

MEMORANDUM OF UNDERSTANDING
AMONG
THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY,
THE MICHIGAN ATTORNEY GENERAL,
THE UNITED STATES DEPARTMENT OF THE INTERIOR, AND
THE SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

1. INTRODUCTION. This Memorandum of Understanding (MOU) by and between the State of Michigan (State), acting through its two designated trustees for natural resources, namely the Michigan Department of Environmental Quality (MDEQ) and the Michigan Attorney General (MAG) (State Trustees), and the United States Department of the Interior (DOI), acting through its representative, the Fish and Wildlife Service (FWS), and the Saginaw Chippewa Tribe of Michigan (Tribe), all of whom are collectively referred to as Trustees, is entered into to ensure the coordination and cooperation of the Trustees in the implementation of the Saginaw River/Saginaw Bay Consent Judgment (Consent Judgment). This MOU is intended to address natural resources injured by PCBs in the Assessment Area which includes the entire Saginaw River extending from the head of the Saginaw River at the confluence of the Shiawassee and Tittabawassee Rivers to the mouth of the Saginaw River at Bay City and all of the Saginaw Bay from the mouth of the Saginaw River to its

interface with open Lake Huron at an imaginary line drawn between Au Sable Point and Point Aux Barques.

2. PARTIES. The following officials are parties to this MOU and will act on behalf of the public as Trustees for natural resources under this MOU:

(i) The Director, Michigan Department of Environmental Quality,

(ii) The Attorney General of Michigan,

(iii) The Secretary of the Department of Interior, acting through its representative, the FWS, and

(iv) The Tribal Chief, Saginaw Chippewa Indian Tribe of Michigan.

3. PURPOSE. The purpose of this MOU is to provide a framework to implement the activities pursuant to the Saginaw River/Saginaw Bay Consent Judgment for natural resource damages resulting from the release of PCBs.

4. GOALS. The mutual objectives of the Trustees under this MOU and in implementing the Consent Judgment are to restore,

replace, or acquire the equivalent of natural resources injured as a result of the release of PCBs in the Saginaw River/Saginaw Bay, including monitoring the progress toward that goal. More specifically, this includes mitigating the injuries by minimizing exposure to PCBs, especially through removal of contaminated sediments; and the replacement, rehabilitation, or enhancement the injured resources, with a primary focus on this occurring in the Assessment Area and its watershed.

5. AUTHORITY. The Trustees, through their designated representatives, enter into this MOU in accordance with the natural resource trustee authorities provided for each Trustee by the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 U.S.C. §§ 9601 et seq., the Natural Resource Damage Assessment Regulations, 43 CFR Part 11, the Michigan Natural Resources and Environmental Protection Act, Act 451 of 1994, and the National Contingency Plan, 40 CFR § 300.600.

6. ORGANIZATION. The Trustees and their representatives recognize the importance of integrating and coordinating their

efforts in order to meet their respective responsibilities as natural resources trustees in an effective and efficient manner. Accordingly, there is hereby created a Trustee Council to implement the MOU, to which Council each Trustee will designate a representative and an alternate. The Trustee Council may designate a representative to serve as Administrative Trustee for administrative purposes, as directed by the Trustee Council. In addition, the Trustee Council may designate Project Coordinators for specific projects, serving under the direction of the Trustee Council. The Trustee Council may also seek advisory participation, as appropriate, from the United States Environmental Protection Agency (EPA) and other entities.

7. DUTIES AND RESPONSIBILITIES. On behalf of the Trustees, the Trustee Council will coordinate and authorize all Trustee activities and matters undertaken pursuant to the Consent Judgment in accordance with the decision-making requirements contained in Section 8. The Trustee Council may take whatever actions it determines are necessary in order to fulfill the fiduciary responsibilities of each Trustee under and to effectuate the purposes of applicable federal and state law. The

duties of the Administrative Trustee shall include, but are not limited to:

- (i) Coordinating among the Trustees information concerning the progress on implementation of the settlement;
- (ii) Scheduling meetings of the Trustee Council and preparation of agendas for such meetings;
- (iii) Preparation and distribution of meeting minutes;
- (iv) Acting as a central contact point for the Trustee Council;
- (v) Establishing and maintaining records and relevant documents;
- (vi) Informing all Trustees of pertinent developments on a timely basis; and
- (vii) Performing such other duties as are directed by the Trustee Council.

8. DECISIONS.

A. All decisions under this MOU shall require the consensus of a quorum of the Trustees.

B. A quorum of at least three Trustees or Trustee Representatives shall be necessary for decision-making.

C. Any Trustee may be represented for purposes of voting on decisions implementing this MOU through the submission of a proxy on behalf of the absentee Trustee to the Trustee Council.

