

**MEMORANDUM OF UNDERSTANDING  
CONCERNING THE CREATION OF THE TAR CREEK NATURAL RESOURCE DAMAGE ASSESSMENT  
AND RESTORATION TRUSTEE COUNCIL**

**BETWEEN:**

THE STATE OF OKLAHOMA;  
THE EASTERN SHAWNEE TRIBE OF OKLAHOMA;  
THE MIAMI TRIBE OF OKLAHOMA;  
THE MODOC TRIBE OF OKLAHOMA;  
THE OTTAWA TRIBE OF OKLAHOMA;  
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA;  
THE QUAPAW TRIBE OF OKLAHOMA;  
THE SENECA-CAYUGA TRIBE OF OKLAHOMA,  
THE WYANDOTTE NATION; AND  
THE UNITED STATES DEPARTMENT OF INTERIOR.

**I. INTRODUCTION**

This memorandum of understanding (MOU) is entered into by and between the State of Oklahoma; The Eastern Shawnee Tribe of Oklahoma; The Miami Tribe of Oklahoma; The Modoc Tribe of Oklahoma; The Ottawa Tribe of Oklahoma; The Peoria Tribe of Indians of Oklahoma; The Quapaw Tribe of Oklahoma; The Seneca-Cayuga Tribe of Oklahoma, The Wyandotte Nation; and The U.S. Department of Interior (hereinafter collectively referred to as the Trustees). The Trustees enter into this MOU in recognition of their common interests in, and responsibilities for, natural resources pursuant to 33 U.S.C. §2702 and 2706, section 311(f) of the Clean Water Act (CWA), 33 U.S.C. §1321(f), and §107(a)(4)(C) and 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), including sections 101, 104, 107, and 120, 42 U.S.C. §9607(a)(4)(C) and 9607(f); the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; and, the Oil Pollution Act of 1990, 33 U.S.C. §2701 *et seq.*; 27A Ok. Stat. Supp.1998, Sections 1-1-202 & 1-2-101, & 1-3-101; and applicable Tribal authorities, (hereinafter collectively referred to as the "Acts"). Specifically, the Trustees enter into this MOU to ensure cooperation and coordination between the Trustees in the preparation of the assessments of, as well as the pursuit of claims for, damages to natural resources under the Acts. Additionally, the Trustees enter into this MOU to ensure that natural resource damages jointly recovered from responsible parties, including any interest which may accrue thereon, are used towards the restoration, replacement, rehabilitation, or acquisition of the equivalent of the natural resources or resource services which were injured, destroyed or lost.

## II. PARTIES

Upon their signature to this MOU, the following officials, or their designees, are Parties to this MOU and, as authorized and designated pursuant to the authorities set forth in section III below, act on behalf of the public as Trustees for natural resources under this MOU.

1. Oklahoma Secretary of Environment
2. Chief, Eastern Shawnee Tribe of Oklahoma
3. Chief, Miami Tribe of Oklahoma
4. Chief, Modoc Tribe of Oklahoma
5. Chief, Ottawa Tribe of Oklahoma
6. Chief, Peoria Tribe of Indians of Oklahoma
7. Chairman, Quapaw Tribe of Oklahoma
8. Chief, Seneca-Cayuga Tribe of Oklahoma
9. Chief, Wyandotte Nation
10. Regional Director, United States Fish and Wildlife Service Region 2,  
U.S. Department of the Interior

## III. AUTHORITY

The Trustees enter into this MOU in accordance with the natural resource trustee authorities provided for each Trustee by the Acts as well as the National Oil and Hazardous Substances Pollution Contingency Plan [NCP], 40 CFR Part 300; the Natural Resource Damage Assessment Regulations, 43 CFR Part 11 and 15 CFR Part 990; and Executive Order 12580 as amended; and other applicable Tribal, State, and Federal laws, regulations and directives.

## IV. EVENTS

This MOU is intended to address all releases, discharges, spills or other incidents, occurrences, or events (hereinafter referred to as "events") in the Tar Creek Superfund Site, Ottawa County, Oklahoma and to any location in the State of Oklahoma where discharges or releases of hazardous substances resulting from mining, smelting, milling, transporting, and other activities related to the location, extraction and production processing of metals and other minerals from the Tar Creek Superfund Site, the Cherokee County Superfund Site, Cherokee County, Kansas or the Oronogo-Duenweg Mining Belt Superfund Site, Jasper County, Missouri, have come to be located, which:

- 1) affect coexisting or contiguous natural resources under the legally authorized trusteeship; and
- 2) give rise to a claim for natural resource damages under the Acts.

