

MEMORANDUM OF UNDERSTANDING
Between the Iowa Department of Natural Resources,
the United States Fish & Wildlife Service,
and the National Park Service
regarding Natural Resource Damage Restoration activities
at the Yellow River Site
City of Postville, Iowa

This Memorandum of Understanding (MOU) executed by the Iowa Department of Natural Resources (IDNR), the United States Fish & Wildlife Service (USFWS), and the National Park Service (NPS) (collectively referred to as the Trustees) is entered into in recognition of their common interests and responsibilities as natural resource trustees, for injured natural resources at or near the Site, located at the beginning of the outfall of the City of Postville's Publicly Owned Treatment Works facility (POTW) along an unnamed creek (sometimes called Hecker Creek) to the confluence of the Yellow River which flows through Effigy Mounds National Monument. This MOU is intended to guide the Trustees participation in natural resource damage restoration activities at the Site. This MOU is not intended to guide the Trustees coordination of any other natural resource trustee activity at any other site or facility. The Trustees enter into this MOU in accordance with the natural resource trustee authorities provided for each trustee under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. Section 9607(f), Section 311(f) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. Section 1321(f), as well as any other applicable federal and state law and authority including, but not limited to, the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), as amended, 40 C.F.R. Part 300, ("NRDAR"), as amended, 43 C.F.R. Part 11 and 15 C.F.R. Part 990, as amended.

WHEREAS, the Trustees primary goal is to restore, replace, rehabilitate and/or acquire the equivalent of lost or injured natural resources caused by releases of hazardous substances at or from the Site.

NOW THEREFORE, the Trustees enter into this MOU to provide a framework for the coordination and cooperation of restoration activities at the Site.

I. TRUSTEES

A. Natural Resource Trustees. The following officials or their designated representatives are authorized to act on behalf of the public as natural resource trustees:

- a. Director, Iowa Department of Natural Resources

- b. Regional Director, U.S. Fish and Wildlife Service Region 3 as the US Department of Interior Authorized Official, acting on behalf of the U.S. Fish and Wildlife Service and National Park Service

II. TRUSTEE DUTIES AND RESPONSIBILITIES

- A. The Trustees hereby agree to form a Trustee Council to be comprised of one representative from the IDNR, the NPS, and the USFWS. The Trustee Council shall meet on an as needed basis and each Trustee Council representative shall represent the interests of the representative's individual natural resource trustee agency. The Trustee Council shall not exercise any legal authority held by any natural resource trustee. The Trustee Council shall have the authority to:
 - 1. Keep the Trustees and their designees under this MOU informed of, and involved in, all relevant and significant natural resource trustee activities pursuant to this MOU;
 - 2. Coordinate the Trustees participation to minimize injury to natural resources, and restore, replace and/or acquire the equivalent of injured natural resources;
 - 3. Designate records for inclusion in the administrative record in accordance with applicable federal regulation and guidance documents;
 - 4. Prepare and publish a Restoration Plan;
 - 5. Conduct environmental analysis according to the requirements of the National Environmental Protection Act; and
 - 6. Coordinate and/or carry out such other actions as may be necessary and appropriate to achieve the purposes of this MOU and to fulfill the trust responsibilities of each Trustee.

- B. The Trustees hereby agree to designate the USFWS to act as Lead Administrative Trustee ("LAT"). The LAT shall have no authority to exercise any legal authority on behalf of any other natural resource trustee. The LAT shall coordinate its LAT activities with the Trustee Council. The LAT's responsibilities shall include, but not be limited to, the following:
 - 1. Scheduling and planning meetings;
 - 2. Acting as a central contact point for the Trustees;

3. Circulating documents among the Trustees;
4. Managing and maintaining documents designated for inclusion in the Administrative Record by the Trustee Council. The LAT may recommend additional documents for inclusion in the Administrative Record to the Trustee Council if, in the course of the NRDA activities, it comes to attention of the LAT that those documents should be so included;
5. Maintaining the administrative record and relevant documents in accordance with applicable federal regulations and guidance documents; and
6. Such other duties as are agreed upon and assigned to the LAT by the Trustee Council.

Neither the designation of the USFWS as the LAT, nor the formation of a Trustee Council is intended to alter, abrogate or cede any natural resource trustee authority or responsibility over any affected natural resources whether the natural resource trustee is party to this MOU or not.

