



MEMORANDUM OF AGREEMENT
BETWEEN THE
MISSOURI DEPARTMENT OF NATURAL RESOURCES
AND
MISSOURI DEPARTMENT OF CONSERVATION

I. INTRODUCTION

This Memorandum of Agreement (MOA) by and between the Missouri Department of Natural Resources (the Trustee) and the Missouri Department of Conservation (MDC) (hereinafter referred to as the Parties) is entered into in recognition of the department's responsibility, as the designated Natural Resource Trustee for the state of Missouri, to assess damages for injury to, destruction of, or loss of natural resources and to restore, replace, rehabilitate and/or acquire the equivalent of the injured natural resources on behalf of the public, and the need to coordinate and cooperate with MDC which is the state agency charged with the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state, including hatcheries, sanctuaries, refuges, reservations and all property owned, acquired or used for such purposes. The department will be relying on MDC as an expert in said areas.

II. PARTIES

The following officials, or their designees, are the Parties to this MOA and act on behalf of the departments:

Director, Missouri Department of Natural Resources
Director, Missouri Department of Conservation

III. AUTHORITIES

This MOA addresses all releases, spills or other incidents, occurrences or events (hereinafter referred to as events) within the state of Missouri and its boundary waters, that give rise to a claim for natural resource damages pursuant to the National Contingency Plan, 40 C.F.R. Part 300, Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., Federal Water Pollution Control Act, 33 1251 et seq., Oil Pollution Act of 1990, 33 2701 et seq., Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11, 15 C.F.R. Part 990, Section 644.096 RSMo and Section 640.220 et seq., and other applicable State and Federal laws (hereinafter collectively referred to as the Acts).

IV. PURPOSE

This MOA is intended to guide and provide a framework for cooperation and coordination between the Parties, consistent with the Trustee's duties and responsibilities as the designated Natural Resource Trustee, including assessing damages and using recovered damages to plan and implement actions appropriate to restore, replace, rehabilitate and/or acquire the equivalent of natural resources or resource services injured, lost, or destroyed, pursuant to the Acts. The general objectives of this MOA are as follows:

- Assist in the identification of potential natural resource injuries to be evaluated;
- Assist in the evaluation of existing data to determine suitability for injury determination and quantification for the identified natural resource injuries;
- Assist in the identification of potential data needs;
- Assist in the development of plans for obtaining necessary additional data;
- Assist in injury assessment sufficient to determine the appropriate type and extent of restoration that may be needed;
- Assist in the development of appropriate restoration alternatives that will compensate the public for losses of or injuries to natural resources occurring as a result of a discharge of oil or releases of hazardous substances at or from a site;
- Assist in the process for public participation;
- Assist in the coordination, to the extent practicable, of restoration selection and implementation with any remedial actions; and
- Assist in the development of a settlement agreement that shall include the restoration plan.

V. DEFINITIONS

Designated Privileged Document. A Designated Privileged Document is a document which is drafted with an expectation of confidentiality, and includes, but is not limited to, communications between the Parties' attorneys or their staff, agents, and/or experts in anticipation of litigation, in the seeking or giving of legal advice, and/or in the context of pre-decisional government deliberations. Designated Privileged Documents include, all data contained in, or is a part of, drafts of uncompleted reports or projects. Designated Privileged Documents shall be marked "Confidential" in large, conspicuous letters on the cover or first page. In the case of multiple documents delivered in one communication, each document must be individually marked "Confidential" to retain its status as a Designated Privileged Document. Individual pages of confidential documents do not need to be marked. Each Party is responsible for maintaining a complete list of confidential documents transferred to it under this agreement. If a document loses its cover page and the status of a document is unknown, the Party must treat the document as a Designated Privileged Document until it can be positively identified as a non-confidential document.

Designated Privileged Communication. A Designated Privileged Communication is a communication which occurs with an expectation of confidentiality and includes, but is not limited to, communications between the Parties' attorneys or their staff, agents, and/or experts in anticipation of litigation in the seeking or giving of legal advice, and/or in the context of pre-decisional deliberations. Designated Privileged Communications are also those communications that occur between Parties to this agreement whereby any Party involved in the communication requests that the communication remain confidential and/or privileged. Should any Party engaged in a communication object to another Party's request for confidentiality, the objecting Party is obligated to note the objection and remove him or herself from the communication.

Event. An event includes all releases, spills or other incidents, occurrences, or events in the state of Missouri and its boundary waters which: 1) affect co-existing or contiguous natural resources under the trusteeship of parties and/or are under the concurrent jurisdiction of parties; and 2) give rise to a claim for natural resource damages under the Comprehensive Environmental Response,

Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; and, the Oil Pollution Act of 1990, 33 U.S.C. §2701 *et seq.*; National Contingency Plan, 40 C.F.R. Part 300; Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11, Subpart F and 15 C.F.R. Part 990, and other applicable State and Federal laws.

VI. FUNDING

The Department of Natural Resources, as the designated state Natural Resource Trustee, agrees to pursue the recovery of costs (past, current and future) for the initiation of a damage assessment and for the planning, conducting, evaluating and coordinating of all natural resource damage assessment activities pursued with respect to natural resource injuries or lost services resulting from an Event. Recovered administrative costs will be disbursed, in proportion to the amount of time expended on natural resource damage activities, by electronic transfer or by check to MDC as soon as possible and shall be used at the individual agency's discretion. Prior to disbursement, MDC will provide to the Department of Natural Resources appropriate documentation detailing the number of hours and specific tasks performed as related to natural resource damage activities.