D. Dispute Resolution. In the event that consensus of a quorum cannot be reached among the members of the Trustee Council, the undecided issue will be elevated to the Trustees for resolution as follows:

1. The FWS and the Tribe shall meet or otherwise confer first to determine a single position between them in accordance with the attached Memorandum of Agreement Between the United States Department of the Interior and the Saginaw Chippewa Indian Tribe of Michigan. This position shall be conveyed by the Office of the Solicitor of the Department of the Interior, on behalf of both the FWS and the Tribe, to the State Trustees.

2. The Office of the Solicitor, on behalf of the FWS and the Tribe, and the State Trustees shall meet or otherwise confer to reach a consensus decision.

3. If necessary, the Trustees may establish further mechanisms by which disputes may be resolved.

E. All decision-making deliberations of either the Trustee Council or the Trustees will focus on the mutual purposes of

restoring, rehabilitating, replacing, enhancing, and/or acquiring the equivalent of the affected natural resources.

F. The State Trustees shall not cast any votes approving the expenditure of funds from the Restoration Account without receiving a prior appropriation from the Michigan Legislature covering such funds. Nothing in this MOU shall be construed, however, as giving or requiring a ratification of a Trustee Council vote by the Michigan Legislature.

9. MEETINGS.

A. The Trustee Council may meet by telephone conference or in person, and shall meet at the request of any Trustee or Trustee representative, provided that the Trustee Council shall not meet more frequently than once per month unless by consensus of a quorum of the Trustees.

B. Written notice stating the place, day and hour of the Trustee Council meeting, and the agenda, shall be delivered to each Trustee Representative not less than five days and not more than thirty days before the meeting, either personally, by mail or facsimile. If written notice is impracticable under the

circumstances, actual notice by telephone or otherwise may be used.

10. FUNDS FOR BOAT LAUNCHES.

The Federal Trustees may pursue matching funds for the boat launches to be constructed pursuant to Paragraph 7.9 of the Consent Judgment. Any available Federal monies received as a match to these funds will be substituted, to the extent of the match, for those allocated for boat launches that Paragraph. Any monies for which substitution is made under this paragraph shall be deposited into the Restoration Account as provided in Paragraph 7.15(a) of the Consent Judgment.

11. RESERVATION OF RIGHTS.

Except as provided in such document(s), this MOU, the Consent Judgment, and other documents referenced therein are not intended to and do not change the various rights, responsibilities, and duties that an individual Trustee may have over or for the natural resources of the Assessment Area, the Saginaw River or Bay, or other area. By entering into this settlement, except for each Trustees right to participate as

provided in this MOU and the Consent Judgment, a Trustee does not:

(i) admit or otherwise acquiesce to any claim of sovereignty over, authority over, or rights in the natural resources of the Assessment Area, the Saginaw River or Bay, or other area by any other Party or any other Trustee; or

(ii) waive, concede, or otherwise forego any claim it may have concerning sovereignty over, authority over, or rights in the natural resources of the Assessment Area, the Saginaw River or Bay, or other area.

12. MODIFICATION OF AGREEMENT. This MOU may be amended, but any such amendment to this MOU must be in writing and executed by all Trustees who are parties to this agreement.

13. EFFECTIVE DATE AND TERMINATION. This MOU shall commence and be in effect from the date of its execution by the last of the parties hereto, and it shall continue until it is terminated by a decision of the Trustee Council as provided in Section 8. This MOU shall terminate upon the consensus of a quorum of the Trustees after all funds required to be paid by the Defendants by

Paragraphs 6.1-6.3 of the Consent Judgement have been paid and expended.

14. LIMITATION. Nothing herein shall be construed as obligating the United States or any department or agency thereof, the State of Michigan or any of its departments, the Tribe, or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

15. 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 do not and cannot form the basis for any third party challenges or appeals or any liability to any person or entity not a party hereto.

16. EXECUTION. This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU. As set forth in Section 13, the effective date shall be the date on which the final Trustee executes the document.

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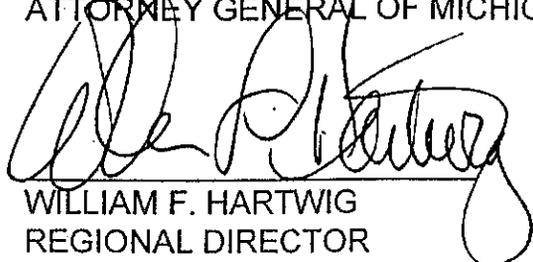
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RUSSELL J. HARDING
DIRECTOR
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

