

BETWEEN

THE STATE OF UTAH
AND
THE UNITED STATES DEPARTMENT OF THE INTERIOR

I. INTRODUCTION

This Memorandum of Understanding (MOU) by and between the State of Utah (State) and the United States Department of the Interior (DOI) (collectively referred to as the Trustees) is entered into (i) to ensure the coordination and cooperation of the Trustees in their application of any natural resource damages recovered in the settlement of United States v. Sharon Steel Corporation, et. al., Civ. A. No. 86-C-924J, (D. Ut.), toward the restoration, replacement and/or acquisition of equivalent natural resources which have been injured, destroyed or lost resulting from the release or threatened release of hazardous substances from the Site; and (ii) to ensure coordination and cooperation of the Trustees in furtherance of their natural resource trustee responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and other applicable law, which arise for any judgments, litigation, or additional settlements in the matter of United States v. Sharon Steel Corporation, et. al.

II. PARTIES

The following officials, or their designees, have been designated to act on behalf of the public as Trustees for natural resources under CERCLA and are parties to this MOU:

1. The Director of the Division of Environmental Health, Utah Department of Health, and
2. The Secretary of the Interior.

The following officials, or their designees, are responsible for the management and/or protection of the natural resources for which damages were recovered in the matter of United States v. Sharon Steel Corporation, et. al., and are also parties to this MOU:

1. The Executive Director, Utah Department of Natural Resources, and
2. The Director of the U.S. Fish and Wildlife Service, U.S. Department of the Interior.

III. AUTHORITY

This MOU is executed in accordance with the natural resource trustee authorities and responsibilities provided for each Trustee by § 107(f) of CERCLA, as amended, 42 U.S.C. § 9607(f), and other applicable law.

IV. PURPOSE AND SCOPE

The parties to this MOU recognize the importance of cooperation and coordination in order to meet their respective natural resource trustee responsibilities under § 107(f) of CERCLA and other applicable law. The purpose of this MOU is to provide a framework for coordination and cooperation between the Trustees. Activities under this MOU will be directed toward restoring, replacing and/or acquiring the equivalent of those natural resources for which they are co-trustees.

A. Co-Trusteeship. To the extent permitted by applicable law, the Trustees agree to coordinate and cooperate as co-trustees for migratory birds, Federally-listed threatened or endangered species, and their habitats under the terms of this MOU.

B. Natural Resource Damage Recoveries. DOI anticipates receiving monetary damages for injuries to natural resources through settlements with the defendants named in the matter of United States v. Sharon Steel Corporation, et. al.

To the extent permitted by applicable law, the Trustees agree that any natural resource damage recoveries obtained or received, either jointly or separately, in the matter of United States v. Sharon Steel Corporation, et. al. and interest earned thereon, will be used in accordance with the requirements of CERCLA § 107(f) and terms of the MOU to restore, replace, or acquire the equivalent of migratory birds, Federally-listed threatened or endangered species, or their habitats which may have been injured, destroyed or lost as a result of the release of hazardous substances at or from the Site, or as a result of remedial actions at the Site.

V. OBJECTIVES

The Parties agree to cooperate and coordinate their activities under this MOU to achieve the following objectives:

A. The development and implementation of a plan (Restoration Plan) for the restoration, replacement and/or acquisition of migratory birds, Federally-listed threatened or endangered species, or their habitats which may have been injured, destroyed or lost by the release of hazardous substances at or from the Site or as a result of remedial actions at the Site. Pursuant to CERCLA § 111(i), 42 U.S.C. § 9611(i), the Parties will ensure the appropriate opportunity for public review of the Restoration Plan, and consideration of public comments before the Restoration Plan is adopted.

B. The expenditure of any natural resource damages recoveries on projects that the Parties agree are designed specifically to restore, replace, or acquire the equivalent of migratory birds, Federally-listed threatened or endangered species, or their habitats to the maximum extent practicable. Such projects will conform to and implement the "no net loss of wetlands" goal established by the President of the United States.

C. The coordination of activities under this MOU with the ongoing remedial actions being undertaken by the U.S. Environmental Protection Agency (EPA) at the Site. To the extent practicable, this coordination will include recommendations on methods to maximize natural resource benefits from remedial activities at the Site.

VI. TRUSTEE COMMITTEE

A. Organization. There is hereby created a Natural Resource Trustee Committee (Trustee Committee). Within thirty (30) days of the execution of this MOU, the State and DOI shall each designate representatives to the Trustee Committee, including one or more representatives from the organizational entity with management responsibility, jurisdiction, and/or expertise for co-trustee resources. Each Trustee shall also designate alternate representatives to serve in the absence of the designated representatives. The names of the representatives and their alternates shall be exchanged between the Parties. The Trustee Committee may create subcommittees when deemed necessary to effect the purposes of the MOU. The Trustee Committee may also seek advisory participation from the United States Department of Justice, the State Attorney General, or other Federal or State agencies, when necessary or appropriate.

B. Decision-making. The Parties agree that all decisions implementing this MOU shall be by consensus. The Parties further agree that decision-making deliberations will focus upon specific actions to restore, replace and/or acquire the equivalent of the natural resources covered by this MOU, rather than upon control or respective trusteeship over those resources or the total sum to be expended for such restoration. In the event that agreement cannot be reached by the Trustee Committee, the matter in dispute will be elevated to the Trustees for resolution. The Parties also agree that dispute resolution would be invoked only for matters involving the objectives of this MOU. If necessary, the Parties may establish further mechanisms by which disputes may be resolved.

