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STATE OF COLORADO
DEPARTMENT OF LAW

**Office of the Attorney
General**

AGENDA

Colorado Natural Resources Trustees Meeting
November 4, 2015, 9:30am to 11:30am
Location: AGO Room 1C

Open Session

1. Approval of Minutes from April 2, 2015 Meeting – 5 minutes

Document:

Draft Minutes from April meeting

2. Suncor Update (Kendall Griffin, Susan Newton, Ed Perkins) - 5 minutes
3. Rocky Mountain Arsenal Foundation Fund Denver Replacement Project (David Banas, Susan Newton, Ed Perkins) – 15 minutes

Action Item:

Denver's request to approve funding for Westerly Creek project

Documents:

Denver Project Proposal

Draft Resolution approving Westerly Creek Project

4. Rocky Mountain Arsenal Recovery Fund Adams County Request to Amend Conditions of Approval (David Banas, Susan Newton, Ed Perkins) – 15 minutes

Action Item: Adams County's request to amend/remove conditions of approval for their Recovery fund projects

Documents:

Adams County materials

Draft Resolution approving proposal with new conditions

5. Proposed Bill allowing CDPHE to expend money from the HSRF to pursue OPA cases and to deposit recovered funds in NRDRF (David Banas, Monica Sheets, Ed Perkins) - 15 minutes

Action item:

Request for Trustee support for the bill and direction on how to proceed

Documents:

Cover Memo

Draft Language

Memo on TABOR Issues

Timeline

6. Gold King Release Update – 10 minutes

Executive Session

7. Rocky Mountain Arsenal Foundation Fund Denver Replacement Project - 10 minutes
8. Rocky Mountain Arsenal Recovery Fund Adams County Request – 10 minutes
9. Proposed Bill allowing CDPHE to expend money from the HSRF to pursue OPA cases and to deposit recovered funds in NRDRF – 10 Minutes
10. Gold King - 10 minutes

Open Session

11. Rocky Mountain Arsenal Foundation Fund Denver Replacement Project - 5 minutes
12. Rocky Mountain Arsenal Recovery Fund Adams County Request – 5 minutes
13. Proposed Bill allowing CDPHE to expend money from the HSRF to pursue OPA cases and to deposit recovered funds in NRDRF – 5 Minutes

ITEM #1

Colorado Natural Resource Damages Trustees
Meeting Minutes
April 2, 2015

In attendance:

TRUSTEES

Cynthia Coffman, Attorney General
Bob Randall, DNR
Martha Rudolph, CDPHE

STAFF and OTHERS

Casey Shpall, DAG, NR
David Banas, AGO, NR
David Kreutzer, AGO, NR
Jennifer Robbins, AGO, NR
Kendall Griffin, AGO NR
Jason King, AGO NR
Susan Newton, CDPHE
Monica Sheets, CDPHE
Gary Baughman, CDPHE
Doug Jamison, CDPHE
Ed Perkins, CDPHE
Alex Davis, DNR
Paul Frohardt, NGC
Kate Kramer, NGC
Pat Schuler, NGC-City of Aurora
Hillary Merritt, TPL

Attorney General Cynthia Coffman called the meeting to order at 2:05 p.m. on April 2, 2015. The meeting's purpose was to brief the Trustees on the current status and issues relating to NRD sites and to request direction and/or approval for various actions.

As it was her first meeting as Chair, Attorney General Coffman gave introductory remarks, after which she requested approval of the November 17, 2014 meeting minutes. Bob Randall moved, Martha Rudolph seconded the motion, and the minutes were unanimously approved as presented.

Uravan

Doug Jamison requested that the Trustees adopt a resolution which approves the allocation of the remaining funds from the Uravan NRD fund to be used to perform additional restoration of abandoned mines within the drainage areas of the Dolores River and San Miguel River. This resolution modifies the approval adopted in the February 27, 2014 resolution. Mr. Jamison gave a brief history of the project and explained that the remaining funds are from the Uravan Mine Restoration Project, one of four projects originally approved by the Trustees in 2005. Mr.

Jamison noted that the geographic areas described in the February 2014 resolution do not encompass other nearby areas that include high priority sites requiring restoration. Mr. Randall asked if the other three original projects had been completed to which Mr. Jamison responded that all four of the original projects had been completed. Ms. Rudolph moved to adopt the resolution as presented. Ms. Coffman seconded the motion, it was unanimously approved, and the resolution was signed by the Trustees.

California Gulch

Mr. Jamison provided an update regarding restoration activities associated with the California Gulch Superfund Site NRD case. He explained that the Cal Gulch Trustee Council is unique because an MOU signed by the State and Federal Trustees in 2008 created a Trustee Council and provided it with some authorities that are normally reserved for the State NRD Trustees. Mr. Jamison noted that, of the 14 projects identified in the Restoration Plan/Environmental Assessment, 4 have been completed, 6 are active, and 4 will be implemented in the future. He informed the Trustees that the Council is considering a restoration project for Half-moon Creek which is within the scope of the RP/EA. The estimated cost of the project is from \$350,000 to \$400,000 and it would be fully funded with NRD funds. Mr. Randall asked if there was a specific timeline for the project to which Mr. Jamison responded no, and added that no new funding would be needed. Mr. Randall further asked if there was a DNR representative on the Council to which Mr. Jamison responded no, that role needs to be filled. Jennifer Robbins noted that the Lowry case also needs a DNR representative. Casey Shpall suggested that a tour of the Cal Gulch site be scheduled for the Trustees. No specific action was requested.

Suncor

Kendall Griffin provided background regarding the Suncor settlement, consent decree and MOU which requires the State and Federal Trustees to work cooperatively to create a Restoration Plan. Ms. Griffin stated that State and Federal processes for selecting projects are different, most notably with regard to public participation, project solicitation and matching fund requirements, and need to be reconciled. She and other Trustee staff have been working with the USFWS to make the combined process more inclusive. Ms. Shpall noted that the Trustees' goal has traditionally been to enhance projects with community input and matching funds. Ms. Griffin also pointed out that the USFWS is particularly interested in an out-of-state prairie pothole restoration project which would be pursued in the Dakotas and Montana. Ms. Griffin requested guidance from the Trustees with regard to future steps in combining the State and Federal processes and which elements of the State process are essential.

Rocky Mountain Arsenal Foundation Fund

David Banas introduced Pat Schuler from the City of Aurora and the Northeast Greenway Corridor Advisory Committee (NGC). Ms. Schuler explained that the City of Aurora had completed its land acquisition projects included in the Master Plan approved by the Trustees in 2012, and \$267,000 remains unspent. She requested that the Trustees adopt a resolution allowing the City of Aurora to reallocate \$267,000 to additional land acquisitions to continue its Triple Creek Trail project, and she provided a Project Application Packet with details. Paul Frohardt,

Executive Director of the NGC, emphasized that Aurora has worked cooperatively with the NGC, and the NGC supports its request. Ms. Rudolph moved to adopt the resolution as presented. Mr. Randall seconded the motion, it was approved unanimously and the resolution was signed by the Trustees.

Bill Allowing CDPHE to Pursue OPA cases

David Banas gave a brief history of the Trustees' direction in 2013 for Trustee staff to draft a bill allowing CDPHE to expend money from the HSRF to pursue OPA cases and to deposit recovered funds in NRDRF. Mr. Banas explained that the current statute only speaks to CERCLA cases, and that a bill to include OPA cases was drafted for the 2014-15 legislative session, but it was not pursued. He asked for the Trustees' guidance on how to proceed in preparation for the 2015-16 legislative session. The Trustees requested staff coordinate among the three agencies to pursue legislation for 2016.

Small Spill Program

Alex Davis and other Trustee staff requested approval to develop a pilot project for small spills. She informed the Trustees there is no formal process in place at the moment for the State to assess small spill injuries. David Banas added that currently, following a spill, first responders handle safety issues and there is a mechanism in place for cleanup, but there is no process for restoration. Mr. Banas noted the extent of injuries and amount of damages is currently unknown and such a pilot project would be helpful in determining whether it was appropriate to pursue a spill program. Ms. Newton noted that other states with such programs have streamlined the process by using a matrix to assess the amount of damages.

Executive Session

Ms. Coffman noted three of the agenda items previously discussed were subject to attorney-client privilege, and therefore called for an executive session pursuant to C.R.S. § 24-6-402(3)(a)(II). At 3:05 p.m., Mr. Randall moved to begin the executive session, Ms. Rudolph seconded the motion, and it was unanimously approved to allow the Trustees to discuss privileged topics concerning Suncor, the bill allowing CDPHE to expend money from the HSRF to pursue OPA cases, and a pilot project for a small spill program. Such discussion, being attorney-client privileged, is authorized under C.R.S. section 24-6-402(3)(a)(II) and C.R.S. section 24-6-402(d.5)(1)(B). The executive session was digitally recorded. No other business was conducted, no minutes were taken.

Open Session

At 4:17 p.m., the Trustees returned to open session. Ms. Shpall noted for the record the Trustees discussed legal issues concerning the Suncor, the bill allowing CDPHE to expend money from the HSRF to pursue OPA cases, and a pilot project for a small spill program.

Following the executive session, Ms. Randolph moved that the Trustees direct Trustee staff to prepare a draft resolution to be shared with USFWS stating Trustee staff will continue

negotiations with the USFWS. The resolution will explain that the State will go forward with its process to solicit projects for different levels of funding: 1) projects for which funding is allotted to the State alone, and 2) projects for which funding is combined with the USFWS. Once the State receives proposals from the community, the State will share them with the USFWS asking it to work with the State to select projects to fund from the combined list of federal projects and state-solicited projects. The selected and non-selected proposals would be incorporated into the RP/EA for comment. Mr. Randall reiterated that the resolution should also include language stressing the importance of matching funds and public support. Mr. Randall seconded the motion and it was unanimously approved.

Ms. Randolph moved that the Trustees request Trustee staff to further investigate what resources are required to pursue new natural resources injury sites, and to determine whether pursuit of natural resources damages claims would be appropriate. Mr. Randall seconded the motion and it was unanimously approved.

Mr. Randall moved that the Trustees direct Trustee staff and Trustee agencies to develop a strategy to present to the Trustees regarding the drafting of a bill allowing CDPHE to expend money from the HSRF to pursue OPA cases and to deposit recovered funds in NRDRF. Ms. Randolph seconded the motion and it was unanimously approved.

Ms. Coffman concluded the meeting at 4:28 p.m.

