

MEMORANDUM OF AGREEMENT

for the

BASIN ENVIRONMENTAL IMPROVEMENT PROJECT COMMISSION

August 13, 2002

PREAMBLE

The parties to this Memorandum of Agreement (hereafter, **Agreement**) commit to work together in good faith through the Basin Environmental Improvement Project Commission (hereafter, **Basin Commission**) to address heavy metal contamination in the Coeur d'Alene Basin. The Basin Commission is established to implement, direct, and/or coordinate environmental remediation, natural resource restoration, and related measures to address water quality and heavy metal contamination in the Coeur d'Alene Basin (hereafter, **Basin**), in a manner that is protective of human health and the environment, and consistent with local, state, federal and tribal participation, resources, and authorities. The Basin Commission works through the direct exercise of certain authorities of the state of Idaho (as described in Section 39-8105 of the enabling legislation) and through its coordination with other entities and governments and their exercise of independent authorities.

I. PURPOSE OF AGREEMENT

The overarching purpose of this Agreement is to fulfill the requirement laid out in the enacting State of Idaho legislation to establish an agreement (or compact) necessary for the U.S. Government and the State of Washington and the Coeur d'Alene Tribe's membership of the Basin Commission. As well, the Agreement defines the conditions under which the parties to the Agreement will participate on the Basin Commission. The Agreement also affirms the dual roles of the Basin Commission: to exercise certain state authorities to address heavy metal contamination in the Coeur d'Alene Basin, as set forth in the enabling legislation; and to coordinate the Commission's activities and authorities with those of other entities operating in the Basin to achieve a similar purpose.

II. SCOPE OF THE BASIN COMMISSION ACTIVITIES

The Basin Commission conducts its work in the Coeur d'Alene Basin of Idaho. The Coeur d'Alene Basin is defined as the watershed of Coeur d'Alene Lake within the counties of Shoshone, Kootenai and Benewah as well as the Coeur d'Alene Reservation located within the state of Idaho.

The primary purpose and foundation of the Basin Commission's work will be to implement the 2002 Record of Decision approved pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) to address heavy metal contamination in the Coeur d'Alene Basin. Future Records of Decision to address Coeur d'Alene Basin heavy metal contamination issued by Environmental Protection Agency, with concurrence from the Idaho Department

of Environmental Quality and the Coeur d'Alene Tribe, as appropriate, may be incorporated into the Basin Commission's work. In addition, the Basin Commission may address the following:

1. A Record of Decision implementing Phase II of the Bunker Hill Comprehensive Cleanup Plan consistent with the 1992 Bunker Hill Record of Decision;
2. Adoption and implementation/coordination of the Lake Coeur d'Alene Management Plan to manage, enhance, preserve, and protect lake water quality; and
3. Remediation of heavy metal contamination at specific mining sites in the North Fork of the Coeur d'Alene River.

Additions to the Basin Commission's work involving other remediation, restoration or measures to address heavy metal contamination within this geographical area shall require amendment of this Agreement.

The Basin Commission will closely coordinate with authorities of the State of Idaho and the State of Washington, Counties in the State of Idaho, the Coeur d'Alene Tribe, and agencies of the Executive Branch of the United States and coordinating Tribes on activities funded by these authorities which also support the remediation and restoration goals of the Basin Commission.

III. FUNDING

The Basin Commission shall seek and utilize funding, services and materials from agreements, grants, appropriations, donations, gifts or other appropriate contributions, and coordinate with other funding authorities to carry out its operations and implement the basin project workplans.

It is the parties' intention to work together as the Basin Commission to identify the appropriate entity (or entities) to carry out specific remedial actions identified in the Record(s) of Decision. Under CERCLA, Section 104(d), 42 U.S.C. § 9604(d), and the NCP, 40 C.F.R. § 300.515, EPA may enter into a cooperative agreement with a state, tribe, federal agency, or political subdivision of a state to carry out remedial actions. EPA may also sponsor and fund remedial actions directly and may utilize designated subcontractors to assist them. EPA, after fully considering any recommendations of the Basin Commission, to the extent consistent with EPA's legal responsibilities, may decide to enter a cooperative agreement with the entity recommended by the Basin Commission. In issuing a grant or entering a cooperative agreement, EPA and any Party using federal monies, must comply with all applicable federal authorities and regulations, including but not limited to 40 C.F.R. Part 31 and 40 C.F.R. Part 35, Subpart O.