## V. PURPOSE

The Trustees recognize the importance of integrating and coordinating Trustee activities. This MOU is intended to guide and provide a framework for cooperation and coordination among the Trustees, consistent with their duties and responsibilities pursuant to the Acts including, assessing damages and using recovered damages to plan and implement actions appropriate to restore, replace, rehabilitate or acquire the equivalent of natural resources or resource services injured, lost, or destroyed pursuant to the Acts.

## VI. NATURAL RESOURCES TRUSTEE COUNCIL

- A. Organization. The Trustees hereby establish the Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council to implement this MOU. The Council shall be comprised of Designated Representatives for the State, Federal and Tribal Trustees. The Trustee Council may seek advisory participation from the United States Department of Justice, the U.S. Department of the Interior, Office of the Solicitor, the Oklahoma Attorney General, Tribal legal counsel or other agencies, when necessary or appropriate.
- B. Designation of Representatives. Each Trustee hereby designates the individual identified in Appendix A as their representative on the Council. To insure continuity in the Council's work, each Trustee hereby designates the individual identified in Appendix B as their alternate representative on the Council. Each Trustee affirmatively agrees that its representatives, absent compelling circumstances, shall attend each meeting of the trustee council.
- C. Changing Representatives. A Trustee may change its designated or alternate Council representative by providing notice, along with the representative's name, address, telephone and facsimile numbers, to each of the other Trustees' designates to the Council. In the event a Trustee's designated representative can no longer serve in this capacity, the Trustees must designate a new Council representative within fourteen days from the date the need presents itself.
- D. Communications. All correspondence and communications to or between the Trustees pertaining to activities, which are subject to coordination and cooperation under this MOU, shall be sent to the primary representative of each Trustee designated herein.
- E. Duties and Responsibilities. The Trustee Council shall coordinate all Trustee activities and matters within the scope of this MOU, including any NRDA activities undertaken by one Trustee that may affect another Trustee's interest. Actions to be taken or authorized by the Trustee Council in implementing this MOU will include, but are not limited to:
  - 1. Conducting scientific and technical studies, sampling and other matters related to the assessment of natural resource damages resulting from events;

2. Seeking compensation from responsible parties for the damages assessed by the Trustees and for the costs of planning and implementing the assessment;
3. Participating in negotiations with responsible parties in concert with attorneys for the Trustees;
4. Overseeing the development and implementation of a plan for the restoration, replacement, rehabilitation, and/or acquisition of the equivalent of natural resources, or resource services, injured, destroyed or lost in accordance with applicable laws;
5. Coordinating Trustee decision-making, planning, and project contracting, technical or otherwise, and ensuring such actions are conducted in accordance with applicable administrative procedures and/or legal requirements;
6. Comments for revisions or request for extension of time will be provided within 30 days of receiving a document. Reviewing, revising, and approving work products, contracts, assessment plans, studies, or any NRDA activity that affects a Trustee's interest in the Tar Creek Site. Comments and/or visions will be provided within 30 days of the receiving a document
7. Making all necessary decisions, on a case by case basis and in accordance with applicable law, for the management and administration of funds pursuant to Section VIII of this MOU;
8. Establishing protocols, standards, procedures, budgets, or other directions as necessary to support access to, or the use of, damages and/or interest;
9. Taking other actions as the Trustee Council determines necessary or appropriate to implement this MOU, including fulfilling responsibilities of the Trustees under applicable State or Federal laws;
10. Designating a Lead Administrative Trustee (LAT). The duties of the Lead Administrative Trustee include the following:
  - a. Scheduling meetings with not less than fourteen days written notice, preparing agendas and recording actions of the Trustee Council meetings;
  - b. Acting as the central contact for the Trustee Council;
  - c. Maintaining records and documents received or generated by the Trustee Council;

- d. Preparing, issuing or arranging for public notices or reports as determined necessary by the Trustee Council;
- e. Maintaining records of fund expenditures and receipts related to events; and
- f. Such other duties as agreed upon by the Trustee Council.
- g. Written notice of all actions will be provided, by certified mail, to all Trustees after every meeting within seven days.

The parties agree that the Lead Administrative Trustee shall not act as final arbitrator of disputes between Trustees. The Lead Administrative Trustee possesses no decision-making rights beyond those normally held as an individual Trustee and is not authorized to act on behalf of the Trustees, except as provided for in Section E(10) of this agreement.

