

MEMORANDUM OF UNDERSTANDING  
(Upper Arkansas River Basin)

Among:

U.S. Department of Interior  
(Fish and Wildlife Service)  
(Bureau of Land Management)  
(Bureau of Reclamation)

ASARCO Incorporated

U.S. Environmental Protection Agency

Resurrection Mining Company

Newmont Mining Corporation

State of Colorado  
(Department of Natural Resources)  
(Department of Public Health and Environment)  
(Office Of The Attorney General)

Res-ASARCO Joint Venture

March 1999

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**MEMORANDUM OF UNDERSTANDING**  
**(Upper Arkansas River Basin)**

This Memorandum of Understanding ("MOU") is entered into as of the Effective Date (as defined in paragraph 7(j) below), by and among the United States (by and on behalf of, the United States Department of the Interior ("DOI") and the United States Environmental Protection Agency ("EPA")); the State of Colorado (by and on behalf of the Colorado Department of Public Health and Environment, the Colorado Department of Natural Resources, and the Colorado Office of the Attorney General (collectively "the State")); Resurrection Mining Company and Newmont Mining Corporation (collectively "Resurrection"); ASARCO Incorporated ("ASARCO"); and the Res-ASARCO Joint Venture as an expression of their mutual good faith and interest in evaluating and, as appropriate, conducting restoration in the Upper Arkansas River Basin and response activities in the Eleven-Mile Reach. The United States, the State, ASARCO, Resurrection and the Joint Venture are herein referred to individually as a "Party" and collectively as the "Parties." ASARCO, Resurrection, and the Res-ASARCO Joint Venture are collectively herein referred to as "the Mining Companies." DOI and the State are herein referred to collectively as the "Trustees." For the purposes of this MOU, "restoration" includes restoration, replacement, or acquisition of the equivalent of injured natural resources.

For purposes of this MOU, the "Upper Arkansas River Basin" is defined as the portion of the Arkansas River from its headwaters downstream to and including Pueblo Reservoir. The "Eleven-Mile Reach" is defined as the 500 year floodplain portion of the Upper Arkansas River Basin beginning at the confluence of the Arkansas River and California Gulch and extending downstream for approximately 11 miles.

**PURPOSE**

This MOU is intended to facilitate:

1. the identification and restoration of injured natural resources in the Upper Arkansas River Basin;
2. cooperation between the Trustees and EPA and coordination of EPA's potential response actions and the Trustees' potential restoration efforts in the Eleven-Mile Reach;

3. the settlement of claims among the Parties, if any, including:

a. claims by the Trustees for natural resource damages in the Upper Arkansas River Basin;

b. claims by EPA under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), and the Clean Water Act ("CWA") concerning the Eleven-Mile Reach; and

c. claims by the State under CERCLA, RCRA, CWA, or State counterpart statutes concerning the Upper Arkansas River Basin.

### **BACKGROUND**

A. DOI and the Department of Agriculture ("USDA") have been designated as Federal trustees for natural resources pursuant to CERCLA and Executive Order No. 12580. DOI and USDA are concerned that natural resources within their trusteeship may have been injured in the Upper Arkansas River Basin due to releases of hazardous substances resulting from mining-related and other activities in and around Leadville, Colorado.

B. The Colorado Attorney General and the respective Executive Directors of the Colorado Department of Public Health and Environment and the Colorado Department of Natural Resources have been designated as the State trustees for natural resources.

C. EPA has been delegated authority to respond, consistent with the National Contingency Plan ("NCP") and as necessary to protect human health and welfare and the environment, to the release or threat of release of any hazardous substance into the environment.

D. The Mining Companies, along with various other individuals and entities, including but not limited to Hecla Mining Company, Denver & Rio Grande Western Railroad Company, and the United States, allegedly have been involved in mining or mining-related activities in and around Leadville, Colorado. Those historic activities may have contributed to the deposition of mining-related wastes within the Upper Arkansas River Basin from which there may have been releases or threats of releases of hazardous

substances.

E. The Mining Companies assert that, to the extent they are liable for any natural resource damages or for response actions or response costs in the Upper Arkansas River Basin, such liability is limited.

F. The Trustees and the Mining Companies desire to reach a settlement of claims, if any, that the Trustees may have or could assert against the Mining Companies for natural resource damages in the Upper Arkansas River Basin.

