

Funding and Participation Agreement

Portland Harbor Injury Assessment

Phase 2

This Funding and Participation Agreement (Agreement) for the Portland Harbor Phase 2 natural resource damage assessment (NRDA) is entered into by the Confederated Tribes of the Grand Ronde Community of Oregon, Confederated Tribes of the Siletz Indians, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Nez Perce Tribe, U.S. Department of the Interior, National Oceanic and Atmospheric Administration, and the Oregon Department of Fish and Wildlife, collectively the Natural Resources Trustees (Trustees) and the party (Phase 2 Participant) whose signature appears below. Collectively, the Trustees and the Phase 2 Participant are the "Parties." The Trustees enter into this Agreement as members of the Portland Harbor Natural Resource Trustee Council (Trustee Council). The Parties agree to the following:

1. The NRDA for the Portland Harbor Site is being conducted in a three phase approach. Phase 1 was the development of the Natural Resource Damage Assessment Plan (AP) and implementation of several early studies. That stage is completed except for implementation of the lamprey study and the osprey egg data validation. Phase 2 is the implementation of those portions of the AP necessary to estimate liability for purpose of early settlements at the end of Phase 2 with potentially responsible parties (PRPs) who have cooperated with the Trustees during the Phase 2 process. Phase 2 involves the implementation of the AP, as described in Appendices B, D, and E¹ of the AP, sufficient to evaluate the appropriateness of and eligibility for early settlements with Phase 2 Participants. Phase 3 involves the full implementation of the AP and the final injury and damage determination. Phase 2 Participants who settle at the end of Phase 2 will not be responsible for assessment costs associated with Phase 3.

2. The Phase 2 Assessment is outlined in Appendix B and E of the AP and the Phase 2 Action Plan (Attachment A). That Action Plan outlines the Phase 2 Participant's involvement in the process.

3. While the Trustees intend to coordinate with the Phase 2 Participant on all major decisions related to those activities funded under this Agreement by the Phase 2 Participant and to reach consensus, should the Parties not agree, final decisions on the implementation of Phase 2 will be made by the Trustees.

¹ The Trustees' consideration of a navigational service loss claim is a separate component of Phase 2, to be funded separately by the Trustees. Work on that component is not part of the cooperative assessment activities covered by this Agreement.

4. During performance of this Agreement, the Trustees and the Phase 2 Participant may also discuss Phase 2 Participant-specific restoration proposal(s) or engage in settlement discussions. Those activities are not covered by this Agreement and will be funded, to the extent necessary, under separate agreements.

5. The Trustees will provide an estimate of funds expended to Phase 2 Participating Parties every six months. The Trustees will provide a final accounting of the expenses of Phase 2 to the Phase 2 Participant within 90 days of the conclusion of the activities covered by this Agreement. Due to differences among Trustees' accounting procedures, the form of the accounting may differ among Trustees. The accounting will consist of a spreadsheet summarizing labor (hours and rates), travel costs, equipment costs, contractors' costs and miscellaneous expenses (e.g., supplies, overnight mail). The accounting will include contractor invoices.

6. On February 16, 2010, the Trustees met with PRPs to discuss the scope of Phase 2 and the estimated costs of Phase 2. At the request of some PRPs, the Trustees condensed the Phase 2 timeframe. The Trustees also considered input from PRPs concerning the necessity of some of the budget items and the costs associated with certain budgeted activities. The Trustees reduced their initial budget estimate to **\$5,581,391.00.**² The Phase 2 Participant recognizes that the actual costs incurred may be more or less than that amount. If the actual costs are greater, the Trustees retain their rights to recover such costs in accordance with the natural resource damage (NRD) liability allocation formula. Although the Trustees do not waive their right to recover reasonable assessment costs at time of settlement, provided that the Phase 2 budget is fully funded by Phase 2 Participants, the Trustees will discuss payment of costs that exceed the budget when they are negotiating settlements with Phase 2 Participants.

Any funds not expended under this Agreement will be credited against the Phase 2 Participant's remaining natural resource liability. The Parties recognize that it may be possible that the Phase 2 Participant's allocated liability for natural resource damages, including assessment costs, may be less than the Phase 2 Participant's payments to the Trustees under this Agreement (and the Phase 1 Funding and Participation Agreement, if applicable). Should this occur, to the extent of their authority, the Trustees will work with the Phase 2 Participants to structure settlements with other PRPs or use some other mechanism mutually acceptable to the Trustees and the Phase 2 Participant to ensure that the Phase 2 Participant receives a refund for the amount of any overpayment.