ITEM #2

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ITEM #3

Northeast Greenway Corridor



Rocky Mountain Arsenal Natural Resource Damages (NRDs) Foundation Fund Project Funding Application Packet



Rocky Mountain Arsenal Natural Resource Damages
Foundation Fund Project Application

Project Name: Westerly Creek Channel Restoration 11th – 12th Avenue

Brief Project Description:

The City and County of Denver requests \$500,000 to expand and enhance Denver's Westerly Creek Greenway from 12th to 11th Avenue. This 3.5 acre stream restoration project is currently under design with engineers and landscape architects for Westerly Creek at New Freedom Park. The Foundation Funds will be used to extend the restoration benefits along the additional reaches upstream by providing fine grading to the bank's edge to create a larger riparian zone and pocket wetlands. It will also fund materials needed for erosion control, irrigation for vegetation establishment, trees, shrubs, native seed, and wetland plugs. Design strategies employed will slow the flow of the creek and create other micro-aquatic habitats to improve water quality, cool water temperatures, and the overall ecological health of Westerly Creek.

The proposed project would result in both environmental and community benefits. Restoration of riparian communities and upland native prairie improves habitat for wildlife and provides new opportunities to learn about wildlife in an urban setting. With close proximity to RMNA, it provides a gateway for nearby communities to learn about and understand wildlife habitat and stewardship.

Project Applicant (City and Department): City and County of Denver, Department of Parks and Recreation

Point of Contact:

Name: Gordon Robertson, Director – Parks Planning
Address: 201 W Colfax Ave, Dept 613, Denver, CO 80202
Phone: 720-913-0615
Email: Gordon.Robertson@denvergov.org

Total Estimated Project Cost: \$625,000

Amount of NRD Funding Requested: \$500,000

Matching Fund Sources, Value and Status:

Urban Drainage Flood Control District: \$125,000 - secured

Signature of Authorized Representative of the Applicant:

Name: 

Date: 9.11.15

Northeast Greenway Corridor

Page 3: Compliance with Screening Criteria:

Projects must first meet the screening criteria below to be considered.

Check all that are met by the project proposed in this application:

- ✓ The project must restore, replace, or acquire the equivalent of the natural resources (and/or their ecological services) that were injured by hazardous substance releases from the Rocky Mountain Arsenal (See Appendix A, NRDF Guidance Document).

The proposed project will restore and create wetlands, while establishing native uplands along the Westerly Creek corridor from 11th-12th Avenue; Repairing the type and function of habitats that were injured by past Arsenal activities.

- ✓ The project must be located in the vicinity of the Rocky Mountain Arsenal, or demonstrate an ecological nexus to the injured natural resources (i.e., provide benefit to local ecology or habitat).

The proposed project is located near the Arsenal, and has a direct ecological connection to the Arsenal through regional wildlife dynamics. Westerly Creek connects with Sand Creek in Stapleton then to the South Platte River and acts as a vital wildlife corridor to the Rocky Mountain Arsenal.

- ✓ NRDs funds may be used to augment existing or ongoing projects that meet the NRDs criteria so long as they do not duplicate current activities, and address the restoration objectives.

The proposed project will use Foundation NRDs funds to increase the area of an existing planned project along Westerly Creek at New Freedom Park to create significant ecological benefits along a larger reach of the Westerly Creek corridor. As of June 2015, the City of Aurora is looking to provide the same restoration to the ecological function on Westerly Creek at 16th and Yosemite based off of City and County of Denver's proposed project.

- ✓ The project must be consistent with the objectives and goals of the Rocky Mountain Arsenal National Wildlife Refuge¹.

The proposed project is consistent with the RMANWR goals for wildlife, habitat management, environmental education, and wildlife-oriented recreation. The design focuses on improvements to restore the ecological health, habitat, and water quality Westerly Creek corridor. It will restore a

¹ The Rocky Mountain Arsenal CMP is available online at: (<http://www.fws.gov/mountain-prairie/planning/ccp/co/rkm/rkm.html#Documents>).

stream corridor for wildlife to move through the city while creating a space for people to enjoy nature.

- ✓ Comply with laws, including local ordinances and zoning.

The proposed project is compliant with local, state, and federal laws. All necessary permits will be acquired prior to construction.

- ✓ Protect public health and safety.

The proposed project protects and improves public health and safety by improving water quality and by expanding a community amenity. Channel slopes will be regraded to improve access to the water's edge and to slow the flow of storm events. This reach of Westerly Creek experience high levels of flooding in recent events in 2013 and 2015. This project will better contain flood events and slow the flow of water to create a safer open space amenity for the surrounding community.

- ✓ Be consistent with local and regional planning, including resource management plans.

The proposed project is consistent with local and regional plans. The design team is incorporation design elements from the Westerly Creek Greenway Master Plan and the Westerly Creek Master Drainage Plan from Urban Drainage Flood Control District.

- ✓ Provide matching funds. At a minimum, the proposal must include matching funds or in-kind services equaling at least 25 percent of the total project cost.

Matching funds from Urban Drainage and Flood Control District of \$125,000 have been secured and meet the minimum 25% percent of the requested foundation fund.

Use up to 10 pages to respond to the following criteria:

1. Environmental

a. Amount of benefit to the damaged natural resources

Surface water

This stream restoration project will benefit surface water systems in a variety of ways. The core of the project is the restoration of a more sustainable and healthy waterway. The funding requested will provide establishment of wetlands and a larger riparian habitat between 12th and 11th Avenue (see map) to assist with water quality and habitat restoration. Native upland vegetation, in place of bluegrass turf, will allow pollutants to settle out of the water before it is slowly discharged into Westerly Creek. The enhancements proposed as part of this request, such as regrading and wetland establishment, will greatly create a meandering channel and expand surface water benefits with the increased capacity of wetland vegetation to filter and immobilize contaminants. The well-vegetated channel will help store water along the creek corridor during wet weather and recharge ground water supplies.

Groundwater systems

The Westerly Creek Greenway improvements is the best opportunity to provide a naturalized creek channel, allowing surface water to more effectively, recharge the ground water, and allow plants and macro-invertebrates to thrive in a healthy ecosystem. The establishment of abundant diverse wetlands in the project area benefits the alluvial ground water system along the creek by promoting and improving infiltration during high flows.

Soils

The enhancements proposed as part of the Westerly Creek Greenway project will improve soils by reducing scouring and erosion during high flow periods. It will also restore the micro-ecosystem needed to develop a nutrient-rich soil base that is the foundation for long-term vegetation growth and regeneration. Additionally, reintroduction of native plant materials within this reach of Westerly Creek, including a variety of shrub and tree species, will help bind the creek bank soil and provide resistance to the erosive forces of water.

Biological resources (fish and other aquatic biota, wildlife, terrestrial and aquatic vegetation and associated habitats, wetlands)

The conversion of a turf-lined channel from 11th – 12th Avenue to a diverse riparian habitat will enhance water quality and fish habitat within this reach of the creek. The project reach is a missing link in the larger Westerly corridor, commonly used by wildlife to navigate through a dense urban setting. The proposed project will result in substantial biological resource benefits by greatly expanding the size and value of the channel with more diverse wetland benches, a wider riparian zone, and a larger upland vegetation

base. The project site currently consists of a degraded, channelized creek, providing little wildlife or habitat value. The enhancements to this project will include a diverse complex of wetlands and upland native grass areas. This expanse of diverse habitat types will become a haven for fish and wildlife, particularly birds including migratory songbirds, waterfowl and raptors.

b. Addresses a critically important local or regional environmental resource

The proposed project will enhance and complement the important open water habitat of Westerly Creek, creating a larger enhancement to this important creek corridor, which runs north from Arapahoe County at Yale Boulevard to the confluence with Sand Creek within the City and County of Denver. From a regional perspective, the enhancement of this site is important as it expands and strengthens the role of Westerly Creek as a biological stepping stone through the urbanized core before it ultimately reaches the South Platte River corridor. This project, combined with the completion of other proposed restoration sites along the creek corridor, will result in long-term benefits to the restoration of the Westerly Creek.

c. Proximity and/or connectivity to regional natural system (riparian, uplands)

The enhancements on Westerly Creek from 11th-12th Avenue are located in an underserved portion of the Lowry neighborhood. The project location is a section of Westerly Creek that connects to the larger, regional system and is now the last Denver owned section to be restored. The confluence at Sand Creek is currently under construction to restore one of the more degraded sections of Westerly Creek. Sand Creek ultimately confluences with the South Platte River, making Westerly Creek a conduit for wildlife and residents to access several miles of waterway corridors throughout the city. Restoration and additional enhancements of wetland and uplands on this site will provide additional habitat for small mammals, raptors and other birds, and will establish an important community connection to the natural environment.

d. System-focus (multiple resources and/or actions)

This project benefits the overall system by improving habitat availability and improving the connection of this greater natural system to adjacent human communities.

This funding will allow for greater restoration along the corridor within the Westerly Creek project area. The Foundation Fund proposal is requesting \$500,000 enhancements, which will provide a larger overall restoration of Westerly Creek from 11th 12th Avenue. Additional coverage of vegetation will expand the riparian and wetland zones. This funding will be used to provide fine grading to the bank's edge to create a larger riparian zone and pocket wetlands. It will fund erosion control, irrigation for vegetation establishment, trees, shrubs, native seed, and wetland plugs. The marsh wetland benches will create more diverse habitat, native landscape zones and increased water quality.

Additionally, banks and slopes along the creek will be reduced in slope to limit harmful erosion and contamination of surface and ground water, with no increase to flooding. Reintroduction of native plant materials within Westerly Creek, including a variety of shrub species and tree species, will help bind the creek bank soil and provide resistance to the erosive forces of water. Additionally, the proposed well-vegetated channel will help store water along the creek corridor during wetter weather and help to charge ground water supplies.

2. Connectivity to the Arsenal

a. Proximity to the Rocky Mountain Arsenal

The project is located approximately 6 miles south of the Arsenal. Westerly Creek has hydrological and ecological connectivity to the Arsenal and reaches of Sand Creek, which have been damaged by past Arsenal activities. This reach of Westerly Creek acts as a vital wildlife corridor from south Denver to Sand Creek, the South Platte River and the Rocky Mountain Arsenal.

b. Ecological or geographical connection to the Arsenal

Habitat restoration and enhancement at this site will strengthen the value and integrity of Sand Creek and the South Platte River as a corridor for wildlife. The Westerly Creek corridor is inextricably linked to the Arsenal and the greater Northeast Greenway system.

3. Project Feasibility

a. Demonstrated high likelihood of success, technically feasible and procedurally sound

The proposed project has a high likelihood of success. The Department of Public Works, Urban Drainage Flood Control District, surrounding communities, non-profits, EPA and the Councilwoman for this district all indicated strong support for this project and remain as integral partners. The success of the development at New Freedom Park has further increased support for restoration along this reach of Westerly Creek from 11th to 12th Avenue. The project is currently under contract for design, with construction planned in spring of 2016.

b. Project completion (identified project timeline and completion date. Shovel ready.)

