

Coeur d'Alene Basin Natural Resource Trustee Council Policies and Procedures Guiding Restoration of Injured Natural Resources



**US Department of Agriculture
US Department of the Interior
Coeur d'Alene Tribe
State of Idaho**

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1 Policies and Procedures

1.1 Purpose

The Coeur d’Alene Basin Natural Resource Trustees include the US Departments of Agriculture (USDA) and the Interior (DOI), the Coeur d’Alene Tribe (Tribe), and the State of Idaho (State). The Restoration Partnership (Partnership) was formed by the Trustees to develop and implement a Restoration Plan. The Trustees use the term “Restoration Partnership” to describe the activities of the natural resource trustee representatives as guided by the formal operations of the Trustee Council (TC). These policies and procedures guide planning and implementation of restoration in the Coeur d’Alene Basin (Basin) and are being implemented under the DOI guidance 43 CFR 11.

1.2 Scope

These policies and procedures apply respectively to the administration of the 2018 Coeur d’Alene Basin Restoration Plan (Plan) and Programmatic Environmental Impact Statement (EIS), and any subsequent restoration planning documents and plans developed by the Partnership.

2 Trustee Council

The TC is made up of four representatives from the Coeur d’Alene Tribe, the United States of America represented by the Department of Agriculture and Department of the Interior, and the State of Idaho. The TC members are selected by their Authorized Officials within their respective governments and information on TC membership, decision making, and dispute resolution processes are contained in the Coeur d’Alene TC Memorandum of Agreement (MOA), signed by DOI, USDA, the Tribe, and the State in 2012 (Appendix A). The MOA is the overarching guidance document on these topics. These policies and procedures in no way alter the MOA. Additionally, an Administrative Trustee will be selected by the TC on an annual basis to accomplish the tasks outlined in the MOA.

2.1 Technical Staff

The Trustees will identify a group of Technical Staff from within their respective agencies/governments who will conduct the following duties including but not be limited to: (1) planning, (2) project development and oversight, (3) implementation of the approved projects under the Plan, and (4) work with the public. Technical Staff report directly to their designated TC representative and will complete work assignments identified by the TC.

The TC may also draw upon other internal staff as the needs arise.

2.2 Amendments to Policies and Procedures

The TC may amend these policies and procedures or draft additional guidance documents to establish processes for any part of the restoration within its purview.

Any TC member may propose minor changes by email or other correspondence to all TC representatives. Minor changes include correcting typographical, transpositions, or other editing errors; redrafting a provision for clarification; and other refinements necessary to effect a provision's original intent.

Amendments and minor changes will become effective only after approval has been documented from all TC members in meeting notes, written correspondence, or resolution and any change is made in writing into a revised version of these documents and filed in the Administrative Record.

2.3 Frequency and Location

The TC will meet as frequently as they deem necessary for advancing their respective work. At least once per year, the TC will have a meeting focused on the progress of restoration projects towards achieving the Plan's goals.

Meetings will be in person or via teleconference. Locations will rotate among TC office spaces or other locations, depending on availability and TC preferences.

2.4 Decision-Making Documentation

2.4.1 Meeting Notes

Meeting notes will be drafted by the Administrative Trustee for each meeting and circulated for TC review and approval. If decisions were made during the meeting, they will be clearly identified in the notes. Once finalized, the final meeting notes will be distributed internally and maintained in the Administrative Record. If decisions on policy changes or administrative processes occur during TC meetings, then those decisions will be clearly identified and documented.

2.4.2 Trustee Council Resolutions

TC resolutions are required for financial decisions, including approval of funding for annual programmatic restoration planning and restoration projects. As described in the 2012 MOA (Appendix A), all decisions authorizing the expenditure of funds shall be memorialized in a TC resolution. Such resolutions will identify the funding amount, purpose, recipient, and settlement account for disbursement.

TC resolutions may also be used to document other administrative or financial decisions including investment of funds in the DOI Natural Resource Damage Assessment and Restoration (NRDAR) Fund accounts.

Resolutions may be proposed and drafted by any TC member and once approved by all TC members, the final draft will be prepared and circulated by the Administrative Trustee. Resolutions are finalized once they are signed (by hand or approved electronic signature) by the TC representative or their authorized alternate, and are maintained and distributed internally. Resolutions may be amended with signed consent of the TC. Resolutions and amendments will be submitted to the Administrative Record.

3 Administrative Records

3.1 Roles and Responsibilities

- A formal Administrative Record for NRDAR planning and implementation will be maintained by an Administrative Record Custodian (Custodian). In addition to these records, individual Trustees may maintain records according to their own requirements or needs.
- The TC designated the Tribe as Custodian for the Administrative Record on behalf of the Trustees. This Record includes a copy of the National Environmental Policy Act Project File associated with the Plan and EIS. Other examples of Administrative Record materials include, but may not be limited to documents for planning and development of the 2018 Plan, documents for restoration implementation funded under the 2007 Interim Plan, and documents for restoration implementation for projects funded under the Plan. This record will include, at a minimum, all restoration implementation decisions, actions, and expenditures. The physical location of the Administrative Record is located at the Coeur d'Alene Tribe, 424 Sherman, Suite 306, Coeur d'Alene, Idaho. Currently, the Coeur d'Alene Tribe is both the Administrative Trustee and the Custodian of the Administrative Record, but as stated in section 2, the Administrative Trustee position
- can rotate on an annual basis wherein the Tribe will remain as the Custodian of the
- Administrative Record.