The Parties also recognize that it is possible that the Phase 2 Participant's payments of assessment costs to the Trustees under this Agreement (and the Phase 1 Funding and Participation Agreement, if applicable) could exceed the Phase 2 Participant's allocated share of assessment costs. In such case, to the extent that the Trustees' ultimate settlement with the Phase 2 Participant is calculated in Discounted Service Acre Years (DSAYS) or another service credit metric, the Phase 2 Participant will have the option of converting the amount of assessment costs

² This estimate does not include funds for the Trustees to conduct an independent NRD allocation. The Phase 2 Participants commit to initiating a process whereby Phase 2 Participants as well as interested non-participating PRPs will undertake and fund that allocation.

exceeding its allocated share into DSAYS or other service credit metric at the cost per DSAY or other service credit metric actually incurred by the Phase 2 Participant. The Phase 2 Participant will provide information to the Trustees to document the unit cost actually incurred.

7. All funds received pursuant to this Agreement are considered joint funds held for the use of the Trustees who have signed this Agreement. Those funds can only be expended pursuant to the terms of this Agreement and the consent of the Trustee Council. Should any of the Trustees withdraw from this Agreement or the Trustee Council, that Trustee will return all unexpended funds received pursuant to this Agreement to the U.S. Department of the Interior Natural Resources Damage Assessment and Restoration Fund (NRDAR Fund) within 60 days of withdrawal. That Trustee will also provide an accounting of its Phase 2 expenditures to the Trustee Council within 60 days of withdrawal. The returned funds will be used for Phase 2 work as agreed upon by the Trustee Council.

8. The Phase 2 Participant will provide funding under this Agreement for the activities to be performed by payment to the NRDAR Fund in accordance with the procedures outlined in Attachment B. Payments shall be made as follows:

A. Phase 1 Participants:

- 1) General Notice Letter (GNL) recipients - **\$185,292.54**
- 2) Non-General Notice Letter (NGNL) recipients - **\$76,294.84**
- 3) GNL recipients who were NGNL recipients at the beginning of Phase 1 - **\$213,542.16**

B. Phase 1 Non-Participants:

- 1) GNL recipients - **\$353,745.53**
- 3) GNL recipients who were NGNL recipients at the beginning of Phase 1 - **\$278,745.53**
- 4) GNL recipients who provided Phase 1 funding under the Interim Phase 1 Funding and Participation Agreement - **\$319,023.31.**

Payments may be made in two installments. The first installment shall be equal to 60% of the total amount due. The first payment is due within 30 days of the effective date of this Agreement. The second installment shall be equal to 40% of the total amount due. The second payment is due July 1, 2011.

9. The Phase 2 Participant agrees to fund the activities to be performed under this Agreement with no admission of liability or responsibility. Neither the existence of this Agreement nor the fact that the Phase 2 Participant agreed to fund Phase 2 is admissible as evidence in any litigation or contested proceeding, to the extent provided by Federal Rule of Evidence 408 or Oregon Rule of Evidence 408, to establish the Phase 2 Participant's liability for natural resource damages or the Phase 2 Participant's allocated share, if applicable, of the natural

resource liability at the Portland Harbor Site. The Phase 2 Participant does not waive and reserves all rights to challenge the NRDA or the costs thereof. All funding provided pursuant to this Agreement is on an interim basis and fully re-allocable in any subsequent settlement, allocation, litigation or other forum between or among both Phase 2 Participants and non-participating PRPs.

10. The Parties agree that any Trustee reports, data, analyses, maps, documents, or estimates of natural resource damages collected, developed, or prepared pursuant to this Agreement that are shared with Phase 2 Participating Parties shall not be considered “settlement confidential”, unless so designated by the Parties. The Parties agree that certain oral or written communications that are in furtherance of settlement negotiations will be considered settlement confidential pursuant to Federal Rule of Evidence 408 and Oregon Evidence Code Rule 408. Nothing herein shall limit the ability of the Trustees to share information, data, and communications with other trustees or otherwise coordinate activities.

The Parties recognize that each Party from time to time may need to share settlement confidential information with other members of their respective organizations (including contractors), insurance carriers, indemnitors, U.S. Department of Justice, the Oregon Department of Justice, and other public authorities. The sharing of settlement confidential information shall be done in a manner reasonably calculated to maintain the confidential nature of the information.

Except as provided above, settlement confidential information shall not be released to third parties except in the following circumstances:

- a. In response to a judicial order compelling disclosure; or
- b. Pursuant to a determination by the Multnomah County District Attorney or the Oregon Attorney General that the communication must be disclosed under the Oregon Public Records Statute; or
- c. As may otherwise be required by law or regulation, including after consideration of the disclosure’s harm to the public interest pursuant to the Oregon Public Records Law.