The Westerly Creek Greenway project is currently under design with Muller Engineers and Wenk Associates for the planning and design of the channel restoration channel from 11th to 12th. Community outreach began in June of 2015 and a final design will be complete in December 2015. Construction is scheduled to begin spring 2016.

4. Sustainability

a. Degree to which benefits to natural resources will be sustained over the long term, based on project design.

The project will be owned, operated and maintained by the City and County of Denver. The Natural Resources Division of the Parks and Recreation Department has begun weed management on site to reduce weed infestations to ensure successful establishment of native species. Per Parks and Recreation construction specifications, an ecological contractor will be required to manage and guarantee the establishment for 3 years, with oversight of the Parks Project Manager. Once the maintenance contract is complete, routine maintenance, and continuous vegetation management will occur with Park District staff. Appropriate methods will be utilized to reduce disturbance to the site and over-use of pesticides.

b. Identify the amount of, and responsible party for, permanent support (e.g. maintenance) and protection (e.g. land ownership or easements) to be provided to a project area.

The City and County of Denver and Urban Drainage Flood Control District will operate, protect and maintain the proposed improvements. The site is zoned as open space and managed by the Parks and Recreation Department. Urban Drainage Flood Control District also provides maintenance to Westerly Creek removing debris and monitors the health of the channel condition.

5. Cohesive Regional Plan

a. Demonstrate how the project contributes to an integrated regional restoration plan.

The Westerly Creek restoration project contributes to the overall regional restoration plan by restoring a critical section of the creek. Over the last 10 years, Denver and Urban Drainage Flood Control District have worked together to maintain the health and sustainability of the Westerly Creek corridor and South Platte River watershed. Denver partnerships have worked collaboratively with the City of Aurora to design and manage portions of the creek on county boundaries. Currently, there are three restoration projects occurring on Westerly Creek. The Department of Parks and Recreation is working with the Park Creek Metro District to restore the reach from 33rd Avenue to the confluence with Sand Creek. This is a \$7M, partially funded through the Restoration NRD Funds, project that will greatly benefit wildlife habitat, water quality, and community connections. The City of Aurora is implementing a FEMA grant to restore the channel and remove several homes from the floodplain. Lastly, Urban Drainage Flood Control District just completed the second of three rehabilitation projects between 33rd Avenue and Beeler Street. All of the mentioned projects will create a creek corridor that functions safely for flood conveyance, enhances wildlife habitat, promotes the health of the regions' water systems, and establishes access for residents to appreciate nature in their backyard.

Westerly Greenway Foundation Fund Budget

(Based on 30% Design)

ITEM NO.	DESCRIPTION OF ITEM	TOTAL COST OF ITEM	NRDS foundation funds 500k	NRDS foundation match 125k (UDFCD)
12th to Richtofen Reach				
1	SITE PREPARATION (dewatering, clearing/grubbing)	\$ 55,824.00	\$ 40,824.00	\$ 15,000.00
2	STORMWATER EROSION CONTROL DURING CONSTRUCTION	\$ 5,676.00	\$ 5,676.00	\$ -
3	EARTHWORK	\$ 65,000.00	\$ 65,000.00	\$ -
4	CREEK BANK STABILIZATION	\$ 23,500.00	\$ 23,500.00	\$ -
5	PEDESTRIAN TRAIL & AMENITIES	\$ 25,000.00	\$ -	\$ 25,000.00
6	CREEK BANK LANDSCAPPING (Riparian and Uplands)	\$ 32,000.00	\$ 22,000.00	\$ 10,000.00
7	IRRIGATION FOR ESTABLISHMENT	\$ 30,000.00	\$ 30,000.00	\$ -
8	DESIGN & PERMIT FEES	\$ -	\$ -	\$ -
Richtofen to 11th Reach				
1	SITE PREPARATION (dewatering, clearing/grubbing)	\$ 93,700.00	\$ 93,700.00	\$ -
2	STORMWATER EROSION CONTROL DURING CONSTRUCTION	\$ 9,800.00	\$ 9,800.00	\$ -
3	EARTHWORK	\$ 42,250.00	\$ 42,250.00	\$ -
4	CREEK BANK STABILIZATION	\$ 52,000.00	\$ 52,000.00	\$ -
5	PEDESTRIAN TRAIL & AMENITIES	\$ 25,000.00	\$ -	\$ 25,000.00
6	CREEK BANK LANDSCAPPING (Riparian and Uplands)	\$ 64,000.00	\$ 64,000.00	\$ -
7	IRRIGATION FOR ESTABLISHMENT	\$ 51,250.00	\$ 51,250.00	\$ -
8	DESIGN & PERMIT FEES	\$ 50,000.00	\$ -	\$ 50,000.00
	TOTAL	\$ 625,000.00	\$ 500,000.00	\$ 125,000.00



URBAN DRAINAGE AND FLOOD CONTROL DISTRICT

Paul A. Hindman, Executive Director
2480 W. 26th Avenue, Suite 156B
Denver, CO 80211-5304

Telephone 303-455-6277
Fax 303-455-7880
www.udfcd.org

March 4, 2015

Susan Newton
Lowry Landfill Superfund NRD Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

RE: Support for NRD funding to enhance project construction at Westerly Creek Greenway

Dear Susan,

This letter is in support of the City and County of Denver's request for \$500,000 to expand Denver's Westerly Creek Greenway project with increased stream restoration along Westerly Creek from 13th and Xenia Street to 11th and Willow Street. Stream restoration and improvements are proposed to be in keeping with the work already accomplished in portions of Westerly Creek completed within the Stapleton and Lowry neighborhoods.

The Urban Drainage and Flood Control District (UDFCD) and Denver worked together from 2008-2010 to complete the *Westerly Creek Major Drainage Planning Study Update*. This planning document stresses the importance of recreating a riparian corridor in this urban watershed to improve flood control, water quality, and the urban environment. Upstream in the Lowry redevelopment area and also downstream in the Stapleton redevelopment area, Westerly Creek has been restored from a blighted, polluted storm sewer, to an urban gem, a rare experience of natural beauty and natural habitat in the city.

In the 1980s, UDFCD and the City and County of Denver partnered to increase the size of the underground conveyance to prevent the worst of the flooding from occurring. However, the drainage and flood control management of the reach in the project area of Westerly Creek was mishandled from the beginning and now that the area has developed with no sign of major redevelopment in the near future, all the alternatives are complicated and expensive. Denver and UDFCD are currently under contract with Muller Engineering to begin the preliminary design for this reach of the creek. It is estimated that the current budget will create a more safe and healthy stream corridor, while creating an amenity for the community. The additional funding requested will allow more enhancements for wetland areas, wider riparian buffers, and a more sustainable native upland habitat. These enhancements will create a more sustainable environment for some of the most disadvantaged citizens in the city, while helping to recharge the groundwater and manage storm water conveyance.

The proposed project improvements are currently under design and will finalized early fall 2015 with construction to start in the winter of 2015.

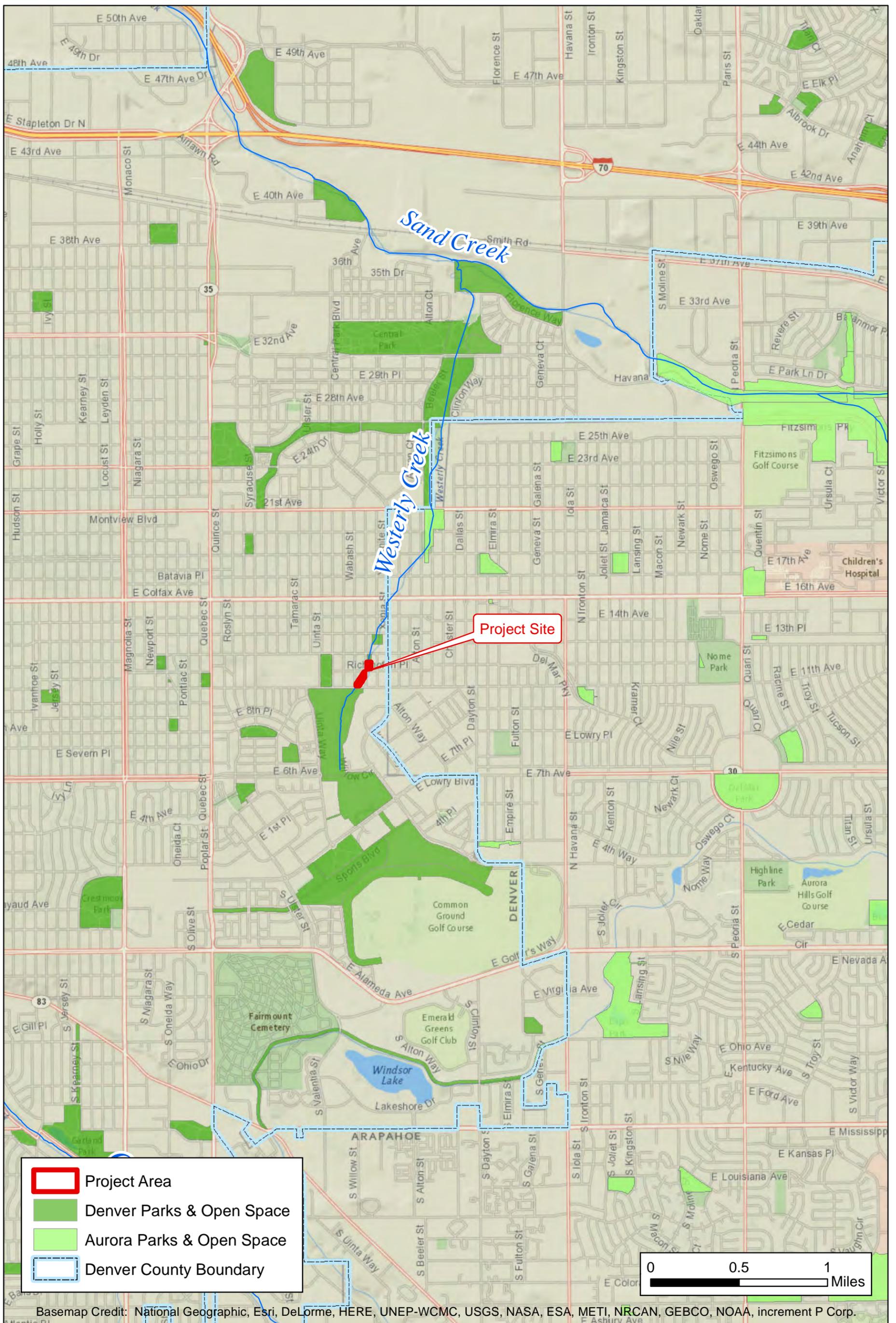
We are committed to this project and will provide a **cash match of \$125,000** towards the grant proposal. The additional money that could be applied to the project through the grant award will greatly benefit this project.