## VII. DECISION-MAKING AUTHORITY

All decisions by the Trustee Council implementing this MOU shall be by unanimous approval of the parties with concurrent, legally authorized, trusteeship over the coexisting or contiguous natural resources which are specifically involved in the event or events for which the decision is being made. If unanimous agreement cannot be reached among the Trustee representatives, the matter in dispute shall be elevated to the respective State, Federal and Tribal Trustees. If necessary, the Trustees may establish further mechanisms by which disputes may be resolved. The Trustees further agree that, while recognizing the areas of expertise and authority of the Trustees, decision-making deliberations will focus on the Trustees' mutual purpose of assessing, restoring, replacing, rehabilitating, and/or acquiring the equivalent of the affected natural resources and/or resource services. Trustee administrative costs associated with dispute resolution will not be reimbursable from settlement funds.

Trustees absent from any meeting will have seven days from notice of any action to provide written notice of their decision to LAT. If Trustee does not provide notice within seven days, the action will be tabled until next meeting.

## VIII. FUNDS

The Trustees agree to cooperate in good faith to attempt to establish, maintain, and utilize, to the extent consistent with applicable law, a joint trust account(s), joint court registry account(s), or the United States Department of the Interior, Natural Resource Damage Assessment and Restoration Fund, for purposes of receiving, depositing, holding, disbursing, and expending all funds recovered jointly due to an undivided interest of the trustees, and the interest earned thereon, recovered, obtained or received by the Trustees from parties responsible for natural resource injuries arising out of an event under this MOU. The Trustees agree to deposit funds recovered jointly due to an undivided interest for injury to natural resources, obtained or received jointly by or on behalf of the Trustees as a result of joint assessment and restoration activities under Federal, State, and/or Tribal natural resource damage assessment regulations, in a joint account(s), unless all Trustees agree that funds recovered require different treatment.

Disbursement of any funds recovered jointly due to an undivided interest of any Trustees will be by written agreement and shall otherwise follow the Decision Making provisions in Section VII, regardless of the location where the funds are held.

The Trustees agree that they will use all recovered damages for natural resource injuries arising out of an event under this MOU exclusively for activities that would restore, replace, rehabilitate or acquire the equivalent of the injured resource. Said activities shall be consistent with Trustee Council approved plans to address those injuries to natural resources and the services that they provide. In accordance with their decision making process in Section VII, the Trustees will establish standards and procedures governing the use of all natural resource damages jointly received by the Trustees for the purposes of developing and administering or implementing a Final Restoration Plan for restoring, replacing, rehabilitating and/or acquiring the equivalent of natural resources injured as a result of an event and the reduced or lost services provided by those resources.

The Trustees agree to pursue the recovery of reasonable costs (past, current and future) for the initiation of damage assessment and for the planning, conducting, evaluating, and coordinating of all natural resource damage assessment activities pursued by the Trustee Council with respect to natural resource injuries or lost services resulting from an event. The Trustees agree to request that recovered costs be separately reimbursed to each individual Trustee agency claiming same. Recovered administrative costs will be disbursed by electronic transfer or by check to each recovering agency as soon as possible and shall be used at the individual agency's discretion. For administrative costs not separately reimbursed, the Trustees agree that the reasonable costs, which are jointly agreed upon, shall be reimbursed to each Trustee out of any damage assessment cost recoveries or payments thereon.

#### IX. CONFIDENTIALITY

The Trustees agree that the free and open exchange of information and sharing of ideas and opinions with other Trustees is crucial to achieving the Trustee's close and common interests and the goals of this MOU. The Trustees also recognize that all written or oral communications related to the assessment and recovery of damages for injury to natural resources are being undertaken in anticipation of litigation. The Trustees agree that all scientific data arising out of the Trustee Council's review of the injury to natural resources resulting from events shall eventually be made public and that such data shall be made public as soon as its publication will not prejudice the accomplishment of the purposes of this Agreement. Finally, it is understood and agreed upon that all information required to be disclosed pursuant to the Freedom of Information Act, other Federal laws or State or Tribal law shall be released unless a privilege held by any Trustee could preclude the release of information.

The Trustees agree that a "designated privileged communication" or "designated privileged document" is a communication which occurs, or a document which is drafted, with an expectation of confidentiality and includes, but is not limited to, communications between the Governments' attorneys or their staffs, agents, consultants, and/or experts in anticipation of litigation, in the seeking or giving of legal advice, and/or in the context of pre-decisional government deliberations.