However, nothing in this Agreement shall be construed as preventing the Federal Trustees from complying with the rules and regulations implementing the federal Freedom of Information Act or the State Trustee from complying with the Oregon Public Records Law and implementing regulations.

11. Nothing in this Agreement shall be construed as obligating the Trustees, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

12. This Agreement does not release the Phase 2 Participant from any potential liability except for the liability for the costs provided under this Agreement. The Trustees consider such costs as reasonable damage assessment costs and agree that the payment of such costs will be credited against a Phase 2 Participant's natural resource liability.

13. It is recognized that each Party to this Agreement reserves all rights, powers and remedies. It is further recognized that, notwithstanding anything else in this Agreement to the

contrary, nothing in this Agreement or in the course of cooperation under this Agreement is intended nor shall be construed as a waiver by any Party of any rights, defenses, privileges or affirmative claims in any proceeding related to natural resource liability arising from the release of hazardous substances at the Portland Harbor site or any other site where the Party may be involved. Nothing in this Agreement is nor shall be construed to be a waiver of the sovereign immunity by any of the Trustees.

14. All Parties to this Agreement acknowledge their intent to participate in this process so as to enter into good faith settlement negotiations at the conclusion of Phase 2.

15. The Trustees acknowledge that the Phase 2 Participant is entering this Agreement with the goal of obtaining a settlement that will provide a complete release for all liability for all NRDs arising out of Portland Harbor contaminant releases, regardless of where the injury or damage occurs. The Phase 2 Participant acknowledges that the Trustees cannot provide certainty at this time regarding the scope of the release to be included in any future settlement or consent decree.

16. The Phase 2 Participants will be provided an opportunity to settle on a several basis based on the results of the natural resource damage allocation. The Trustees agree that, in recognition of the monies paid by the Phase 2 Participants, the Trustees will prioritize harborwide settlement negotiations with Phase 2 Participants over non-participating parties. The Trustees will provide a six-month window following the issuance of demand letters to Phase 2 Participants to initiate settlement negotiations exclusively with Phase 2 Participants. However, this Agreement does not preclude the Trustees from negotiating settlements with non-participating parties in advance of negotiating settlements with Phase 2 Participants where a settlement opportunity could otherwise be lost for reasons, including but not limited to, insolvency, bankruptcy, or dissolution of the PRP.

17. Phase 2 Participants will be afforded the following benefits of participation in Phase 2:

a. Phase 2 Participants will have the exclusive right to review and comment on the Trustee Council proposed inputs to the Habitat Equivalency Analysis, Resource Equivalency Analysis and Benefit Transfer process. Phase 2 Participants will also have the exclusive right to participate in meetings with the Trustee Council to discuss inputs, advocate different positions and provide additional information for consideration by the Trustees.

b. Phase 2 Participants will have the opportunity to sell excess credits generated through approved restoration projects to non-participating PRPs.

c. Phase 2 Participants will have a right of first refusal to purchase any credits generated through approved restoration projects by third party restoration bankers who have entered into agreements with the Trustee Council.

d. To the extent permitted by law, Phase 2 Participants will not be allocated any of NOAA's unreimbursed past costs incurred through the completion of Phase 1, which is defined here as June 1, 2010, the date when the AP is made public through posting on the Trustees' website.

e. Phase 2 Participants will initiate a process to allocate NRD liability for the Portland Harbor Site. The Phase 2 Participants may set the terms of participation in the NRD allocation process, which will be conducted in accordance with the process described in Attachment C. The substantive terms of the process agreement developed by the Phase 2 Participants will be subject to Trustee Council approval to ensure that the allocation process is fair to all parties and yields a fair and reasonable result. The initial price of participation in the NRD allocation will be on a per capita basis, although those participation costs themselves will be subject to the NRD allocation. The costs of the NRD allocation are considered reasonable assessment costs under CERCLA. If it is determined, based on the results of the allocation, that a party has overpaid its share of the costs of the allocation, that party may seek to recover the amount of the overpayment from other parties through contribution, settlements, or other available means.

18. The Trustees commit that the funding provided pursuant to this Agreement will only be used for tasks necessary to enter into NRD settlements and will not be used for any task for which the primary purpose is litigation. Funding received under this Agreement will not be used by the Trustees to develop a claim for navigational services losses.

19. Any Phase 2 Participant may withdraw from this Agreement upon 15 days advance written notice to the Chair of the Trustee Council and the other Phase 2 Participants. A withdrawing Phase 2 Participant foregoes any rights under this Agreement except that the withdrawing Phase 2 Participant shall retain any credits to natural resource liability for payments of assessment costs made prior to its withdrawal.

