

PARTNERSHIP AGREEMENT
for the
TRI-STATE MINING DISTRICT NATURAL RESOURCE RESTORATION
INTER-GOVERNMENTAL PARTNERSHIP

I. INTRODUCTION

This Agreement is by and between: the State of Kansas; the State of Missouri; the State of Oklahoma; the Eastern Shawnee Tribe of Oklahoma; the Miami Tribe of Oklahoma; the Modoc Tribe of Oklahoma; the Ottawa Tribe of Oklahoma; the Peoria Tribe of Indians of Oklahoma; the Quapaw Tribe of Oklahoma; the Seneca-Cayuga Tribe of Oklahoma, the Wyandotte Tribe of Oklahoma; and the U.S. Department of Interior (hereinafter referred to as the Department and including the U.S. Fish and Wildlife Service and Bureau of Indian Affairs) (collectively referred to herein as Partners). The Partners enter into this Agreement to assist and ensure the communication, coordination and cooperation of the Partners, in their individual and collective activities as Natural Resource Trustees, as they pursue the restoration of and compensation for natural resources injured in Cherokee County, Kansas, Jasper County, Missouri, Ottawa County, Oklahoma and the jurisdictional areas of the Partner Tribes from the releases of hazardous substances within the Tri-State Mining District. Individual area(s) within the Tri-State Mining District are sometimes referred to herein as the Site(s).

II. AUTHORITIES

Pursuant to 33 U.S.C. §2702 and 2706, section 311(f) of the Clean Water Act (CWA), 33 U.S.C. §1321(f), and §107(a)(4)(C) and 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), including sections 101, 104, 107, and 120, 42 U.S.C. §9607(a)(4)(C) and 9607(f); the National Oil and Hazardous Substances Pollution Contingency Plan [NCP], 40 CFR Part 300; the Natural Resource Damage Assessment Regulations, 43 CFR Part 11 and 15 CFR Part 990; and Executive Order 12580 as amended; Surface Water Quality Standards K.A.R. 28-16-28 (b) through (f), authorized by K.S.A. 65-171d, implementing the K.S.A. 65-165 and K.S.A. 65-171d; Section 644.096 RSMo and Section 640.220, et. seq., RSMo, 27A Ok. Stat. Supp.1998, Sections 1-1-202 & 1-2-101, & 1-3-101; and applicable Tribal authorities, 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. Such damage awards must be used to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources.

III. DEFINITIONS

Unless otherwise identified, terms used in this Agreement are as defined in the authorities listed in Section II above.

Cultural Functions and Services mean any Native American traditions, cultural, spiritual and/or subsistence practices that utilize, consume, rely on, relate to the existence of, are associated with, or services of natural resources.

Tri-State Mining District refers to the Cherokee County Superfund Site, Cherokee County, Kansas; Oronogo-Duenweg Mining Belt Superfund Site, Jasper County, Missouri; and Tar Creek Superfund Site, Ottawa County, Oklahoma and to 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.

IV. PURPOSE

The purpose of this Agreement is to establish a Partnership responsible for enhancing communication, information sharing, coordination and cooperation among Partners and any Trustee Council(s) that may be subsequently formed. This Agreement does not establish or form a Trustee Council. The goal of the Partnership is to provide a framework for communication, coordination and cooperation, among the Partners and Trustee Councils subsequently formed to develop a consistent approach for the assessment of damages and equitable restoration throughout the Tri-State Mining District. Communication, coordination, and consistency will limit unnecessary duplication of effort and enhance the efficient use of financial resources.

This Agreement reflects the overall interest and responsibility of each Partner to identify natural resource injury, and to share information, ideas and expertise necessary to pursue restoration, replacement, rehabilitation, or acquisition of equivalent natural resources injured by mining activities. This Agreement is also intended to integrate restoration into response actions to the extent possible. However, this Agreement recognizes that each Partner is autonomous and has separate authorities and responsibilities and that the ability of each Partner to provide funding or other resources is dependent upon availability. The Parties to this Agreement recognizes that some of the Partners that are parties to this agreement hold dual roles with regard to responsibilities to the impacted public.

The Partnership will be a collaborative working group that supports Trustee Councils, that may be subsequently formed, concerning Trustee activities carried out within the Tri-State Mining District, as provided by the applicable laws and regulations listed in Section II. Accordingly, the general objectives of the Partnership are as follows:

1. To aid in the determination of whether natural resources have been injured as a result of releases of hazardous substances in the Tri-State Mining District and, if so, the extent of those injuries as well as the extent of service losses associated with any injury.
2. To aid in the restoration of natural resources and or evaluation of services lost, or destroyed as a result of releases of hazardous substances in the Tri-State Mining District.
3. To encourage cooperative and cost effective solutions to response actions and restoration issues involving Partners with adjacent or overlapping responsibilities. In addition, the Partnership shall encourage the integration of, to the extent practicable, natural resource restoration into response actions taken in the District and to minimize adverse impacts to natural resources.
4. To assist the Trustee Councils, subsequently formed, in public outreach during appropriate phases of the process.