The Basin Commission will work together with other agencies or entities which fund and conduct natural resource restoration and other related measures to address water quality, habitat quality, or natural ecosystem recovery. The parties agree to coordinate remedial actions conducted under the Record(s) of Decision with resource restoration and management activities involving Trustees responsible for natural resources of the Coeur d'Alene Basin. The parties agree to and strongly support this coordination in order to improve and efficiently promote the broader responsibility inherent in collective stewardship of basin resources.

The Basin Commission will establish appropriate fiscal policies and procedures to implement whatever fiduciary responsibilities it chooses to undertake.

IV. BASIN COMMISSION ORGANIZATION

The parties recognize that the Basin Commission shall establish an organizational structure that includes a Basin Environmental Improvement Project Commission Board (Basin Commission Board), a Basin Commission Technical Leadership Group (Technical Leadership Group), and a Basin Commission Citizen Coordinating Council (Citizen Coordinating Council).

A. Basin Commission Board

1. Membership

Membership of the Board is described in Section 39-8106 (3) of the enabling legislation.

2. Functions

The Board has specific powers and duties as described in Section 39-8106. The Basin Commission Board shall annually approve one- and five-year Commission workplans, including establishment of annual project priorities and budgets, and directing the workplans' implementation. The Board shall appoint an Executive Director to assist the Board in administering basin projects. The Executive Director's duties shall include contract management, fiscal planning support, annual report development duties, and assisting the Commission with public involvement and outreach. The Executive Director will also coordinate closely with the Technical Leadership Group on numerous topics including work planning, budget planning, monitoring, contract specifications, and assuring the group is kept current and well-informed of remedial actions under the oversight of the Executive Director. The Board will define and assume additional specific duties and/or functions for itself over the course of its early discussions.

B. Commission Technical Leadership Group

1. Membership

The Technical Leadership Group, which serves in an advisory capacity to the Board, shall consist of federal, state, local, and tribal representatives serving the governmental entities with regulatory or land management responsibilities in the Coeur d'Alene Basin that may be affected by remedial actions. The Technical Leadership Group may also determine, as a group, to consult with other individuals with specific scientific, engineering and/or regulatory/land management expertise to advise them on specific issues as the Technical Leadership Group deems necessary to assist the Basin Commission perform its duties.

The Technical Leadership Group shall strive to come to agreement on recommendations or conclusions to be presented to the Basin Commission. If no agreement is reached, the parties will contemporaneously represent their positions to the Basin Commission Board.

2. Functions

The Technical Leadership Group advises and provides recommendations on and plans for all duties related to implementation of Records of Decision and other technical or regulatory issues put forward to the Board. Specific duties and functions of the Technical Leadership Group in coordination with the Executive Director will include advice on the development of workplans and funding plans, technology

development, demonstration/pilot project development, remedial priorities, and coordination with related activities in the Basin. The Technical Leadership Group's responsibilities shall also include the following.

- A. In collaboration with the Executive Director, develop and recommend to the Board one- and five-year workplans, including establishment of annual project priorities and budgets, as well as design and implementation of planning and construction projects. Development of the plans will be coordinated with other natural resource management agencies to improve planning and promote efficient use of available resources for all remediation projects.
- B. Support and advise the Board on the exercise of its authorities to implement the Commission workplan.
- C. Coordinate with agencies with authority and expertise or active resource management and restoration activities to help implement the Commission's workplan.
- D. Design and develop implementation plans and coordinate with the Executive Director in defining and developing detailed budget estimates for specific remedial projects in the Coeur d'Alene Basin to implement the Record(s) of Decision related to heavy metal contamination in the Basin.
- E. Make recommendations regarding the evaluation and oversight of Basin monitoring and reporting, as provided in the Commission's annual or five-year workplan(s) or required by Records of Decision.
- F. Closely coordinate and assist in the development and approval of annual reports to the Basin Commission Board summarizing accomplishments, performance, budgets, and goals.

The Technical Leadership Group will consider citizen input provided through public hearings or meetings, workshops, comment periods, or the Board.

C. Commission Citizen Coordinating Council

A Citizen Coordinating Council will serve as a primary information conduit to and from the Basin Commission on citizen/community issues, concerns, and opportunities for input related to Commission activities. The Council is provided for in Section 39-8106(4). The Council will function to communicate citizen issues and formal comments to the Basin Commission or Executive Director on Basin work.

It is the parties' intent to have all key interests in the Basin represented on the Citizen Coordinating Council while maintaining a manageable group size and balance.