Accordingly, except as provided below or otherwise provided herein, the Trustees shall treat all designated privileged documents generated, and designated privileged communications, by, between or among the Trustees as privileged attorney-client communications, attorney work product or protected by other applicable privileges such as the deliberative process privilege (or as a combination thereof). The Trustees shall protect and maintain these documents and communications in such a manner as to insure that no intentional or unintentional disclosure is made which would compromise any asserted privilege.

Unless otherwise specifically provided, the Trustees shall each be entitled to assert an applicable privilege with respect to any document or communication jointly transmitted, prepared, or funded by the Trustees. Each Trustee shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared, or funded solely by that Trustee. Nothing herein in any way affects or limits the authority of any signatory to waive any privilege and release any documents, information, analyses, opinion, conclusion, or advice that are subject to privileges held exclusively by that signatory.

The transmittal of any designated privileged documents or designated privileged communications between or among any of the Trustees or federal or state response action agencies or other federal, state or tribal trustees (and their counsel, representatives, contractors and consultants) does not waive, or imply any waiver, of any privilege or right which the transmitting government may assert with respect to that document or communication.

If a subpoena, discovery request, or other request in any form, for a designated privileged document or information provided under this Agreement is received by any Trustee, a copy of the subpoena or request will be immediately forwarded to counsel for the Trustee to which the privilege applies and to the government representative(s) who originally generated the document or communication requested. The Trustee who receives such a request shall also provide a draft of the Trustee's intended response to such request to each signatory to this MOU not less than fourteen (14) days prior to the date that the Trustee intends to issue its response. To the extent that applicable law may require a response more promptly that is consistent with the above temporal requirement, the Trustees agree to act in good faith to meet any such requirements.

An agreement between the Trustees to release a designated privileged document or communication shall not be construed as a waiver of privilege or confidentiality regarding any other documents or communications.

At the request and option of any Trustee, designated privileged documents shall be returned to the originating Trustee or destroyed, subject to the provisions of the Federal Records Act, 44 U.S.C. § 2901, et seq.

## X. RESERVATION OF RIGHTS

The confidentiality agreement contained in Section IX, all Trustees understand that this document is not intended to create or waive any legal rights or obligations among the Trustees or any other person or entity not a party to this MOU. Nothing in this MOU is to imply that any signatory government is in any way abrogating or ceding any responsibilities or authority inherent in its ownership, management, control, or trusteeship over natural resources.

## XI. MODIFICATION OF AGREEMENT

Any modification of this MOU shall be in writing and upon approval of all Trustees currently parties to the MOU.

## XII. TERMINATION

This MOU shall be in effect from the date of execution until termination by agreement by the Trustees. At any time the Trustees determine that there is no purpose served by this MOU, the MOU will terminate, as to the Trustee making such a declaration upon the declaration, in writing, of such a finding. Any Trustee may withdraw from this MOU at any time for any reason. In the event any Trustee withdraws from the MOU, it must provide thirty days written notice before the withdrawal can become effective. In the event of such withdrawal, this MOU remains in full force and effect for the remaining Trustees.

The Trustees specifically agree that the provisions of Article IX of this agreement (confidentiality) shall remain binding upon any Trustee after it has declared that the MOU serves no purpose, or should such Trustee withdraw from this agreement.

In the event of the withdrawal of any Trustee, or at the termination of this MOU, each Trustee agrees to cooperate in preparing a full and complete accounting for and status report of all accounts managed jointly by the Trustees or their representatives pursuant to Section VIII of this MOU.

## XIII. LIMITATION

Nothing in this MOU shall be construed as obligating any signatory to this agreement to expend any funds in excess of appropriations authorized by law.

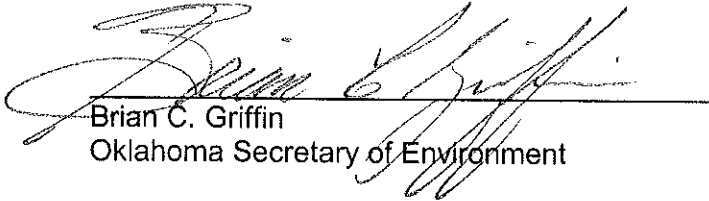
#### XIV. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this MOU are subject to the availability of funding and are intended to be guidance for the respective Trustees. They may not be the basis of any third party challenges or appeals. Nothing in this MOU creates any rights or causes of action in persons not parties to this agreement.