G. EPA and the Mining Companies desire to reach a settlement of all CERCLA, RCRA, and CWA claims, if any, that the United States may have or could assert against the Mining Companies for response actions or response costs arising from or relating to the Eleven-Mile Reach.

H. The State and the Mining Companies desire to reach a settlement of all CERCLA, RCRA, and CWA or State counterpart statutory claims, if any, that the State has or may have against the Mining Companies arising from or relating to the Upper Arkansas River Basin.

I. The Parties are willing to participate in a voluntary, cooperative effort as described in this MOU so long as no party is prejudiced if a settlement of claims is not achieved.

J. The Parties are aware of the interest of private land owners and the public with regard to possible injuries to and restoration of natural resources within the Upper Arkansas River Basin and with regard to the removal or remediation of hazardous substances within the Eleven-Mile Reach. The Parties intend to coordinate activities with such property owners and other interested persons or entities.

## **AGREEMENT**

### **1. Negotiations**

a. The Parties will enter into settlement negotiations intended to fully resolve the liability, if any, that the Mining Companies may have pursuant to CERCLA, RCRA, or CWA for natural resource damages, response costs, or other matters or actions relating to the release or threat of release of mining-related hazardous substances

concerning the Upper Arkansas River Basin; provided, however, that EPA's participation in the negotiations will be limited to the Eleven-Mile Reach.

b. The Parties agree that such negotiations will be mediated by a neutral third party acceptable to all Parties. The United States, State, Resurrection, and ASARCO will share equally (1/4 paid by each Party) the fees and expenses of the mediator. Within sixty days after entering into this MOU, the Parties will develop a plan and schedule for negotiations.

c. These settlement negotiations shall be confidential in accordance with applicable law. Any settlement of claims will be incorporated into a consent decree or administrative order, as appropriate, and made available for public notice and comment.

## **2. Study of the Eleven-Mile Reach**

a. The Parties will select a mutually acceptable team of expert consultants (the "Consulting Team") whose primary purpose shall be to inform the settlement process by evaluating possible impacts on natural resources within the Eleven-Mile Reach resulting from the release of hazardous substances relating to past mining-related activities in and around Leadville, Colorado. In addition, the Consulting Team will develop alternatives for addressing any identified impacts within the Eleven-Mile Reach, including the identification of specific restoration projects or actions, and will undertake other activities as directed by the Parties.

b. In evaluating and identifying appropriate restoration actions for the Eleven-Mile Reach, the Consulting Team will consider the results of investigations currently being conducted on behalf of EPA concerning the chemical and physical properties of the tailing and sediment deposits in, and the geomorphology of, the Eleven-Mile Reach. The Consulting Team also will consider all other pertinent available information. In developing restoration alternatives, the Consulting Team shall consider ongoing and proposed removal and remedial activities that are being conducted or will be conducted by the Mining Companies, the United States, and others on the California Gulch NPL site.

c. The Consulting Team will consist of no more than six individuals with scientific expertise in

disciplines relevant to natural resources injury determination and restoration. Those areas of expertise should include but not necessarily be limited to: terrestrial biology, toxicology, aquatic biology/water quality, fluvial geomorphology, and habitat restoration/revegetation. Members of the Consulting Team shall be mutually agreeable to all of the Parties and shall include one member of DOI's technical staff.

d. The work of the Consulting Team will be guided by a work plan ("Work Plan") developed by mutual agreement of the Parties. The Work Plan shall establish guidelines for the functioning of the Consulting Team and its interaction with the Parties and will be designed to ensure appropriate oversight, guidance, and management by the Parties without compromising the scientific independence and integrity of the Consulting Team.

e. The Trustees will retain all of their authorities to make decisions concerning assessment and restoration independent of the work done by the Consulting Team. Reports prepared by the Consulting Team will not be binding on any of the Parties, but may be used by any Party as part of the settlement negotiations.

f. Nothing in this MOU shall in any way restrict or limit the nature or scope of response actions that may be required by EPA or the State in exercising their respective authorities under Federal or State law.

g. Resurrection and ASARCO will pay all fees and expenses incurred by the Consulting Team, including DOI's technical staff member's salary and benefits, in performing tasks set forth in the Work Plan and any additional tasks deemed necessary by the Consulting Team and approved in writing by the Parties. All such costs must be incurred pursuant to and in accordance with a written budget approved in advance by the Parties. Budgets may be approved on a task by task basis. Resurrection and ASARCO shall be responsible for all contractual matters (for example, technical services agreements, billing, etc.) involving non-governmental members of the Consulting Team.

h. All funding contributed by the Mining Companies for work done by the Consulting Team to implement the Work Plan shall be considered assessment costs and shall be credited against the liability, if any, that the Mining Companies may have for natural resource damages, including

assessment costs, in the Upper Arkansas River Basin. This provision shall survive the termination of this MOU.