20. The Effective Date of this Agreement will be the date on which it is signed by the Phase 2 Participant and all Trustees.

SIGNATURES

For the Phase 2 Participant:

Name of Company:

Status of Company under Section 8: _____

By: _____

Date: _____

For the Trustees:

National Oceanic and Atmospheric Administration

By: _____

Date: _____

Department of the Interior

By: _____

Date: _____

Oregon Department of Fish and Wildlife

By: _____

Date: _____

Nez Perce Tribe

By: _____

Date: _____

Confederated Tribes of the Warm Springs Indian Reservation of Oregon

By: _____

Date: _____

Confederated Tribes of the Umatilla Indian Reservation

By: _____

Date: _____

Confederated Tribes of Siletz Indians

By: _____

Date: _____

Confederated Tribes of the Grand Ronde Community of Oregon

By: _____

Date: _____

Attachment A

**Portland Harbor Natural Resource
Damage Assessment**

Phase 2 Action Plan
August 19, 2010

I. Interaction between Natural Resource Trustees (Trustees) and Phase 2 Participating Parties (PPs)

The Trustees' proposed approach to interaction with PPs seeks to balance the need for in-person discussions with the practical need for cost-effectiveness. As discussed below, the Trustees propose to hold four quarterly meetings per year and interact with PPs in between these meetings via written materials and telephone conference calls.

The Phase 2 process will begin with a kickoff meeting, held within a month of the initiation of Phase 2, at which dates will be set for the remaining quarterly meetings. At this meeting, the Trustees will propose to the PPs a schedule for discussing key topics relevant to habitat equivalency analyses (HEA), resource equivalency analyses (REA), and benefits transfer (BT) for the Portland Harbor (PH) natural resource damage assessment (NRDA). Also at this meeting, the Trustees will discuss the bases for the Expert Panel's recommendations related to habitat restoration for Chinook salmon. While the Trustees will not be taking comments on the Expert Panel's recommendations themselves, decisions based on those recommendations will be open to comments from Phase 2 PPs. At the first quarterly meeting, the Trustees will also present their initial views on a number of HEA, REA, and BT topics, as time permits. Topics **highlighted in bold** text in Part II of this Action Plan will be priorities for Trustee focus in the first quarterly meeting. Topics addressed in subsequent meetings will be determined following the first meeting.

At subsequent quarterly meetings, the Trustees will continue to share their views about HEA, REA, and BT topics, augmented where appropriate by written materials provided in advance of meetings. The Trustees will entertain real-time comments at meetings, written materials after meetings, and presentations at subsequent meetings, and the Trustees will provide the PPs with modified positions, as appropriate, in subsequent written materials or presentations at quarterly meetings.

The Trustees intend to reach refined initial positions (modified as appropriate by information from PPs) on all of the key inputs to, and outputs from, HEA, REA, and BT for PH during the first year, regardless of whether consensus can be reached between Trustees and PPs on all issues, so that all parties can begin to understand the implications of these positions for the subsequent analyses. The Trustees will document their positions and the areas of agreement with PPs and will take comments on this documentation. At the end of the first year, the Trustees will

provide a preliminary estimate of potential natural resource damages based on the Trustees' positions on all of the key inputs.

During the second year, the Trustees and the PPs will focus on narrowing and resolving any areas of disagreement regarding the HEA, REA, and BT. This will be accomplished by examining the effect of disagreements on bottom-line outcomes (e.g., determining how restoration costs or recreational values vary with different assumptions) with the goal of identifying cost-effective, affordable restoration projects that would overcome uncertainties and disagreements to the mutual satisfaction of Trustees and PPs. However, the Trustees will also consider options for analytical refinements and/or data collections, which could be accomplished during the second year. The Trustees will provide a final estimate of potential natural resource damages (for settlement purposes), along with all calculations, supporting data, and related materials needed by the allocation team to perform an allocation, in the second year. The Trustees will strive to complete this estimate by 6 months into the second year; however, the exact date will depend on the nature and extent of discussions with PPs.¹ The Trustees will also be identifying realistic restoration opportunities for actual settlements with particular PPs at or around the time of the U.S. Environmental Protection Agency (EPA) record of decision (ROD). Work by the Trustees on restoration planning is expected to extend into the third year. Furthermore, the Trustees will determine whether any formal agreements (e.g., restoration implementation agreements) other than settlements are necessary. The Trustees and PPs will begin work on a settlement template in Year 1.

II. Specific Topics that the Trustees Will Address During Phase 2²

At the kickoff meeting, the Trustees will propose a schedule for addressing topics listed below during the first year. Topics **highlighted in bold** text in Part II of this Action Plan will be priorities for Trustee focus in the first quarterly meeting.