#### XV. EXECUTION: EFFECTIVE DATE

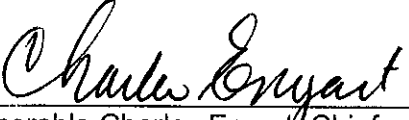
This MOU may be executed in counterparts. This Agreement shall be effective upon execution by at least two (2) Parties. The date of execution shall be the date of the second Party's signature. A copy with all original executed signature pages affixed shall constitute the original MOU.

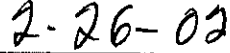
**Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

  
\_\_\_\_\_  
Brian C. Griffin  
Oklahoma Secretary of Environment

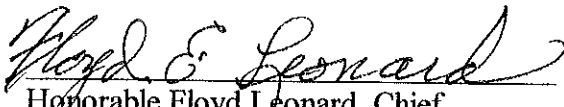
4/5/02  
Date

**Memorandum of Understanding**  
**Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

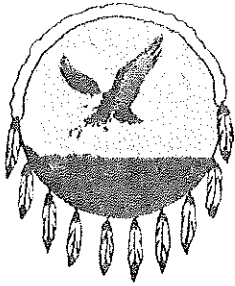
  
\_\_\_\_\_  
Honorable Charles Enyart, Chief  
Eastern Shawnee Tribe of Oklahoma

  
\_\_\_\_\_  
Date

**MEMORANDUM OF UNDERSTANDING  
(NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION)  
TAR CREEK TRUSTEE COUNCIL**

  
Honorable Floyd Leonard, Chief  
Miami, Tribe of Oklahoma

May 21, 2004  
Date



**MODOC TRIBE OF OKLAHOMA**

515 G Southeast  
Miami, Oklahoma 74354  
918-542-1190 • FAX 918-542-5415

2004 AUG 25 A 9:49

11/21/04

August 25, 2004

Charles Head  
Field Representative  
Miami Field Station  
Bureau of Indian Affairs

Mr. Head,

At this time, it is the decision of the Modoc Tribe of Oklahoma to decline membership in the Tar Creek Trustee Council. Thank you and the council for their efforts.

Sincerely,

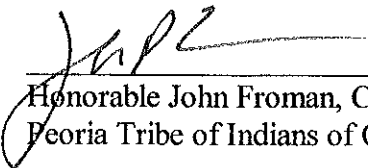
Troy L. Little Axe  
Assistant Tribal Administrator

**MEMORANDUM OF UNDERSTANDING  
(NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION)  
TAR CREEK TRUSTEE COUNCIL**

Charles A. Todd  
Honorable Charles Todd, Chief  
Ottawa, Tribe of Oklahoma

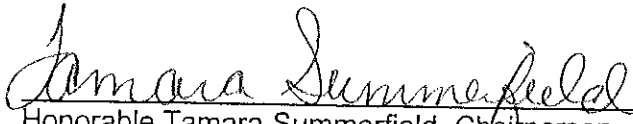
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Date

**MEMORANDUM OF UNDERSTANDING  
(NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION)  
TAR CREEK TRUSTEE COUNCIL**

  
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Honorable John Froman, Chief  
Peoria Tribe of Indians of Oklahoma

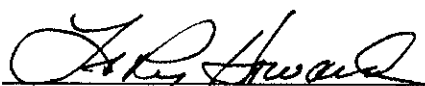
May 21, 2004  
Date

Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council

  
Honorable Tamara Summerfield, Chairperson  
Quapaw Tribe of Oklahoma

4-20-02  
Date

**Memorandum of Understanding**  
**Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**



Honorable Leroy Howard, Chief  
Seneca-Cayuga Tribe of Oklahoma

3-28-02

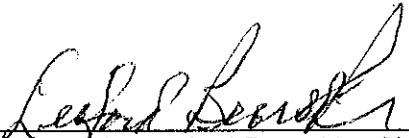
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ATTORNEY GENERAL'S  
OFFICE

**Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

  
\_\_\_\_\_  
Honorable Leaford Bearskin, Chief  
Wyandotte Nation

2/12/02  
Date

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ATTORNEY GENERAL'S  
OFFICE

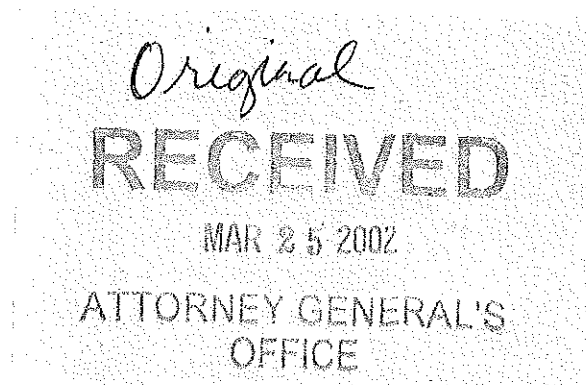
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Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council