C. Duties and Responsibilities. The Trustee Committee shall coordinate and cooperate regarding co-trustee natural resource restoration activities within the scope of this MOU. The Trustee Committee may take whatever actions the Committee, in its discretion, determines are necessary to fulfill the purposes and achieve the objectives of this MOU and to effectuate the purposes of applicable Federal and State law. It is expected that the Trustee Committee will take the following actions, among others, to address the Trustees' natural resource restoration responsibilities in an expeditious manner:

1. Oversee the development and the implementation of the Restoration Plan.
2. In accordance with applicable law, make all necessary decisions for the management and administration of projects for which money subject to this MOU is disbursed.

3. The DOI representative will act as Coordinator for administrative purposes, including:
 - a. scheduling of meetings of the Trustee Committee, preparing agendas for those meetings, and recording of all actions taken at such meetings;
 - b. acting as a central contact for the Trustee Committee;
 - c. maintaining all records and relevant documents received or generated by the Trustee Committee;
 - d. contracting with consultants, including Federal, State, and/or private entities, that the Trustee Committee determines necessary to provide services to the Committee;
 - e. preparing and issuing public notices or reports as determined to be necessary by the Trustee Committee;
 - f. such other duties as are agreed upon by the Trustee Committee.

VII. FUNDS

DOI will maintain the funds derived as a result of the settlement reached for this Site in accordance with the requirements of Section 107(f)(1) of CERCLA, and with applicable Federal fiscal management laws. The funds so managed shall be disbursed and expended consistent with the Restoration Plan and in accordance with decisions made by the Trustee Committee for the use of such funds. The Parties recognize that, consistent with CERCLA § 111(i), funds may not be expended for restoration, replacement, or acquisition of the equivalent natural resources until the Restoration Plan addressed in Section V.A has been adopted.

VIII. CONFIDENTIALITY

For the purpose of facilitating public comments, as provided by CERCLA § 111(i), the Parties agree to make available for public review records pertaining to the Restoration Plan. In the event, however, that the Parties become involved in the recovery of damages for injury to natural resources in anticipation of litigation, all written or oral communications related to such matters, to the extent permitted by applicable law, will be treated as privileged and confidential attorney-client communications or attorney work product (or both), as applicable, and will be protected from disclosure to the maximum extent possible under applicable Federal or State law. Such records will not be disclosed to a non-party without the advanced written approval of the Party contributing the information.

IX. RESERVATION OF RIGHTS

Each Party has and reserves the right to take whatever actions necessary to preserve any legal remedies available to that Party, and nothing in this MOU is intended to waive or foreclose any such right. The Parties further agree that declaratory relief and injunctive relief are to be the exclusive remedies requested by any Trustee from the court for any claim of breach of this MOU and that neither monetary damages nor attorneys fees shall be available as a remedy against any Trustee in any such proceeding.

Each Trustee reserves the right to intervene or otherwise to participate in any legal proceeding concerning the contentions of a third party with respect to the scope of the other Trustee's trusteeship and waives any objection to such intervention or participation by the other Trustee.

X. MODIFICATION OF AGREEMENT

A. This MOU may be amended by agreement of the Parties where the Parties determine an amendment is necessary to accomplish the objectives of this MOU, or to modify the objectives of this MOU consistent with the requirements of CERCLA and other applicable law.

B. Any modification of this MOU shall be in writing, executed by the Parties.

XI. TERMINATION

A. This MOU shall be in effect from the date of execution until implementation of the Restoration Plan has been completed. At any time prior to this, should the Parties agree that purposes underlying this MOU have been addressed, the MOU will terminate upon such a finding.

B. In the event either Trustee withdraws from the MOU, notice must be given in writing to the other Trustee at least thirty days (30) in advance of the withdrawal.

XII. LIMITATION

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

XIII. 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 Parties. They may not be the basis of any third party challenges or appeals.

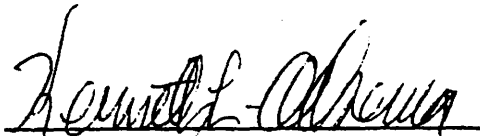
XIV. NONDISCRIMINATION

During the performance of this MOU, the parties will not discriminate against any person because of race, color, religion, sex, national origin, or handicapping condition.

XV. EXECUTION; EFFECTIVE DATE

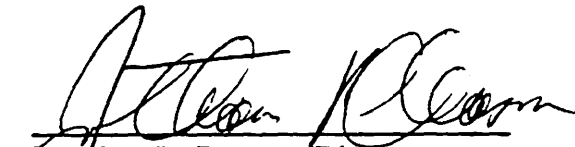
This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU, to be retained by DOI. The date of execution shall be the date of the final Party's signature.

The Parties hereto have signed this MOU on the date appearing opposite their signatures.



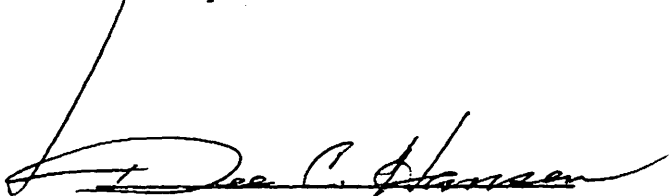
Kenneth L. Alkema
Natural Resources Trustee
State of Utah

May 10, 1991
Date



Jonathan P. Deason, Director
Office of Environmental Affairs
U.S. Department of the Interior

July 11, 1991
Date



Utah Department of Natural Resources

29 May 91
Date



U.S. Fish and Wildlife Service
GALEN L. BUTERBAUGH

3-5-91
Date