

MEETING MATERIALS

**Colorado Natural Resource Damages
Trustees Meeting
August 15, 2024
9:30 a.m. – 11:30 a.m.**

**Location:
Wells Fargo Building
1700 Lincoln Street
Denver, CO**

**(Note: Use the 17th and Sherman Street entrance and report
to security desk by 9:15 a.m.)**

PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney
General



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

STATE OF COLORADO
DEPARTMENT OF LAW

AGENDA

Colorado Natural Resources Trustees Meeting

August 15, 2024
9:30 am to 11:30 am

Location:
Wells Fargo Building
1700 Lincoln Street, Denver, Colorado

Note: Use the 17th and Sherman Street entrance and report to security desk by 9:15 a.m.

Note: A hyperlink to a Microsoft Teams meeting 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 May 9, 2024 Meeting – 5 minutes

Action Item:

- (1) Review and approve minutes from May 9, 2024 meeting

Document:

- (1) Draft minutes from May 9, 2024 meeting

3. Budgets Update – (Tracie White) - 5 minutes

Action Items: None

Document:

- (1) Budget Spreadsheet

4. Recent Investigations – (Mindy May) – 10 minutes

Action Items: None

Documents: None

5. North St. Vrain – (Jason King, Melody Mascarenaz) – 5 minutes

Action Items: None

Documents: None

6. Bonita Peaks Mining District – (Jason King, Mark Rudolph) – 10 minutes

Action Items: None

Documents: None

7. Suncor Final Report – (David Kreutzer, Ducks Unlimited) – 20 minutes

Action Items: None

Documents: None

8. Idarado – (Jason King) – 5 minutes

Action Items: None

Documents: None

9. Fountain Creek – (Rob Harris, Melody Mascarenaz) – 10 minutes

Action Items: None

Documents: None

10. Vail – (Jason King) – 5 minutes

Action Items: None

Documents: None

11. Rocky Mountain Arsenal – (Melody Mascarenaz) – 5 minutes

Action Items: None

Documents: None

Executive Session

12. Home Lake State Wildlife Area – (Shelley Hickerson, Mindy May) – 10 minutes

Action Items: None

Documents: None

Open Session

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

Action Items: None

Documents: None

ITEM #2

Colorado Natural Resource Damages Trustees
Meeting Minutes
May 9, 2024
Durango, Colorado
(Approved _____)

In Attendance:

TRUSTEES

Phil Weiser, Attorney General

Dan Gibbs, Executive Director, Colorado Department of Natural Resources (DNR)

Trisha Oeth, Director of Environmental Programs, Colorado Department of Public Health and Environment (CDPHE)

TRUSTEE STAFF

Lukas Staks, Senior Assistant Attorney General, Office of the 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

Shelley Hickerson, Assistant Attorney General, NRE

Tracie White, CDPHE

Jennifer Talbert, CDPHE

Susan Newton, CDPHE

Melody Mascarenaz, CDPHE

Mark Rudolph, CDPHE

Robert Harris, DNR

Melynda May, DNR

Pete Conovitz, DNR

OTHER STATE STAFF

Laura Kelly, Senior Paralegal, NRE

Ashton Danneels, NRE Intern

Mindy Baumgardner, Rural Outreach Specialist, Office of the Attorney General

Josie Brady, Division of Community Engagement Coordinator, Office of the Attorney General

PUBLIC

Approximately 30 members of the public attended the meeting at the Durango Public Library, and another four joined virtually.

Open Session

Trustee Weiser called the hybrid meeting (held at the Durango Public Library and via Teams) to order at approximately 3:00 p.m. on May 9, 2024. 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.

Agenda

Trustee Gibbs moved to approve the Agenda. Trustee Oeth seconded the motion and the motion was unanimously approved.

Minutes

Trustee Weiser presented the minutes from the January 8, 2024 Trustee Meeting. Trustee Oeth moved to approve the January 8, 2024 minutes. Trustee Gibbs seconded the motion, and the motion was unanimously approved.

Budgets Update

Jennifer Talbert presented the Budgets Update and there were no questions.

Executive Session

Senior AAG Lukas Staks recommended the Trustees make a motion to go into Executive Session to consider Agenda Item #4 on the Trustee Meeting agenda regarding the Home Lake State Wildlife Area. He stated the Executive Session is authorized pursuant to section 24-6-402(3)(a)(II), C.R.S. and other laws that allow the Trustees to enter Executive Session for specific purposes. At approximately 3:05 p.m., Trustee Oeth moved to begin an Executive Session to discuss Agenda Item #4. Trustee Gibbs seconded the motion, and the motion was unanimously approved.

At approximately 3:20 p.m., Trustee Oeth moved to end the Executive Session. Trustee Gibbs seconded the motion, and the motion was unanimously approved, whereupon Executive Session was ended.

