

AMENDED MEMORANDUM OF UNDERSTANDING

AMONG

STATE OF KANSAS  
STATE OF MISSOURI  
STATE OF OKLAHOMA  
CHEROKEE NATION  
EASTERN SHAWNEE TRIBE OF OKLAHOMA  
MIAMI TRIBE OF OKLAHOMA  
OTTAWA TRIBE OF OKLAHOMA  
PEORIA TRIBE OF INDIANS OF OKLAHOMA  
SENECA-CAYUGA NATION  
WYANDOTTE NATION  
U.S. DEPARTMENT OF THE INTERIOR

FOR

COORDINATION OF  
NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION ACTIVITIES  
IN  
THE TRI-STATE MINING DISTRICT

This Amended Memorandum of Understanding<sup>1</sup> (“Agreement”) is agreed by, between and among the following:

- The State of Kansas;
- The State of Missouri;
- The State of Oklahoma;
- The Cherokee Nation;
- The Eastern Shawnee Tribe of Oklahoma;
- The Miami Tribe of Oklahoma;
- The Ottawa Tribe of Oklahoma;
- The Peoria Tribe of Indians of Oklahoma;
- The Seneca-Cayuga Nation;
- The Wyandotte Nation; and
- The U.S. Department of the Interior (including the U.S. Fish and Wildlife Service and Bureau of Indian Affairs).

Singularly the aforementioned State, Tribal and Federal entities may be referred to herein as “Trustee” or collectively as “Trustees.”

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<sup>1</sup> This Amended Memorandum of Understanding replaces the Memorandum of Understanding scheduled to expire on December 31, 2016 and is in compliance with the Modification of Agreement provision herein.

## AUTHORITY

The parties are Trustees for natural resources within their respective jurisdictional areas. Trustees for natural resources may recover damages for injury to, destruction of, or loss of natural resources resulting from the release of a hazardous substance or the discharge of oil, pursuant to the following:

- 33 U.S.C. §§ 2702, 2706, and section 311(f) of the Clean Water Act (CWA), 33 U.S.C. § 1321(f);
- Sections 101, 107(a)(4)(C) and 107(f) and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); 42 U.S.C. § 9607(a)(4)(C) and § 9607(f);
- National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300;
- Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11 and 15 C.F.R. Part 990;
- Executive Order 12580 as amended;
- Surface Water Quality Standards;
- Kansas Statutes Annotated (K.S.A.) 65-171u;
- Missouri Constitution, 1945, Art. IV, Sections 40(a)-47; Chapter 252, RSMo, Department of Conservation--Fish and Game; Chapter 254, RSMo, State Forestry Law; Chapter 644, RSMo, the Missouri Clean Water Law; Sections 260.350-260.434, RSMo, the Missouri Hazardous Waste Management Law; Sections 260.500, *et seq.*, RSMo, the Missouri Hazardous Waste Clean Up Law; and the regulations duly promulgated under the statutes set out above;
- 27A Ok. Stat. Supp. 1998, Sections 1-1-202, 1-2-101, and 1-3-101; and
- Applicable Tribal authorities.

Such damage awards must be used to restore, replace, rehabilitate or acquire the equivalent of the injured natural resources.

## PURPOSE

The purpose of this Agreement is to address the mutual concerns of the Trustees as they pertain to the Tri-State Mining District, which includes the following Superfund Sites:

- The Cherokee County Superfund Site, Cherokee County, Kansas;
- The Oronogo-Duenweg Mining Belt Superfund Site, Jasper County, Missouri;
- The Newton County Mine Tailings Superfund Site, Newton County, Missouri; and
- The Tar Creek Superfund Site, Ottawa County, Oklahoma.

The Tri-State Mining District also includes any location where discharges or releases of hazardous substances resulting from mining, smelting, milling, transporting and other activities related to the location, extraction and production processing of metals and other minerals at the aforementioned Superfund Sites have come to be located.

The Trustees recognize the importance of coordinating their efforts to meet effectively and efficiently their respective natural resource Trustee responsibilities under applicable Federal, State and Tribal laws. It is anticipated that communication, coordination and cooperation among the Trustees will limit unnecessary duplication of effort and enhance the efficient use of financial resources.

This Agreement recognizes that each Trustee is autonomous and has separate authorities and responsibilities and that the ability of each Trustee to provide funding or other resources towards the pursuit of these interests and goals is dependent upon availability.

This Agreement does not establish or form a trustee council.

This Agreement reflects the overall interest and responsibilities of the Trustees to assess natural resource injuries and to recover damages for such injuries.

This Agreement provides a framework for sharing information, ideas and expertise necessary to pursue restoration, replacement, rehabilitation or acquisition of equivalent natural resources injured by mining activities within the Tri-State Mining District; and for the development of complimentary approaches to assess injuries, recover damages and provide for restoration throughout the Tri-State Mining District, to the extent practicable and appropriate.