A. HEA debit³

- 1. HEA tools [e.g., spreadsheet, geographic information system (GIS) to be used]**
- 2. Discount rate**
- 3. Time period**
 - a. Initial accounting of injuries beginning in January 1981. Damages where both the release of hazardous substances and damages occurred wholly before December 11, 1980 will not be included in debit.**
 - b. Projected time to recovery (will likely vary according to alternative remedial scenarios)
- 4. Areas to be included in the HEA debit**
- 5. List of hazardous substances to be included in an analysis of sediment concentrations**
6. Determining relative ecological values (see Section E, HEA credit)

1. This schedule assumes a remedial Record of Decision (ROD) date of December 2012. If the ROD is delayed, there may be additional flexibility in this schedule to resolve inputs and issues, depending on funding.

2. Section 22 of the Phase 2 budget narrative is relevant to all of the topics that follow.

3. Sections 25, 29, 30-33, and 44-49 of the Phase 2 budget narrative are relevant to this topic.

7. Thresholds
 - a. **Species to be incorporated**
 - i. **What key species can be incorporated?**
 - ii. **Evaluate whether to include wildlife species (e.g., bald eagle, osprey, mink, river otter) in HEA or conduct separate REA**
 - b. Standards and existing threshold values
 - c. Literature relevant to potential newly calculated thresholds
 - d. Relevant Phase 1 data
 - e. Species not covered by existing standards, thresholds, literature, or data: integrate into HEA or separate REA?
8. Key resources and services of Tribal interest
 - a. **Evaluate potential gathering/fishing service losses for key resources (lamprey and salmon) distinct from general recreational fishing**
 - b. Evaluate HEA/REA to ensure that they adequately reflect tribal resources
9. Current percent service loss estimates
 - a. What range seems plausible, based on holistic review of existing standards, thresholds, and literature and in light of the concentrations measured in PH?
 - b. How to integrate information relevant for benthic invertebrates with information relevant for vertebrate species
 - c. Method for integration of thresholds for multiple contaminants
10. Past and future percent service losses
 - a. Integration of current average percent service loss
 - b. Shape of recovery curve
 - c. Estimation of past service losses relative to current based on historical records of earlier releases, contamination data from before remedial investigation (RI; if sufficient), sediment cores (if relevant and appropriate), river modeling (if sufficient)
 - d. Estimation of future service losses based on no action and reasonable assumptions about cleanup [including ongoing modeling from the RI and feasibility study (FS)]

B. *BT debit*

1. **BT tool (e.g., spreadsheet to be used)**
2. **Discount rate**
3. Time period
 - a. **Initial accounting of injuries beginning in January 1981. Damages where both the release of hazardous substances and damages occurred wholly before December 11, 1980 will not be included in debit.**
 - b. Projected time to recovery (may differ for no-action and reasonable remedial scenarios)
4. **Categories of loss that could be included based on literature (e.g., recreation categories; local uses)**
5. **Categories of public to be included in the analysis (e.g., anglers, other recreational users, tribal members, general public)**

4. Sections 34-38 and 39-43 of the Phase 2 budget narrative are relevant to this topic.

6. **What specific data and literature are available to estimate numbers of people in the relevant categories?**
 - a. **Geographical area**
 - b. **Creel data**
 - c. **Other recreational use data**
 - d. **Census data**
7. What information is available to develop a change in use?
 - a. Site-specific information on likely change in use
 - b. Typical change in use from relevant literature
8. What are the criteria for literature inclusion and selection?
 - a. Criteria for change in use levels literature
 - b. Criteria for change in the value of trips literature
9. Transformations of values
 - a. Over time
 - b. Over distance from site
 - c. To account for differences between other sites with literature and PH
 - d. Transfer of point estimates or value functions
10. Value-to-cost or value-to-value (and how to estimate restoration values if the latter)?

C. *Restoration opportunities*⁵

1. **Refinement of the current list of Trustee projects and priorities (including how to include projects or project components best suited to offset tribal and recreational losses)**
2. **How to sequence projects within the Study Area versus those in the larger geographic area (with the latter comprising no more than half of the total)**
3. **Continue to identify additional projects, particularly in the larger geographic area⁶**
4. **How to determine practical obstacles and realistic costs for priority restoration projects**

D. *HEA credit*⁷

1. **Determining the footprint area of specific high-priority projects**
2. **Determining relative ecological values**
 - a. **Injured PH habitats**
 - b. **Project areas before restoration**
 - c. **Project areas following restoration**
 - d. **Ideal habitats**
3. Integrating habitat needs for different species, including wildlife species
4. Balancing and integrating ecological priorities with tribal priorities, recreational priorities, and navigational priorities
5. Determining the timeline of improvement caused by restoration activities
 - a. Restoration

