

MEMORANDUM OF AGREEMENT COEUR D'ALENE BASIN NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION

This Memorandum of Agreement (MOA *or* Agreement) is entered into by and between the following governmental entities: the Coeur d'Alene Indian Tribe (Tribe), the United States Department of the Interior (DOI), the United States Department of Agriculture (USDA), and the State of Idaho (State), collectively referred to as the "Trustees."

I. BACKGROUND

Beginning around 1890 and continuing to this day, mine waste releases contaminate extensive areas within a 1500 square mile (3885 km²) area of the Coeur d'Alene River Basin (Basin), principally in the South Fork River and mainstem Coeur d'Alene River (River), in the River's channel, levees and floodplain, as well as in lakes and wetlands adjacent to the River, and in Coeur d'Alene Lake.

On December 8, 1983, the State commenced a civil action under CERCLA against several mining companies for response costs and natural resource damages in the Basin. The State settled with those companies on May 31, 1986.

Since 1993, an extensive Natural Resource Damage Assessment and Restoration (NRDAR) case documented that mine waste caused significant injuries to natural resources and supporting habitat throughout at least 145 km of rivers and streams and 110 km² of floodplains within the Basin. Two NRDAR lawsuits were filed concerning these natural resource injuries: one was filed by the Coeur d'Alene Tribe in 1991, and the other was filed by the United States in 1996. These two lawsuits were later consolidated. The trial on liability issues began on January 22, 2001, and continued through July 2001. On September 3, 2003, the U.S. District Court for the District of Idaho ruled on liability in Phase I of the trial¹. Over the course of the litigation, the named defendants have individually settled with the United States and the Tribe, either separately or in concert. In some instances, the State also settled its outstanding claims by joining in the settlement and filing a complaint concurrently with the filing of a consent decree.

A settlement with Hecla Mining Co. and Hecla Limited, Inc. was entered by the U.S. District Court for the District of Idaho as a Consent Decree on September 8, 2011. Also during this period, pursuant to CERCLA section 122(g) several *de minimis* settlements were entered with other contributing parties.

The following is a summary of the various NRDAR settlement dates; the entities involved in each proceeding; and the deposition of the resultant funds (settlement funds):

1. 1986 Gulf Resources, Pintlar, Asarco, Sunshine Mining Co., Bunker Ltd., Coeur d'Alene Mining Co.

¹ See Cases CV-96-0122-N-EJL; CV-91-0342-N-EJL. The Court found Hecla (31%) and ASARCO (22%) mining companies liable for the Environmental Protection Agency's (EPA) response cost and for the natural resource damages. *United States and Coeur d'Alene Tribe v. ASARCO*, 280 F.Supp.2d 1094, 1120 (D. Idaho 2003), *as modified*, 471 F.Supp.2d 1063, 1068-69 (D. Idaho 2005) (United States and Tribe are "'trustees' for purposes of CERCLA over the federal and tribal land as well as the migratory natural resources of: fish, wildlife, birds, biota, water and groundwater based on their involvement in the management and control of such natural resources").

- Parties to the settlement: State.
 - Funds location: A State of Idaho trust account – all funds expended.
2. 1995 Gulf U.S.A. Corporation and Pintlar Corporation
 - Parties to the bankruptcy: DOI, USDA, Tribe.
 - Funds location: A joint court registry account.
 3. 2000 Union Pacific Railroad
 - Parties to the settlement: DOI, USDA, Tribe, and State.
 - Funds location: Federal and Tribal funds - DOI NRDAR Fund; account number 0109. The depository into the NRDAR Fund will hereafter be referred to as the DOI Restoration Fund.
 4. 2001 Sunshine Mining and Refining Company and Sunshine Precious Metals, Inc., and two subsidiaries (collectively “Sunshine”)/Sterling
 - Parties to the bankruptcy: DOI, USDA, Tribe.
 - Funds location: Net Smelter Return (NSR) royalties deposited into DOI Restoration. Fund; account number 0109.
 5. 2001 Coeur Mining and Callahan Mining Corporation
 - Parties to the settlement: Tribe.
 - Funds location: The Tribe’s account – all funds expended.
 6. 2001 Coeur Mining and Callahan Mining Corporation
 - Parties to the settlement: DOI, USDA.
 - Funds location: DOI Restoration Fund; account number 0024.
 7. 2003 ASARCO LLC
 - Parties to the settlement: Tribe.
 - Funds location: The Tribe’s account.
 8. 2010 Grupo Mexico/ASARCO LLC
 - Parties to the bankruptcy: USDA, DOI.
 - Funds location: DOI Restoration Fund; account number 0583.
 9. 2010 to 2011 *de minimis* mining company litigation
 - Parties to the settlements: Tribe, DOI, USDA.
 - Funds location: DOI Restoration Fund; account number 0109; Insurance Recovery Trust.
 10. 2010 Atlantic Richfield Co.
 - Parties to Settlement: Tribe, DOI, USDA, State.
 - Funds Location: DOI Restoration Fund; account number 0643.
 11. 2011 Hecla Mining Company, Hecla Ltd., and associated companies (“Hecla”)
 - Parties to Settlement: Tribe, DOI, USDA, and State.
 - Funds Location: DOI Restoration Fund; account number 0643.