I appreciate the opportunity to provide my support of this project. If you have any questions, please either call me (303.455.6277) or e-mail me (bchongtoua@udfcd.org). We are prepared to work with you and to help in any way we can.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara Chongtoua', with a long, sweeping horizontal line extending to the right.

Barbara Chongtoua

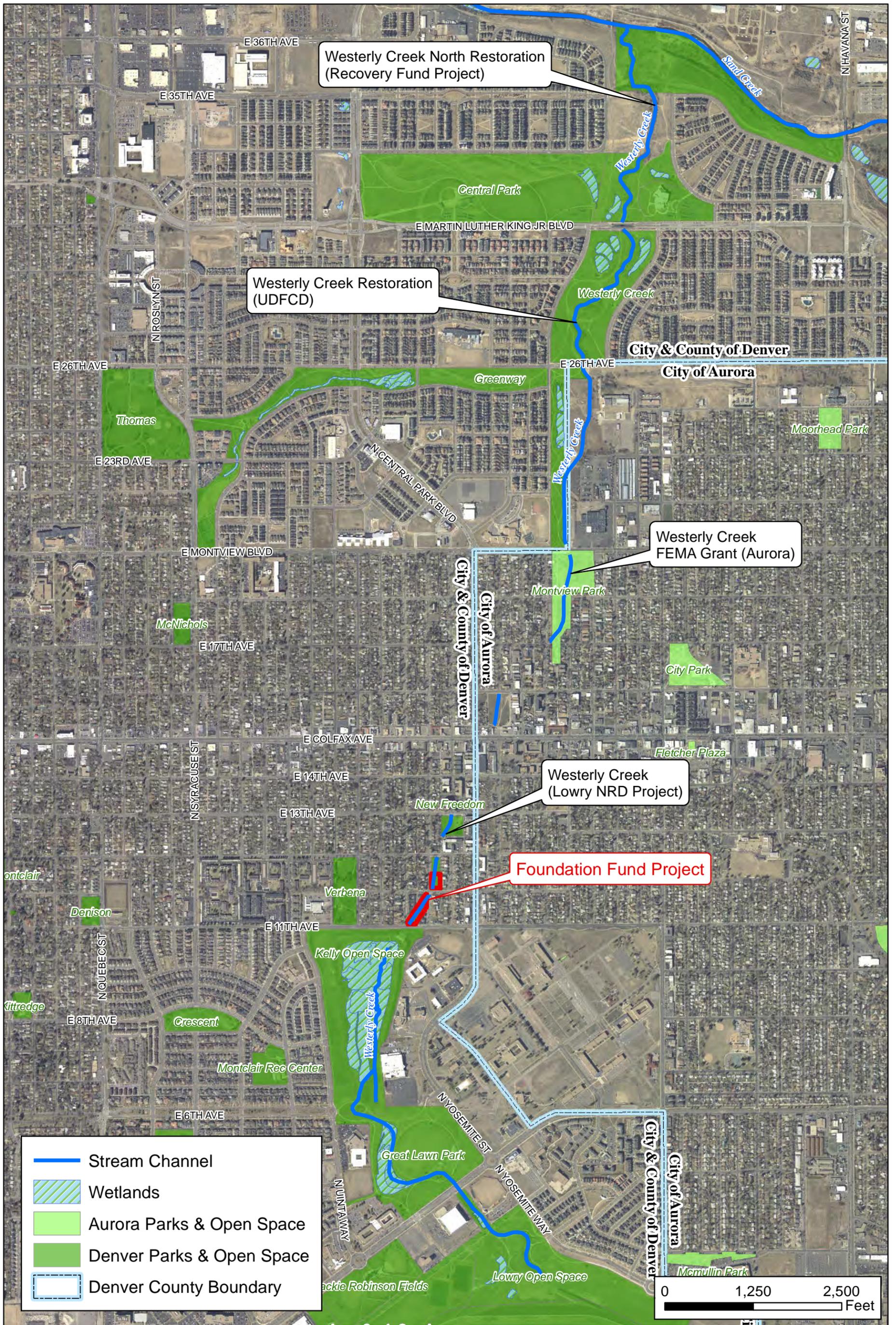


Basemap Credit: National Geographic, Esri, DeLorme, HERE, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, increment P Corp.