5. Sections 59-69 of the Phase 2 budget narrative are relevant to this topic.

6. The Trustees are currently working to identify restoration projects outside of the study area.

7. Sections 70-74 of the Phase 2 budget narrative are relevant to this topic.

- b. Preservation to avoid practically-predicted losses
- 6. Representative restoration projects to evaluate the average cost per Discounted Service Acre Year (DSAY; inside and outside of the Study Area)
- 7. Banking DSAYs (as DSAYs or cash equivalent), cashing out DSAY debits, and BT values (including how to practically avoid any obvious double counting)

E. Overarching issues⁸

- 1. **Baseline**
 - a. **Accounting for contamination not released by PPs**
 - b. **Accounting for losses (e.g., habitat degradation) not caused by contamination or required cleanup**
- 2. Uncertainty and disputes
 - a. What processes may be used to determine an acceptable range of uncertainty, or what specific methods can be used to resolve disagreements about uncertainty?
 - b. Can cost-effective, affordable restoration projects be identified that will limit the need for disputes?
- 3. Avoiding double counting
 - a. Integrating BT debit, REA debit, and HEA debit
 - b. Determining the scale of restoration

III. Additional Provisions

A. Meeting Logistics

The Trustees will make their best effort to send an agenda for each quarterly meeting along with written materials and any presentation(s) to the PPs two weeks in advance of each meeting. PPs may submit comments on the information provided one week in advance of each meeting.

A notetaker will be present at each meeting to develop detailed notes from each meeting, and to record areas of agreement and disagreement between the Trustees and PPs. The Trustees and PPs will strive to reach agreement on HEA, REA and BT inputs. However, in order to ensure that all of the issues outlined in Section II above are addressed in Year 1, the Trustees reserve the right to cut off debate on an issue, note the specific disagreement and move on to the next issue. Specific areas of disagreement will be revisited in Year 2.

The Trustees and PPs will consider convening small technical groups to address areas of disagreement if it is determined that such a group would help achieve consensus.

B. PP Access to Tools Utilized in the Assessment

PPs will be provided access to Trustee analyses and electronic files used by the Trustees to develop those analyses, including tools and datasets developed in a GIS for HEA analyses.

C. Opportunities for Technical Input by PPs

8. Sections 27 and 28 of the Phase 2 budget narrative are relevant to this topic.

As described above, the Trustees will develop initial positions on inputs to the HEA, REA, and BT analysis, and present these positions at the quarterly meetings. Through this process, the PPs will have opportunities to review the sources for inputs to these models and provide feedback on those sources, as well as propose alternative sources and inputs.

D. Use of Technical Neutral

The Trustees and PPs recognize that the resolution of some types of disputes would benefit from utilizing a technical neutral in Year 2 to help resolve technical disagreements between the Trustees and PPs. The Trustees and a majority of PPs will, in good faith, identify the specific issue or set of issues to be submitted to the technical neutral. Any costs associated with the use of a technical neutral are not part of the Trustees' Phase 2 budget and will be funded separately by the PPs. The separate funding will cover all costs of the Trustees to prepare for and participate in meetings and discussions with the technical neutral and any direct charges by the technical neutral, and other associated costs and fees.

For each issue or set of issues submitted to the technical neutral, the technical neutral will be asked to attend a half-day meeting with the Trustees and PPs. At this meeting, the parties will have an opportunity to present their positions. The technical neutral will render a binding opinion within two weeks after that meeting unless the parties agree to a different schedule.

The Trustees and PPs will work to identify a short list of potential technical neutrals to address specific issues that may arise. This will be done in Year 1.

Attachment B
Department of the Interior
Natural Resource Damage Assessment and Restoration Fund
Assessment and Settlement Deposit Remittance Procedures

The Department of Interior's National Business Center (NBC) has established procedures with the Department of Treasury to provide two electronic options for remitting payments to the Natural Resource Damage Assessment and Restoration Fund. Procedures for using these processes are attached.

The preferred electronic method is the Department of Treasury's Automated Clearing House (ACH)/Remittance Express. If your bank does not have ACH deposit transmission capabilities, then Treasury's Federal Wire (Fed Wire) Transfer procedure is the required alternative. Use the attached forms to assist in preparing your remittance.