This is the fourth in a line of agreements intended to coordinate NRDAR activities in the Basin:

1. MOA signed in 1992
 - Memorandum of Agreement between the DOI and the Tribe.
 - The purpose of the MOA was to acknowledge the common interests and

responsibilities of DOI and the Tribe for the restoration, replacement and/or acquisition of equivalent natural resources which have been injured, destroyed or lost because of the release of hazardous substances into the Bunker Hill Facility natural resource damage assessment area, which area is co-extensive with the Bunker Hill Superfund Facility. The MOA was intended to provide a framework of good faith, government-to-government coordination of the natural resource damage assessment process activities. The DOI and the Tribe acknowledged that additional agreements may be executed between the Tribe and DOI to further meet the above described purposes.

2. MOA signed in 1995
 - Memorandum of Agreement among USDA, DOI, and Tribe.
 - The purpose of the MOA was to ensure the coordination and cooperation of these Trustees in the expenditure of jointly recovered funds from the Gulf U.S.A. Corporation and Pintlar Corporation bankruptcy proceedings in the United States Bankruptcy Court, Idaho District, for damage assessment and the restoration, replacement and /or acquisition of the equivalent natural resources which have been injured in the Basin Assessment Area.
3. MOA signed in 2010
 - Memorandum of Agreement among USDA, DOI, and Tribe.
 - The purpose of the MOA was to ensure the coordination and cooperation of the Trustees in the expenditure of jointly recovered funds from all previous and future NRDA settlements for damage assessment and for the restoration, replacement and /or acquisition of the equivalent natural resources which have been injured in the Basin Assessment Area.

II. SCOPE AND PURPOSE

This MOA replaces the MOA signed in 2010 and is intended to address the planning and implementation of restoration of natural resources or natural resource services injured, destroyed or lost as a result of the release of mining-related hazardous substances into the Coeur d'Alene Basin, Idaho. The purpose of this MOA is to establish a process for coordinating and cooperating in the development and adoption of a Natural Resource Damage Restoration Plan, implementation of restoration activities, and expenditure of recovered funds from all previous settlements listed above.

III. AUTHORITY

The Trustees enter into this MOA in furtherance of, and in accordance with, their respective responsibilities and authorities as natural resource trustees pursuant to: Sections 107 and 111 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 40 U.S.C. § 9607; National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300; Section 311(f) of the Clean Water Act, 33 U.S.C. 1321(f); and other applicable laws and regulations. By signature below, each Trustee certifies that the individuals listed as representatives

of the Trustees are authorized to act in their respective areas for matters related to this MOA.

1. Director, Coeur d'Alene Tribal Natural Resources Department, authorized official for the Tribe.
2. Director, Engineering, U.S.D.A. Forest Service, Northern Region, authorized official for the U.S. Department of Agriculture.
3. Regional Director, Region 1, U.S. Fish and Wildlife Service, authorized official for the U.S. Department of the Interior.
4. Director, Idaho Department of Fish and Game and Director; Idaho Department of Environmental Quality, authorized officials for the State.