Westerly Creek 11th Ave to 13th Ave

Regional Context Map

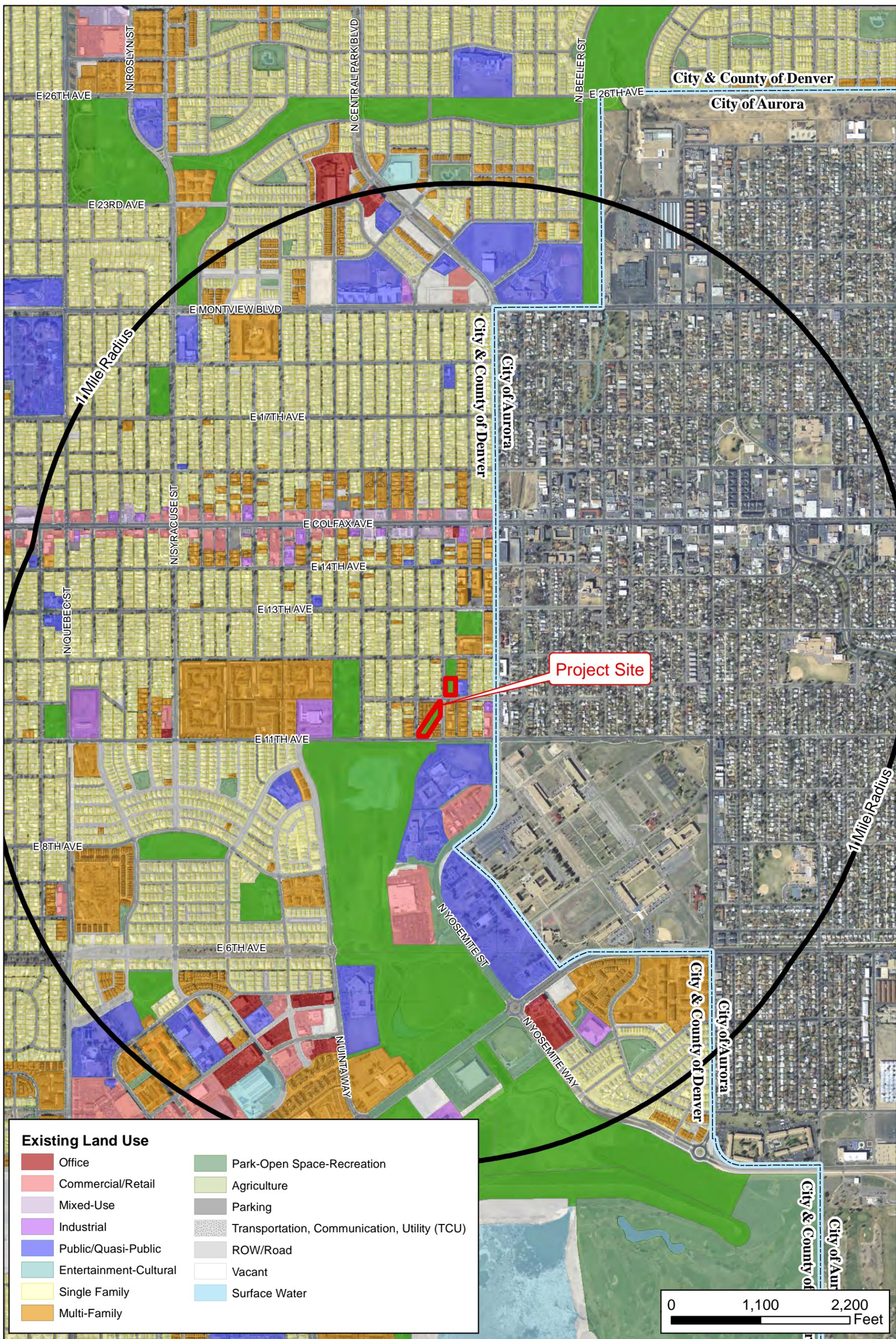




Westerly Creek 11th Ave to 12th Ave

Natural Resources and Nearby Projects



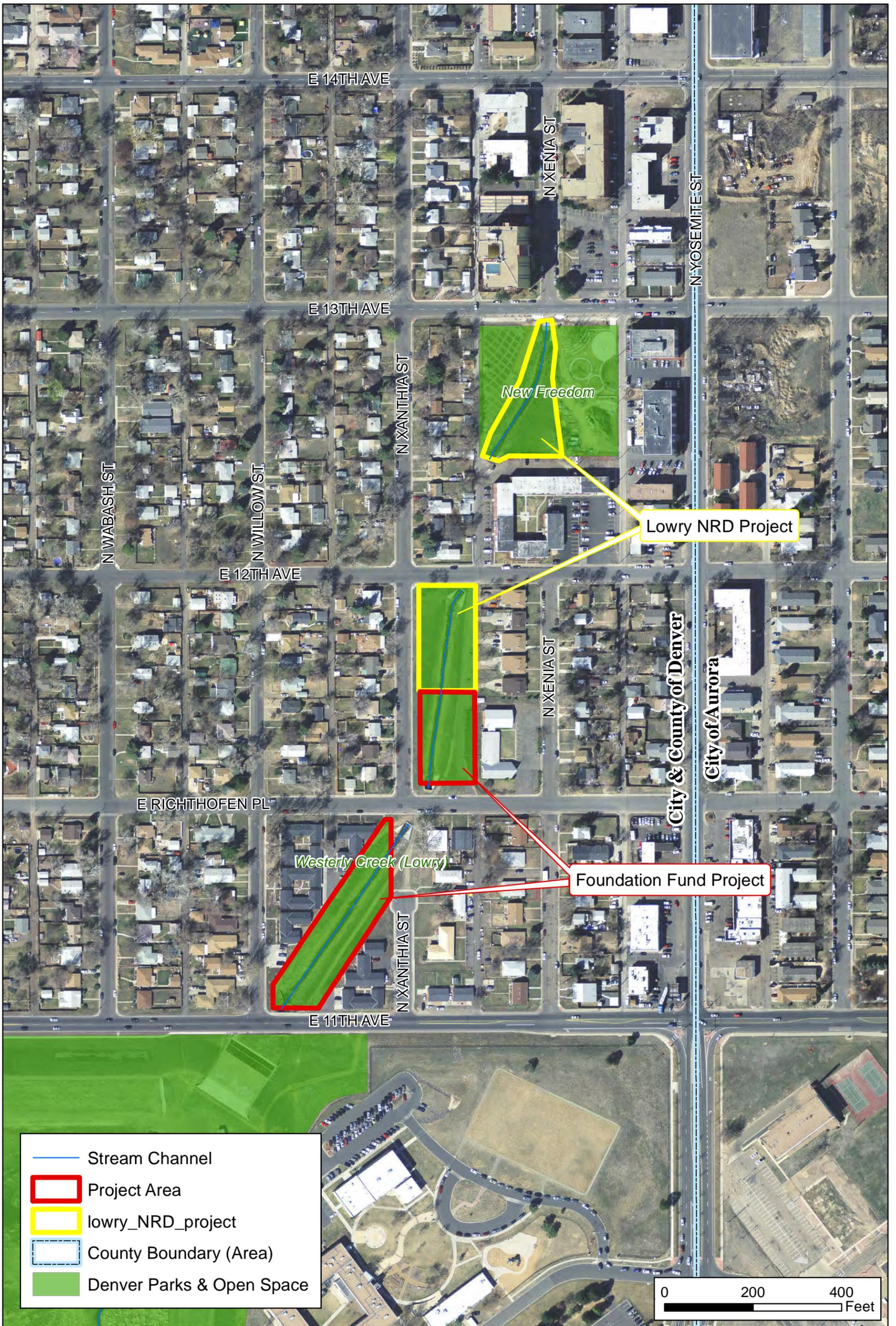


Westerly Creek 11th Ave to 13th Ave

City & County of Denver Existing Land Use



The City and County of Denver shall not be liable for damages arising out of the use of this information. The information is provided "as is" without warranty of any kind, expressed or implied, including, but not limited to the fitness for a particular use.



Westerly Creek 11th Ave to 12th Ave

Project Site Map



The City and County of Denver shall not be liable for damages arising out of the use of this information. The information is provided "as is" without warranty of any kind, expressed or implied, including, but not limited to the fitness for a particular use.

Middle Reach (12th Ave to Richthofen Place)

Existing Conditions



Middle Reach

Existing Conditions



Middle Reach: Looking South from 12th Ave. towards Richthofen Pl.

Middle Reach

Existing Conditions



Middle Reach: Looking North towards 12th Ave.

Middle Reach

Existing Conditions



Middle Reach: Looking North towards 12th Ave. adjacent to Alley

Middle Reach

Opportunities



- **Re-align Alley**
- **Creek Sinuosity + Pools**
- **Planting Pockets (flat benches)**
- **Trail Connection**

Middle Reach

Opportunities



BEFORE

Middle Reach

Opportunities



AFTER

Upstream Reach (Richthofen Place to 11 Ave)

Existing Conditions



Upstream Reach

Existing Conditions



Upstream Reach: Looking South towards 11th Avenue/Kelley Road Dam

Upstream Reach

Existing Conditions



Upstream Reach: Looking Northeast from Willow St. towards Richthofen Pl.

Upstream Reach

Existing Conditions



Middle Reach: Western Edge, looking Northeast towards Richthofen Pl.

Upstream Reach

Existing Conditions



Upstream Reach: Looking Northeast across Richthofen Pl. to Middle Reach.

Upstream Reach

Existing Conditions



Upstream Reach: Looking South towards 11th Ave/Kelley Road Dam

Upstream Reach

Opportunities



- Creek Sinuosity
- Planting Pockets (flat benches)
- Realign Trail + Provide Connections

Upstream Reach

Opportunities



BEFORE

Upstream Reach

Opportunities



AFTER

RESOLUTION

**COLORADO NATURAL RESOURCE TRUSTEE
RESOLUTION NOVEMBER 4, 2015
CONCERNING DENVER’S WESTERLY CREEK PROPOSAL FOR THE
ROCKY MOUNTAIN ARSENAL NATURAL RESOURCE DAMAGES
FOUNDATION FUND MONEY**

WHEREAS, the Colorado Natural Resource Trustees are responsible for the management and direction of Colorado’s natural resource damages program;

WHEREAS, the Trustees are responsible for administering State funds to restore, replace or acquire the equivalent of injured natural resources;

WHEREAS, the Rocky Mountain Arsenal (“RMA”) natural resource damages (“NRDs”) settlement established a fund of \$10 million for Northeast Greenway Corridor projects (“Foundation Fund”) and a fund of \$17.4 million for NRDs projects (“Recovery Fund”);

WHEREAS, on November 4, 2015, the City and County of Denver submitted their application requesting \$500,000 for their project “Westerly Creek Channel Restoration 11th – 12th Avenue”;

WHEREAS the Northeast Greenway Corridor Working Group (NGC) supports Denver’s application;

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows:

The Trustees do hereby grant Denver’s request for funds as described in its Westerly Creek Channel Restoration 11th – 12th Avenue” proposal, subject to the following conditions:

- 1) This approval is valid for five years;
- 2) This approval is contingent on the Trustees’ staff’s approval of the final restoration plan; and,
- 3) This approval is conditioned on compliance with all laws and regulations, including but not limited to: State and Federal laws, local ordinances, permitting and zoning requirements, and water rights requirements.

Cynthia Coffman, Colorado Attorney General

Date

Martha Rudolph,
Director of Environmental Programs, CDPHE

Date

Robert Randall, Deputy Director, DNR

Date

DRAFT

ITEM #4



Parks & Open Space Department
Adams County Regional Park
9755 Henderson Road
Brighton, CO 80601
PHONE 303.637.8000
FAX 303.637.8015
www.adcogov.org

October 16, 2015

Mr. David Banas
Assistant Solicitor General
Colorado Department of Law
Natural Resources & Environment Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, Colorado 80203

Re: Adams County's South Platte Acquisition – NRD Recovery Fund

Dear Mr. Banas:

Adams County, in partnership with the Trust for Public Land (TPL), is currently working on both of the land acquisitions approved by the Colorado Natural Resource Trustees as part of our Recovery Fund proposal. TPL has recently executed an Option Agreement with the 10365 Partners, LLLP, for the fee acquisition of the 10365 Partners property.

Adams County and TPL are concerned about two of the conditions that are contained in the Colorado Natural Resource Trustee Resolution dated November 17, 2014 that approved our South Platte Acquisition projects. Specifically, we feel that Conditions 6 and 7, as they are currently worded, could potentially prohibit us from acquiring the 10365 Partners property. As directed by the Trustees' staff, it was requested that we propose alternative language for these two conditions and explain why these conditions are problematic prior to the Trustees meeting on November 4.

Condition 6): No additional surface oil and gas development, beyond what currently exists, may occur on the sites, including any extension to the existing leases;

We propose that Condition 6 be modified to read: "6) No additional surface oil and gas development, beyond what currently exists, or is permitted under existing leases, may occur on the sites, including any extension to the existing leases. This prohibition shall be referenced both as a deed restriction in the deed conveyance of the property and also in the deed of conservation easement placed upon the property."

There are existing oil and gas improvements on the 10365 Partners property pursuant to two oil and gas leases – two wells and one tank battery. One well is listed as "Temporarily Abandoned," is not in production, and the above ground equipment has

BOARD OF COUNTY COMMISSIONERS

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been removed. However, the oil and gas lease remains in effect by the owner paying a nominal "shut-in royalty" to the landowner. The second well remains at this time in active production, and that oil and gas lease stays in effect due to production. Since the existing oil and gas leases remain in effect, there is a potential for additional surface oil and gas development. Therefore, the only way to ensure that no additional surface oil and gas development occurs on the property would be to acquire and extinguish the two existing oil and gas leases. We are proposing to ensure that no new surface oil and gas development could occur on the property pursuant to oil and gas leases executed after the property acquisition.

Condition 7): Prior to release of any of the Funds, the Proponent must demonstrate to the Trustees' staff that the existing surface mineral development will be terminated, and the surface restored, within five years of Proponent's acquisition of the 10365 parcel.

Similar to Condition 6, Condition 7 will be difficult if not impossible for Adams County and TPL to meet as it is currently written. The only way to ensure that Condition 7 could be accomplished is to acquire the existing oil and gas leases on the property and then extinguish the leases. Therefore, we are requesting to have Condition 7 removed.

The Colorado Oil and Gas Conservation Commission (COGCC) is charged with ensuring that oil and gas operators adhere to Regulations, including 1000 Series Reclamation Regulations. The COGCC also requires that oil and gas operators post bonds to ensure that decommissioning and reclamation of wells does occur.

As requested by the Trustees' staff, we have requested an Oil and Gas Assessment of the two wells on the 10365 Partners property in regards to current/future production, and potential of and likelihood of additional oil and gas development on the property. We will provide this Oil and Gas Assessment prior to or at the November 4 meeting of the Trustees. Thank you for your consideration of our request, and if you have any questions or concerns please contact me at your convenience.

Sincerely,



Marc Pedrucci
Natural Resource Manager
Adams County Parks & Open Space

Cc: Susan Newton, CDPHE
Ed Perkins, CDNR
Wade Shelton, the Trust for Public Land
Peter Ives, the Trust for Public Land

RESOLUTION

**COLORADO NATURAL RESOURCE TRUSTEE
RESOLUTION NOVEMBER 4, 2015
CONCERNING ADAMS COUNTY'S REQUEST TO MODIFY CONDITIONS
OF NOVEMBER 17, 2014 APPROVAL**

WHEREAS, the Colorado Natural Resource Trustees are responsible for the management and direction of Colorado's natural resource damages program;

WHEREAS, the Trustees are responsible for administering State funds to restore, replace or acquire the equivalent of injured natural resources;

WHEREAS, the Rocky Mountain Arsenal ("RMA") natural resource damages ("NRDs") settlement established a fund of \$17.4 million for Natural Resource Damages (NRDs) projects ("Recovery Fund" or "Fund");

WHEREAS, the Recovery Fund money is not available until interest earned on the Fund repays the Hazardous Substances Response Fund and the State General Fund for the approximately \$2.2 million in litigation expenses incurred by the State in pursuing its NRD claim against Shell and the United States Army;

WHEREAS, as of September 2014, approximately \$1.4 million in litigation expenses remains to be repaid;

WHEREAS on February 27, 2014, the Trustees agreed in principle to the Northeast Greenway Corridor Working Group's (NGC's) proposal for each NGC constituent to pay a percentage of the remaining litigation expenses to "unlock" the Recovery Fund money sooner than the interest will repay the litigation expenses;

WHEREAS, On September 26, 2014 the Trustees approved Adams County's request for \$3,685,901 to acquire two parcels totaling 224 acres of habitat including a 100 acre lake and irrigated meadow, with the following conditions:

- 1) This resolution will expire November 17, 2019, and the funds will no longer be available, unless a contract consistent with this resolution is executed by that date.
- 2) Release of the Funds is contingent on the Proponent contributing matching funds to the project pursuant to the Proposal and consistent with the Trustees' matching funds policy;
- 3) Prior to release of any of the Funds, interest on the Recovery Fund must fully repay the litigation expenses or the Proponent must repay litigation expenses in an amount and manner determined by the Trustees' staff;
- 4) Any land acquired with the Funds must be encumbered by a conservation easement that has been reviewed and approved by the Trustees' staff. The

conservation easement must include an agricultural use plan or management plan;

- 5) Release of the Funds is contingent on compliance with all laws and regulations, including but not limited to: State and Federal laws, local ordinances, permitting and zoning requirements, and water rights requirements;
- 6) No additional surface oil and gas development, beyond what currently exists, may occur on the sites, including any extension to the existing leases;
- 7) Prior to release of any of the Funds, the Proponent must demonstrate to the Trustees' staff that the existing surface mineral development will be terminated, and the surface restored, within five years of Proponent's acquisition of the 10365 parcel.

