MEMORANDUM OF AGREEMENT
AMONG THE
STATE OF ILLINOIS,
ACTING THROUGH THE ILLINOIS DEPARTMENT OF NATURAL RESOURCES AND THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
AND
THE UNITED STATES DEPARTMENT OF THE INTERIOR,
ACTING THROUGH THE UNITED STATES FISH & WILDLIFE SERVICE
REGARDING COORDINATION OF
NATURAL RESOURCE RESTORATION AND SETTLEMENT FUNDS MANAGEMENT

I. INTRODUCTION

This Memorandum of Agreement for Natural Resource Restoration and Settlement Funds Management (the Agreement) is entered into by and between the Illinois Department of Natural Resources (IDNR) and the Illinois Environmental Protection Agency (IEPA), acting on behalf of the State of Illinois and the United States Fish and Wildlife Service (USFWS), acting on behalf of the United States Department of the Interior (collectively referred to as "the Trustees") in recognition of their common interests and responsibilities as Trustees of natural resources on behalf of the public to ensure the coordination and cooperation among the Trustees.

This Agreement is appropriate to implement the restoration, replacement, rehabilitation and/or acquisition of natural resources, which may have been injured, destroyed or lost as a result of hazardous substance releases into the Saline Branch Drainage Ditch and the Salt Fork, a tributary of the Vermilion River in July 2002 ("Release").

This Agreement provides the framework for the use and expenditure of approximately $450,000.00 in natural resource damages, together with interest accruing following receipt, (the "Settlement Funds") that the Trustees jointly recovered from parties responsible for resource injuries to the Saline Branch Drainage Ditch and the Salt Fork, a tributary of the Vermilion River. (the "Site").

The Settlement Funds were recovered in settlement of the Trustees' joint claim for natural resource damages asserted in United States of America and the State of Illinois v. The Board of Trustees of the University of Illinois, *et al.*, 02:07-cv-2188-MPM-DGB, pursuant to a Consent Decree lodged on October 10, 2007 (hereafter, "Consent Decree") and are being held in the Department of the Interior's Natural Resource Damage Assessment and Restoration (NRDAR) Account (hereafter, the "Account"), solely for use by the Trustees to plan, implement, monitor and report on the completion of projects to restore, replace, rehabilitate and/or acquire natural resources equivalent to those injured by the release of hazardous substances at the Site.

II. PARTIES

The following officials, or their designees, are Parties to this Agreement and act on behalf of the public as Trustees for natural resources under this Agreement:

1. The Director of the Illinois Department of Natural Resources,
2. The Director of the Illinois Environmental Protection Agency, and
3. The Regional Director, Region 3 of the United States Fish and Wildlife Service, acting on behalf of the United States Department of the Interior.

III. AUTHORITY

The Trustees enter into this Agreement in accordance with the authorities provided for each Trustee under Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f) and other State and Federal authorities.

IV. PURPOSE AND SCOPE

This Agreement is intended to guide and provide a framework for cooperation and coordination among the Trustees and to govern the Trustees' use and expenditure of jointly recovered natural resource damages to plan, implement, monitor and report on the completion of those actions appropriate to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources or resource services injured, lost or destroyed as a result of releases of hazardous substances at or from the Site, consistent with their duties and responsibilities as Trustees, and the terms of the Consent Decree.

V. STATEMENT OF OBJECTIVES

The natural resource damages, which the Trustees jointly recovered shall be used by the Trustees as provided in Section IV and Section V of this Agreement, and in accordance with the priorities identified in the Consent Decree and other restoration planning activities undertaken by the Trustees. The Trustees shall monitor the restoration projects and upon completion, the USFWS will prepare a completion report. The Trustees shall also coordinate with one another to undertake public review and comment of all planned restoration activities.

VI. NATURAL RESOURCE TRUSTEE COUNCIL

A. Organization. The Trustees herein establish the Salt Fork Trustee Council (the Council) to implement this Agreement. The Trustee Council shall be comprised of one representative from each of the three Trustee agencies, the IDNR, IEPA and USFWS. Within fourteen (14) days of the execution of this Agreement, each Trustee shall designate a Primary Trustee Representative to the Council, who shall be authorized to vote on behalf of that Trustee. Each Trustee shall also designate an Alternate Trustee Representative who shall be authorized to act and vote in the absence of the Primary Trustee Representative. Each Trustee may, by written notification to all other Trustees, change the Primary and Alternate Trustee Representative designees.

The U.S. Department of Justice, the Office of the Illinois Attorney General, and in-house counsel for each of the Trustees, may each appoint one attorney who may attend all meetings of, or organized by, the Council in a legal/consultative role but who shall not be a member of the Trustee Council.

The USFWS may appoint a USFWS or Department of the Interior representative with expertise in complying with the requirements of the National Environmental Policy Act (NEPA), who shall be authorized to attend all meetings, but who shall not be a member of the Trustee Council.

B. Communications. All correspondence and communications to or between the Trustees pertaining to activities, which are subject to coordination and cooperation under this Agreement, shall be sent to the Primary Trustee Representative of each Trustee as designated.

C. Duties and Responsibilities.

1. The Council shall coordinate all Trustee activities and matters within the scope of this Agreement. Actions to be taken or authorized by the Council in implementing this Agreement include but are not limited to:

    a. Designing, contracting for, or otherwise undertaking and overseeing the development and implementation of restoration activities, including the preparation of a Restoration Plan ;
    b. Monitoring the restoration projects and assisting USFWS in preparing a completion report following restoration implementation; and
    c. Taking such other actions as the Trustee Council determines are necessary or appropriate to implement this Agreement.

