

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE STATE OF MONTANA AND
THE U.S. DEPARTMENT OF THE INTERIOR
IN THE CONDUCT OF NATURAL RESOURCE DAMAGE ASSESSMENT AND
RESTORATION FOR THE JULY 1, 2011 EXXON OIL SPILL ON THE
YELLOWSTONE RIVER, MONTANA**

I. INTRODUCTION

This Memorandum of Understanding ("MOU") is between the State of Montana (State), by and through the Montana Department of Justice Natural Resource Damage Program, and the U.S. Department of the Interior (DOI), (collectively referred to as the "Trustees"). This MOU is entered into to ensure the coordination and cooperation of the Trustees in initiating and conducting preassessment and restoration planning activities, for natural resources and services under their trusteeship injured as a result of the release of oil on July, 1, 2011 from the Exxon Silvertip Pipeline into the Yellowstone River corridor near Laurel, Montana. This MOU may be modified by the Trustees to include the Crow Tribe of Indians for natural resources and services under its trusteeship.

II. PARTIES

The following officials are executing this MOU as representatives of their respective agencies, which act on behalf of the public as Trustees for natural resources and services under this MOU:

Robert G. Collins, the State of Montana;

The State of Montana is represented by the Montana Department of Justice.

Jamie Connell, U.S. Department of the Interior;

The U.S. Department of the Interior (DOI) is represented by the Fish and Wildlife Service (FWS) and the Bureau of Land Management (BLM). The BLM Montana State Director, Jamie Connell, is the Authorized Official for the DOI and the Federal Lead Administrative Trustee.

III. AUTHORITY

The Trustees enter into this MOU pursuant to the authorities provided to Natural Resource Trustees by the Oil Pollution Act (33 U.S.C. § 2701 et seq.); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.) and the Oil Pollution Act Regulations (15 C.F.R. Part 990). In addition, the Federal Trustees enter into this MOU pursuant to the authority provided in Subpart G of the National Contingency Plan (40 C.F.R. §§ 300.600 et seq.); and Executive Order 12580 (3 C.F.R., 1987 Comp. p. 193, 52 Fed. Reg. 2923 (January 23, 1987)), as amended by Executive Order 12777 (56 Fed. Reg. 54757 (October 19, 1991)).

IV. DEFINITIONS

Terms are as defined in the Oil Pollution Act Regulations. Whenever the following terms are used in this MOU, they include the following meanings:

A. "Federal Lead Administrative Trustee" or "FLAT" means the Bureau of Land Management as the Federal Trustee agency that has been selected by the Department of the

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Interior to coordinate natural resource damage assessment activities, and other activities for the federal agencies.

B. "Lead Administrative Trustee" or "LAT" means the State of Montana (State), by and through the Montana Department of Justice Natural Resource Damage Program, and the U.S. Department of Interior, acting through the Bureau of Land Management, selected by the Trustees to coordinate natural resource damage assessment activities, and other activities as authorized by the Trustee Council and subject to this MOU.

C. "Yellowstone River Oil Spill" means the discharge of crude oil from the ruptured Exxon Silvertip Pipeline in Yellowstone County, Montana, on or about July 1, 2011 which discharged a minimum of 1,000 barrels of crude oil into the Yellowstone River and onto lands in and adjacent to the River, primarily via high-water flows, including the floodplain, backwaters, wet meadows, wetlands, side channels, fields, riverbeds and banks, and other areas.

D. "Voting Trustee Council Members" means the primary representatives appointed and authorized to vote on behalf of each Trustee, or in the event the primary representative(s) is (are) unable to participate at a given meeting of the Trustee Council, their respective alternate(s). Participation at a given meeting of the Trustee Council may be either in person or by telephone conference.

E. "Trustee Council" means the Yellowstone River Oil Spill Trustee Council, comprised of representatives of the State and DOI.

V. PURPOSE

The purpose of this MOU is to provide a framework for coordination and cooperation among the Trustees in the conduct of natural resource damage assessment and restoration (NRDAR) activities that the Trustees will undertake associated with the Yellowstone River Oil Spill. The Trustees commit to share joint responsibilities regarding the planning and implementation of preassessment activities and restoration planning.

Objectives

The Trustees shall coordinate their efforts to meet their respective natural resource trustee responsibilities. The Trustees' objectives include, but are not limited to, the following:

- Forming a Trustee Council that implements natural resource damage assessment activities for the benefit of the public for those resources under the jurisdiction of the Trustees,
- Coordinating the efforts of the Trustees in implementing the natural resource damage assessment process, consistent with 15 CFR Part 990.
- Coordinating Trustee Council activities with response and NRDA-related activities, and
- Developing a joint Damage Assessment and Restoration Plan (DARP) for the restoration of natural resources and services injured due to the Yellowstone River Oil Spill pursuant to applicable laws.