### 3. Downstream Survey

a. The Trustees and the Mining Companies acknowledge that in order for the Mining Companies to fully resolve their liability, if any, for natural resource damages in the Upper Arkansas River Basin, additional information may be required regarding potential impacts to natural resources in the portion of the Upper Arkansas River Basin downstream from the Eleven-Mile Reach, to and including Pueblo Reservoir (the "Downstream Area"), caused by releases of hazardous substances from mining-related activities.

b. In order to evaluate potential liability and plan for appropriate restoration, if any, in the Downstream Area, the Trustees and the Mining Companies will direct the Consulting Team to conduct a literature review to determine the nature and extent of available information regarding natural resources and associated impacts to natural resources in the Downstream Area. As part of its review the Consulting Team shall identify additional information that is necessary to evaluate impacts to natural resources and shall propose alternatives for the collection of such data.

c. Following completion of the literature review, the Trustees and the Mining Companies will determine whether additional information is needed and, if so, will develop a detailed study plan to collect such information. The plan will be implemented as directed by the Trustees and the Mining Companies.

d. The restoration planning process, if any, for the Downstream Area will be determined during settlement negotiations.

e. Funding for the collection of necessary additional information will be equally shared by DOI, ASARCO, and Resurrection (1/3 to be paid by each) and will be considered costs of assessment. All such costs must be incurred pursuant to and in accordance with a written budget approved in advance by the Parties. DOI's contribution will be based upon the availability of funding.

f. All funding contributed by the Mining Companies or the Trustees for work done in accordance with

this section of the MOU shall be considered assessment costs. Funding contributed by the Mining Companies shall be credited against the liability, if any, that the Mining Companies may have for natural resource damages, including assessment costs, in the Upper Arkansas River Basin. This provision shall survive the termination of this MOU.

4. **Airshed Survey**

a. The Trustees and ASARCO acknowledge that in order to fully resolve ASARCO's liability, if any, for natural resource damages in the Upper Arkansas River Basin, additional information may be required regarding potential impacts to natural resources resulting from the release of hazardous substances through its smelter stack emissions and subsequent deposition. The area of deposition shall be referred to as the "Airshed".

b. In order to evaluate liability and plan for restoration, the Trustees and ASARCO will direct the Consulting Team and/or other agreed upon individuals to conduct a literature review pertinent to the surrounding and potentially impacted Airshed. The purpose of the literature review is to determine the nature and extent of available information regarding natural resources and associated impacts to natural resources in the surrounding Airshed.

c. Following completion of the literature review, the Trustees and ASARCO will determine whether additional information is needed and, if so, will develop a detailed study plan to collect such information. The plan will be implemented as directed by the Trustees and ASARCO.

d. The restoration planning process, if any, for the Airshed will be determined during settlement negotiations.

e. Funding for the literature review and for the collection of necessary additional information will be provided by ASARCO according to a written budget approved by ASARCO and the Trustees, and will be considered costs of assessment.

f. All funding contributed by ASARCO for work done in accordance with this section of the MOU shall be considered assessment costs and shall be credited against the liability, if any, that ASARCO may have for natural resource damages, including assessment costs, in the Upper

Arkansas River Basin. This provision shall survive the termination of this MOU.

5. **Products, Budget, and Schedule**

a. The Parties will seek to complete tasks according to the schedule set forth in Attachment A.

b. The Parties may, by mutual agreement, modify the tasks to be completed and the schedule or budget as reasonably necessary.

