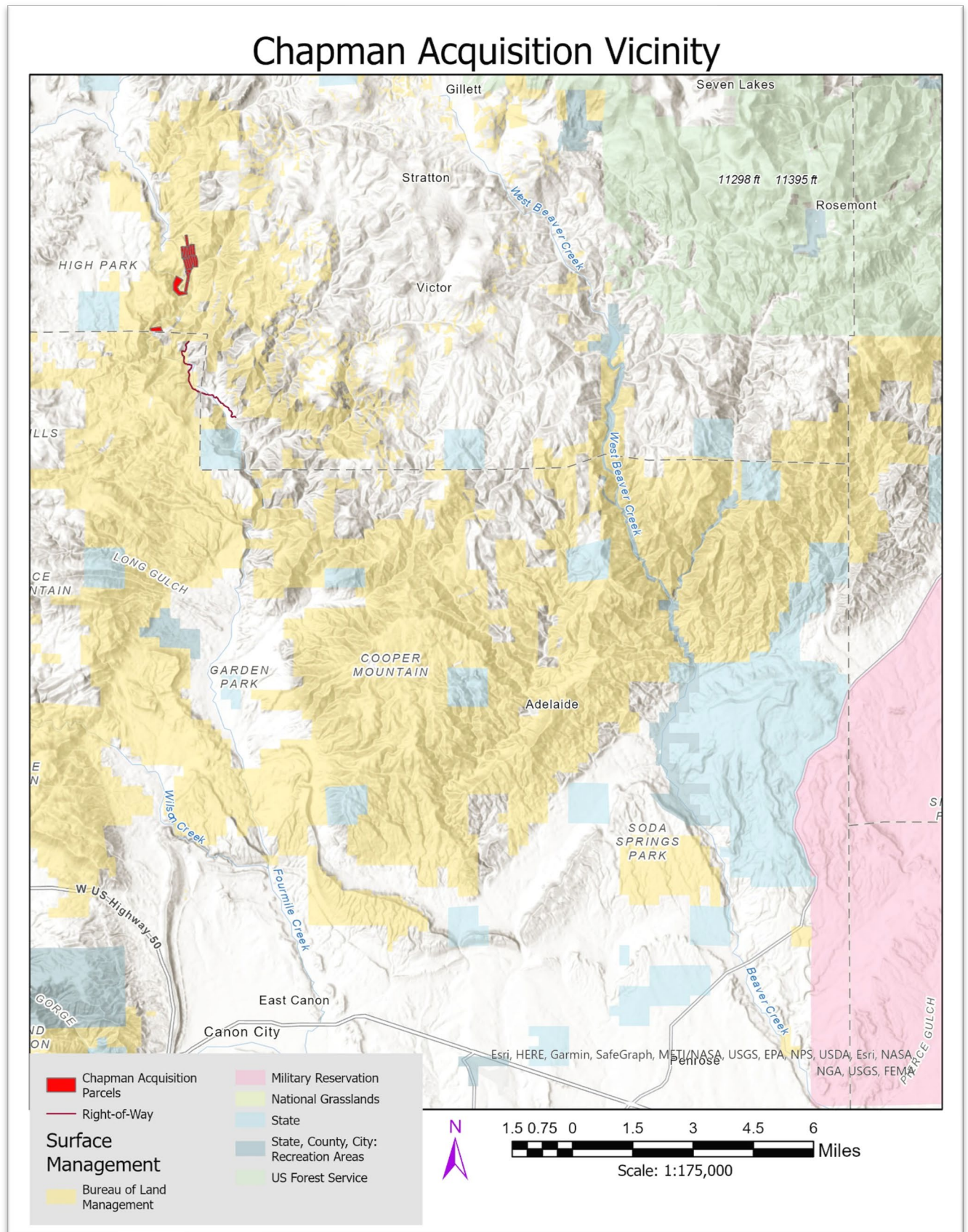




Photo A: Panoramic photo of the Four Mile Creek area target parcels. This view is looking west toward Booger Red Hill and the target parcels in Rattlesnake Gulch and along Four Mile Creek. Currently, there is an island of public lands within the private land that is inaccessible to the public (refer to Map 2 for land status). Acquisition of the target parcels in this area would establish access to the isolated island of public land, and increase public access along Four Mile Creek for fishing, hunting, and other recreational opportunities.



Photo B: Panoramic view from Booger Red Hill to the northeast. Four Mile Creek in the foreground is located mostly on the privately owned target parcels. The isolated island of public land is portions of the tree-covered hillside located toward the middle of the image (refer to Map 2 for land status). Mount Pisgah is the prominent peak in the background. Acquisition of the target parcels in this area would establish access to the isolated island of public land, and increase public access along Four Mile Creek for fishing, hunting, and other recreational opportunities. This area would be accessible from the Booger Red Hill parking area and trailhead, as well as from the north along existing roads to trails in the area of the Lakemoore West subdivision.



Photo C: The private landowner fishing in Four Mile Creek on the target parcels. Access to Four Mile Creek and the surrounding creeks for hunting, fishing and other recreation would be created with acquisition of the target parcels.

**COLORADO NATURAL RESOURCES TRUSTEES
RESOLUTION OF MAY 11, 2023
CONCERNING THE CALIFORNIA GULCH FUNDS AND THE
FOURMILE CREEK ACQUISITION**

WHEREAS, the Colorado Natural Resources Trustees (“Trustees”) are responsible for the management and direction of Colorado’s natural resource damages program and have coordinated with federal trustee agency counterparts to form a Trustee Council pursuant to a 2020 Memorandum of Understanding (“MOU”);

WHEREAS, pursuant to the MOU, the Trustees must approve of expenditures of both State and federal funds;

WHEREAS, the United States Bureau of Land Management (“BLM”) has requested \$69,500 of the Department of Interior funds from the Upper Arkansas River Watershed Natural Resource Damages Settlement to fund the administrative costs of closing on the acquisition of 18 donated mining claims in the upper Arkansas River watershed along Fourmile Creek in Teller County, totaling approximately 225 acres with 0.80 miles of perennial fishery habitat;

WHEREAS, the Trustee Council has determined: (1) that the acquisition of these parcels is consistent with the Restoration Plan and Environmental Assessment for the Upper Arkansas River Watershed; (2) that the project has a strong nexus to the natural resources injured because it protects riparian habitat, the same type of resources as those that were injured; and (3) that existing planning processes have identified riparian habitat restoration as a high priority in the Arkansas River Valley and in the watershed;

Colorado Natural Resources Trustees Resolution #2023-05-11-01

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

Pursuant to the MOU, the Trustees support the Department of the Interior transferring sufficient funds to the BLM to complete this project.

Philip J. Weiser, Colorado Attorney General

Date

Trisha Oeth, Director of Environmental Health
and Protection, Colorado Department of Public
Health and Environment

Date

Dan Gibbs, Executive Director,
Colorado Department of Natural Resources

Date

ITEMS #7-10
NO DOCUMENTS