All remitters are encouraged to use these electronic methods. Non-electronic remittances (checks) are acceptable as well, and should be payable to the Department of Interior and forwarded to:

DOI Restoration Fund
NBC Division of Financial Management Services
Branch of Accounting Operations
Attn: Collection Officer
Mail Stop D-2770
7401 West Mansfield Ave.
Lakewood, CO 80235

**Please reference "NRDA 14X5198" and the site name
on check or transmittal letter**

Attachment B
Department of the Interior
Natural Resource Damage Assessment and Restoration Fund
Assessment and Settlement Deposit Remittance Procedures

In order to accomplish electronic transfers, in addition to other settlement or billing information, please provide the following information to the remitter:

Preferred method of electronic transfer: Automated Clearing House (ACH)

Receiver name: DOI Restoration Fund
ALC 14010001

Receiver Tax ID Number: 53-0196949

Receiver address: 7401 West Mansfield Ave.
Mailstop D-2770
Lakewood, CO 80235

Receiver bank: Federal Reserve Bank
New York, NY
ABA # 051036706

Receiver ACH Account No.: 312024 (See Attachment I-3)

Receiver Fedwire Acct No.: Treasury NYC 021030004
(To be used only for Fedwire transfers) (See Attachment I-4)

Payment Related Data: Should at a minimum reference site location

Attachments I-3 and I-4 provide more technical specifics which can be provided to the remitter's banking institution. Questions concerning electronic deposit procedures should be directed to Rebecca Gupta at (303) 969-5416.

Attachment B
Department of the Interior
Natural Resource Damage Assessment and Restoration Fund
Assessment and Settlement Deposit Remittance Procedures

The following information is provided to assist Remitters in giving complete and accurate data to their financial institution for use in originating Automated Clearing House payments. The industry name for the following format is CCD+.

ACH CCD+ Format

Data Element Name	Contents	Size	Position
<i>Record Type Code</i>	'6'	1	01-01
<i>Transaction Code</i>	'22'	2	02-03
<i>Receiving ABA</i>	'05103670'	8	04-11
<i>Check Digit</i>	'6'	1	12-12
<i>Account Number</i>	'312024'	17	13-29
Payment Amount		12	30-41
Identification #		13	42-54
<i>Receiver Name</i>	<i>DOI Restoration Fund</i>	22	22-76
Discretionary	N/A	2	77-78
<i>Addenda Indicator</i>	'2'	1	79-79
Trace Number	Assigned by Remitters Bank	15	80-94

ACH Addenda Record Format

Data Element Name	Contents	Size	Position
<i>Record Type Code</i>	'7'	1	01-01
<i>Addenda Type Code</i>	'05'	2	02-03
Payment Related		80	04-83
<i>Sequence Number</i>	'0001'	4	84-87
Addenda Trace	Assigned by Remitters Bank	17	88-94

The data items in bold must be provided to the bank by the Remitter. Those items bolded and italicized must be provided verbatim. The **Payment Amount** is the judgement or settlement amount being remitted; dollars and cents must be separated by a decimal point, do not use commas or any other punctuation. The **Identification Number** is the case Court Number. The **Payment Related** data should include the paying potentially responsible party(ies) name, site or case name and site location.

Attachment B
Department of the Interior
Natural Resource Damage Assessment and Restoration Fund
Assessment and Settlement Deposit Remittance Procedures

Federal Wire (FedWire) Transfer

The following information is provided to assist Remitters in giving complete and accurate data to their financial institution for use in originating FedWire payments (**in the event ACH is not available**). The industry name for the following format is FedWire Transfer Format.

Required Fields and Tags

Field Tag Name	Field Tag Number	Field Tag Contents
Message Disposition	(1100)	Assigned by Federal Reserve Bank
Acceptance Time Stamp	(1110)	Assigned by Federal Reserve Bank
OMAD	(1120)	Assigned by Federal Reserve Bank
IMAD	(1520)	Assigned by Remitters Bank
Amount	(2000)	
Sender FI	(3100)	Assigned by Remitters Bank
Sender Reference	(3320)	Assigned by Remitters Bank
<i>Receiver FI</i>	<i>(3400)</i>	<i>'Treasury NYC 021030004'</i>
<i>Beneficiary</i>	<i>(4200)</i>	<i>'DOI Restoration Fund ALC 14010001'</i>
Ref for Beneficiary	(4320)	
Originator	(5000)	
Originator Financial Institution	(5100)	Assigned by Remitters Bank
Orig to Beneficiary	(6000)	

The data items in bold must be provided to the bank by the Remitter. Those bolded and italicized must be provided verbatim. The **Amount** is the judgement or settlement amount being remitted; dollars and cents must be separated by a decimal point, do not use commas or any other punctuation. The **Reference for Beneficiary** is the case Court Number. **Originator** is the paying potentially responsible party(ies). **Originator to Beneficiary** should include the site or case name and site location.