6. **Coordination and Public Involvement**

a. The Parties recognize that the public has interests in the restoration of natural resources throughout the Arkansas River Basin.

b. The Parties recognize that most of the land adjacent to the Arkansas River within the Eleven-Mile Reach is privately owned and permission to access those properties will be necessary to implement assessment, restoration, or response activities.

c. In order to serve the interests of the public, the Parties will establish a team to develop a public participation plan with input from landowners and other interested members of the public, including local elected officials. Before implementation of the Work Plan, the Parties will complete preparation of the public participation plan and seek appropriate public input.

d. Public comment will be sought on restoration plans prior to implementation. Applicable law may require additional public involvement.

e. The Parties will coordinate and sequence response actions and restoration projects for the Eleven-Mile Reach so as to optimize beneficial impacts to the environment and natural resources and to avoid duplicative, inconsistent, or counter-productive activities.

f. DOI and USDA-Forest Service, Rocky Mountain Region (USDA-Forest Service) have entered into a Memorandum of Agreement (MOA) (Attachment B). The MOA will provide for coordination between DOI and USDA-Forest Service on natural

resource issues in the Upper Arkansas River Basin related to the implementation of this MOU.

**7. Term and Effect of this MOU**

a. This MOU is intended to facilitate settlement discussions among the Parties and to provide a basic framework for such discussions. The participation of the Parties in such discussions is purely voluntary in nature and cannot be compelled. Any Party may, in its sole discretion, withdraw from this MOU at any time, for any reason whatsoever, without liability, by first providing to the remaining Parties a written notice of its intention to withdraw from this MOU ("Notice of Withdrawal"). The Notice of Withdrawal shall include the date of the notice ("Notice Date") and a brief description of the reason the Party intends to withdraw from the MOU. The Notice of Withdrawal shall be sent by registered mail, certified mail, overnight carrier, or telefacsimile on the Notice Date to the contacts listed in Attachment C. Any Party may change its contact by first providing written notice to the other Parties. The Parties agree that during the thirty day period following the Notice Date they will seek to informally resolve any dispute that is the basis for the Notice of Withdrawal. Unless the Party that provided the Notice of Withdrawal withdraws such notice, in writing, during the thirty-day period, that Party shall be deemed to have withdrawn from this MOU on the 31<sup>st</sup> day after the Notice Date.

b. It is the intent of the Trustees and the Mining Companies that the Mining Companies' potential liability for injured natural resources, if any, in the Upper Arkansas River Basin be fully resolved as part of the settlement process set forth in this MOU. At this time, the Parties mutually expect that a settlement of the Mining Companies' potential liability will not involve a payment of monetary damages for lost use or services of natural resources. The Trustees do not waive any claim that may exist with respect to possible damages for lost use of natural resources, but the Trustees commit to trying to achieve a full settlement of the Mining Companies' potential liability based on the restoration of injured natural resources and the services they provide rather than monetary damages.

c. The Parties recognize that this MOU does not, and cannot, address all the circumstances and issues that may arise during negotiations. The process undertaken as outlined in this MOU will be dynamic in nature, and may change over time by written agreement of the Parties.

d. This MOU is not intended to, and shall not create any rights in any person who is not a party to this MOU.

e. It is the intent and commitment of the Parties that all data and other information necessary for a full resolution of the Mining Companies' potential liability for injured natural resources in the Upper Arkansas River Basin be obtained pursuant to the processes set forth in this MOU. Notwithstanding that fact, any Party may conduct other studies relating to natural resources injuries and associated damages in the Upper Arkansas River Basin that are outside the scope of this MOU. In order to facilitate the settlement process, prior to undertaking any study outside the scope of this MOU, the Party intending to conduct such study shall notify the remaining Parties in writing of its intent to perform such study and shall provide to the remaining Parties a brief summary of such proposed study. Such information shall be provided to the remaining Parties no later than 10 working days prior to the proposed start of such study, and the Party intending to conduct such study shall in good faith consider any comments submitted by the remaining Parties regarding such proposed activities. The purpose of this provision is to support good faith negotiations. The Trustees and EPA retain final authority to decide on studies each may conduct within the Upper Arkansas River Basin.

f. The Parties agree that neither this MOU, nor any Party's consent to enter into this MOU, nor any actions by any of the Parties in accordance with or related to this MOU, shall in any way constitute or be construed as an admission of liability, statement against interest, or a concession by any of the Parties of any factual or legal matters. Neither this MOU, a Party's consent to enter into the MOU, nor any action taken by a Party pursuant to the MOU shall be admissible in evidence against such Party.