H. Dale Hall  
U.S. Fish and Wildlife Service, Region 2  
Authorized Official  
Department of the Interior

Date 3/22/02



QEF0000026



## CHEROKEE NATION

P.O. Box 948  
Tahlequah, OK 74465-0948  
918-456-0671

Chad "Corntassel"  
Smith  
ᎠᎿᎾᎿᎾ  
Principal Chief

Joe Grayson  
ᎠᎿᎾᎿᎾ  
Deputy Principal Chief

January 7, 2005

Miles Tolbert, Lead Administrative Trustee  
Secretary of the Environment  
State of Oklahoma  
3800 N. Classen Blvd.  
Oklahoma City, OK 73118

*Miles*  
Dear ~~Secretary~~ Tolbert:

I have enclosed a signature page executed by Principal Chief Chad Smith for purposes of signing onto the Memorandum of Understanding Concerning the Creation of the Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council. We will look forward to working with the State and other members of the Trustee Council.

Please let me know when this will be placed on the agenda for official approval by the Trustee Council of a modification adding the Cherokee Nation as a party as required by Article XI of the MOU.

Sincerely,

Jeannine Hale  
Acting Administrator  
Environmental Programs  
jhale@cherokee.org  
(918)456-0671 ext 2786

**MEMORANDUM OF UNDERSTANDING  
(NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION)  
TAR CREEK TRUSTEE COUNCIL**



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**Chad Smith, Principal Chief  
Cherokee Nation**

1/03/05

**Date**

**FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING  
OF THE TAR CREEK NATURAL RESOURCE DAMAGE ASSESSMENT AND  
RESTORATION TRUSTEE COUNCIL**

This First Amendment To The Memorandum Of Understanding Of The Tar Creek Natural Resource Damage Assessment And Restoration Trustee Council (hereinafter referred to as "MOU") is entered into by and between the State of Oklahoma; The Eastern Shawnee Tribe of Oklahoma; The Miami Tribe; The Ottawa Tribe of Oklahoma; The Peoria Tribe of Indians of Oklahoma; The Seneca-Cayuga Tribe of Oklahoma; The Wyandotte Nation; and The U.S. Department of Interior, all of which constitute natural resource trustees and the current members of the Tar Creek Trustee Council (hereinafter collectively referred to as "Trustees").

WITNESSETH:

WHEREAS, the Quapaw Tribe of Oklahoma and The Modoc Tribe of Oklahoma who were original signatories to the MOU have previously withdrawn as members of the Tar Creek Trustee Council and The Cherokee Nation has recently agreed to join the Tar Creek Trustee Council; and

WHEREAS, the Trustees now desire to amend the MOU in accordance with the terms of this Amendment to accurately reflect and identify the current members of the Tar Creek Trustee Council, along with their designated and alternate representatives.

NOW THEREFORE, pursuant to Section XI of the MOU and in consideration of the terms and conditions set forth herein, the parties hereto, constituting all of the Trustees to the MOU hereby agree that the MOU shall be amended as follows:

1. Proper Designation of Parties to MOU. The designation of the parties to the MOU as listed in page one immediately prior to and in Section I thereof and on page two in Section II of the MOU does not accurately reflect the current parties/Trustees to the MOU, therefore, pages one and two of the MOU are hereby deleted and the new pages one and two attached hereto as Exhibits A and B, respectively, are substituted in place thereof as if originally included in and made a part of the MOU.
2. Designation of Representatives. The designation of the individuals identified as representatives of each Trustee in Appendix A and the alternate representatives in Appendix B, as referenced in Section VI. B. of the MOU, do not accurately reflect the current representatives of each Trustee. Therefore, Appendices A and B of the MOU are hereby deleted, and the new pages attached hereto as Appendices A and B, respectively, are substituted in place thereof as if

originally included and made a part of the MOU. Each Trustee hereby reaffirms their agreement that their representatives, absent compelling circumstances, shall attend each meeting of the Trustee Council.