2. The USFWS shall perform any necessary NEPA evaluation or other requirements under federal law, including an analysis of the environmental consequences of the preferred alternative, the no action alternative and at least one other action alternative.

3. The IDNR shall conduct a Comprehensive Environmental Review Process under IDNR guidelines and policies and ensure compliance with applicable state law.

D. Decision making. All decisions by the Council implementing this Agreement shall be made by unanimous consensus. In the event that unanimous agreement cannot be reached among the members of the Council, the matter in dispute will be elevated to the designated Management Officials of each Trustee agency, for resolution. If necessary, the Trustees, may, by unanimous consensus, establish further mechanisms by which disputes may be resolved.

Management Officials:

1. IDNR – Todd Rettig, or his designee
2. IEPA – Michelle Ryan, or her designee
3. USFWS – Rick Nelson, or his designee

E. Lead Administrative Trustee. The Trustees designate the IDNR as Lead Administrative Trustee (LAT) under this Agreement for the purpose of coordinating trustee activities towards planning and implementing restoration. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. Other duties of the LAT and/or the other Trustee entities shall be arrived at by resolution of the Trustee Council.

VII. USE OF FUNDS

A. General Use. The Settlement Funds may only be used by the Trustees to plan, implement, monitor and report on the completion of projects to restore, replace, rehabilitate and/or acquire natural resources equivalent to those injured as a result of the Release.

B. Trustee Administrative Costs. The Trustees may incur administrative costs, both direct and indirect, associated with restoration projects including costs to plan, implement, monitor and report on the completeness of those projects designed to restore, replace, rehabilitate and/or acquire the equivalent of injured natural resources, including travel associated with such activities. The IDNR and IEPA may seek reimbursement of their respective costs from the interest accruing on the Settlement Funds placed in the Account. The IDNR and IEPA Trustees may document their Administrative Costs and upon unanimous written consent seek recovery of those costs from the Account up to a total reimbursement of $5200 per

Trustee. The USFWS will receive advance funding for administrative expenses in lieu of any additional accounting of Administrative Costs from the Settlement Funds that shall not exceed the following one-time amounts $5200.00. Any Interest funds not used to reimburse Trustees for their administrative costs shall be added to the Settlement Funds and used solely to implement restoration projects to restore, replace, rehabilitate and/or acquire natural resources equivalent to those injured as a result of the Release.

C. Procedures Relating to Use or Access to Funds. Disbursement of any funds from the Account will be by unanimous written agreement in the form of a Trustee Council Resolution executed by all Primary Trustee Representatives, or in the event the Primary Trustee Representative is unavailable, then the Trustee Council Resolution will be executed by the Alternate Trustee Representative from the Trustee Council. Prior to the first disbursement, the USFWS shall provide the NRDAR Fund Manager with a copy of the executed Consent Decree. Upon completion, the USFWS shall provide the NRDAR Fund Manager with a copy of the Salt Fork Restoration Plan.

VIII. RESERVATION OF RIGHTS

Each Trustee has and reserves the right to take any action within the scope of its authority as a Trustee, including as may be necessary to pursue and/or to preserve any legal rights or remedies available to it as a Trustee. Nothing in this Agreement is intended to waive or foreclose any such rights.

IX. MODIFICATION OF AGREEMENT

A. This Agreement may be modified only by unanimous consent of the IDNR, IEPA and the Authorized Official of the USFWS.

B. Any modification of this Agreement shall be in writing, executed by the IDNR, IEPA and the Authorized Official of the USFWS.

X. TERMINATION

A. This Agreement shall remain in effect until completion of all work required pursuant to the Restoration Plan or at such a time as all of the Trustees withdraw from the Agreement.

B. In the event any Trustee withdraws from the Agreement, such withdrawal must be in writing and delivered to the other Trustees at least thirty (30) days in advance of the withdrawal. In the event of such withdrawal, this Agreement remains in full force and effect for the remaining Trustees. If all the Trustees terminate the Agreement before all the funding is expended, then the USFWS will expend any remaining funding in the NRDAR fund, and the IDNR and IEPA will expend any remaining funding in any State fund, in accordance with the Consent Decree entered in United States of America and the State of Illinois v. The Board of Trustees of the University of Illinois, *et al.*, 02:07-cv-2188-MPM-DGB.

XI. LIMITATION

The responsibilities and commitments identified in this Agreement are wholly subject to the lawful availability of funds, including from the Account. Nothing in this Agreement shall be construed as obligating the United States, the State of Illinois or any other public agency, their officers, agents, or employees to expend any funds in excess of those that are reimbursable from the Account or authorized by law.

XII. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this Agreement represent guidance for the respective Parties. This Agreement does not, and is not to be construed as, providing the basis of any third party challenges or appeals.

XIII. EXECUTION: EFFECTIVE DATE

This Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute an original Agreement. The date of execution shall be the date of the last of the Trustees' representatives to sign.

XIV. ANTI-DEFICIENCY

Nothing in this Agreement shall be construed as obligating the United States or the State of Illinois, their officers, agents or employees, to expend any funds in excess of appropriations or other amounts authorized by law.

IN WITNESS WHEREOF, the parties hereto have signed this Settlement Funds Management Agreement on the date appearing under their signatures.

State of Illinois

Tom Flattery

Tom Flattery, Director
Office of Realty & Environmental Planning
Illinois Department of Natural Resources

1-23-09
Date

UNITED STATES DEPARTMENT OF THE INTERIOR

Charles Wooley

Tom Melius
Regional Director
U.S. Fish & Wildlife Service, Region 3

for

Date 10/30/08

State of Illinois

Douglas Scott
Director, Illinois Environmental Protection Agency

1-22-09
Date