IV. RESTORATION FUNDS FROM SETTLEMENTS

Pursuant to CERCLA Section 111(i), 42 USC § 9611(i), except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, a publically reviewed Restoration Plan must be developed and adopted by the Trustees. Settlement funds must be spent in accordance with the Trustees' Interim and/or Final Restoration Plans unless otherwise provided by law. In conformity with this provision, the Trustees agree to use the funds to accomplish the following:

- A. Develop a Final Restoration Plan to restore, rehabilitate, replace and/or acquire the equivalent of injured natural resources or resource services.
- B. Plan, design, implement and monitor restoration actions in accordance with the Interim and/or Final Restoration Plan and to coordinate remedial and restoration activities so as to maximize the value of remedial actions toward restoration of natural resources.
- C. Prohibit expenditures on physical structures and infrastructure improvements such as buildings; or traditional public works projects, except for those physical structures that are a necessary part of a restoration project (such as road work, sediment reduction, or erosion control, or installation of drainage features).
- D. Implement only those projects that are consistent with any prioritization or project selection criteria set forth in the Interim and/or Final Restoration Plan.
- E. Minimize the amount of the settlement funds that are spent on administrative charges and expenses. Administrative charges and expenses may include, but are not limited to, salary, travel, and overhead of Trustee Council and restoration team members, and other Trustee staff. Approval of Trustees' administrative expenditures shall require only majority vote, and will not be subject to the consensus requirements as defined below.
- F. Comply with applicable State, Federal, and Tribal laws and regulations.

V. TRUSTEE COUNCIL

A. Trustee Council:

The existing Trustee Council (Council) is expanded to include the State of Idaho and shall be the mechanism through which the Trustees will coordinate their activities regarding the

NRDAR in the Basin. The Council shall consist of one voting member from each of the Trustees (DOI, State, Tribe, and USDA). Each Trustee shall provide the Administrative Trustee with the name of its voting member and an alternate voting member. Each Trustee has more than one bureau, department, or organizational level with natural resource trust responsibilities (see V.B.). Each voting Council member is responsible for consulting and coordinating with his or her respective bureaus, departments, or organizational levels regarding decisions to be made by the Council. A non-voting representative from each of these bureaus, departments, or organizational levels (listed below) may attend and participate in meetings of the Council. Technical experts and others may also attend and participate in meetings of the Council as deemed appropriate by a majority of the Council voting members.

B. Federal, Tribal, and State Representatives

1. The DOI has two primarily involved bureaus: the U.S. Fish and Wildlife Service and the Bureau of Land Management.
2. The Tribe has two primary involved departments: the Tribal Lake Management Department and the Tribal Natural Resources Department.
3. The USDA has one involved agency at two levels within the organization: the Northern Region of the Forest Service and the Idaho Panhandle National Forest.
4. The State has two involved departments: the Idaho Department of Environmental Quality and the Idaho Department of Fish and Game.

C. Council Responsibilities:

1. Developing and adopting a Final Restoration Plan in a timely manner that includes sufficient detail to evaluate possible alternatives and to select a preferred alternative for restoring, rehabilitating, replacing, and/or acquiring the equivalent of injured natural resources and the services those resources provide;
2. Planning, developing, and implementing assessment and restoration actions in accordance with the Interim and/or Final Restoration Plan to benefit natural resources or natural resource services injured, destroyed, or lost due to the release of mining-related hazardous substances in the Basin;
3. Implementing standard and accepted cost accounting procedures or cost reimbursement guidelines consistent with this Agreement as are needed to carry out this Agreement or relevant consent decrees or court opinions and authorizing disbursement of settlement funds in accordance with section V.D.3;
4. Adopting such bylaws, team charters, and statements of Council policy or position, consistent with this Agreement as are needed to carry out this Agreement or relevant consent decrees or court opinions; and
5. Managing coordination between the Trustees and the Federal, Tribal, and State agencies carrying out remediation within the Basin.

D. Council Decisions:

1. There must be consensus among all the Trustees for adoption of the Final Restoration Plan.

2. The Council shall attempt to reach consensus on decisions consistent with this MOA and to timely adopt the Restoration Plan.
 3. Disbursal of funds: There have been diverse settlements between the Trustees and various potentially responsible parties over time. The Trustees are required by law to use these monies for the benefit of the injured, destroyed, or lost natural resources. Fiscal control over these funds, however, is not shared concurrently with all Trustees. For this reason, the Trustees agree that if consensus cannot be reached on a matter, decisions concerning the dispersal of funds shall be as follows:
 - a. No funds may be disbursed from the settlement accounts listed in Sections I.6 and I.8 above, on federal sole trust resources without consensus between the Federal Trustees.
 - b. No funds may be disbursed from the settlement accounts listed in Sections I.2, I.3, I.4, I.8, and I.9 above for proposed actions on co-trust natural resources without consensus among the Federal and Tribal Trustees.
 - c. No funds may be disbursed from the settlement accounts listed in Sections I.10 and I.11 above without consensus among the Federal, Tribal and State Trustees.
- E. Council decisions will be recorded in writing, either by resolution signed by the voting members or in minutes approved as to form and content by the voting members. However, all decisions authorizing the expenditure of funds shall be memorialized in a Council resolution signed by the applicable voting members as described in Section V.D.3. All records of Council decisions including copies of any supporting documents shall be maintained in the administrative record.