C. This MOU is intended to guide the Trustees coordination and implementation of the NRDA restoration activities as follows:

1. The Trustees shall coordinate their individual review of any comment, plan, report or other submittal through the LAT. The LAT shall consolidate the comments received from the Trustees. In the event that Trustees submit conflicting comments, the LAT shall convene a meeting of the Trustee Council to resolve the conflicts. In the event the Trustees are unable to resolve the conflict, the decision making and dispute resolution provision of Section IV. (D), shall apply. In the event that Trustees submit conflicting comments, the LAT shall submit the consolidated comments for review and approval by the Trustee Council after resolution of the conflict(s). Through effective coordination of their activities, the Trustees will strive to minimize costs and expenses where possible.

III. FUNDING

The Trustees agree to cooperate in good faith when receiving, depositing, holding, disbursing, managing and expending all natural resource damage recoveries obtained or received by the Trustees relating to natural resource injuries at the Site. Each Party shall be solely responsible to provide funding for any administrative, personnel or other resources necessary to carry out its duties and responsibilities pursuant to this MOU and for documentation to support reimbursement of its respective administrative costs.

IV. GENERAL PROVISIONS

- A. **Reservation of Rights.** This document is not intended to create any further legal rights or obligations among the Trustees and their representatives or any other person not a Party to this MOU.
- B. **Limitation of Authority.** No party is authorized to represent another Party or another natural resource trustee in any litigation or settlement negotiations that may be commenced by any natural resource trustee. Nothing in this MOU shall be construed as obligating the State of Iowa or the United States or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law or funds received from potentially responsible parties for actions related to natural resource damages.
- C. **Termination.** This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. Any Trustee may withdraw from this Agreement upon written notice in accordance herewith. In the event any Trustee withdraws from the Agreement, such withdrawal must be in writing at least thirty days in advance of the withdrawal. In the event of such withdrawal, this agreement remains in full force and effect for the remaining Parties.
- D. **Decision Making and Dispute Resolution.** The Trustee Council shall strive for consensus on all comments, positions and decisions necessary to conduct NRDAR activities at the Site. All comments, positions and decisions agreed to by the Trustee Council shall be recorded in writing, either by resolution signed by the Trustee Council members, or in minutes approved as to content and form by the Trustee Council members. In the event that the Trustee Council cannot reach a consensus, the Trustee Council shall attempt to resolve the dispute through discussions directed to obtaining a consensus agreement among the Trustee Council members involved in the dispute. The period for discussions shall not exceed fifteen (15) days from the day the dispute is communicated (either orally or in writing) by one Trustee to the other members of the Trustee Council. If the Trustee Council fails to achieve agreement the Trustees shall expeditiously refer the matter to their respective management. The Trustees agree that discussions will focus upon the Trustees' mutual goals of restoration of injured natural resources rather than upon independent control or trusteeship over the affected natural resources.
- E. **Modification.** Modification of the MOU must be in writing and upon approval of all the Trustee Council members.

- F. Reservation of Authority.** Nothing in this MOU is intended to alter, abrogate or cede any natural resource trustee authority or responsibility over any natural resource(s) whether the natural resource trustee is a party to this MOU or not.
- G. Trustee Contact.** The following persons shall serve as the contacts for each party. The contact person for each party may be changed by providing written notice to all other parties.

Bill Kalishek
Iowa Department of Natural Resources
2321 Siewers Spring Road
Decorah, IA 52101
PHONE: (563) 382-8324
FAX: (563) 382-0284

Richard C. Nelson
U.S. Fish & Wildlife Service
Rock Island Field Office
4469 48th Avenue Court
Rock Island, IL 61201
PHONE: (309) 793-5800 Ext. 201
FAX: (309) 793-5804

Rodney Rovang
Effigy Mounds National Monument
151 Highway 76
Harpers Ferry, Iowa 67411
PHONE: (563) 873-3491 Ext. 111
FAX: (563) 873-3743

VI. EFFECTIVE DATE

The date of execution shall be the date of the final Trustees' signature.

VII. SIGNATURES

IN WITNESS WHEREOF the Trustees have executed this MOU on the dates attested below:



Richard C. Nelson
Rock Island Field Office
U.S. Fish & Wildlife Service
Region 3

Ken Herring
Iowa Department of Natural Resources

Date: August 11, 2006

Date: _____



Phyllis Ewing, Superintendent
Effigy Mounds National Monument

Date: August 10, 2006

VII. SIGNATURES

IN WITNESS WHEREOF the Trustees have executed this MOU on the dates attested below:

Richard C. Nelson
Rock Island Field Office
U.S. Fish & Wildlife Service
Region 3

Ken Herring

Ken Herring
Iowa Department of Natural Resources

Date: _____

Date: 8-15-2006

Phyllis Ewing, Superintendent
Effigy Mounds National Monument

Date: _____