3. Effective Date. This First Amendment shall become effective as of the date hereof.
4. No Other Changes. The MOU is amended by this First Amendment in no other manner except as set forth herein.
5. Authority. Each of the undersigned hereby represents to the other signatories that they are the duly authorized Trustee or the designated representative of the respective Trustee, which have the proper authority to sign this First Amendment.
6. Counterparts. This First Amendment may be executed by the parties in one or more counterparts, and all such counterparts, as so executed when placed together, shall constitute one agreement binding upon all parties hereto.

IN WITNESS WHEREOF, the parties hereto have agreed to the above and foregoing in  
its entirety as of the 7<sup>th</sup> day of  
July 2005.

**First Amendment to Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

A handwritten signature in black ink, appearing to read 'Miles Tolbert', is positioned above a horizontal line.

**Miles Tolbert  
Oklahoma Secretary of Environment**

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**First Amendment to Memorandum of Understanding**  
**Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

Land Protection Division  
Department of Environmental Quality

*Charles Enyart*

**The Honorable Charles Enyart, Chief**  
**Eastern Shawnee Tribe of Oklahoma**

**First Amendment to Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**



**The Honorable Chad Smith, Principle Chief  
Cherokee Nation**

**First Amendment to Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

*Floyd E. Leonard*

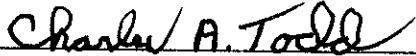
**The Honorable Floyd Leonard, Chief  
Miami Tribe of Oklahoma**

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Land Protection Division  
Department of Environmental Quality


**First Amendment to Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**



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**The Honorable Charles Todd, Chief  
Ottawa Tribe of Oklahoma**

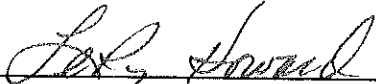
**First Amendment to Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**



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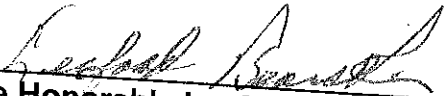
**The Honorable John P. Froman, Chief  
Peoria Tribe of Indians of Oklahoma**

**First Amendment to Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

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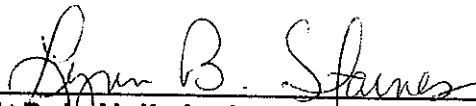
**The Honorable LeRoy Howard, Chief  
Seneca-Cayuga Tribe of Oklahoma**

**First Amendment to Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**



**The Honorable Leaford Bearskin, Chief  
Wyandotte Nation**

**First Amendment to Memorandum of Understanding  
Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

  
**ACTING** **H. Dale Hall, Authorized Official**  
**U.S. Fish and Wildlife Service Region 2,**  
**U.S. Department of the Interior**

**EXHIBIT "A"**

**To the First Amendment to the Memorandum of Understanding of the Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

**MEMORANDUM OF UNDERSTANDING  
CONCERNING THE CREATION OF THE TAR CREEK NATURAL RESOURCE  
DAMAGE ASSESSMENT AND RESTORATION TRUSTEE COUNCIL  
BETWEEN:**

THE STATE OF OKLAHOMA;  
THE CHEROKEE NATION;  
THE EASTERN SHAWNEE TRIBE OF OKLAHOMA;  
THE MIAMI TRIBE OF OKLAHOMA;  
THE OTTAWA TRIBE OF OKLAHOMA;  
THE PEORIA TRIBE OF INDIANS OF OKLAHOMA;  
THE SENECA-CAYUGA TRIBE OF OKLAHOMA;  
THE WYANDOTTE NATION; AND  
THE UNITED STATES DEPARTMENT OF INTERIOR.

**I. INTRODUCTION**

This memorandum of understanding (MOU) is entered into by and between the State of Oklahoma; The Cherokee Nation; The Eastern Shawnee Tribe of Oklahoma; The Miami Tribe of Oklahoma; The Ottawa Tribe of Oklahoma; the Peoria Tribe of Indians of Oklahoma; The Seneca-Cayuga Tribe of Oklahoma; The Wyandotte Nation; and the U.S. Department of Interior (hereinafter collectively referred to as the Trustees). The Trustees enter into this MOU in recognition of their common interests in, and responsibilities for, natural resources pursuant to 33 U.S.C. §2702 and 2706, section 311(f) of the Clean Water Act (CWA), 33 U.S.C. §1321(f), and §107(a)(4)(C) and 107(f) of the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA), including sections 101, 104, 107, and 120, 42 U.S.C. §9607(a)(4)(C) and 9607(f); the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; and, the Oil Pollution Act of 1990, 33 U.S.C. §2701 *et seq.*; 27A Ok. Stat. Supp. 1998, Sections 1-1-202 & 1-2-101, & 1-3-101; and applicable Tribal authorities, (hereinafter collectively referred to as the "Acts"). Specifically, the Trustees enter into this MOU to ensure cooperation and coordination between the Trustees in the preparation of the assessments of, as well as the pursuit of claims for, damages to natural resources under the Acts. Additionally, the Trustees enter into this MOU to ensure that natural resource damages jointly recovered from responsible parties, including any interest which may accrue thereon, are used towards the restoration, replacement, rehabilitation, or acquisition of the equivalent of the natural resources or resource services which were injured, destroyed or lost.