Attachment C

Natural Resource Damages Allocation

Phase 2

1. Overall Goal. Produce an allocation of Trustees' estimate of potential natural resource damages (for settlement purposes) to Portland Harbor PRPs. The allocation will be for all parcels and all PRPs. The allocation shall be sufficient to support negotiation of a final settlement with the Trustees in a time frame that is consistent with the timing of the remedial allocation but does not supersede the remedial allocation. Allocation will be comprehensive, and sufficient for Trustees to rely on allocation in supporting the lodging and entry of a Consent Decree in Federal Court.

2. PRP Milestones. A parallel allocation process is proceeding for the purpose of allocating the Portland Harbor Site investigation and remedial action costs (referred to as the "Portland Harbor remedial allocation process"). The ability to achieve the NRD allocation process milestones described below that are relevant to allocation liability issues will be affected by the progress of, and certain decisions in, the Portland Harbor remedial allocation process.

a. PRP Allocation Process Agreement. 3 months after the effective date of the Phase 2 Funding and Participation Agreement with Trustees, the PRPs will have a completed NRD allocation process agreement.

b. Selection of Allocation Team. 1 month after completion of NRD allocation process agreement, the PRPs will have completed selection of allocation team.

c. Allocation Method Report. 2 months after selection of allocation team, draft method report will be produced. Trustees will have opportunity to review and comment before rendering a final report. The final NRD method report shall parallel the method report for the Portland Harbor remedial allocation to the extent that both involve the same or similar liability issues and equitable factors. It is anticipated that the allocation will be both a parcel-by-parcel allocation, and will include sub-allocations within each parcel, as appropriate.

d. Allocation Database. Allocation database will be established within 3 months of allocation team selection. Trustees will have access to non-confidential portion of database, but not to advocacy materials.

e. Closure of Allocation Record. Except for advocacy briefing and supporting expert reports, the allocation record will close 2 months after the latter of receipt of 1) Trustees' final estimate of potential natural resource damages (for settlement purposes) and 2) information from the Portland Harbor remedial allocation process relating to facts and legal issues that are relevant to facts and legal issues in the NRD allocation process.

f. Periodic Status Updates. PRPs will provide Trustees with quarterly updates on progress of allocation process.

g. Advocacy Phase. After closure of the allocation record, PRPs will commence the advocacy phase of the NRD allocation on a date to be determined. The advocacy phase of the NRD allocation process and the Portland Harbor remedial allocation process shall occur in the same time period. It is expected that this phase will require 9 months to 1 year to complete.

h. Mediation / Negotiation. Allocation team will produce an allocation of NRD liability to all PRPs and orphan parties that will provide the foundation for mediation / negotiation of a final settlement for Participants with the Trustees. It is expected that this mediation / negotiation process will commence on a date to be determined after issuance of EPA's ROD.

i. Trustee Access to Allocation Report. Upon completion of the Allocation Report, and prior to commencing formal settlement negotiations (which will begin after the Trustees issue demand letters), the Trustees will have access to the Allocation Report, which will include the specific allocation for parcels and PRPs and supporting, non-confidential materials for purposes of verifying the allocation and to support entry of the Consent Decree.

j. Parallelism with PCI Group Process. Because the NRD allocation process will be dependent on certain information generated in the Portland Harbor remedial allocation process, the Participants will coordinate the NRD allocation process schedule and timing with the PCI Group schedule for the Portland Harbor remedial allocation process.

3. Trustee Milestones.

a. Preliminary Estimate of Potential Natural Resource Damages. Trustees will provide a preliminary estimate of potential natural resource damages (for settlement purposes) within 12 months of the effective date of the Phase 2 Funding and Participation Agreement. This estimate will be the basis for a 6 month negotiation period for the Trustees and Participants to work out differences over essential inputs into the Trustees' damages assessment.

b. Final Estimate of Potential Natural Resource Damages. Trustees will provide final estimate of potential natural resource damages (for settlement purposes) after completion of the negotiation period see paragraph (3a). Trustees will provide all calculations, supporting data, and related materials needed by the Allocation Team to perform an allocation.

c. Trustee Submissions to Allocation Record. The Trustees may submit data, historical information, and other non-advocacy materials to the non-confidential portion of the Allocation Record. Such submissions must be completed at or before the submission of Trustees' final estimate of potential natural resource damages (for settlement purposes) and the determination of facts and legal issues from the Portland Harbor remedial allocation process that are relevant to the NRD allocation process, which events will trigger the closing of the Allocation Record (see paragraph 2.e. above).

d. Quarterly Meetings. The Trustees will meet with the Participating Parties quarterly to work on NRDA issues, and to discuss, as necessary, the progress of the allocation process.