V. ORGANIZATION

There is hereby created a Partnership to implement this Agreement. Each Partner will designate an official Representative and an alternate to serve on the Partnership. The Partnership may create subcommittees or work groups as necessary to effect the purposes of this Agreement. The Partnership and any individual Partners may also seek participation from the United States Department of Justice, the State Attorneys General or other legal advisors, and other State or Tribal natural resource agencies when appropriate.

Individual Trustee Councils, comprised of trustees for affected resources, at the Cherokee County Superfund Site, Cherokee County, Kansas; Oronogo-Duenweg Mining Belt Superfund Site, Jasper County, Missouri; and Tar Creek Superfund Site, Ottawa County, Oklahoma may be developed. The Trustees at all three sites recognize the importance of coordinating their efforts to effectively and efficiently meet their respective natural resource trustee responsibilities under applicable Federal and State laws. This Partnership is intended to serve as a vehicle for the efficient and economical use of technical and financial resources available to the individual Partners

The Partners shall appoint a member to serve as the Coordinator for the Partnership. The position of Partnership Coordinator does not grant or carry any additional rights or privileges within the Partnership group. The duties of the Coordinator shall include, but are not limited to acting as a central point of contact for the Partnership; establishment and maintaining records documents relevant to Partnership coordination activities; and such other duties as directed by the Partnership. The Coordinator will be responsible for informing the Partners of all pertinent developments on a timely basis. The Coordinator shall fully cooperate with and act under the direction of the Partnership.

Any Partner may call a meeting upon 30 calendar days written notice to the other Partners, or other reasonable notice as is appropriate under the circumstances. The coordinator will make every effort to keep members who are not participating informed and updated on the events of the meeting. Members not participating in a meeting at which a decision on a specific issue is made and at which two thirds of the Partnership is present must present new information to reopen an issue.

For any notice required to be given to any Partner on any matter under the terms and conditions of this Agreement, each Partner designates the individual(s) set forth in Appendix A to receive any and all information. Receipt of information to the individual set forth in Appendix A constitutes valid receipt by that Partner represented by that individual of the information so provided.

VI. ACTIVITIES

In conducting natural resource damage assessment and restoration activities, the Partners may utilize information from existing sources such as State and Tribal environmental programs, DOI's environmental programs, and the Environmental Protection Agency. Partnership Actions to be conducted to achieve the general objectives listed in Section IV (PURPOSE) may include:

1. Cooperating with the performance of actions functionally equivalent to a Preassessment Screen consistent with 43 CFR 11.23 - 11.25 of releases at or from mining activities within the District;

2. Cooperating in the identification of natural resources and their services over which Partners have trust responsibilities and identifying potential injuries to these resources, and service losses resulting from the injuries;
3. Cooperating and coordinating in response action planning with the appropriate response agency at sites posing risks to natural resources or where natural resources are injured;
4. Making recommendations to any Trustee Council(s) that may be subsequently formed for the purposes of assessment and restoration activities;
5. Sharing relevant data and information among all Partners;
6. Providing comment, opinion, and assistance if requested and allowed by law and available resources, to activities related to obtaining compensation for and subsequent restoration of natural resources.
7. Cooperating during activities seeking compensation from responsible parties for the damages assessed by the Trustees and for the costs of planning and implementing the assessment and restoration;
8. Consulting with regional resource management plans during development of restoration alternatives.
9. Encourage the Environmental Protection Agency to join as a Partner to the Agreement to facilitate integration of Partnership concerns into response actions.

VII. INTERRELATIONSHIP WITH CULTURAL RESOURCE PRESERVATION AND NATURAL RESOURCE MANAGEMENT

The Partnership recognizes the importance of preserving and protecting cultural resources for Native American peoples in the Tri-State Mining District. These uses will be provided by the Partnership to the Trustee Councils that may be subsequently formed to aid in the assessment process and identification of appropriate restoration.

Tribal representatives will take the lead to ensure cultural resource considerations are integrated into restoration identification and implementation and Partnership activities on projects located on Tribal, Trust, or Restricted Land, and may offer the Partners and subsequent Trustee Council(s) assistance in the appropriate integration of these considerations into restoration activities. These considerations will include the links with prehistoric and 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.

VIII. FUNDS

The Partnership may make recommendations concerning the use of natural resource damages or other funds for projects benefitting injured natural resources at the sites, received by the Partners for the purposes of restoration of natural resources at the sites injured as a result of the release of hazardous substances from the Tri-State Mining District and the reduced or lost services provided by such resources.