g. The Mining Companies agree that if this MOU is terminated, notwithstanding such termination, costs authorized by the Trustees and the Mining Companies and incurred by any Party, except EPA, in fulfilling such

Parties' commitments under this MOU shall be considered part of the overall costs of a natural resource damage assessment for the Upper Arkansas River Basin. The Mining Companies agree that, in any subsequent litigation that may arise among the Parties, the Mining Companies will not assert that such costs were not incurred in compliance with 43 C.F.R. Part 11. The Mining Companies reserve the right to challenge such costs on any grounds otherwise available to them, and reserve the right to challenge any costs incurred by the Trustees that were not authorized by the Trustees and the Mining Companies on any basis, including challenges to the reasonableness of these costs. This subparagraph shall survive termination of this MOU.

h. If this MOU is terminated, the Mining Companies agree not to allege the Trustees are unprepared for litigation based on failure to perform normal natural resource damage assessment activities during the term of this MOU.

i. The Parties agree that the allocation of costs set forth in this MOU are not and shall not be asserted by a Party to be binding on the Parties or serve as precedent for any future allocation of liability among the Parties for natural resource damages or response costs concerning the Upper Arkansas River Basin.

j. For purposes of this MOU, "Effective Date" shall mean the latest date on which this MOU is executed by all the Parties as set forth on the signature page.

k. Nothing in this MOU shall be construed as obligating the United States, its officers, agents, or employees, to expend any funds in excess of appropriations authorized by law.

l. No elected or appointed officials of the United States or the State shall be allowed to receive any personal benefit arising from this MOU.

**MEMORANDUM OF UNDERSTANDING  
(Upper Arkansas River Basin)**

**SIGNATURE PAGE**

**ASARCO INCORPORATED**

**STATE OF COLORADO  
Office Of The Attorney General**

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**UNITED STATES**  
**Department of Interior**

**STATE OF COLORADO**  
**Department of Natural Resources**

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**UNITED STATES**  
**Environmental Protection Agency**

**STATE OF COLORADO**  
**Department of Public Health and Environment**

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**RESURRECTION MINING COMPANY**

**RES-ASARCO JOINT VENTURE**

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**NEWMONT MINING CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A**  
**Memorandum of Understanding**  
**(Upper Arkansas River Basin)**

**WORK PRODUCTS AND SCHEDULE\***

- 1. Coordination - Public Participation Plan

Schedule: 2 months  
Responsibility: Parties

2. Guidelines for negotiations  
Schedule: 2 months  
Responsibility: Counsel/Mediator
  3. Work Plan for the consultant team
    - A. Operating Guidelines
    - B. 11-Mile Reach
    - C. Downstream Survey
    - D. Airshed SurveySchedule: A.: 1 month;  
B.-D.: 3 months  
Responsibility: Parties
  4. Final Consultants' Report  
Schedule: 15 months  
Responsibility: Consultant Team
  5. Draft Restoration Plan - Eleven-Mile Reach  
Schedule: 18 months  
Responsibility: Parties
  6. Settlement Agreement  
Schedule: 24 months  
Responsibility: Counsel/Mediator
- \*Schedules begin upon signature of MOU by all Parties**

**ATTACHMENT B**  
**Memorandum of Understanding**  
**(Upper Arkansas River Basin)**

MEMORANDUM OF AGREEMENT

between

UNITED STATES DEPARTMENT OF AGRICULTURE -  
FOREST SERVICE, ROCKY MOUNTAIN REGION

and

UNITED STATES DEPARTMENT OF INTERIOR  
FISH AND WILDLIFE SERVICE, REGION 6

This Memorandum of Agreement (Agreement) is entered into between the United States Department of Agriculture - Forest Service, Rocky Mountain Region (USDA-Forest Service) and United States Department of Interior (Interior). Interior and USDA-Forest Service have been designated as Federal trustees for natural resources pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, Sections 104, 107, and 122, 42 U.S.C. §9604, §9607, and §9622; and the Clean Water Act, section 311(f)(5), 33 U.S.C. §1321(f)(5). Interior and the USDA-Forest Service believe that natural resources in the Upper Arkansas River Basin (defined as that area from the headwaters of the Arkansas River downstream to and including Pueblo Reservoir) within their trusteeship may have been injured due to releases of hazardous substances resulting from mining-related activities in and around Leadville, Colorado. Although approximately 10,000 acres of National Forest System (NFS) lands may have been impacted by historic mining disturbances, approximately 24 total acres of NFS lands along the Arkansas River are expected to be addressed by this Agreement.