The USDA and DOI also maintain records consistent with federal requirements.

The State will maintain records consistent with State requirements.

The responsibilities of the Administrative Record Custodian include, but may not be limited to the following:

- Provide public access to the Administrative Record in a centralized location.
- Retain Administrative Record materials.
- Periodically notify the TC of Administrative Record obligations.
- Support the TC by adding documents to the Administrative Record.
- Provide Administrative Record indices and/or organizational structures with input from the TC.

- Maintain an inventory list of equipment and property custodian information to facilitate shared use.

The TC will provide additional guidance on the type and scope of materials to be included in Administrative Record. The TC will be notified by the Custodian and provided an opportunity for review when records are proposed for the Administrative Record.

3.2 Records Requests from the Public

When an agency or government receives a request for records involving the Partnership, they will notify the TC of those requests. Each Trustee that receives requests from the public will follow their respective government procedures. If the Administrative Record Custodian receives a request directly from the public, they will inform the TC.

3.3 Records Retention

Each of the Trustees has its own records identification, retention, scheduling, and disposition (collectively “records management”) requirements set forth in varied statutes, regulations, and policies. Because of the joint nature of state, federal, and tribal decision-making, there is a need to standardize some record retention requirements across the jurisdictions. Documents related to the procurement and administration of contracts and sub grant agreements for restoration planning or implementation will be retained for a minimum of 10 years after completing the work performed under the contract. These records include, but are not limited to, solicitations, responses to solicitations, contracts, addenda, invoices, and supporting documentation. The Plan, EIS, and TC resolutions will be maintained for the life of the Partnership and retained by the Administrative Record Custodian. Each project sponsor will retain project-specific documents (e.g., designs, contracts, and permits) based on their respective Trustee Record Retention Policy.

The Trustees agree to retain, pursuant to their applicable records management authorities, all other substantive records associated with any restoration projects selection or implementation for 10 years after project completion (excluding the time for any post-construction monitoring). Should this provision require a Trustee to retain records beyond that Trustee’s applicable record retention period, the Trustee may submit those records to the Administrative Trustee at the completion of the Trustee’s retention period for the remainder of the 10-year period.

4 Restoration Projects and Project Review

The TC will develop and approve 3–5 year Work Plans that outline the implementation of the Plan, coordination with Environmental Protection Agency (EPA) clean-up action, and public outreach. The TC will annually determine whether there is a need to solicit, review, and approve project applications or funding. For projects to be considered by the TC, they must be consistent with the Plan and will meet eligibility criteria.

4.1 Annual Restoration Project Solicitation, Review, and Selection

The TC will determine new project solicitations based on the restoration needs in the Basin considering current projects, discussions with EPA, and other partner or stakeholder information to identify priorities for the solicitation. Prior to the restoration project review and decision making meetings, the individual Trustees with their technical staff will evaluate projects for their consistency with the Plan and selection criteria, and present their conclusions during the meetings. The TC will collectively determine which projects are funded, including determination of phased funding and/or elimination of project elements. The voting members of the TC will only approve proposed projects consistent with the MOA, Plan, and eligibility criteria.

Projects must meet the requirements in the application.

4.2 Project Sponsors

4.2.1 TC Considerations for Assigning Trustee Project Sponsors

- **Technical Staff and TC**—The first step the TC should consider in assigning sponsorship is asking if any of the Trustees are interested in volunteering for sponsorship.
- **Land ownership**—The TC will consider land ownership or management as a primary basis for assigning project sponsorship. For example, if a project is proposed on the National Forest it is likely that the USFS will be assigned the Sponsor.
- **Workload**—The TC should consider each of the Technical Staff members' workload, including workload as part of the Restoration Partnership and internally within their respective agency or government, before assigning sponsorship.
- **Contracts, agreements, and other funding mechanisms (existing or ease of establishment)**—Depending on the nature of the project, funds may need to be distributed to various individuals, private companies, and other agencies or governments. The TC should consider the ease of each agency or government to distribute funds and the associated administrative costs of allocating and managing those funding mechanisms.
- **Other contributing sources (e.g., funds, services, in-kind)**—The TC should consider the likelihood that a project could obtain additional contributions that complement projects. The TC should identify the potential source and amount of potential contributing sources that could be garnered.
- **History/knowledge/relationships/preference**—In some cases, individual Trustees may have a history of working on a particular project or specific knowledge and established relationship with the project proponent. The project proponent may have a preference to work with a particular Trustee, and the TC needs to consider these instances.
- **Location in the Planning Area**—The location of the project as it relates to the geographic position of other completed or planned projects within the Planning Area.
- **Type of project**—The TC may consider the type of project (wetland, stream, lakes, and human use) as a basis for assigning sponsorship. Technical staff may desire to sponsor

certain project types or conversely may not be interested in sponsoring other types. In addition, the Trustees should consider each agency or government's experience and unique abilities for each project type.