## **EXHIBIT "B"**

### **To the First Amendment to the Memorandum of Understanding of the Tar Creek Natural Resource Damage Assessment and Restoration Trustee Council**

#### **II. PARTIES**

Upon their signature to this MOU, the following officials, or their designees, are Parties to this MOU and, as authorized and designated pursuant to the authorities set forth in section III below, act on behalf of the public as Trustees for natural resources under this MOU.

1. Oklahoma Secretary of Environment
2. Chief, Cherokee Nation
3. Chief, Eastern Shawnee Tribe of Oklahoma
4. Chief, Miami Tribe of Oklahoma
5. Chief, Ottawa Tribe of Oklahoma
6. Chief, Peoria Tribe of Indians of Oklahoma
7. Chief, Seneca-Cayuga Tribe of Oklahoma
8. Chief, Wyandotte Nation
9. Regional Director, United States Fish and Wildlife Service Region 2,  
U.S. Department of Interior

#### **III. AUTHORITY**

The Trustees enter into this MOU in accordance with the natural resource trustee authorities provided for each Trustee by the Acts as well as the National Oil and Hazardous Substances Pollution Contingency Plan [NCP], 40 CFR Part 300; the Natural Resource Damage Assessment Regulations, 43 CFR Part 11 and 15 CFR Part 990; and the Executive Order 12580 as amended; and other applicable Tribal, State, and Federal laws, regulations and directives.

#### **IV. EVENTS**

This MOU is intended to address all releases, discharges, spills or other incidents, occurrences, or events (hereinafter referred to as "events") in the Tar Creek Superfund Site, Ottawa County, Oklahoma and to any location in the State of Oklahoma where discharges or releases of hazardous substances resulting from mining, smelting, milling, transporting, and other activities related to the location, extraction and production processing of metals and other minerals from the Tar Creek Superfund Site, the Cherokee County Superfund Site, Cherokee County, Kansas or the Oronogo-Duenweg Mining Belt Superfund Site, Jasper County, Missouri, have come to be located, which:

- 1) affect coexisting or contiguous natural resources under the legally authorized trusteeship; and
- 2) give rise to a claim for natural resource damages under the Acts.

## APPENDIX A

### Designated Representatives:

#### State of Oklahoma:

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Mary Jane Calvey, Environmental Program Manager  
Land Protection Division

Address: \_\_\_\_\_ Department of Environmental Quality  
P. O. Box 1677  
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Oklahoma City, OK 73101-1677

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#### Cherokee Nation:

Jeannine Hale, Administrator Environmental Programs

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Tahlequah, OK 74465

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#### Eastern Shawnee Tribe of Oklahoma:

\_\_\_\_\_  
Roxane Weldon, Director, Environmental Department

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**Miami Tribe of Oklahoma:**

Mike Rutledge, Environmental Director

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**Ottawa Tribe of Oklahoma:**

Rosanna Sheppard, Environmental Director

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**Peoria Tribe of Indians of Oklahoma:**

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**Seneca-Cayuga Tribe of Oklahoma:**

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**Wyandotte Nation:**

Christen Creson, Environmental Program Manager

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**Department of the Interior:**

Suzanne Dudding, Fish & Wildlife Biologist

\_\_\_\_\_  
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E-Mail Address: \_\_\_\_\_ Suzanne\_Dudding@fws.gov

## APPENDIX B

### Alternate Representatives:

#### State of Oklahoma:

Ron Suttles, Oklahoma Department of Wildlife Conservation

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Address: P. O. Box 53465  
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#### Cherokee Nation:

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#### Eastern Shawnee Tribe of Oklahoma:

Aaron Brummett, Lead Awareness Coordinator

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**Miami Tribe of Oklahoma:**

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**Ottawa Tribe of Oklahoma:**

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**Peoria Tribe of Indians of Oklahoma:**

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**Seneca-Cayuga Tribe of Oklahoma:**

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**Wyandotte Nation:**

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**Department of the Interior:**

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