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

IX. CONFIDENTIALITY

The Partners have entered into a separate confidentiality agreement titled "CONFIDENTIALITY AGREEMENT for the TRI-STATE MINING DISTRICT NATURAL RESOURCE RESTORATION INTER-GOVERNMENTAL PARTNERSHIP." Said agreement is attached hereto as Appendix B and incorporated by reference herein.

X. RESERVATION OF RIGHTS

The Partners recognize and respect the individual autonomy of each Partner. Except as expressly stated herein, the Partners understand that this document does not create or waive any legal rights or obligations between the Partners, or any other persons not a Party to this Agreement. This agreement will not usurp, veto, or otherwise alter the decision of individual Partner(s) or action taken with respect to the jurisdiction of that individual Partner, and are not binding on any decision made or action taken by the individual Partner(s) operating within their respective authority and jurisdiction.

It is also understood that the Partnership formed by this agreement is not intended to operate as a legally recognized or registered business entity under State, Federal, or Tribal law. The Partnership may not incur debt, hold title, or enter into any other legal obligation, nor should it be represented by any Partner as being able to do so.

Each Partner to this Agreement 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 Partner to this Agreement agrees to provide thirty (30) calendar days prior written notice to all other Partners of its intent to participate in negotiations with any Potentially Responsible Party (PRP) or other entity regarding settlement or other disposition of natural resource damage claims at the Sites.

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.

XI. MODIFICATION OF AGREEMENT

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

XII. EFFECTIVE DATE

This Agreement shall be effective upon execution by at least seven (7) Partners or Designated representatives. The date of execution shall be the date of the seventh Partner's signature

XIII. TERMINATION AND WITHDRAWAL

This Agreement shall be in effect from the date of execution until three years after the effective date unless otherwise agreed to by the Partners. Any Partner may withdraw from the Partnership created and established by this Agreement upon thirty (30) calendar days written notice to all Partners. Any withdrawing member shall continue to be subject to all obligations of confidentiality as set forth in Section IX. There is no partial withdrawal allowed under this Agreement.

XIV. 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 Partners. Such rights and responsibilities may not be the basis of any third Party challenges or appeals.

XV. SURVIVAL

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

XVI. COUNTERPARTS

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

**Partnership Agreement Tri-State Mining District
Natural Resource Restoration Inter-Governmental Partnership**

Original Signed By: (pages 7-18)

Kansas Department of Health and Environment	December 1999
Missouri Department of Natural Resources	January 2000
Missouri Attorney General's Office	December 1999
Oklahoma Secretary of Environment	December 1999
Eastern Shawnee Tribe of Oklahoma	March 2000
Miami Tribe of Oklahoma	September 2000
Modoc Tribe of Oklahoma	August 2000
Quapaw Tribe of Oklahoma	December 1999
Seneca-Cayuga Tribe of Oklahoma	November 1999
Wyandotte Tribe of Oklahoma	March 2000
Peoria Tribe of Indians of Oklahoma	December 1999
Ottawa Tribe of Oklahoma	March 2000
U.S. Fish and Wildlife Service, Region 2	January 2000

APPENDIX A

Technical Representatives and their Alternates

State of Kansas:	Technical Representative	Leo Henning Department of Health and Environment
	Alternate	James Hayes Department of Wildlife and Parks
State of Missouri:	Technical Representative	Gary Behrns Department of Natural Resources
	Alternate:	Frances Klahr Department of Natural Resources
State of Oklahoma::	Technical Representative	Glen Jones Department of Environmental Quality
	Alternate	Ron Suttles Department of Wildlife Conservation
Eastern Shawnee Tribe of Oklahoma:	Technical Representative	Glen Brock Director, Environmental Department
	Alternate	Alicia Sinclair Legislative Development Director
Miami Tribe of Oklahoma:	Technical Representative	Marilyn Rogers Environmental Director
	Alternate	Larry Ekhoﬀ Water Quality Officer
Modoc Tribe of Oklahoma:	Technical Representative	John Ballard Environment
	Alternate	Phill Follis
Quapaw Tribe of Oklahoma:	Technical Representative	Earl Hatley Environmental Program Director
	Alternate	Tabitha Worley Environmental Program Assistant

Seneca-Cayuga Tribe of Oklahoma:	Technical Representative	Marion Sizemore Environmental Director
	Alternate	Environmental Assistant/Monitor (To be Filled)
Wyandotte Tribe of Oklahoma:	Technical Representative	Barbara Kyser-Collier Director, Environment Department
	Alternate	
Peoria Tribe:	Technical Representative	To Be Determined
	Alternate	
Ottawa Tribe:	Technical Representative	To Be Determined
	Alternate	
Department of the Interior:	Representative:	Dean Heckathorn Department of Interior
	Alternate:	John Miesner U.S. Fish and Wildlife Service
	Alternate	Jeffery Loman Bureau of Indian Affairs