4.2.2 Project Sponsor Responsibilities

All projects require that one of the Trustees act as the sponsor. The sponsor's specific role can vary depending on the project, but at a minimum, a sponsor is accountable for ensuring that project implementation is in accordance with its objectives, design, scope, schedule, and budget. Additionally, the project sponsor will ensure that environmental compliance activities will be appropriately integrated into processes. The project sponsor will be the project proponent's liaison to the TC, including reporting to the TC on project accomplishments on a regular basis.

Partnership Trustees assigned as a project sponsor are responsible for budget, implementation, maintenance, oversight, and reporting. Any changes should be included in the next quarterly and annual reports to the Trustees. All project expenses above amounts awarded in TC Resolutions must seek TC approval and potential amendments to TC Resolutions.

Project sponsors will regularly monitor a project's progress through site visits.

Fiscal records and quarterly reports will be maintained by each project sponsor, and available for review.

4.2.3 Trustee Sponsorship Changes

There may be instances where project sponsors need assistance from other Trustees to assist in project oversight and sponsorship; therefore, the TC will consider these on a case-by-case basis when necessary. If a project needs to change sponsorship, the Trustees will capture these modifications in a TC Resolution and enter into the Administrative Record. If funds need to be transferred, those will be managed by the DOI Fund Manager and entered into the Administrative Record.

4.3 Project Solicitation, Review, and Selection

The Trustees will solicit restoration projects from among the Trustees and external parties as described in the Plan. The TC has developed a process to solicit project ideas and full applications via internal meetings or for open solicitation via the website. The timing and frequency of project solicitations will be determined by the TC, and may be annual, ongoing, or any other frequency. Solicitations may be internal among the Trustees, or they may be open to any internal or external parties to apply. The solicitation and application process may occur in stages with a pre-application stage (e.g., project ideas) and a full application stage. In some instances, the TC may consider project applications outside of the solicitation process when presented by one of the Trustees and in accordance with the Plan.

4.3.1 Open Solicitation

The Partnership will provide an opportunity for the public to submit project ideas for consideration using the website's Idea Page. Interested parties will be able to go to the website, fill out the Idea Form, and submit their idea via the Restoration Partnership email: info@restorationpartnership.org.

4.3.2 Intersolicitation

Potential projects that come to the attention of the Trustees between the periods of open solicitation are referred to as intersolicitation projects. The Trustees recognize that good restoration opportunities with time sensitive or other extenuating factors will come to their attention between periods of open solicitation. The TC may consider restoration project applications outside of an open solicitation framework based on timeliness and other extenuating factors. Typically, this would include the following:

- Imminent threats to site integrity and/or permanent loss of preservation or restoration opportunity without prompt action. Potential sale, subdivision, or development that reduces the ecological value or restoration potential of a site are typical examples.
- Time-sensitive opportunity to highly leverage Partnership funds against cost-share partner funding on a project that aligns with the Partnership's mission, strategic framework, and geographic priorities. Examples include signing on as a cost-share partner at the beginning of a project with substantial but time-sensitive funding and looking for additional cost-share partners, or at the end of a project experiencing budget shortfalls and seeking supplemental funding to facilitate project completion and improve outcomes.
- Time-sensitive opportunity to integrate restoration and leverage funds with remediation projects consistent with the Plan.

Intersolicitation project applications can originate with either a Trustee or an outside entity. In either case, the project proponent must work through a Trustee, who will act as an initial filter, to bring a request for new intersolicitation project review to the full TC. Any Trustee may request an opportunity to present a new project for review and approval at any time.

4.3.3 Review and Selection

For all project solicitations, if the project ideas meet the eligibility criteria in the Project Selection Criteria (see Section 5.4 of the Restoration Plan) then the TC can request full applications and presentations (e.g., PowerPoints) to be considered for full ranking and potential funding. The Trustees' Technical Staff will independently rank the applications through a Project Selection Criteria matrix, collectively meet to rank them together, and made recommendations to the TC.

The TC will make decisions on projects that are selected for funding and the Administrative Trustee will work with the project sponsors to issue letters of project acceptance and funding. These decision documents will be made through TC Resolutions and the project sponsors will

work with the project applicant to develop and implement the project. If there are specific conditions as per projects and their approvals, those conditions will be included in the respective TC Resolutions.

4.3.4 Review of Project Process

The TC will review annually on-going projects. This may include a request to do a site visit or other clarifying information to assess the progress of the project. The TC will also review projects and progress to determine whether restoration goals are being met and how to improve future solicitations.