WHEREAS, In a letter dated October 16, 2015, Adams County requested the Trustees modify Condition 6 and remove Condition 7.

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows:

The Trustees do hereby grant Adams County's request to remove Condition 7 and to modify Condition 6 to read:

6) No additional surface oil and gas development, beyond what currently exists, or is permitted under existing leases, may occur on the sites, including any extension to the existing leases. This prohibition shall be referenced both as a deed restriction in the deed conveyance of the property and also in the deed of conservation easement placed upon the property.

Cynthia Coffman, Colorado Attorney General

Date

Martha Rudolph,
Director of Environmental Programs, CDPHE

Date

Robert Randall, Deputy Director, DNR

Date

ITEM #5

CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

FREDERICK YARGER
Solicitor General



**STATE OF COLORADO
DEPARTMENT OF LAW**

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Denver, Colorado 80203
Phone (720) 508-6000

**Natural Resources and
Environment Section**

October 2, 2015

M E M O R A N D U M

TO: Colorado Natural Resource Trustees

FROM: David Banas

THROUGH: Casey Shpall

RE: Update on Strategy for OPA Funding Legislation

At the April 2, 2015 Trustee meeting, you requested staff develop a strategy for pursuing legislation that would allow CDPHE to expend money from the Hazardous Substances Response Fund (HSRF) to pursue Oil Pollution Act (OPA) cases and to deposit recovered funds in the Natural Resource Damages Recovery Fund (NRDRF). We have met several times and have coordinated with staff in charge of legislative affairs at the three Trustee agencies. Based on these conversations, we are requesting you direct us to move forward with this legislative proposal. Specific updates include:

1. The staff in charge of legislative affairs from AGO, CDPHE and DNR (Jenn Anderson, Eliza Schultz and Gaspar Perricone) conducted a preliminary assessment to gauge feelings of stakeholders from the landfill, oil and gas and transportation industries which will give the Trustees a better idea of who might oppose the legislation and for their reasons for such opposition. The results of these preliminary discussions are that no significant opposition exists and the JBC even may be willing to run the bill. More information needs to be shared with stakeholders if the Trustees wish to move forward, including: more detailed info about the proposal including funding mechanisms, authority for enforcement, history of enforcement under this authority and why this is a technical fix.
2. AGO has drafted a legal memo (attached) outlined TABOR issues and concluding no TABOR issues exist with this bill.

Also attached are supporting documents, including:

1. DNR's 2014 memo explaining the background and need for legislation;
2. Proposed legislation

3. A timeline explaining the history of CERCLA, OPA, designation of the State Trustees and relevant legislation

Based on the results of our work this summer, and with your approval, we hope to move forward with this bill this legislative session.

DRAFT

TABOR Implications

CYNTHIA H. COFFMAN
Attorney General
DAVID C. BLAKE
Chief Deputy Attorney General
MELANIE J. SNYDER
Chief of Staff
FREDERICK R. YARGER
Solicitor General



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Natural Resources and
Environment Section

July 28, 2015

M E M O R A N D U M

TO: Natural Resource Damage Trustees
FROM: Jennifer Robbins, Assistant Attorney General
RE: **Legislative Proposal and Implications of Amending §§ 25-16-101 - 105, C.R.S.**

LEGISLATIVE PROPOSAL:

The Hazardous Waste Sites Clean-Up statute, § 25-16-101 -105, C.R.S. (the “Act”) creates two funds: the Hazardous Substance Response Fund (HSRF), § 25-16-104.6, C.R.S., and the Natural Resource Damage Recovery Fund (NRDRF), § 25-16-104.6, C.R.S. The HSRF, in relevant part, funds the State’s pursuit of natural resource damages (NRD) – that is, monetary damages that compensate the State for injuries to natural resources caused by releases of hazardous substances – pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). The NRDRF holds the money the State recovers from CERCLA NRD claims.

Although the State can also pursue NRD claims for injuries to its natural resources resulting from a release of petroleum under the Oil Pollution Act of 1990 (OPA), no parallel mechanisms exist to fund pursuit of such claims or to hold the money recovered from such claims.

The legislative proposal seeks: (1) to allow the HSRF to be used to pursue claims for natural resource damages under OPA and (2) to allow the State to use the NRDRF to hold monetary damages, including interest, recovered through litigation by the State acting as trustee of natural resources pursuant to OPA.

FEDERAL STATUTORY OVERVIEW:

A. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)

CERCLA was enacted by Congress to address remedial and response actions for the clean-up of hazardous substances and to restore natural resources injured as a resulting from the release of hazardous substances. Under CERCLA, petroleum products are

specifically exempted from the definition of hazardous substances. CERCLA authorizes the federal government, through the Environmental Protection Agency, to pursue response and remedial actions for the cleanup of hazardous substance releases. However, States cannot independently implement (i.e., without the involvement of the Environmental Protection Agency) the cleanup provisions of CERCLA.¹

CERCLA provides direct independent authority to States to act on behalf of the public, as trustee for natural resources, and recover natural resource damages. 42 U.S.C. §9607(f)(1). The Governor of each State is required to designate State officials who act as the State's natural resource trustees. 42 U.S.C. §9607(f)(2)(B). Governor Romer designated the state natural resource trustees on January 19, 1990 pursuant to CERCLA. Romer designated the Executive Director of the Colorado Department of Health, the Executive Director of the Colorado Department of Natural Resources, and the Attorney General of the Colorado Department of Law to jointly act as trustees for the State's natural resources. After this designation, the legislature amended the state statute § 25-16-101 -105, C.R.S. to provide funding for State CERCLA NRD claims and establish a fund to hold recovered money.

B. Oil Pollution Act ("OPA") enacted August 18, 1990.

OPA was enacted by Congress in response to the Exxon Valdez diesel spill. After this oil spill, Congress realized the existing framework was uncoordinated and insufficient to address an environmental disaster of that magnitude. Accordingly, Congress created within OPA a comprehensive framework by delegating response authority to the Coast Guard and the Environmental Protection Agency; expanding the role and breath of the National Contingency Plan; expanding the type of responsible parties from Clean Water Act "point sources" to tank vessels, offshore facilities, and certain onshore facilities; requiring facility response plans; creating a freestanding liability regime including damages for injury to natural resources, loss of real or personal property (and associated economic losses), loss of subsistence use of natural resources, lost revenues resulting from the destruction of property or natural resource injury, and costs of providing; and creating the Oil Spill Liability Trust Fund.

Additionally, Congress created a similar framework to CERCLA within OPA to address natural resource damages. Specifically, OPA provides "each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines... is liable for the removal costs and damages" 33 U.S.C. § 2702(a). Damages include, among other things, natural resource damages for, "injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign

¹ See, *Colorado v. Idarado Mining Co.*, 916 F.2d 1486 (10 Cir. 1990) (holding the authority to obtain and injunction for cleanup actions under CERCLA is expressly limited to the federal government.)

trustee.” 33 U.S.C. § 2702(b). Further OPA specifies that, “in the case of natural resource damages,” a responsible party is liable “to any State for natural resource belonging to, managed by, controlled by, or appertaining to such State or any political subdivision thereof.” 33 U.S.C. § 2706(a)(2).

Like CERCLA, OPA authorizes the Governor of each state to designate the “local official who may act on behalf of the public as trustee for natural resources. 33 U.S.C. § 2706(b). Governor Owens designated the state natural resource trustees under OPA on January 31, 2006. However, after the delegation from Governor Owens the corresponding statutory change was not made to provide for administration or collections resulting from claims brought under OPA.

STATE STATUTORY OVERVIEW

A. Hazardous Waste Sites Clean Up, § 25-15-101 -105, C.R.S.

The General Assembly created a state statute to provide a mechanism in which the State of Colorado could participate in federal implementation of CERCLA, which is referred to in the statute as “the federal act”² for the cleanup of hazardous substances. Specifically, Section 103(1) authorizes the State to participate in “response” and “remedial” actions. § 25-16-103(1), C.R.S.

The HSRF account consists of: (1) money that the general assembly chooses to appropriate from the general fund; (2) money derived from the solid waste user fee imposed by section 25-16-104.5; (3) moneys recovered from responsible parties pursuant to CERCLA not generated by natural resource damage claims brought by the State under CERCLA; (4) money recovered for future response costs under CERCLA; and (5) money derived from public or private sources that may be credited to the fund. § 25-16-104.6(1)(a), C.R.S. As the HSRF includes money derived from public or private sources, money recovered from responsible parties under OPA for administrative and legal costs could be credited to this fund.

However, use of the funds may only be for the limited purposes established in 25-16-104.6, C.R.S, which includes costs of administration and costs of collection or civil penalties and to finance any litigation arising under CERCLA and for enforcement. The money in the HSRF account may not revert or be transferred to the general fund at the end of the fiscal year. § 25-16-104.6(1)(a), C.R.S.

The Natural Resource Damage Recovery Fund (NRDRF) was created by 25-16-104.7, C.R.S. Section 104.7 created the natural resource damage recovery fund, which originally authorized appropriation to the HSRF. The legislature amended this section in 1990 after the designation by Governor Romer to isolate damages recovered from CERCLA natural

² § 25-16-102(3), C.R.S.

resource damages cases into a separate fund and earmark the money exclusively for restoration replacement, or acquisition of state natural resources consistent with CERCLA. 25-16-104.7, C.R.S.

IMPACTS and IMPLICATIONS

As the State is already authorized to pursue claims under OPA for damages to the State's natural resources, the impacts of this legislation are nominal.