Open Session

Trustee Weiser stated that pursuant to statute, the Trustees went into Executive Session to consider Agenda Item #4 regarding the Home Lake State Wildlife Area. The discussion during Executive Session was limited to privileged attorney-client communications about that item. The Executive Session was separately recorded and no decisions were made.

Natural Resource Damages 101

David Banas introduced himself and thanked the community for attending. He briefly explained the role of the Trustees and Trustee staff, and how the NRDs Program works: 1) staff investigates when there is a release of a hazardous substance, and if there are injuries to the State's natural resources, the Trustees and staff attempt to recover damages; and 2) staff works, with input from the community, to restore those injured natural resources by allocating those

funds to project proponents to restore, replace, or acquire the equivalent of the injured resources. Mr. Banas also explained in detail the two distinct parts of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the difference between Superfund cleanups that protect human health and the environment by cleaning up contaminated sites and NRD projects that make the public whole by restoring natural resources. He then talked through the procedural steps for a NRDs assessment and restoration.

U.S. Department of Interior (DOI) Natural Resource Damages Regulations

In addition to the roles described by Mr. Banas, Trustee Weiser noted that the Trustees sometimes provide comments to changes in regulations that affect the NRDs Program. Specifically, David Kreutzer presented the Trustees' redlined comments on DOI's regulations concerning more expeditious NRDs calculations. Mr. Kreutzer reported that many other stakeholders, including both plaintiff and defendant sides, shared similar concerns regarding DOI's current procedures.

Suncor

In an effort to touch on various phases of the NRDs Program, Mr. Banas introduced Susan Newton of CDPHE to explain how the Trustees awarded funds stemming from a settlement with Suncor. She described the Suncor incident, injuries, and the cooperative settlement process which resulted in approximately \$2.2 million for restoration projects. Ms. Newton briefly explained the rather complicated Ducks Unlimited project which was habitat-focused and included wetlands mitigation projects in Mexico and Canada to cover the birds' entire flyway and entire lifecycle. She noted that Ducks Unlimited will give a more detailed final report at the next Trustee Meeting on August 15, 2024.

North St. Vrain

Jason King reminded the Trustees of a tanker rollover just north of Lyons in April 2021. The tanker discharged 2,500 gallons of gasoline into the North St. Vrain creek causing a considerable fish kill. Mr. King reported that Trustee staff worked with Abt Associates and presented a NRDs claim to the trucking company's insurers which quickly paid the requested \$240,000. He noted that the Solicitation for Project Proposals (SPP) was issued in January 2024, and only one restoration project proposal was submitted from a collaboration of seven different partners. The project is designed to improve aquatic habitat in the North St. Vrain River in close proximity to the spill site. Mr. King stated that the initial screening of this river restoration project proposal is underway, a site visit is planned for July 2024, and Trustee staff hopes to present a recommendation to the Trustees by the end of 2024.

Memorandum of Understanding with Department of Interior

Ms. Talbert reminded the Trustees about the Memorandum of Understanding (MOU) with DOI which was finalized earlier this year. She reported that the Director of the DOI NRDA Program reached out to her wanting to showcase this MOU for the entire DOI NRDA Program. Ms. Talbert and Emily Splitek (former Trustee staff) will be presenting a webinar in late May about the collaboration and the effectiveness of working together with DOI.

Bonita Peaks Mining District (BPMD)

Trustee Weiser commented that the NRDs Program is on the precipice of some impactful and meaningful NRDs projects in the BPMD. He described three separate “lanes” under CERCLA: (1) Superfund, which focuses on remediation (for example, the harms caused by the Gold King mine blowout); (2) NRDs Program, which focuses on restoration of injured natural resources; and (3) reimbursement to those businesses which were harmed and should receive compensation, noting (1) and (3) are not within the scope of the NRDs Program.

Trustee Weiser explained that restoration work can begin in areas outside the Superfund site before EPA’s remediation work at BPMD is completed. He added that the Trustees plan to reserve approximately \$3.5 million for opportunities after EPA’s remediation work is completed, leaving up to \$3.5 million in funding that is currently available for NRDs projects. Trustee Weiser informed the community that the Trustees would like project proposals submitted by September 30, 2024, so that the Trustees might be able to act on them in early 2025.

Trustee Oeth commented that an earlier meeting in Silverton helped the Trustees understand some of the projects envisioned, and she noted the community’s energetic collaboration. Trustee Gibbs added that he was impressed to see such a large group in attendance and hear about some of the challenges and opportunities related to restoring injured natural resources.