## AGREEMENT

The Trustees agree, to the extent allowed by law and the available resources of each, to pursue the following actions:

- To confer, cooperate and coordinate activities among Trustees in identifying natural resources and their services throughout the Tri-State Mining District, in recognizing potential injuries to and service losses from these resources, and in determining damages for injured natural resources and the actions required to restore the natural resources.
- To cooperate and coordinate with the appropriate response action planning at sites posing risks to natural resources or where natural resources are injured.
- To consult regional resource management plans during development of restoration alternatives.
- To attempt to integrate restoration into response actions to the extent possible and appropriate.

- To confer, cooperate and coordinate action with the Trustees as they pursue from responsible parties compensation for and restoration of natural resources injured as a result of releases of hazardous substances from within the Tri-State Mining District.
- To offer consultation to each other for the purposes of assessment and restoration activities, including, but not limited to:
  - o The determination of injury to natural resources as a result of releases of hazardous substances in and from the Tri-State Mining District;
  - o The quantification of any injury and the corresponding level of service losses associated with such injury;
  - o The determination of appropriate restoration of natural resources injured as a result of releases of hazardous substances in the Tri-State Mining District;
  - o The development of cost effective response and restoration actions,
  - o Outreach to the public in addressing the goals and objectives of natural resource restoration; and
  - o The use by Trustees of natural resource damages or other funds for the purpose of restoration of natural resources and their services that have been injured as a result of the release of hazardous substances from the Tri-State Mining District.

## ORGANIZATION

Each Trustee shall name at least one individual and one alternate to serve as its representatives. The names and contact information of the representatives shall be shared among all the Trustees.

As necessary, representatives of the Trustees may meet to discuss issues of common concern.

Any Trustee party to this Agreement may call a meeting upon thirty (30) calendar days' written notice to the other Trustees or other reasonable notice as is appropriate under the circumstances.

The Trustees may create subcommittees or work groups as necessary to effectuate the purposes of this Agreement. Trustees may also seek participation from the States Attorneys General, the United States Department of Justice, or other legal advisors, and other Federal, State or Tribal natural resource agencies when appropriate.

## CULTURAL RESOURCE PRESERVATION

The Trustees recognize the importance of preserving and protecting Native American traditions, and cultural, spiritual and/or subsistence practices that utilize, consume, rely on, relate to the existence of, or are associated with, services provided by natural resources. Tribal member representatives will take the lead to ensure cultural function and service considerations are integrated into restoration projects located on Tribal, Trust or Restricted Land, and may offer the Trustees assistance in the appropriate integration of these cultural resource considerations into restoration activities. These considerations may include, but are not limited to, links with historic

sites and land use patterns relative to past and present climates, soils, water, plants, animals and human interaction with cultural resources in the environment.

## CONFIDENTIALITY

The parties to this Agreement have entered into a separate confidentiality agreement titled “Confidentiality Agreement among State of Kansas, State of Missouri, State of Oklahoma, Cherokee Nation, Eastern Shawnee Tribe of Oklahoma, Miami Tribe of Oklahoma, Ottawa Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, Seneca-Cayuga Tribe of Oklahoma, Wyandotte Nation, U.S. Department of the Interior for Coordination of Natural Resource Damage Assessment and Restoration Activities in the Tri-State Mining District.” Said agreement is attached hereto as Appendix A and incorporated by reference herein.

## RESERVATION OF RIGHTS

The Trustees recognize and respect the individual autonomy of each Trustee. The Trustees understand that this document does not create or waive any legal rights or obligations between or among the Trustees, or any other persons not a party to this Agreement.

This Agreement will not usurp, veto or otherwise alter the decision of individual Trustees or actions taken with respect to the jurisdictional interests of individual Trustees, and is not binding on any decisions made or actions taken by the individual Trustees operating within their respective authority and jurisdiction.

It is also understood that this Amended Memorandum of Understanding is not intended to operate as a legally recognized or registered business entity under State, Federal or Tribal law.

The Trustees may not incur debt, hold title or enter into any other legal obligation, nor should it be represented by any Trustee as being able to do so.

Each Trustee has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or otherwise, and nothing in this Agreement waives or forecloses the exercise of any such rights, powers or remedies. However, each Trustee agrees to provide thirty (30) calendar days prior written notice to all other Trustees of its intent to participate in negotiations with any Potentially Responsible Party or other entity regarding settlement or other disposition of natural resource damage claims.

Nothing in this Agreement waives the sovereign immunity of the United States, States or any of the Tribes.

Pursuant to Section 22, Title 41, U.S.C., no member of Congress shall be admitted to any share or part of this instrument, or any benefits that may arise therefrom.

## MODIFICATION OF AGREEMENT

Modifications of this Agreement must be in writing and must be approved by all parties to the Agreement.

