

MEMORANDUM OF AGREEMENT
AMONG THE
NEW MEXICO OFFICE OF THE NATURAL RESOURCES TRUSTEE
UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE
AND
UNITED STATES DEPARTMENT OF THE INTERIOR

IN SUPPORT OF
CLEVELAND MILL CONSENT DECREE

I
INTRODUCTION

This Memorandum of Agreement (Agreement) by and among the New Mexico Office of the Natural Resources Trustee (ONRT), the United States Department of Agriculture, Forest Service (USFS), and the United States Department of the Interior (DOI), collectively, the Natural Resources Trustees (Trustees), is entered into in recognition of the common interests and responsibilities of the Trustees in providing for the restoration, replacement, or acquisition of the equivalent of natural resources that may have been injured, destroyed, or lost as the result of releases of hazardous substances at or from the Cleveland Mill site near the City of Silver City in Grant County, New Mexico, in accordance with the Consent Decree (Decree) entered on _____, 1995, in Civil Action No. 95-0285 MV/LSG in the United States District Court for the District of New Mexico.

II

AUTHORITY

The Trustees enter into this Agreement in accordance with their natural resource trustee authorities provided by Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. Section 9607(f); Section 311(f) of the Clean Water Act, 33 U.S.C. Section 1321(f); and other applicable Federal and State laws and regulations including the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300 (as amended, 59 Fed. Reg. 47384-47495, Sept 15, 1994). USFS and DOI enter into this Agreement in accordance with authority provided under Executive Order 12580. USFS is provided further authority under 7 CFR 2.60(a)(43). ONRT enters into this Agreement pursuant to additional authority provided by the Natural Resources Trustee Act of 1993 (NMTA 75-7-1 through 5).

III

PURPOSE

The Decree provides for the Settling Defendants to pay \$165,000 into an interest-bearing court registry account, the "Cleveland Mill Natural Resource Trustees Account," in settlement of their liability for damages for injury to, destruction of, or loss of natural resources. The Decree further provides that such damage award shall be used jointly by the Trustees, in accordance with section 107 (f) (1) of CERCLA, 42 U.S.C. Section 9607(f)(1) to restore, replace, or acquire the equivalent of such natural resources (collectively, "restoration"). The Trustees recognize the importance of integrating and coordinating the restoration of affected natural resources. The purpose of this Agreement is to implement such restoration by establishing a Trustee Council, providing for the development and implementation of a Natural Resource Restoration Plan, and providing for the resolution of disputes that may arise among the Trustees in the course of implementing the restoration.

IV

DESIGNATION OF TRUSTEE COUNCIL REPRESENTATIVES

A. A Trustee Council is hereby established, comprised of one voting representative of each undersigned Trustee agency, to carry out the purposes of the Decree and of this Agreement.

B. Each Trustee hereby respectively designates the following person(s) as its primary representative on the Trustee Council:

1. For ONRT:
Steven J. Cary
P.O. Box 26110
Santa Fe, New Mexico 87502
Street Address: 2600 Cerrillos Rd.
Building T-187, Room 206
Santa Fe, New Mexico 87502
505-474-3293
505-474-4795 (FAX)
2. For USFS:
Penny Luehring
517 Gold Avenue SW
Albuquerque, NM 87102
505-842-3141
505-842-3800 (FAX)
3. For DOI:
Stephen R. Spencer
P.O. Box 649
Albuquerque, NM 87103
Street Address: 625 Silver Ave. SW
Suite 190
Albuquerque, NM 87102
505-766-3565
505-766-1059 (FAX)

C. To insure continuity in the Trustee Council's work, each Trustee shall designate an alternate representative to the Council and shall notify the designated primary representatives for each of the other Trustees of the alternate's name, address, telephone and facsimile number. This designation and notification will be made within fourteen (14) days of the execution of this Agreement.

D. A Trustee may change its primary or alternate representative by providing written notice to each of the other Trustees' designates to the Trustee Council. In the event a Trustee's primary representative can no longer serve in that capacity, the Trustee must designate a new primary representative to the

Trustee Council within fourteen (14) days of the need for such new designation.

E. Subject to applicable federal or state law, all correspondence and communications to or among the Trustees pertaining to activities which are subject to coordination and cooperation under this Agreement shall be sent to the primary representative of each Trustee designated herein.