5 Authorized Expenditures for Restoration Planning and Project Implementation

The following guidelines aid in the development and approval of restoration planning and project implementation budgets. These guidelines help ensure that adequate information is available for NRDAR restoration program financial reviews when required.

5.1 Investing Funds

Long-term investment philosophies and decisions will be made by the TC in consultation with the DOI accountant (based at Interior Business center (IBC) and formalized in TC resolutions.

The TC will hold an annual review meeting to evaluate strategy for short and long-term liquidity and investment opportunities provided by the DOI Fund Manager. The general approach will be to provide the Trustees with sufficient yearly funding while investing other funding for out-year interest accrual.

Subaccounts

The TC may establish subaccounts for specific purposes. For example, the TC may decide to establish a subaccount for long-term operations and maintenance (O&M) expenses, or subaccounts could be established for tracking expenditures for Human Use projects or Coeur d'Alene Lake restoration.

5.2 Withdrawal of Funds from the DOI Restoration Fund

NRDAR Fund Withdrawal

The Trustees are required to utilize the Damage Assessment and Restoration Tracking System (DARTS) Withdrawal Request Dashboard to request withdrawals from the DOI NRDAR Fund. Any Trustee may submit a Fund Withdrawal Request through the DARTS Dashboard; however, DOI will serve as the primary Case Manager for the Withdrawal Requests. Prior to submitting a withdrawal request, the appropriate metadata and any supporting documents (e.g., signed TC

resolution) must be uploaded into DARTS if not previously uploaded through a prior funding request. The restoration project details page must be completed prior to submitting a funding request for implementation, monitoring, or administration costs. Users will access and submit the Withdrawal Request Forms from the DARTS Dashboard. Further guidance is found in the DARTS Withdrawal Request Form User Instructions.

Once the request has been submitted, the dashboard will display all pending and completed requests, allowing users to track all funding requests submitted to the NRDAR Fund. The NRDAR Fund Manager and associated budget staff will review the request in DARTS and process the request within associated financial systems. Once the request has been processed, the request status will display as completed within the dashboard. The DARTS system will send email notifications to the submitter as it works its way through the review and transfer/payment process.

- Withdrawals must be documented by a TC resolution. The resolution must state the purpose for which the funds will be used (i.e., restoration implementation for an approved project, restoration planning administrative activities). The resolution will also identify the Trustee receiving the funds, the account number to which the funds will be deposited, and any other special instructions. Special instructions may include notification requests, notation to include with the transfer, and specifics regarding distribution of DOI indirect costs.
- The DOI TC representative or designated Case Manager will prepare a DARTS Withdrawal Request that will accompany the TC Resolution. The DARTS Withdrawal Request will not identify any new funding amounts or conditions not already included in the TC resolution.
- The DOI Restoration Fund will prepare and process a US Treasury transfer that will transfer the funds from the DOI Restoration Fund to the Trustee indicated in the TC resolution and DOI Request for Release of Funds memo.
- The US Treasury will wire transfer the requested funds to the Trustee-specific account.

5.3 Administrative Accounting and Independent Financial Reviews

The financial accounting and review requirements described in these policies and procedures are the responsibility of each individual Trustee who receives funds under the 2012 MOA. These documents do not supplant each Trustee's internal accounting and financial tracking systems, but they instead establish standards in financial transparency that will be practiced by each Trustee.

Each Trustee will monitor and maintain fiscal records, including but not limited to: timesheets, travel expenses, invoices, supplies, and all subaward or subcontract expenses.

5.4 Financial Accounting

5.4.1 General

For financial accounting of funds, it is the responsibility of each Trustee and certifying officers to ensure that all actions are based on sound accounting and budgetary practices, applying the Generally Accepted Accounting Principles adopted by the Federal Accounting Standards Advisory Board (for federal Trustees), the Governmental Accounting Standards Board (for state/Tribal Trustees), or other equivalent standards. Unless otherwise approved by the TC, the fiscal year begins on October 1 and ends on September 30 to coincide with the federal fiscal year.

- **Basic Principles**—Restoration costs presented in budgets must be consistent with applicable statutes, regulations, consent decrees, Restoration Plans, permit conditions, Trustee MOA or interagency agreements, and TC resolutions. Costs must be documented. Documentation includes a detailed record identifying the nature, justification for, and amount of expenditures, proof of payment and receipt of goods or services.
- **Personnel Services**—Restoration planning and project implementation budgets shall outline costs for personnel services including all remuneration, expected to be paid or accrued, for services rendered in support or furtherance of restoration planning or project implementation activities, including but not necessarily limited to wages, salaries, fringe benefits, and indirect charges. These costs for compensation are allowable to the extent that the total compensation for individual employees is reasonable for the services rendered and conforms to any established policy of the individual's employer consistently applied to like activities. Funding compensation includes proportional coverage for employee paid time off, holidays, and special circumstances of leave that occur during the project period.