VII. CONFIDENTIALITY

Except as provided below or otherwise provided herein, the Parties shall treat all Designated Privileged Documents generated, and Designated Privileged Communications, by or between the Parties as privileged attorney-client communications, attorney work product or protected by other applicable privileges such as the deliberative process privilege (or a combination thereof), and shall protect such documents and communications from disclosure to the maximum extent possible under applicable Federal and State law.

The transmittal of a Designated Privileged Document or a Designated Privileged Communication, between the Parties (and their counsel, representatives, employees, contractors and consultants) does not waive, or imply any waiver, of any privilege or right which the transmitting entity may assert with respect to that document or communication.

Unless otherwise specifically provided, the Parties shall each be entitled to assert an applicable privilege with respect to any document or communication jointly transmitted, prepared, or funded by the Parties. Each Party shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared, or funded solely by that Party. Only by specific written agreement from the Parties or pursuant to Court Order shall disclosure of a Designated Privileged Document or Designated Privileged Communication be made public or disclosed to a non-Party, other than a Party's counsel, contractors or consultants. Such agreement shall not be construed as a waiver of privilege or confidentiality regarding any other documents or communications. At the request and option of either Party, designated privileged documents shall be returned to the originating Party or destroyed, subject to the provisions of the Federal Records Act, 44 U.S.C. ' 2901, *et seq.* and applicable State law.

If a subpoena, discovery request, or other request in any form, for a designated privileged document or information provided under this Agreement is received by either Party, a copy of the subpoena or request will be immediately forwarded to counsel for the Party or Parties to which the privilege applies and to the government representative(s) who originally generated the document or communication requested. The Party who receives such a request shall also provide a draft of

the Party's intended response to such request not less than ten (10) days prior to the date that the Party intends to issue its response. To the extent that applicable law may require a response more promptly than is consistent with the above temporal requirement, the Parties agree to act in good faith to meet any such requirements.

The information shared between the Department of Natural Resources and the MDC shall remain confidential as provided by Section 610.032, RSMo. The department is an executive agency as defined in § 610.032.5, RSMo. The department is required, pursuant to Chapter 640, RSMo to administer the programs assigned to the department relating to environmental control and the conservation and management of natural resources. The MDC is an executive agency as defined in § 610.032.5, RSMo. The MDC is charged, pursuant to Chapter 252, RSMo with the control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state. The information to be shared between the executive agencies will only be used in the furtherance of their constitutional and statutory duties. Access to the information to be shared shall begin on the effective date of this agreement.

Nothing herein in any way affects or limits the authority of any signatory to waive any privilege and release any documents, information, analyses, opinion, conclusion, or advice that are subject to privileges held exclusively by that signatory.

Designated Privileged Documents shall be maintained in such a manner as to insure that no intentional or unintentional disclosure is made which would compromise any asserted privilege, including segregating designated privileged documents in files that are identified as containing privileged documents that are not to be disclosed publicly or in response to a discovery request in any litigation that may result in connection with the Parties' exercise of their authority.

The provisions of this agreement apply to the representatives, employees, counsel, agents, assigns, contractors and consultants of each Party. The Parties are responsible for ensuring that these individuals are aware of, and in compliance with, the terms of this agreement.

VIII. RESERVATION OF RIGHTS

Except for the confidentiality statement contained in Section VII, the parties understand that this document is not intended to create any further legal rights or obligations among the Parties or any other persons not a party to this MOA. Nothing in this MOA implies that any signatory government agency is in any way abrogating or ceding any responsibilities or authority inherent in its control or trusteeship over natural resources.

IX. MODIFICATION OF AGREEMENT

The Parties acknowledge that additional agreements may be executed by the Trustee with regards to natural resource damage claims that arise and for planning the restoration, replacement, rehabilitation, and/or acquisition of equivalent natural resources that may be injured, destroyed or lost. Site and/or event specific MOAs shall not be considered modifications to this MOA and will be subject to the same procedural and substantive requirements contained herein. Modifications shall be in writing and signed by both the Parties.

X. TERMINATION

This MOA shall be in effect from the date of execution until termination by agreement of the Parties. At any time the Parties determine that there is no purpose served by this MOA, the MOA will terminate upon such a finding. Either Party may withdraw from this MOA at any time for any reason. In the event either Party withdraws from the MOA, the Party will provide 30 days written notice before the withdrawal becomes effective.

XI. LIMITATION

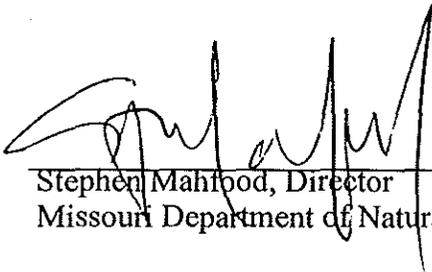
Nothing in this MOA shall be construed as obligating the State of Missouri or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XII. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this MOA are subject to the availability of funding and are intended to be guidance for the respective Parties. The rights and responsibilities may not be the basis for any third party challenges or appeals. Nothing in this MOA creates any rights or causes of action in persons not parties to this agreement.

XIII. EXECUTION: EFFECTIVE DATE

This MOA may be executed in counterparts. A copy with all original executed signature pages shall constitute the original MOA. The date of execution shall be the date of the final Party's signature.



Stephen Mahtood, Director
Missouri Department of Natural Resources

3-7-01

Date

Jeremiah W. (Jay) Nixon, Attorney General
State of Missouri

Shelley A. Woods
By:
Shelley A. Woods
Assistant Attorney General

February 2, 2001
Date

Jerry M. Conley
Jerry M. Conley, Director
Missouri Department of Conservation

1/24/2001
Date

js

Pamela D. Anderson
Pamela Anderson
Assistant General Counsel

1-12-01
Date