**PURPOSE**

This Agreement will provide for coordination between the USDA-Forest Service and Interior on natural resource issues in the Upper Arkansas River Basin related to the implementation of the Memorandum of Understanding (MOU) described below (see Background section). Interior will act as the Federal Lead Administrative Trustee but will keep the USDA-Forest Service informed of all issues related to natural resources under USDA-Forest Service trusteeship. Other than incidental uses of NSF lands specifically addressed in this Agreement, this Agreement does not authorize any CERCLA response actions on NFS lands, which actions will be addressed by a future Memorandum or other

appropriate agreements, entered jointly by all necessary parties.

### **BACKGROUND**

An MOU is being entered into by and among the United States (by and on behalf of, the United States Department of the Interior and the United States Environmental Protection Agency); the State of Colorado (by and on behalf of the Colorado Department of Public Health and Environment, the Colorado Department of Natural Resources, and the Colorado Office of the Attorney General); Resurrection Mining Company and Newmont Mining Corporation (collectively Resurrection); ASARCO Incorporated (ASARCO); and the Res-ASARCO Joint Venture as an expression of their mutual good faith and interest in evaluating and, as appropriate, conducting restoration in the Upper Arkansas River Basin and response activities in the Eleven-Mile Reach. The "Eleven-Mile Reach" is defined as the 500 year floodplain portion of the Upper Arkansas River Basin beginning at the confluence of the Arkansas River and California Gulch and extending downstream for approximately 11 miles. The MOU is intended to facilitate: the identification and restoration of injured natural resources in the Upper Arkansas River Basin; cooperation between the Trustees and EPA; coordination of EPA's potential response actions and the Trustees' potential restoration efforts in the Eleven-Mile Reach; and the settlement of claims, if any, among the parties.

### **AUTHORITY**

Interior has been delegated authority under CERCLA, 42 U.S.C. § 9601 et seq., 42 U.S.C. § 9607 (f); the Clean Water Act, section 311 (f) (5), 33 U.S.C. § 1321 (f) (5), the National Oil and Hazardous Substance Contingency Plan, 40 C.F.R. 300 et seq., (NCP); and Executive Order 12580 as amended, to act on behalf of the public as trustee for "natural resources" as defined at 42 U.S.C. § 9601 (16). Interior authority includes assessing injuries and damages for injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by Interior. The Regional Director, Region 6, U.S. Fish and Wildlife Service has been delegated as Interior's Authorized Official for the Upper Arkansas River Basin.

USDA-Forest Service has been delegated authority under CERCLA, 42 U.S.C. § 9601 et seq., 42 U.S.C. § 9607 (f); the

Clean Water Act, section 311 (f) (5), 33 U.S.C. § 1321 (f) (5), the NCP and Executive Order 12580 as amended and 7 C.F.R. § 2.60 (a) (42) (1998) , to act on behalf of the public as trustee for "natural resources" as defined at 42 U.S.C. § 9601 (16). USDA-Forest Service authority includes assessing injuries and damages for injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States on NFS lands. This authority has been delegated to the Rocky Mountain Regional Forester.

### **AGREEMENT**

The USDA-Forest Service and Interior agree that the Interior Authorized Official will act as Federal Lead Administrative Trustee for all actions related to implementation of the MOU on all Federal lands in the Upper Arkansas River Basin.