5.4.2 Segregation of Funds

- **NRDAR Funds**—All funds subject to these policies and procedures, including all principal and interest thereon, must be accounted for separately from other sources of funding to ensure that funds provided under the Partnership and are used only for authorized NRDAR activities.
- **Project funding**—Trustees receiving funds will maintain unique project codes or identifiers for each project or non-project activity to track all funds received and expensed for each project or activity.

5.4.3 Project Adjustments

Expenditure of funds on restoration projects shall be consistent with the application, amendments, and budget. All funds are subject to these policies and procedures and must be documented accordingly. Adjustments to project budgets can be made per the provisions of the

following sections, subject to any requirements provided in the Plan, project documentation, and resolution of the TC.

5.4.4 Excess Project Funds

Any unspent or unobligated funds, including any accrued interest, remaining from a project may only be used by the sponsor for another restoration project if approved by the TC and documented in a TC Resolution.

Remaining funds may be retained by the sponsor or returned to the DOI Restoration Fund as agreed upon by the TC.

5.4.5 Insufficient Project Funds

As soon as the project sponsor determines that there are insufficient funds to implement a project, the project sponsor will (1) notify the TC and (2) seek concurrence on additional funding to address the budget shortfall issue, or (3) seek concurrence on a revised scope of work and budget.

5.5 Core Annual Funding

An annual allocation of funds will be distributed to each Trustee each fiscal year to support core planning, administrative activities, and implementation of approved projects. Currently, this amount is \$150,000 per Trustee according to TC Resolution 41. The TC will periodically consider the annual allocation for adjustments such as inflation. Travel and training are allowable costs from core budget allocations as reasonable and necessary to support restoration activities.

•Such travel and training will follow the applicable policies of the individual Trustee.

Each Trustee will engage in the administration and coordination of the Plan using these annually distributed funds as they deem appropriate, so long as the expenditure is reasonable and necessary to support or further approved restoration activities. Costs may include, but are not limited to:

- Council meetings, public meetings/hearings, EPA remedial planning meetings (as they relate to restoration efforts in conjunction with remediation), or other Basin-related meetings.
- Travel to restoration project sites.
- Meetings to brief agency or tribal staff, to coordinate with managers on restoration planning or implementation, or for NRDAR-related coordination with management personnel, where an in-person briefing is requested by management.
- Consult with and retain contractors or consultants to work on approved restoration projects or planning tasks.
- Present background information, progress reports, and project results, at symposia, conferences, and agency training sessions where such travel will further advance restoration activities or improve team member effectiveness.
- Training relevant to implementing restoration projects.

- Where allowable travel costs occur in connection with travel for other purposes, the cost of the travel shall be apportioned among the purposes of the travel in proportion to the amount of time spent in connection with the different purpose.

Any unspent funds remaining at the end of the fiscal year will be reported in annual financial reports. If carryover funds are to be redirected toward implementation activities (e.g., restoration projects), the TC will approve such use of the funds. If a Trustee's needs exceed the core budget allocation, a supplemental request may be presented to the TC for review and approval.

The expenditures of these funds must be in accordance with the policies and procedures of each respective Trustee that is spending the funds and includes approval over expenditures, payroll, time sheets, and pay rates.

5.5.1 Indirect Costs

All Trustees reserve the ability to recover indirect costs that are unique to each Trustee. Costs included as part of the indirect calculation cannot be applied to a restoration project as a direct cost (e.g., rent or utilities). Each Trustee may recover indirect costs in accordance with its most current indirect policy.

5.5.2 Expended and Obligated Costs

Unless otherwise required by law or terms of a written agreement, the Trustees will track expended costs, or outlays, and obligated costs or encumbrances. The Trustee definitions of these terms are as follows:

- **Expended costs (outlays)**—The term “expended costs” shall be defined as the actual outlay of funds (i.e., payments) through the issuance of checks or warrants, the disbursement of cash, or the electronic transfer of funds.

- **Obligated costs (encumbrances)**—The term “obligated costs” shall be defined as a commitment to acquire goods or services. An obligated cost is a commitment to pay and should not be considered an expended cost until the goods or services have been received and the invoice paid.

5.5.3 Cost Documentation Content

- Each project sponsor will maintain cost documentation supporting its expenditures. Documentation can be electronic or hardcopy according to individual Trustee policies and procurement guidelines. Summary information will be reported according these policies and procedures. Below are the types of documentation typically maintained:

Personnel—Personnel costs are those associated with Trustee employee compensation for approved activities. Each project sponsor will maintain documentation to support personnel expenses based on established procedures for the individual Trustee. These costs may include salary and fringe benefits.

Travel—Travel costs include expenses incurred while on official travel for approved activities. Each project sponsor will maintain documentation to support travel expenses based on established procedures for the individual Trustee.