## EFFECTIVE DATE

This Agreement shall be effective as to each Trustee upon the date the Trustee executes this Agreement.

## TERMINATION AND WITHDRAWAL

This Agreement remains in effect until conclusion of the first meeting of the Trustees in 2026 or December 31, 2026, if no meeting is held in 2026.

Any Trustee may withdraw from this Agreement upon thirty (30) calendar days' written notice to all parties to this Agreement. Any withdrawing Trustee shall continue to be subject to all obligations of confidentiality as set forth herein.

There is no partial withdrawal allowed under this Agreement.

## THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this Agreement are subject to the availability of funding and are intended to be guidance for the respective Trustees. Such rights and responsibilities may not be the basis of any third-party challenges or appeals.

## SURVIVAL

If any provision of this Agreement is deemed invalid or unenforceable, the balance of the Agreement shall remain in full force and effect.

## COUNTERPARTS


This Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original Agreement.

## LIMITATION OF AGREEMENT

The Trustees recognize that the ability of the Trustees to participate in the activities authorized by this Agreement may be limited by the availability of appropriations or other appropriate funding sources. Nothing in this Agreement shall be construed as obligating the Trustees to expend any funds contrary to law or in excess of appropriations authorized by law.

**AMENDED MEMORANDUM OF UNDERSTANDING FOR COORDINATION OF  
NATURAL RESOURCE DAMAGE ASSESSMENT AND  
RESTORATION ACTIVITIES IN THE TRI-STATE MINING DISTRICT**


**FOR THE STATE OF KANSAS:**

  
\_\_\_\_\_  
Susan Mosier, MD, MBA, FACS  
Secretary and State Health Officer  
Kansas Department of Health and Environment

12-29-16  
\_\_\_\_\_  
Date

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FOR THE STATE OF MISSOURI:

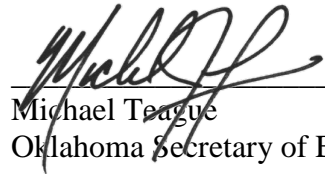
  
\_\_\_\_\_  
Harry Bozoian, Director  
Missouri Department of Natural Resources

12/28/16  
\_\_\_\_\_  
Date



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FOR THE STATE OF OKLAHOMA:

A handwritten signature in black ink, appearing to read "Michael Teague", is written over a horizontal line.

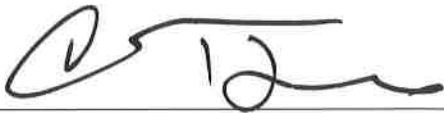
Michael Teague  
Oklahoma Secretary of Energy and the Environment

03/23/2017

Date

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FOR THE CHEROKEE NATION:

A handwritten signature in black ink, appearing to read 'Bill John Baker', written over a horizontal line.

Bill John Baker, Principle Chief

A handwritten date '12/2/15' in black ink, written over a horizontal line.

Date

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FOR THE EASTERN SHAWNEE TRIBE OF OKLAHOMA:

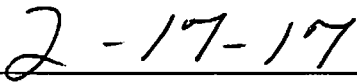
  
\_\_\_\_\_  
Glenna J. Wallace, Chief

  
\_\_\_\_\_  
Date

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FOR THE MIAMI TRIBE OF OKLAHOMA:

  
\_\_\_\_\_  
Douglas Lankford, Chief

  
\_\_\_\_\_  
Date

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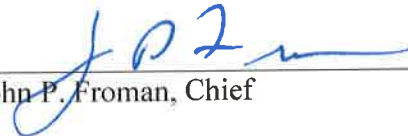
FOR THE OTTAWA TRIBE OF OKLAHOMA:


  
\_\_\_\_\_  
Ethel Cook, Chief

  
\_\_\_\_\_  
Date

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FOR THE PEORIA TRIBE OF INDIANS OF OKLAHOMA:

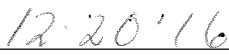
  
\_\_\_\_\_  
John P. Froman, Chief

  
\_\_\_\_\_  
Date

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FOR THE SENECA-CAYUGA NATION:

  
\_\_\_\_\_  
William L. Fisher, Chief

  
\_\_\_\_\_  
Date

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FOR THE WYANDOTTE NATION:

  
\_\_\_\_\_  
Billy Friend, Chief

12/5/2016  
\_\_\_\_\_  
Date

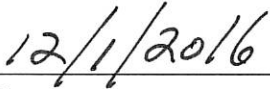


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FOR THE DEPARTMENT OF THE INTERIOR:

A handwritten signature in black ink, appearing to read "Benjamin Tuggle", is written over a horizontal line.

Benjamin Tuggle  
DOI Authorized Official  
Regional Director  
Region 2, U.S. Fish and Wildlife Service

A handwritten date "12/1/2016" is written in black ink above a horizontal line.

Date