Case Study. The need for this legislative proposal came about through the State's recent pursuit for natural resource damages pursuant to OPA from the West Creek tanker spill. On January 25, 2013, approximately 30 miles southwest of Grand Junction, Colorado, a tanker truck owned by Groendyke Transportation Inc. ("Groendyke") slid off Highway 141, flipped over the guardrail, and rolled down a steep embankment coming to rest on the bank of West Creek (the "Spill"). The truck was hauling approximately 6,000 gallons of gasoline and approximately 2,000 gallons of diesel. The Spill occurred on land owned by the Bureau of Land Management, which brought the Department of Interior (DOI) to also initiate a natural resource damage claim. Jointly, the State and DOI, acting as the lead agency, pursued the natural resource damage claim against Groendyke, resulting in a three party settlement agreement for the natural resource damages under OPA. However, the State could not place its portion of the settlement funds in the NRDRF. The State and DOI entered into a separate agreement in which DOI would hold the recovered funds and the State and DOI would administer a joint restoration project in which the State would be reimbursed by DOI for its costs and expenses related to the restoration project.

While this worked for the West Creek Spill because there were no State-only natural resources injured, it would be challenging if the recovered funds were injuries to groundwater, a State-only natural resource. Further, this scenario does not permit the State to control its portion of the funds.

Tabor Implications. The proposed legislation is not affected by the Taxpayer Bill of Rights (TABOR). Under TABOR, the government cannot raise tax rates without voter approval and cannot spend revenues collected under existing tax rates without voter approval if revenues grow faster than the rate of inflation or growth.

A. Changes to the Hazardous Substance Response Fund (HSRF) created by 25-16-104.6, C.R.S.

While this fund is subject to TABOR because it is comprised of the solid waste user fees established by 25-16-104.5, the proposed legislation does not have TABOR implications because :

- (1) the proposed legislation does not change the way the fees are collected;
- (2) the legislature has already capped the amount in which the Commission can set fees;

and

(3) the amount maintained in the HSRF is capped at \$10,000,000.00.

B. Changes to the The Natural Resource Damage Recovery Fund (NRDRF) created by 25-16-104.7, C.R.S.

This fund is not subject to or impacted by TABOR because:

- (1) the fund does not establish a tax;
- (2) is only comprised of moneys collected through litigation or other action, and
- (3) is not a fee or imposed tax.

CONCLUSION

This legislative proposal is designed to provide the State with the necessary funding mechanisms to implement the natural resource damage provisions pursuant to OPA and intended by the Governor's designation of the State natural resource trustees in January 2006.

2014 DNR OPA Legislative

**Colorado Department of Natural Resources
Executive Director's Office
2014 Legislative Agenda Proposal**

Title of Proposal: Authorize expenditure of funds to pursue claims for damage to State's natural resources arising under the federal Oil Pollution Act

Summary of Proposal and Rationale: There is currently no mechanism to fund the work of CDPHE's Hazardous Materials and Waste Management Division (HMWMD) or the Attorney General's Office (AGO) to identify, quantify, and pursue civil claims for impacts to the state's natural resources arising from oil and gas pollution under the Oil Pollution Act of 1990 (OPA). This proposal would create such a funding mechanism by authorizing pursuit of OPA claims from funds in the Hazardous Substances Response Fund established in 25-16-104.6, C.R.S.

Under current law, tipping fees collected from solid waste disposal operations under the Solid Waste User Fee statute are deposited in the HSRF. Funds in the HSRF may only be spent in pursuit of claims for damage to the state's natural resources arising under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) – not those arising from injuries to natural resources caused by oil or gas pollution.

In addition, current law does not address where to hold money recovered by the State for claims arising under OPA. The natural resource damage portion of all settlements recovered by the State have traditionally been pursuant to CERCLA and have been deposited in the Natural Resource Damage Recovery Fund (NRDRF) established in 25-16-104.7(1). When the NRDRF was established in 1985, OPA did not yet exist.

Key Changes: Add OPA to the list of statutes for which HMWMD can spend HSRF funds to pursue claims for damages to the state's natural resource or to reimburse the AGO for same.

Affected Statutes: 25-16-102, 103, 104.5, 104.6 and 104.7, C.R.S. to add "or OPA" every time the statute mentions the "federal act."

Fiscal and Economic (Jobs) Impact: Minimal. Dedicated funding source could result in more clean-ups of sites polluted by oil and gas operations, resulting in more projects. Would not impose additional fees.

Potential Supporters: Conservation community

Potential Opponents: Landfill operators, oil and gas operators

Potential Sponsors: Unknown.

Consequences if Denied: Without a funding stream, the State would be much less likely to pursue claims for damages to natural resources arising from oil and gas operations. Recent such cases include the Parachute Creek leak and the West Creek spill. On West Creek, a Groendyke Transportation tanker truck overturned, released 8,000 gallons of petroleum products into the stream, and burned 3/4 mile of stream and killed several hundred fish. Between 2008 and 2012, there were 40 tanker truck spills, including 13 where cargo spills included petroleum, produced water, and other pollutants.

OPA Funding Statue Changes

PROPOSED REVISIONS TO ADD OPA TO CERCLA
NRDS FUNDING MECHANISMS

25-16-102. Definitions

- As used in this article, unless the context otherwise requires:
 - **(1)** "Attended solid waste disposal site" means a site established pursuant to part 1 of article 20 of title 30, C.R.S., at which an attendant is present during the normal hours of operation on or after December 31, 1984. This term shall not include any site which is deemed to hold a certificate of designation, but for which such certificate is not required, pursuant to **section 30-20-102 (4), C.R.S.**; nor shall it include any site used by a person for disposal of solid waste on his own property pursuant to **section 30-20-102 (3), C.R.S.**
 - **(1.5)** "Commission" means the solid and hazardous waste commission created in **section 25-15-302.**
 - **(2)** "Department" means the department of public health and environment.
 - **(3)** "Federal act" means the federal "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as from time to time amended.
 - **(4)** "Hazardous substance" has the same meaning as that ascribed to it in the federal act.
 - **(5)** "National contingency plan" has the same meaning as that ascribed to it in the federal act and OPA.
 - **(#)** "oil" has the same meaning as that ascribed to it in OPA
 - **(#)** "OPA" means the Oil Pollution Act of 1990, 33 USC § 2701 *et seq.*, as from time to time amended.
 - **(6)** "Remedial action" has the same meaning as that ascribed to it in the federal act.
 - **(7)** "Removal" has the same meaning as that ascribed to it in the federal act.

- **(8)** "Response" has the same meaning as that ascribed to it in the federal act.
- **(9)** "Responsible party" has the same meaning as that ascribed to it in the federal act and OPA.
- **(10)** "Solid waste" has the same meaning as that ascribed to it in [section 30-20-101 \(6\), C.R.S.](#)
- **(11)** "Waste producer" means any legal person who contracts for the transportation of waste ultimately destined for an attended solid waste disposal site.

25-16-103. Authorization to participate - implementation

- **(1)** The general assembly hereby authorizes the department of public health and environment to participate in federal implementation of the federal act and OPA and, for such purpose, the department has the authority to participate in the selection and performance of responses and remedial actions and to enter into cooperative agreements with the federal government providing for remedial actions and responses. The department with the consent of the governor has the authority to decline to participate with the federal government on remedial actions which the department determines are not in the interest of the state. Any cooperative agreements entered into under this article may provide assurances acceptable to the federal government that:
 - **(a)** The state will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions;
 - **(b)** The state will assure the availability of an acceptable hazardous waste disposal facility for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances.
- **(2)** Any state matching payment required by a cooperative agreement entered into pursuant to this section must be approved by the general assembly acting by bill.

25-16-104. Financial participation

Subject to the provisions of [section 25-16-103](#), the general assembly

accepts the provisions of section 104 (c) (3) (C) of the federal act requiring the state to pay or assure payment of the necessary state share of response costs, as appropriated by the general assembly, including all future operation and maintenance costs. Any remedial action requiring state matching payment shall be explicitly approved by the general assembly acting by bill and shall be subject to appropriation.

25-16-104.5. Solid waste user fee - imposed - rate - direction - legislative declaration - repeal

- **(1)** Repealed.
- **(1.5)** The general assembly hereby finds and declares that, for purposes of this section, a user fee is intended to be a charge imposed upon waste producers in addition to any charge specified by contract. Any such user fee imposed by this section shall be itemized and depicted on any bill, receipt, or other mechanism used for solid waste management services rendered to any person disposing of solid waste and shall be in addition to the costs of any other solid waste management services provided.
- **(1.7)** (a) On or after July 1, 2010, the commission shall promulgate rules that establish a solid waste user fee upon each person disposing of solid waste at an attended solid waste disposal site. The operator of the site at the time of disposal shall collect the fee from waste producers or other persons disposing of solid waste. The effective date and amount of the fee shall be set by rule of the commission, and the amount shall be sufficient to offset:
 - **(I)** The department's direct and indirect costs associated with implementation of the solid waste management program under **section 30-20-101.5, C.R.S.**;
 - **(II)** The department's direct and indirect costs for the implementation of its responsibilities under the federal act and OPA, as described in this part 1, and to provide matching funds and cover future maintenance costs pursuant to **section 25-16-103; and**
 - **(III)** The anticipated payments to the department of law, pursuant to subparagraph (II) of paragraph (b) of this

subsection (1.7), for the direct and indirect costs of the department of law for the implementation of its responsibilities under the federal act and OPA, as described in this part 1, which costs are distinct from those described in subparagraph (II) of this paragraph (a).

▪ **(b)**

- **(I)** The portion of the fee collected for the costs described in subparagraph (I) of paragraph (a) of this subsection (1.7) shall be transmitted to the department for deposit into the solid waste management fund created in [section 30-20-118, C.R.S.](#)
- **(II)** The portions of the fee imposed under this subsection (1.7) that are collected for the costs described in subparagraphs (II) and (III) of paragraph (a) of this subsection (1.7) shall be transmitted to the department for deposit into the hazardous substance response fund created in [section 25-16-104.6](#). The department may expend moneys from the portion of the fee collected under subparagraph (III) of paragraph (a) of this subsection (1.7) to compensate the department of law for all or a portion of the expenses incurred for services rendered under the federal act and OPA, as billed to the department by the department of law.

- **(c)** The fee established by the commission under this subsection (1.7) shall not exceed fifty cents per cubic yard of solid waste, of which no more than three and one-half cents shall pay for the costs described in subparagraph (III) of paragraph (a) of this subsection (1.7).
- **(d)** The department shall give the operators of attended solid waste disposal sites written notice of changes to the solid waste user fees no later than ninety days before the effective date of the changes. Failure to provide the notice required by this paragraph (d) shall invalidate the rules that changed the fees.

• **(2)** (a) Repealed.