Contracts—Each project sponsor will maintain documentation to support contract expenses consistent with applicable statutes and regulations, including but not limited to the following:

- - A copy of the contract or purchase order and all modifications.
- - A copy of paid invoice(s) (invoices should indicate period of performance).
 - Amount paid and approval of the invoice for payment.
 - Documentation of work performed.

Grants and cooperative agreements—Each project sponsor will maintain documentation to support grant and cooperative agreement expenses consistent with applicable statutes and regulations, such as a copy of the grant or cooperative agreement and all modifications, as well as proof of payment to grant recipient or cooperator.

Supplies and Equipment—If these expenditures are made outside of the contracting process, the expense should be supported by invoices/receipts.

Indirect costs—Each project sponsor will maintain documentation to support its indirect costs including the amount, calculation, and authority to collect indirect charges.

5.5.4 Project Allowable Costs

5.5.4.1 Equipment

Definition—The Trustees will use the federal definition for equipment as stated in 45 CFR 74 and 92. Equipment is an article of tangible, nonexpendable personal property having a useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit. However, consistent with individual Trustee policy, lower limits may be established. If more stringent than federal definition, each Trustee will define equipment according to individual policy.

Acquisition and Allowable Costs—The reasonable cost of equipment acquired in whole or in part to support restoration activities are allowable for projects with TC approval. Documentation in approved budgets will identify equipment to be purchased. Whenever feasible and cost-effective, equipment shall be rented, leased, or shared between fellow Trustees. The acquisition process will follow the purchasing policies of the Trustee. Minimum required cost documentation will consist of invoices identifying the equipment, date of purchase, and cost of equipment purchased. Equipment purchases and costs will be reported to the TC.

Equipment will be leased or owned and maintained by the project sponsor according to the individual Trustee's policy regarding equipment inventory; repair, maintenance, and safeguarding; surplus; and disposal. At a minimum, this will include a basic annual inventory of the equipment during the term of project use that identifies the storage location, serial number(s), and property custodian name.

Use During and After Project—Equipment shall be used for the restoration project for which it was acquired. At the completion of the project for which the equipment was acquired, the equipment shall belong to the acquiring Trustee and may be used for other projects and purposes according to individual Trustee policy.

The TC will encourage and support sharing equipment funded under the Restoration Partnership for projects in the Basin primarily and then made available to other Trustees projects elsewhere. The Administrative Record will contain an inventory list of equipment and property custodian information to facilitate shared use. Agreements for lending equipment will be at the Trustee owner's discretion based on individual Trustee policies regarding insurance, equipment use agreements, and training requirements.

Equipment surplus and disposal will follow individual Trustee policy. However, if equipment purchased using Restoration Partnership funds becomes surplus, the Trustee owner will notify the other Trustees and provide them the opportunity to receive the surplus equipment. If surplus equipment is not needed by other Trustees and sold, the assessed value will be included in annual report.

5.5.4.2 Project-Related Public Outreach

Reasonable costs and indirect charges associated with the design, production, and printing of educational materials that support or further a specific restoration should be costs documented with that project. More general programmatic activities, including but not limited to interpretive signs, pamphlets, and web page design/maintenance are allowable with prior approval by the TC. Minimum required cost documentation will consist of invoices showing activity including charges and proof of payment.

5.5.4.3 Long-Term O&M

Reasonable costs of long-term O&M are allowable once the TC has approved them. The TC will consider O&M costs on a project case-by-case basis. If the TC decides to fund long-term O&M, then a separate account may be established to ensure the funds are committed. The calculation of the amount of funds to be set aside will be performed by the project sponsor in conjunction with the TC. It is desirable to minimize long-term O&M.

Operations and Maintenance

Operations and maintenance (O&M) are crucial components of most natural resource restoration projects to ensure their long-term success and protection of the Trustees' financial investments. Whenever relevant, O&M should be considered in all stages of project planning, implementation, and monitoring. The Trustees include O&M as a consideration in the selection criteria for choosing projects and require descriptions of O&M in project applications. This section describes O&M and related policies and procedures.

1. Definitions:

1. **Operation.** The administration, management, and performance of non-maintenance activities necessary to keep a project safe and functioning as planned (e.g., utility costs associated with the operation of water pumps).
2. **Maintenance.** The recurring activities necessary to retain or restore a project or practice in a safe and functioning condition, including the management of vegetation, the repair or replacement of failed components, the prevention or treatment of deterioration, and the repair of damages. Maintenance may be scheduled or unscheduled, and may include preventive, corrective, recurring, or emergency activities.
3. **Long-Term O&M.** Long-term O&M are those operations and maintenance activities required for a project or practice to remain functional in the time period after construction, installation, and establishment until the end of the project's design life.
2. O&M is the responsibility of the applicant, unless otherwise agreed upon by the TC, and requires labor, funds, and management. The O&M requirements, responsibilities (e.g., landowner agreements), and costs will be evaluated and approved during the project selection process. Reasonable O&M costs are allowable once approved by the TC, and cost-share funding for O&M is optimal.
3. The TC may require approved O&M Plans for some projects (which may be separate from the application approved by the TC) based on the complexity, scope and risks of the funded work. Some projects may require short term O&M only during construction and establishment phases, while others will require ongoing O&M. Approved O&M plans may also be required even if the applicant does not specifically request funding for O&M to ensure the restoration project functions as intended over the long-term. The Trustees may also require additional documentation or assurances that O&M will be funded and completed by the applicant or their contractors for the duration of the project.
4. In some cases, written Project O&M Plans will need to be developed and approved prior to implementation of the project. Project O&M plans shall identify any actions or conditions necessary for the operation of a project to safely function as planned over the short- and long-term. Participating parties, budgets, schedules, design life of the project, equipment, practices, inspection routines and performance criteria may also be required.
5. The Trustees may establish separate accounts to ensure funds are specifically available for approved long-term O&M costs. See Section 5.1 of these Policies and Procedures.