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VI. ORGANIZATION - YELLOWSTONE RIVER OIL SPILL TRUSTEE COUNCIL AND LEAD TRUSTEES FOR SPECIFIC PROJECTS

To implement this MOU, there is hereby created the Yellowstone River Oil Spill Trustee Council (Trustee Council) to which the Trustees will each appoint one primary representative and at least one alternate representative. Each party to this agreement shall have one vote that shall be cast by the party's primary representative, or in the absence of the primary representative, by an alternate representative. A representative from the Department of the Interior Bureau of Indian Affairs (BIA) may attend Trustee Council meetings as a non-voting member provided that BIA and the Crow Tribe of Indians provide letters committing to abide by the confidentiality provisions of the MOU.

The primary representative and alternate representative of each Trustee for the Trustee Council are:

State of Montana

Primary representative: Robert G. Collins

Alternate representative: Douglas H. Martin \ Larry G. Peterman

Attorney Advisor: Mary Capdeville

Department of Interior

Primary representative: Theresa M. Hanley

Alternate representative: Paul J. Meyer

Attorney Advisor: Ann Umphres

Trustees may designate different representatives and Attorney Advisors at any time upon notice to Trustee Council representatives and Attorney Advisors. Communications regarding the Trustee Council business shall be addressed to the primary and, unless the Trustee Council directs otherwise, copied to the alternate representative and the Trustee legal representatives. Designated Attorney Advisors of Montana and DOI shall serve as legal counsel to the Trustee Council. The Trustee Council will seek advisory participation from other federal, state, or local agencies or any other entity as deemed appropriate by the Trustee Council.

VII. DECISION MAKING

A. Consensus of Voting Members and Lead NRDA Trustees

Except as specifically delegated to a particular Trustee pursuant to Section IX, or otherwise provided in this Section VII below, the Trustees shall use their best efforts to obtain consensus in making decisions implementing this MOU. If consensus cannot be reached regarding the assessment of a particular natural resource and that natural resource is within the sole trusteeship of a particular Trustee, said Trustee may act as the lead NRDA Trustee for that resource and the final arbitrator regarding its assessment.

For the natural resources being assessed for which two or more Trustees may exercise trusteeship, i.e., where their NRDA jurisdictions are co-existent, these Trustees shall act as Co-lead Trustees pertaining to these resources and endeavor to arrive at NRDA decisions by consensus. If, however, consensus cannot be reached, after providing 15 days written notice to the Trustees, each such Trustee may take whatever actions, independent of the other Trustees, it determines are necessary to fulfill its trust responsibilities under relevant authorities. Co-lead

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Trustees may also divide responsibility for implementing the assessment of such resources as they may mutually agree.

B. Voting Members

The Voting Members of the Trustee Council will be the following:

- The State of Montana
- The Department of the Interior.

There will be a total of 2 voting members.

VIII. RESERVATION OF RIGHTS

Nothing in the above Section VII or anything else in this MOU is to imply that any signatory government is in any way abrogating or ceding any responsibility or authority inherent in their control or trusteeship over natural resources or services.

IX. POWERS, DUTIES, AND RESPONSIBILITIES

A. Trustee Council

On behalf of the Trustees, the Trustee Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the procedures contained in Section VII (Decision Making), above. Subject to Section VII, the Trustee Council and each Trustee, in its discretion, may take whatever actions it determines are necessary to fulfill its trust responsibilities under, and to effectuate the purposes of, applicable Federal and State law. Any Trustee on the Trustee Council may request a meeting of the full Trustee Council. It is expected that the Trustee Council, in accordance with applicable laws and policies, may take the following actions to address the Trustees' NRDAR responsibilities:

1. Conduct preassessment, and restoration planning activities regarding natural resource damages for injury to, destruction of, or loss of natural resources and natural resource services, including those of cultural significance;
2. Arrange for the letting of contracts, through one or more of the Trustees, with consultants or contractors best qualified to provide services to the Trustee Council;
3. Oversee the development and implementation of the Damage Assessment and Restoration Plan and ensure public notice, opportunity for public input, and consideration of all public comments prior to preparing the final Damage Assessment and Restoration Plan consistent with Federal and State NRDA regulations and law;
4. Maintain records and documents by each agency that is party to this MOU, in support of its NRDAR activities relating to the Yellowstone River Oil Spill, and provide such documents on request by the FLAT and LAT in support of conducting the cooperative Trustee NRDAR, and as needed to document agency costs. Delegate specific duties to individual Trustee representatives. Certain duties set out below are hereby delegated to the Lead Administrative Trustee for specific projects.

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B. Lead Administrative Trustees

There shall be two Co-Lead Administrative Trustees, the State of Montana and DOI, represented by the BLM. Except as otherwise specified below, the Co-Lead Administrative Trustees may carry out their responsibilities jointly and/or divide their administrative duties between themselves. The Co-Lead Administrative Trustees shall carry out the following duties:

- Coordinate and monitor all aspects of the preassessment and restoration planning process, even if not specifically addressed above;
- Schedule, provide notice of, prepare agendas for, and document general meetings of the Trustee Council;
- Act as the central contact points for the Trustee Council with regard to the Response Agencies;
- Act as the central contact points for the Trustee Council with regard to the other agencies and the public;
- Act as the central contact points for the Trustee Council with regard to the Responsible Party, Exxon, and its agents;
- Establish and maintain records and relevant documents regarding activities under this MOU, and with the assistance of all Trustees, establish and maintain any administrative record that is required; and
- Perform routine administrative duties supporting the implementation of NRDAR activities under this MOU; and
- Carry out such other duties as directed by the Trustee Council.