1. Membership

The Council shall be open and inclusive and include a balance and diversity of views. Members shall meet one or more of the following criteria:

- A. Demonstrated interest or responsibilities (e.g., land ownership, statutory authority, or directly and intrinsically affected by remedial decisions);
- B. Official representative of a defined constituency group;
- C. Represent a specific geographic area or population group;
- D. Views and interests not otherwise represented that are necessary for effective citizen dialogue, input, and perspective; or
- E. Technical, scientific, or engineering skills applicable to the process of basin cleanup.

2. Functions

The Council shall provide three primary support functions to the Basin Commission, and the Board, particularly:

- A. Coordinate, with the Executive Director, basin-wide public education and outreach.
- B. Advise on community issues and concerns.
- C. Assist with the development and distribution of an information newsletter and assist in hosting a website containing information about the Commission, future meetings, and projects, with authorization from the Board.

V. PUBLIC INVOLVEMENT AND OUTREACH

A. Public Involvement

Public participation is an essential element of the Commission process. The parties commit to ensuring a significant, fair, and structured process of public information and involvement in the design and implementation of environmental remediation and natural resource restoration priorities and projects.

B. Public Comment

To the extent possible, the parties to this Agreement agree to coordinate their public comment requirements and responsibilities through Board discussions and activities.

VI. DECISIONS REGARDING INTERPRETATION OF MOA

Decisions of the parties regarding the interpretation of this Agreement shall be by consensus. In the event of a dispute involving this Agreement, the parties shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus. The party raising the dispute shall contemporaneously provide an explanation for why such a dispute is necessary to protect the significant interests and obligations the party represents. In the event consensus cannot be reached, the matter shall be presented to the signatories of the parties to the dispute for resolution.

VII. RESERVATION OF RIGHTS

Each party to this Agreement 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.

The parties recognize that under the Appointments Clause of the Constitution, only officers of the United States may exercise governmental authority and that it is the federal government's responsibility to make various decisions under CERCLA. The participation of the federal representative on the Basin Commission will be governed by federal law, including the following relevant ethics regulations: 5 C.F.R. Part 2635, 5 C.F.R. part 6401.103.

The parties recognize that although this Agreement and the statute creating the Commission define the Basin as lying wholly within the State of Idaho, a significant part of the Basin site as defined under the Record of Decision is downstream of the Idaho-Washington border. The parties recognize that, because a significant portion of the Basin lies within Washington, the State of Washington and the Spokane Tribe of Indians reserve the right to negotiate directly with the EPA, and expect that remedial actions, authorities, and duties in Washington will be independent of the operational framework established for the parties by this Agreement. The State of Washington, which is located downstream of the Basin Commission jurisdictional area, will consult with the EPA regarding implementation of the Record of Decision in Washington, and will make good faith efforts to keep the parties apprised of remedial projects and to pursue remedies consistent with the goals of the parties. The remedial actions in Washington will be prioritized consistent with human health protection goals defined in the ROD.

VIII. OTHER PROVISIONS

A. Commitment of Resources

Nothing in this Agreement shall be construed as obligating the United States, the State(s), the Tribe(s), their officers, agents, or employees, to expend any funds in excess of appropriations authorized by law.

B. Effective Date, Ratification, Modification, and Termination

1. This Agreement becomes effective when:

- A. It has been executed on behalf of the United States of America, the States of Idaho and Washington, the Coeur d'Alene Tribe, and the Local Governments listed in Appendix I, Section A; or
- B. Parties that have signed the Agreement by August 20, 2002 determine to make the Agreement effective and to proceed.

2. The terms of the Agreement may be modified by unanimous agreement among the parties.

C. Execution and Withdrawal

This Agreement shall be executed in counterparts. A copy with all original executed signature pages affixed will constitute the original Agreement. Any signatory may withdraw 30 days after providing a written notice to the parties of its decision and reasons for withdrawal.

IX. SIGNATURES

A. Parties which are Basin Commission Board Members

State of Idaho
By: [Signature]
Date

United States of America
By: [Signature] 13 Aug 2002
Date

Coeur d'Alene Tribe
By: [Signature]
Date

State of Washington
By: [Signature] 8-13-02
Date

Shoshone County
By: [Signature] 8-27-02
Date

Kootenai County
By: [Signature] 8/20/02
Date

Benewah County
By: [Signature] 10-31-02
Date

B. Parties which are Coordinating Entities

United States Department of the Interior
By: [Signature] 9/25/02
Date

Spokane Tribe of Indians
By: [Signature] 8-16-02
Date

United States Forest Service
By: [Signature] 8/23/02
Date

APPENDIX I. PARTIES AND AUTHORITIES

A. Parties which are Basin Commission Board Members

This Agreement is made and entered into by and among the following, which shall each be represented on the Basin Commission Board:

THE STATE OF IDAHO
THE STATE OF WASHINGTON

COEUR D'ALENE TRIBE

the UNITED STATES OF AMERICA

BENEWAH COUNTY OF IDAHO
KOOTENAI COUNTY OF IDAHO
SHOSHONE COUNTY OF IDAHO

B. Parties which are Coordinating Entities

This Agreement is made and entered into by and among the following, which while not being members of the Basin Commission Board, have agreed to coordinate their efforts, pursuant to their respective authorities in the Coeur d'Alene Basin, with the Basin Environmental Improvement Project Commission. This coordination, which is called for in the Agreement, may include participation on the Technical Leadership Group and other activities which can contribute to the common goals of remediating heavy metal contamination and water quality problems in the Basin in order to protect human health and restore the environment.

UNITED STATES DEPARTMENT OF THE INTERIOR
UNITED STATES DEPARTMENT OF AGRICULTURE
SPOKANE TRIBE OF INDIANS

Collectively, all signatories to this Agreement will be referred to as the **parties**.

Authority for the State of Idaho to enter into this Agreement is contained in Idaho Code Section 39-8104.

Authority for the State of Washington to enter into this Agreement is contained in Revised Code Washington Ch. 43.21A.150.

Authority for the United States of America to enter into this Agreement is contained in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and Appointment by the President of the United States of America.

The Coeur d'Alene Tribe has authority to enter into this Agreement pursuant to their inherent tribal sovereignty, Article VII, Section 1 of the revised Constitution and Bylaws of the Coeur d'Alene Tribe, the

Comprehensive Environmental Response, Compensation and Liability Act, including 42 U.S.C. §§ 9626, 9604, 9605 and the National Oil and Hazardous Substances Pollution Contingency Plan, including 40 CFR 300.515(b); 42 U.S.C. 9607(f)(1), 40 CFR 610, 615 and the Natural Resource Damage Assessment Regulations 43 CFR Part 11; Coeur d'Alene Tribal Resolutions No. 102(91) and No. (02), and other applicable Federal and Tribal Law.

Authority for the County of Benewah to enter into this Agreement is contained in: PLEASE FILL IN

Authority for the County of Kootenai to enter into this Agreement is contained in: PLEASE FILL IN

Authority for the County of Shoshone to enter into this Agreement is contained in: PLEASE FILL IN

Authority for the United States Department of the Interior to enter into this Agreement is contained in Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), Section 311(f)(5) of the Clean Water Act, 33 U.S.C. § 1321(f)(5), and the NCP at 40 C.F.R. § 300.600, through which the President has designated the Secretary of the Interior as a Federal Trustee for natural resources managed or controlled by the Department of the Interior. In the Coeur d'Alene Basin, the authority of the Secretary of the Interior has been delegated to the Regional Director, Region 1 of the United States Fish and Wildlife Service. Under CERCLA and the NCP, as a natural resource trustee, the Department of the Interior coordinates its activities with the lead agency, other trustees and interested parties to insure the protection of its trust resources and to promote the restoration of resources injured by the release of hazardous substances. These resources include but are not limited to migratory birds and their supporting ecosystem, endangered species and their supporting ecosystem, and resources located on, under or over public lands managed by the Bureau of Land Management.

Authority for the United States Department of Agriculture Forest Service to enter into this Memorandum of Agreement is contained in the following authorities: Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), together with 40 C.F.R. 300.600(b)(3), provides for the delegation of CERCLA authority to the Secretary of Agriculture to act as a Natural Resource Trustee with respect to natural resources on, over or under land administered by the United States Department of Agriculture. The Secretary's CERCLA authority to act as a Natural Resource Trustee was delegated to the Chief of the Forest Service by 7 C.F.R. § 2.60(a)(42). The Chief's authority has, in turn, been delegated to the Regional Forester by Forest Service Manual Section 2164.04c(3). Pursuant to Executive Order 12777, Section 1(c)(3), the Secretary of Agriculture has also been delegated the authority to act as Natural Resource Trustee under Section 311(f)(5) of the Clean Water Act, 33 U.S.C. § 1321(f)(5). Natural Resource Trustees are broadly authorized to coordinate and cooperate in carrying out their trustee responsibilities by 40 C.F.R. § 300.615.

The Chairman of the Spokane Tribal Business Council, or his designee, has authority to enter this Agreement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq., the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, Spokane Tribal Business Council Resolution No. , and other applicable Federal and Tribal law.