5.5.4.4 Land Protection (Acquisition or Conservation Easements)

Reasonable costs for land acquisition and purchase of conservation easements furthering the goal of restoration of injured resources is allowed with prior approval by the TC and will follow applicable federal, state, or tribal laws, regulations and statutes. The duration of conservation easements will also be determined on a case-by-case basis and will follow guidance provided by

the November 23, 1999, memorandum, from Charles P. Raynor, Assistant Solicitor, to Mat Millenbach, Program Manager, “Duration of Easements and Deed Restrictions Implemented as Restoration Actions” (Appendix B). Because acquisitions may affect the local tax base, the TC shall establish protocols for working with counties or other taxing entities to ensure smooth transition where acquisition is considered, to include payment of Fees in Lieu of Taxes where legal and appropriate.

5.5.4.5 Accomplishment Reporting and Accomplishment Reporting Materials

The reasonable costs and indirect charges associated with production of project-specific restoration accomplishment reports outlined in these policies and procedures are allowable and should be built into project budgets.

5.6 Financial Reporting

According to these policies and procedures, the Trustees will submit financial tracking information for the funds each has received at least quarterly. From this information, the TC will produce an annual financial summary as part of the Annual Accomplishment Report. This financial summary will include total expenditures for each project or planning activity, interest earned and expensed, and transfers, as applicable. Additionally, the reports will include all funds received and expended by the Trustees including project and administrative planning withdrawals, interest, and balances. The annual reports will be publicly available on the Restoration Partnership website and the Administrative Record.

5.6.1 Financial Reviews

To ensure public trust and accountability regarding the use of Restoration Partnership funds, financial reviews will be conducted no less than once every 3 years for the duration of implementation, with the first review occurring in fiscal year 2022. The TC will select one single financial review firm for the same fiscal year, funds for the financial reviews will be requested from DARTS in their own independent TC Resolutions, and each Trustee is responsible for procuring such reviews and must abide by the scope of procedures included below.

- The entity conducting the reviews shall be independent of each Trustee. All independent financial reviews will be completed in compliance with the financial procedures outlined herein and with all applicable and respective state, tribal, and federal statutes, regulations, and policies.
- All financial reviews shall be conducted in accordance with each Trustees standards established by the American Institute of Certified Public Accountants available during that fiscal year. In general, the scope of the financial reviews will be to evaluate the statement of revenues, expenditures, and source documentation for completeness, accuracy, and compliance with applicable guidelines and regulations.
The TC will provide a standard scope of work and report format that outlines the minimum amount of information that must be provided. The financial reviews for each

Trustee will be made available to the TC no later than 60 days after receipt of the final report, and it will be retained as part of the Administrative Record.

5.6.2 Readiness

Each project sponsor is responsible for ensuring that source documentation is organized and available for review, internal controls are documented, and individuals knowledgeable about the expenditures are reasonably available to answer questions.

5.6.3 Contractors

Contractors who receive funding for services are not automatically subject to the independent financial reviews described above. This does not, however, preclude the project sponsor who oversees an applicable contract or agreement from determining that an independent financial review of the contract or agreement is required in addition to Trustee review of expenditure documentation and work produced by that contractor.

Contract Labor or Services—Contractor or consultant services that are needed to support and further restoration planning and implementation are allowable where the TC has approved the project.

- Indirect costs associated with contracts or contract services will follow their independent requirements.
 - Each government's internal guidance for contract labor or services will be followed.
 - Change orders affecting project objectives or approved costs will require TC preapproval. If an agreement cannot be made the Trustees will defer to the dispute resolution process identified in the MOA (Appendix A.)
 - Travel by contractors is allowed only as necessary to accomplish restoration planning and implementation.
- Cost documentation packages are subject to legal restrictions on disclosure or dissemination of confidential business information.

6 Restoration Project Financial and Accomplishment Reporting

The TC will track progress of restoration projects through quarterly and annual financial reports that include narratives describing project status and a final project accomplishment report. The annual fiscal year accomplishment reports are the responsibility of project sponsors who will collate them and make available.