La Plata County Commissioner Marsha Porter-Norton described the harmful impacts of the Gold King mine blowout on the community and the decades of damage to the ecosystem. She expressed excitement about potential projects and noted that the Southern Ute sovereign nation is an important voice going forward as it owns part of the river. Other public comments were made by La Plata County Commissioner Clyde Church, Chara Ragland (Chair of the BPMD Community Advisory Group (CAG)), Ty Churchwell (Trout Unlimited and CAG Executive Committee Member), and Peter Butler (former CAG chairperson).

Mr. King gave a BPMD presentation which explained the NRDs claims, settlements, geographic areas for restoration projects, and an update on the SPP process for BPMD. Mr. Banas clarified the timeline for project proposals.

At approximately 4:30 p.m., Trustee Gibbs moved to adjourn the meeting. Trustee Oeth 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
Total Settlement	\$6,600,000.00	\$10,000,000.00	\$345,000.00	\$1,000,000.00	\$1,606,930.00	\$245,305.00
Total NRD dollars spent	\$0.00	\$14,461,288.20	\$0.00	\$1,561,412.98	\$1,257,894.52	\$0.00
Account Balance as of 6/25/2024	\$6,870,315.47	\$4,541,110.98	\$382,487.93	\$212,883.14	\$717,526.22	\$258,958.01
Most recent TT Resolution Date	NONE	11/14/2023	4/23/2019	6/24/2019	8/14/2023	NONE
Current Trustee awarded amount	\$0.00	\$3,953,875.00	\$382,487.93	\$287,000.00	\$675,000.00	\$0.00
Contract Encumbrances	\$66,924.00	\$4,305,976.38	\$0.00	\$168,200.00	\$674,998.58	\$0.00
Remaining funds	\$6,803,391.47	\$235,134.60	\$382,487.93	\$44,683.14	\$42,527.64	\$258,958.01
Type of Restriction	Restoration Plan required	Follow Restoration Plans developed by State and USFWS	None	None	Groundwater nexus to the South Platte	None
Remaining funds available	\$239K from Blue Tee will be added from the HSRF in Phase 2.	Interest and remaining funds available	Interest to CPW, no remaining funds available	Interest to Governor's Basin Project, no remaining funds available	Interest to USFWS, no remaining funds available.	Settlement from December 2022, all funds available
Update	CDPHE contracted with Abt for the restoration plan. Offeror registrations received from 12 proponents	All SPP projects are under contract and underway.	CPW is obtaining matching funds - need CDPHE contract by December 2024	Society Turn is completed; TLR to acquire Silver Mountain Mine; Governor Basin delayed due to EPA remedial requirements.	Contract is completed with USFWS.	Restoration proposals under review by Trustee staff

Natural Resource Damages Accounts

NRD Matter	RMA Recovery Fund	RMA Foundation Fund	Shattuck	Standard Metals	Summitville	Suncor	Uravan	Vail Mill Creek
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	\$248,660.00
Total NRD dollars spent	\$12,901,945.00	\$9,185,555.00	\$1,272,904.00	\$0.00	\$5,144,896.92	\$1,072,893.64	\$1,177,922.42	\$0.00
Account Balance as of 6/25/2024	\$7,982,375.01	\$1,066,182.93	\$24,591.54	\$495,089.20	\$257,242.62	\$209,717.46	\$202,809.25	\$255,822.02
Most recent TT Resolution Date	3/24/2021	3/28/2018	3/17/2022	12/9/2022	1/21/2021	6/9/2022	3/24/2021	NONE
Current award	\$5,707,087.93	\$1,388,523.00	\$30,000.00	\$0.00	\$1,171,620.00	\$1,267,454.00	\$270,000.00	\$0.00
Contract Encumbrances	\$439,011.54	\$100,000.00	\$30,000.00	\$0.00	\$225,396.00	\$183,104.76	\$183,813.87	\$0.00
Remaining funds	\$7,543,363.47	\$966,182.93	-\$5,408.46	\$495,089.20	\$31,846.62	\$26,612.70	\$18,995.38	\$255,822.02
Type of Restriction	None	None	None	None	Money must be spent in Alamosa River Watershed	None	None	None
Remaining funds available	All funds available on line I9	All funds available on line J9	Only available funds will be paid out	\$230K awarded; remaining funds for Silverton	Interest to TU, no remaining funds available	Interest to TU, no remaining funds available	Interest to WEEDC, no remaining available funds	All funds available on line P9
Update	These funds were combined for the SPP, which was published in September. We are waiting for project proposals to be submitted.		Project is underway.	Gossan Creek Project delayed due to Lowline Gunnison Fire	In Stream Flow Project is underway	Restoration is completed	Restoration projects are almost completed by WEEDC. DRMS identifying locations for additional work	CPW identifying project in Gore/ Mill Creek

ITEMS #4-13
No Documents