The Co-Lead Administrative Trustees may delegate any of their duties to another Trustee with the concurrence of the Trustee Council.

X. CONFLICT OF INTEREST

A Trustee Council representative will abstain from discussing and voting on any issue coming before the Trustee Council in which that representative has a personal financial interest. The Trustee Council representative will identify this conflict to the Trustee Council prior to consideration and voting on the issue(s), and the representative will be replaced with an alternate for voting on the particular issue.

XI. TELECONFERENCING

A Trustee Council meeting may be convened by telephone conference call. Should a Trustee Council representative be unable to travel to a meeting, that representative may participate by telephone conference and may vote by telephone on any issue requiring a vote by the voting Trustee Council members.

XII. CONFIDENTIALITY

The Trustees agree that it is generally in the public interest that scientific data arising out of their review of the injury to natural resources and services caused by the Yellowstone River Oil Spill

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be made public. Public sharing of scientific data, wherever possible, will be the general policy of the Trustees. However, all parties to this MOU recognize that oral and written communications that are privileged attorney-client communications, attorney work product, joint enforcement privilege, or protected by other applicable privileges (or a combination thereof) ("Privileged Communications") will be protected from disclosure to the extent possible under applicable Federal and State law.

Nothing in this MOU is intended as, nor shall it be construed to be, a general waiver of any attorney-client privilege, joint enforcement privilege, or any protection afforded under the work product doctrine or any other doctrine or privilege under applicable law that has been or may be asserted in this matter and shall be without prejudice to any assertion of privilege or protection as to other documents or communications concerning the same or similar subject matter(s).

The parties to this MOU further agree that whenever a request for production of any written communication is received pursuant to any applicable Federal or State law, the request will be forwarded for response to the Trustee or Trustees whose representatives or consultants originally generated or substantially contributed to the record requested. If that Trustee or those Trustees determine to release any communication that another Trustee believes should be withheld on grounds that it is a Privileged Communication, then the matter shall be submitted to the Trustee Council for resolution. Nothing contained herein shall be construed as requiring a Trustee or the Trustee Council to release Privileged Communications.

XIII. LIMITATION

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

XIV. THIRD-PARTY CHALLENGES OR APPEALS

Nothing in this MOU may 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. MODIFICATION OF AGREEMENT

Modification of this MOU must be in writing and approved by all parties to this MOU.

XVI. TERMINATION

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. At any time that the Trustees determine that the purposes set forth in this MOU have been satisfied, the MOU may be terminated. In the event any Trustee withdraws from the MOU, such withdrawal must be in writing and provided to the other parties to this MOU at least thirty days in advance of the withdrawal.

In the event of the withdrawal of any Trustee or the termination of this MOU, the Trustees shall give a full and complete accounting to the Trustee Council of all restoration funds received,

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deposited, held, disbursed, managed, expended, or otherwise controlled by a Trustee in any joint or separate account as a result of the Yellowstone River Oil Spill, pursuant to this MOU.

The duty of the Trustees to maintain the confidentiality of Privileged Communications shall continue and survive the withdrawal of a Trustee or termination of this MOU.

XVII. SEVERABILITY

The terms of this MOU are severable. If any term or condition of this MOU is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms and conditions.

XVIII. EXECUTION: EFFECTIVE DATE

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU and be retained by the Lead Administrative Trustee that maintains records. The date of execution shall be the date of the signature of the last Trustee to sign the MOU.


FOR THE STATE OF MONTANA, ACTING BY AND THROUGH THE MONTANA
DEPARTMENT OF JUSTICE, NATURAL RESOURCE DAMAGE PROGRAM

Steve Bullock
Attorney General

Robert G. Collins
Supervising Assistant Attorney General
Mary Capdeville
Assistant Attorney General

Date: _____

FOR THE UNITED STATES DEPARTMENT OF INTERIOR


Jamie Connell
State Director
BLM Montana/Dakotas

Date: 2/3/13

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FOR THE STATE OF MONTANA, ACTING BY AND THROUGH THE MONTANA
DEPARTMENT OF JUSTICE, NATURAL RESOURCE DAMAGE PROGRAM

Steve Bullock
Attorney General



Robert G. Collins
Supervising Assistant Attorney General
Mary Capdeville
Assistant Attorney General

Date: Feb. 7, 2012

FOR THE UNITED STATES DEPARTMENT OF INTERIOR

Jamie Connell
State Director
BLM Montana/Dakotas

Date: _____