Federal Lead Administrative Trustee shall:

1. Represent USDA-Forest Service's interests at all meetings and other sessions between the MOU parties, at which USDA-Forest Service, or its representative, does not attend; and
2. Consult with USDA-Forest Service before advancing any position that may affect NFS lands; and
3. Provide USDA-Forest Service with copies of documents generated at such meetings, or by any of the MOU parties, which may affect NFS lands; and
4. Provide USDA-Forest Service a minimum of five (5) days to comment on any Statement of Work, Work Plan, or other document the may affect NFS lands; and
5. Provide USDA-Forest Service with timely notice of any meetings, other sessions, or events that may affect NFS lands; and
6. Conduct community relations activities cooperatively with the MOU parties by providing draft copies of news releases for comment and jointly scheduling public meetings or other forms of public involvement; and

7. Provide a written construction schedule to USDA-Forest Service for all construction activities that may affect NFS lands; and
8. Ensure all applicable and necessary permits and other statutory authorizations will be obtained and adhered to when conducting activities on NFS lands; and
9. Keep USDA-Forest Service informed of all changes in procedures and deliverables required by the MOU; and
10. Inform USDA-Forest Service immediately of any vehicle or other accidents on NFS lands; and

USDA-Forest Service shall:

1. Provide timely review (as required by MOU parties) on any documents generated by the parties; and
2. Participate in public meetings at USDA-Forest Service discretion; and
3. Assist Interior in providing access, issuance of special use permits, oversight, and conducting inspections of any access or other activities on NFS lands; and
4. Provide Interior with any specifications for necessary road maintenance and improvements for work that may need to occur on NFS roads as part of this project; and
5. Identify vegetative species for restoration or revegetation activities on NFS lands, including road cuts and fills; and
6. Provide concurrence with any Action Memorandum and amendments thereto, Administrative Orders on Consent, Consent Decrees, or other appropriate documents for any response, restoration, or other actions on or affecting NFS lands requiring USDA-Forest Service concurrence or approval.

**DISPUTE RESOLUTION**

The Dispute Resolution procedures in this section are

the exclusive mechanism for resolving disputes under this Agreement. The Federal Trustees shall attempt to expeditiously and informally resolve any disagreements concerning implementation of this Agreement. If the Federal Trustees fail to resolve such a dispute informally, the Dispute Resolution procedure in the following paragraph shall apply:

If a dispute regarding any work taken pursuant to this Agreement cannot be resolved informally, a final decision regarding any actions scheduled to occur on NFS lands shall be made by the Rocky Mountain Regional Forester.

#### **AGREEMENT TERM**

1. This Agreement is executed as of the last date shown below and expires on December 31, 2004 at which time it will be subject to review and renewal, or expiration.
2. Either Federal Trustee may terminate this Agreement, in whole or part, at any time prior to the expiration date by providing a 30 day written notice to the other Federal Trustee.

#### **SPECIAL PROVISIONS**

1. This Agreement shall in no way prohibit or restrict either Federal Trustee from participating in similar activities with other public or private agencies, organizations, or individuals.
2. NON-FUND OBLIGATING DOCUMENT. This Agreement is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Trustees and shall be independently authorized by appropriate statutory authority. This Agreement does not provide such authority. Specifically, this Agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services

must fully comply with all applicable requirements for competition.

3. This Agreement may be modified or amended as necessary upon written consent of the Federal Trustees.
4. This Agreement is intended only to foster interagency coordination that enhances efficiency and effectiveness. It may not be the basis of any third party challenge, appeal, or judicial review. Nothing in this Agreement creates any rights, defenses, or causes of action in any person, party, or entity.

The designated Interior contacts for this Agreement are:

**Interior Authorized Official:**

Ralph Morgenweck, Regional Director  
U.S. Fish and Wildlife Service  
P.O.Box 25486-DFC  
Denver, CO 80225-0486  
303-236-7920

**Interior Project Manager:**

Andrew Archuleta  
U.S. Fish and Wildlife Service  
Colorado Field Office  
755 Parfet, Suite 361  
Lakewood, CO 80215  
303-275-2353

The designated USDA-Forest Service contacts for this Agreement are:

**Technical:**

Vern Schmitt  
USDA-Forest Service, Physical Resources  
Rocky Mountain Region 2  
P.O. Box 25127  
Lakewood, CO 80225  
303-275-5091

**Legal:**

Kenneth P. Pitt  
USDA-Office of the General Counsel  
P.O. Box 25005  
Denver, CO 80225  
303-275-5539

**NONDISCRIMINATION**

Neither Federal Trustee, and any contractors thereof, shall not discriminate against any employee or applicant for employment because of race, color, national origin, handicap, religion, or sex and shall comply with all Federal statutes prohibiting discrimination in any program or activity receiving Federal financial assistance, comply with all Federal statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, executive orders, regulations and policies. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) which prohibits discrimination on the basis of





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