6.1 Annual Accomplishment Reporting

The TC will review and approve the annual accomplishment report during a scheduled TC meeting. TC members and their technical staff will be responsible for drafting annual

accomplishment reports. Annual draft program accomplishment reports will be collated and finalized by the Administrative Trustee prior to the annual meeting. The report will include accomplishments and monitoring outcomes (see Section 5.7 of the RP) from projects funded in the prior year. Each project report should follow the reporting template.

6.2 Final Project Report

A final project report will be submitted by the project sponsor to the TC within 90 days of project completion. Projects are considered complete when all work except maintenance and monitoring have been completed. The final project report will include a brief summary of the project (referencing the TC resolution numbers, project application, and annual reports).

Appendix A.

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 Pintlir 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

 3/8/2012

Name/Date
eh 3/7/12

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

Maryn Thorson 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

 5-30-12

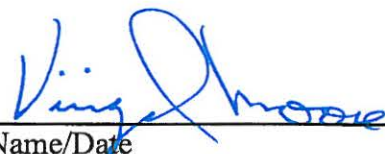
Name/Date

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

Appendix B.



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240



Memorandum

NOV 23 1999

To: Mat Millenbach, Program Manager
Natural Resource Damage Assessment and Restoration Program

From: Charles P. Raynor, Assistant Solicitor
Branch of Fish, Wildlife, and Environmental Protection

Subject: Duration of Easements and Deed Restrictions Implemented as Restoration Actions

You have requested our opinion whether easements acquired or deed restrictions imposed as part of restoration under CERCLA¹ or OPA² must be for a duration in perpetuity, or whether trustees have flexibility in determining the duration based on site-specific considerations. Restoration actions under both CERCLA and OPA include actions to restore, rehabilitate, replace, or acquire the equivalent of the natural resources injured by hazardous substance releases or discharges or threats of discharge of oil. In some cases, trustees conclude that acquisition of land (e.g., as replacement habitat) is an appropriate restoration action. In addition to acquisition of unencumbered fee title, acquisition may take the form of acquiring a protective easement interest in property, or having a trustee or a third party acquire property in fee, subject to deed restrictions requiring that the property be managed for conservation purposes.

In response to your specific question, neither CERCLA nor OPA requires that acquisition of land or interests in land, or imposition of deed restrictions on property, for restoration purposes must be in perpetuity. Instead, the appropriate duration of an easement or deed restriction is a function of scaling these forms of restoration to satisfy one or both of the objectives of these statutes to return injured resources to their baseline condition and provide compensation for interim losses. Baseline is the condition or conditions of the natural resources, as measured by services, that would have existed had the discharge or substantial threat of discharge of oil, or release of hazardous substances, not occurred. See 43 C.F.R. § 11.14(e); 15 C.F.R. § 990.30. Appropriate compensation for interim losses generally is determined either by scaling compensatory restoration projects, see 15 C.F.R. Part 990, or calculating compensable value, see 43 C.F.R. Part 11, to be used on restoration activities.

¹ Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

² Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.

In general, in scaling an acquisition alternative, the amount of acreage to be subject to the easement or restriction, the level of natural resources service productivity, and the duration of the restriction will all be interrelated factors in determining what is appropriate for returning to baseline conditions and/or compensating for interim losses. For example, a larger amount of acreage protected for a shorter duration may provide services equivalent to those provided by a smaller amount of acreage protected for a longer duration. As another example, an injury for which return to baseline conditions will occur relatively quickly, and for which there are few interim losses, may make an easement for a limited duration appropriate. On the other hand, a larger scale or more complex injury, with a longer recovery period, could justify acquisition for a longer duration or even in perpetuity—particularly if there are significant uncertainties surrounding the projected period for successful recovery of the injured resources and significant interim losses.

Trustees have broad discretion in deciding the most appropriate combination of restoration actions for any given case, based on site-specific circumstances. Policy considerations (e.g., no net loss of wetlands) or other statutory mandates may be relevant factors in deciding between two appropriately scaled acquisition alternatives, one which includes restrictions in perpetuity and the other which does not. Although neither CERCLA nor OPA contain specific requirements regarding the duration of ownership for acquired replacement resources or the duration of conservation restrictions in deeds, it is important that trustees who are considering acquisition of property as a restoration action fully consider their own legal authorities, requirements, or restrictions for acquiring and holding interests in property. Acquisition by a trustee may have management consequences and requirements beyond those determined by CERCLA and OPA, which could weigh in favor or against an acquisition in perpetuity. For example, acquisition may result in the inclusion of property or a property interest in a parks or refuge system, which may in turn have its own set of legal requirements. Whether those separate legal requirements could affect the flexibility of a trustee to hold such property for a limited duration is beyond the scope of this opinion.

Finally, whenever another trustee or a third party will hold the easement or property subject to deed restrictions, it is important that the arrangement be structured in such a way that the Department has legal mechanisms in place to enforce the easement or deed restrictions.