- **(a.5)** Notwithstanding any provision of law to the contrary, one hundred percent of the moneys collected pursuant to

subparagraph (II) of paragraph (a) of subsection (1.7) of this section from persons disposing of solid waste at an attended solid waste disposal site where a local government solid waste disposal fee is imposed to fund hazardous substance response activities at sites designated on the national priority list pursuant to the federal act shall be transmitted to the owner of the solid waste disposal site to the extent that the moneys are used to fund the response activities at the sites on the national priority list. The balance of any moneys described under this paragraph (a.5) that are not used to fund such response activities shall be credited to the hazardous substance response fund created in [section 25-16-104.6](#).

- **(b)** At the end of each fiscal year, the state treasurer shall transfer any moneys in the solid waste management fund created in [section 30-20-118, C.R.S.](#), that exceed sixteen and one-half percent of the moneys expended from such fund during the fiscal year to the hazardous substance response fund created in [section 25-16-104.6](#).

- **(3)** to (3.7) Repealed.
- **(3.9)** (a) Subject to subsection (1.5) of this section, in addition to any other user fee imposed by this section, on or after July 1, 2007, there is hereby imposed a user fee to fund the recycling resources economic opportunity program created in [section 25-16.5-106.7](#). Such fee shall be collected by the operator of an attended solid waste disposal site at the time of disposal and shall be imposed and passed through to waste producers and other persons disposing of waste at the following rate or at an equivalent rate established by the department:

- **(I)** Two cents per load transported by a motor vehicle that is commonly used for the noncommercial transport of persons over public highways;
- **(II)** Four cents per load transported by a truck, as defined in [section 42-1-102 \(108\), C.R.S.](#), that is commonly used for the noncommercial transport of persons and property over the public highways; and
- **(III)** An amount, per cubic yard per load transported by any commercial vehicle or other vehicle not included in the vehicles described in subparagraph (I) or (II) of this paragraph (a), in accordance with the following schedule:

- **(A)** Through December 31, 2013, seven cents per cubic yard per load;
- **(B)** From January 1, 2014, through December 31, 2014, nine cents per cubic yard per load;
- **(C)** From January 1, 2015, through December 31, 2015, eleven cents per cubic yard per load; and
- **(D)** On and after January 1, 2016, fourteen cents per cubic yard per load.

- **(b)** Any user fee collected by the operator of a solid waste disposal site or facility pursuant to paragraph (a) of this subsection (3.9) shall be transmitted by the last day of the month following the end of each calendar quarter to the state treasurer, who shall credit one hundred percent of such moneys to the recycling resources economic opportunity fund created in [section 25-16.5-106.5](#), to fund the recycling resources economic opportunity program pursuant to [section 25-16.5-106.7](#).

- **(4)** The department shall credit an amount equal to two and one-half percent of the money collected as fees by a solid waste disposal site or facility in order to defray the costs of such collection.
- **(5)** Any operator who fails to collect or to transmit, within thirty days of the day specified in subsection (2) of this section, the fee imposed pursuant to this section is liable for payment of a civil penalty of ten percent of the total amount of fee money uncollected or untransmitted. Collection of such penalty and fee shall be in the manner provided for the collection and enforcement of taxes pursuant to article 21 of title 39, C.R.S.
- **(6)** This section is repealed, effective July 1, 2026.
- **(7)** Repealed.

25-16-104.6. Fund established - administration - revenue sources - use

- **(1)**
 - **(a)** There is hereby established in the state treasury the hazardous substance response fund. The fund shall be composed

of any moneys that the general assembly may choose to appropriate from the general fund and any moneys derived from the fee imposed pursuant to [section 25-16-104.5](#) and any interest derived therefrom; any moneys recovered from responsible parties pursuant to the federal act or OPA that are not generated by the state litigating as trustee for natural resources pursuant to [section 25-16-104.7](#); any moneys recovered through litigation by the state pursuant to the federal act that are designated for future response cost; and any other moneys derived from public or private sources that may be credited to the fund. Moneys in the fund shall be annually appropriated by the general assembly, subject to the provisions of [section 25-16-104](#), shall remain available for the purposes of this article, and shall not revert or be transferred to the general fund of the state at the end of any fiscal year. If the fund balance exceeds ten million dollars in any state fiscal year and the fund balance is not projected to fall below ten million dollars within twenty-four months, the department shall evaluate the need to reduce fees to bring the balance of the fund below ten million dollars, and shall present the evaluation to the commission.

o **(b)**

- **(I)** Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on March 27, 2002, the state treasurer shall deduct thirty million dollars from the hazardous substance response fund and transfer such sum to the general fund.
- **(II)** In order to restore the amount transferred from the hazardous substance response fund pursuant to subparagraph (I) of this paragraph (b), moneys from the general fund shall be transferred to the hazardous substance response fund in accordance with [section 24-75-217, C.R.S.](#)

o **(c)** Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on April 20, 2009, the state treasurer shall deduct seventeen million four hundred sixty-eight thousand five hundred seventeen dollars from the hazardous substance response fund and transfer such sum to the general fund.

o **(d)** Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on June 1, 2009, the state

treasurer shall deduct twelve million five hundred thousand dollars from the hazardous substance response fund and transfer such sum to the general fund.

- **(e)** Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, on July 1, 2009, the state treasurer shall deduct two million five hundred thousand dollars from the hazardous substance response fund and transfer such sum to the general fund.
 - **(f)** Notwithstanding any provision of paragraph (a) of this subsection (1) to the contrary, for the state fiscal year commencing July 1, 2010, the state treasurer shall make a one-time transfer from the hazardous substance response fund to the solid waste management fund created in [section 30-20-118, C.R.S.](#), of up to four hundred thousand dollars, to be used in connection with the department's solid waste management activities.
- **(2)** The general assembly may appropriate up to two and one-half percent of the moneys in the hazardous substance response fund for the department's costs of administration and its costs of collection of fees or civil penalties pursuant to [section 25-16-104.5](#). In addition, the department is authorized, subject to appropriation by the general assembly, to use the moneys in the fund for the following purposes:
 - **(a)** To maintain an inventory of all sites and facilities at which hazardous substances have been disposed of in the state;
 - **(b)** To supply such state matching funds as may be needed to perform response actions at any site where action is being taken pursuant to the federal act;
 - **(c)** To provide any post-cleanup monitoring and maintenance required pursuant to the federal act;
 - **(d)** To provide for future response costs in connection with state activities at natural resource damage sites;
 - **(e)** To provide such state matching funds as may be needed to perform remediation activities at sites subject to remediation under the federal "Water Pollution Control Act", [33 U.S.C. sec. 1251](#) et seq., where such remediation activities would keep the site from being added to the national priorities list established pursuant to the federal act;
 - **(f)** To remediate sites:

- **(I)** That do not have a responsible party that will perform a remediation;
- **(II)** That have been determined to present a threat to human health or the environment; and
- **(III)** Where the remediation will allow the redevelopment of the property for the public good;

- **(g)** Repealed.

- **(2.5)** Moneys in the hazardous substance response fund created pursuant to this section may be appropriated as follows:

- **(a)** To finance any litigation arising under this part 1 or the federal act or OPA on behalf of the state;
- **(b)** For the enforcement of court-approved remedies under the federal act out of moneys in the hazardous substance response fund received for future response costs, excluding fines, under the federal act.

- **(2.7)** (Deleted by amendment, L. 2007, p. 1503, § 1, effective May 31, 2007.)

- **(3)** Before the department supplies hazardous substance response fund money as state matching funds for a particular site pursuant to paragraph (b) of subsection (2) of this section, the executive director of the department shall first make a written determination that no potentially responsible party or parties have offered to implement a proper removal and remedial action plan at such site at their own expense, consistent with the national contingency plan established pursuant to the federal act.

- **(4)** It is the intent of the general assembly that state matching moneys be appropriated solely from the hazardous substance response fund.

25-16-104.7. Natural resource damage recoveries - fund created - repeal

- **(1)** Except as provided in subsection (3) of this section, any moneys recovered through litigation by the state acting as trustee of natural resources pursuant to the federal act, and any interest derived

therefrom, are credited to the natural resource damage recovery fund, which fund is hereby created. The department may expend the custodial moneys in the fund without further appropriation for purposes authorized by the federal act or OPA, including the restoration, replacement, or acquisition of the equivalent of natural resources that have been injured, destroyed, or lost as a result of a release of a hazardous substance or oil. In addition, the department shall use the moneys in the natural resource damage recovery fund in a manner that is consistent with any judicial order, decree, or judgment governing the use of any particular recovery credited to the fund.

- **(2)** Repealed.
- **(3)** To the extent authorized by law, and consistent with a final judicial order or decree in any litigation by the state acting as trustee of natural resources pursuant to the federal act or OPA, any recovery of natural resource damage assessment or other costs, including litigation costs and fees, shall be credited to the fund from which such costs were originally paid.
- **(4)** (a) Notwithstanding any other provision of law and except as provided in paragraph (b) of this subsection (4), on June 30, 2010, and each June 30 thereafter, the state treasurer shall:
 - **(I)** Deduct an amount equal to sixty-two and three-tenths percent of the interest earned on those moneys in the natural resource damage recovery fund that were received in the settlement reached in the case denominated State of Colorado v. United States of America, Shell Oil Company, et al., Case No. 83 CV 2386, in the United States district court for the district of Colorado, and shall transfer such amount to the hazardous substance response fund created in [section 25-16-104.6](#); and
 - **(II)** Deduct an amount equal to thirty-seven and seven-tenths percent of the interest earned on those moneys in the natural resource damage recovery fund that were received in the settlement reached in the case denominated State of Colorado v. United States of America, [Shell](#) Oil Company, et al., Case No. 83 CV 2386, in the United States district court for the district of Colorado, and shall transfer such amount to the general fund.
- **(b)** The state treasurer shall continue to make the transfer specified in subparagraph (I) of paragraph (a) of this subsection (4) until the total amount transferred to the

hazardous substance response fund and credited to the fund pursuant to paragraph (b.5) of this subsection (4) equals one million six hundred fifty-seven thousand five hundred seventy-seven dollars, at which time the state treasurer shall cease the transfers. The state treasurer shall continue to make the transfer specified in subparagraph (II) of paragraph (a) of this subsection (4) until the total amount transferred to the general fund and credited to the general fund pursuant to paragraph (b.5) of this subsection (4) reaches one million four thousand eight hundred seventy-three dollars, at which time the state treasurer shall cease the transfers.

- **(b.5)** The department may accept moneys from public or private sources for the purpose of repaying the loans to the natural resource damage recovery fund from the hazardous substance response fund created in [section 25-16-104.6](#) or the general fund. The department shall transmit these moneys to the state treasurer, who shall credit the moneys to the appropriate fund. This paragraph (b.5) is exempt from the provisions of part 13 of article 75 of title 24, C.R.S.
- **(c)** This subsection (4) is repealed, effective July 1, 2020.

Timeline of Legislation

Timeline of Legislation