Date of Execution

FRANK J. KELLY
ATTORNEY GENERAL OF MICHIGAN

Date of Execution

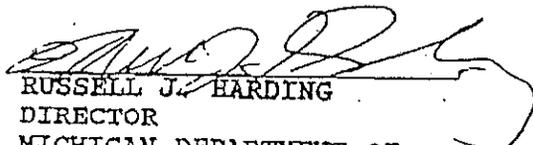

WILLIAM F. HARTWIG
REGIONAL DIRECTOR
UNITED STATES FISH AND
WILDLIFE SERVICE

11/16/98

Date of Execution

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RUSSELL J. HARDING
DIRECTOR
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

11/24/98
Date of Execution

Frank J. Kelly

FRANK J. KELLY
ATTORNEY GENERAL OF MICHIGAN

24 November 98
Date of Execution

WILLIAM F. HARTWIG
REGIONAL DIRECTOR
UNITED STATES FISH AND
WILDLIFE SERVICE
UNITED STATES DEPARTMENT
OF THE INTERIOR

Date of Execution

RUSSELL J. HARDING
DIRECTOR
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

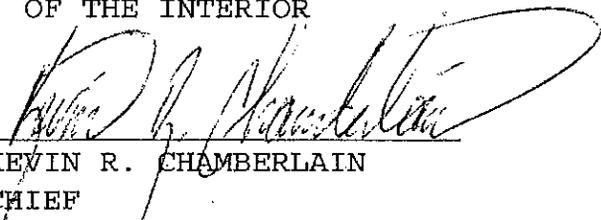
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ATTORNEY GENERAL OF MICHIGAN

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REGIONAL DIRECTOR
UNITED STATES FISH AND
WILDLIFE SERVICE
UNITED STATES DEPARTMENT
OF THE INTERIOR

Date of Execution



KEVIN R. CHAMBERLAIN
CHIEF
SAGINAW CHIPPEWA INDIAN
TRIBE OF MICHIGAN

Date of Execution

MEMORANDUM OF AGREEMENT BETWEEN UNITED STATES DEPARTMENT OF THE
INTERIOR AND THE SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

1. INTRODUCTION

This Memorandum of Agreement (MOA) by and between the United States Department of the Interior (DOI) acting through its representative, the Fish and Wildlife Service (FWS), and the Saginaw Chippewa Indian Tribe of Michigan (Tribe), is entered into in conjunction with a Memorandum of Understanding (MOU) between the same two parties and the Michigan Department of Environmental Quality and the Michigan Attorney General, relating to coordination and cooperation of the Trustees in the implementation of the Saginaw River/Saginaw Bay Consent Judgment.

2. PURPOSE

The purpose of this MOA is to determine how the DOI shall determine a "single position" on behalf of the FWS and the Tribe, as required by Par. 8.D.1 of the MOU in the event the Trustees designated under the MOU are unable to reach an agreement by consensus of a quorum and a dispute is "elevated" for resolution by the DOI and the State Trustees in accordance with Paragraph 8 of the MOU.

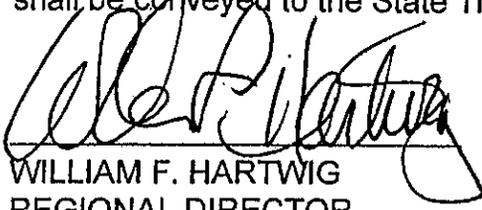
3. DETERMINATION OF SINGLE JOINT POSITION IN DISPUTE RESOLUTION

If a dispute is elevated to the DOI and the State Trustees, the representatives of the FWS and the Tribe shall meet in person or by telephone conference as quickly as possible to formulate a position. If the representatives are in agreement as to what should be done, they shall make a written record of their decision, and the DOI Trustee decision shall be communicated to the State Trustees as soon as possible. If the FWS and the Tribe representatives are not in agreement, the DOI Trustee shall take no position until the FWS-Tribe disagreement has been resolved by the Solicitor of the DOI. Thereupon the Solicitor's decision shall determine the DOI Trustee decision and shall be conveyed to the State Trustees as soon as possible.

WILLIAM F. HARTWIG
REGIONAL DIRECTOR
UNITED STATES FISH AND
WILDLIFE SERVICE
UNITED STATES DEPARTMENT
OF THE INTERIOR

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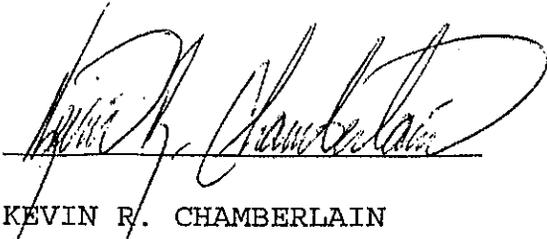
WILLIAM F. HARTWIG
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4/16/98

Date of Execution

KEVIN R. CHAMBERLAIN
CHIEF
SAGINAW CHIPPEWA INDIAN
TRIBE OF MICHIGAN

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