V

DUTIES AND RESPONSIBILITIES

A. The Trustee Council shall coordinate and authorize all Trustee activities and matters pertaining to the development and implementation of the Natural Resource Restoration Plan, including but not limited to:

1. Selecting a Lead Administrative Trustee for the Council and assigning other specific tasks or functions to individual Trustee representatives in the interests of efficiency as necessary.
2. Developing a Natural Resource Restoration Plan, including a community relations component.
3. Evaluating and approving actions necessary for implementation of the Natural Resource Restoration Plan.
4. Implementation of the Restoration Plan.
5. Directing use of the Cleveland Mill Natural Resource Trustees Account established under the Decree.
6. Consulting with other State and Federal agencies and public or private entities as the Council deems appropriate to fulfill its responsibilities.
7. Taking whatever other actions, including securing the services of professional consultants or other experts, which the Council determines are necessary to fulfill its responsibilities.

B. The Trustee Council shall discharge its duties and responsibilities consistent with the provisions of the Decree.

VI

DECISIONMAKING

A. All decisions of the Trustee Council shall be by unanimous vote of its members.

B. If necessary, in cases of disputes between Trustee representatives such that unanimity cannot be reached, the Trustee representatives not in agreement shall refer the matter to successively more senior personnel within their respective agencies until agreement is achieved. If necessary, the Trustees may establish further mechanisms to resolve disputes.

VII

FUNDS

The Trustees agree to cooperate in good faith to administer and maintain, to the extent consistent with applicable law, the Cleveland Mill Natural Resource Trustees Account for purposes of receiving, depositing, holding, disbursing, managing and expending all funds awarded consistent with the Consent Decree and the requirements of the court. All disbursements from the fund shall be made only upon written approval of all Council members. Funds shall be paid out of the Cleveland Mill Natural Resource Trustee Account only for actions identified in the Natural Resource Restoration Plan. The Lead Administrative Trustee will provide a quarterly statement of account activity to the Trustee Council, including all deposits, disbursements and interest earned. This requirement may be satisfied by distribution of documents required by the Clerk of the Court.

VIII

GENERAL

A. This Agreement may be amended by written agreement of the Trustees when the Trustees determine an amendment is necessary to accomplish its intended purpose.

B. This Agreement shall be effective from the date it is fully executed and shall continue in effect

until terminated by written agreement of the Trustees. Any Trustee may terminate its participation in the Agreement upon giving sixty (60) days written notice to the other Trustees. The withdrawal of a Trustee shall not affect the subsequent validity of the Agreement with respect to the non-withdrawing Trustees.

C. This Agreement may be executed in counterparts, all of which will be considered the original document.

D. The provisions of this Agreement shall apply to and be binding upon the Parties to this Agreement, their successors, and assigns.

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

F. Nothing in this Agreement alters the statutory or regulatory authorities or coordination responsibilities of the Trustees.

G. The terms of this Agreement shall not be construed as a waiver of any right, privilege or presumption on the part of any of the Parties, including the right of issuing orders and recovering costs.

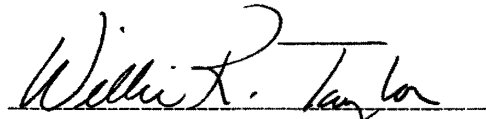
H. No Member of or Delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therein.

I. The rights and responsibilities contained in this Agreement are subject to the availability of funding and are not intended to be the basis for any challenges or appeals or to create any causes of action.

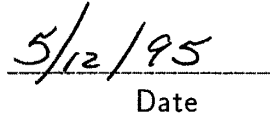
The parties hereto have signed this Agreement on the day and year appearing opposite their signatures.

U.S. DEPARTMENT OF THE INTERIOR

Authorized Official

A handwritten signature in cursive script, reading "Willie R. Taylor", written over a horizontal line.


Willie R. Taylor, Director
Office of Environmental Policy and Compliance

A handwritten date "5/12/95" written over a horizontal line.

Date

U.S.D.A. FOREST SERVICE

Authorized Official

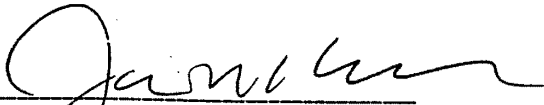
A handwritten signature in black ink, appearing to read "Charles W. Cartwright, Jr.", written over a horizontal line.

Charles W. Cartwright, Jr.
Regional Forester, Southwestern Region

04/14/95
Date

NEW MEXICO OFFICE OF THE NATURAL RESOURCES TRUSTEE

Authorized Official

A handwritten signature in cursive script, appearing to read "James H. Koch", written over a horizontal line.

James H. Koch
Natural Resources Trustee

4/15/95
Date