VI. DISPUTE RESOLUTION

The Council shall conduct good faith discussions in an attempt toward obtaining consensus on Council decisions consistent with this MOA and to timely adopt the Restoration Plan. If consensus is not reached by the voting members of the Council on a decision for which their consensus is required, pursuant to this MOA, the matter in dispute shall be presented for resolution to a group comprised of one Authorized Official (listed in Section III) from each applicable Trustee. If the dispute cannot be resolved by these higher level officials, the Trustees may adopt further procedures for dispute resolution. However, if a dispute cannot be resolved through discussions among the applicable Authorized Officials, the ultimate decision by the federal, tribal, or state Trustee to spend funds from its own accounts, as listed in Section I above, on that Trustee's sole trust resources in accordance with the Trustees' jointly adopted Restoration Plan, shall not require consensus.

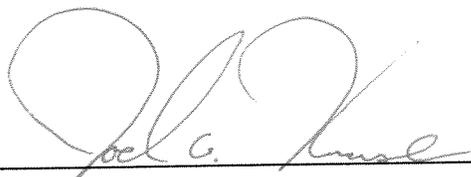
VII. ADMINISTRATIVE TRUSTEE

- A. For purposes of facilitating the exchange and coordination of information among the Trustees, one Trustee shall be designated the Administrative Trustee (AT). Determination of the AT shall be by consensus of the Trustees.
- B. Designation of the AT shall not preclude the Trustees' determination on a case-by-case basis to assign responsibility for specific tasks to another Trustee.
- C. The Trustees agree that the DOI Council member shall initially serve as the AT. The Trustees may by majority vote change the designation of the AT without the need for an amendment to this Agreement. Such a change in the designation of the AT shall be executed through a Council resolution.

VIII. MISCELLANEOUS PROVISIONS

- A. Effective Date; Amendment and Termination. This Agreement shall be effective when executed by all of the Trustees and may not be amended except by written agreement of all Trustees. A Trustee shall give 90 days' written notice to terminate its participation in this Agreement. Such notice shall come from the Authorized Official. Upon such termination and withdrawal of any Trustee, the Agreement shall continue to be effective as to the remaining Trustees.
- B. Commitment of Resources. Nothing in this Agreement shall be construed as obligating USDA, DOI, the Tribe, or the State, or their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.
- C. Reservation of Rights. This Agreement does not create any legal rights or obligations among the Parties or any other persons not a party to the MOA. It is also recognized that each Party to this Agreement has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or treaty or otherwise and that nothing in this Agreement waives or forecloses the exercise of any such rights, powers or remedies.
- D. Modification of Agreement. Modification of this MOA must be in writing and approved by all Trustees that are currently party to this MOA.

For the Department of Agriculture
USDA Forest Service
Director, Engineering, Region 1


Name/Date

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For the Department of the Interior
U.S. Fish and Wildlife Service
Regional Director, Region 1

Morgan Thurson March 30 2012
Name/Date

For the Coeur d'Alene Indian Tribe
Director, Coeur d'Alene Tribal
Department of Natural Resources

Name/Date

For the Idaho Department of Environmental Quality
Director, Idaho Department of Environmental Quality

Name/Date

For the Idaho Department of Fish and Game
Director, Idaho Department of Fish and Game

Name/Date

For the Department of the Interior
U.S. Fish and Wildlife Service
Regional Director, Region 1

Name/Date

For the Coeur d'Alene Indian Tribe
Director, Coeur d'Alene Tribal
Department of Natural Resources

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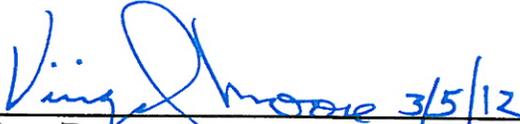
Name/Date

For the Idaho Department of Environmental Quality
Director, Idaho Department of Environmental Quality



Name/Date

For the Idaho Department of Fish and Game
Director, Idaho Department of Fish and Game

 3/5/12

Name/Date