

**MEMORANDUM OF UNDERSTANDING  
RELATING TO THE  
CASTRO COVE/CHEVRON RICHMOND REFINERY  
NATURAL RESOURCE DAMAGES SETTLEMENT  
AMONG THE  
CALIFORNIA DEPARTMENT OF FISH AND GAME, OFFICE OF SPILL PREVENTION  
AND RESPONSE, THE U.S DEPARTMENT OF THE INTERIOR (U.S. FISH AND  
WILDLIFE SERVICE), AND THE NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION**

**I. INTRODUCTION**

This Memorandum of Understanding ("MOU") is between the California Department of Fish and Game, Office of Spill Prevention and Response (CDFG/OSPR), the U.S. Fish and Wildlife Service (USFWS) on behalf of the U.S. Department of the Interior (USDOI), and the National Oceanic and Atmospheric Administration (NOAA), (collectively referred to as, the "Trustees"). This MOU is entered into to ensure the coordination and cooperation of the Trustees in restoring, rehabilitating, replacing, and/or acquiring the equivalent of resources injured by the release of hazardous substances and discharge of oil from the Chevron Refinery in Richmond, California.

**II. PARTIES**

The following officials are executing this MOU as representatives of their respective agencies that act on behalf of the public as Trustees for natural resources under this MOU:

- Regional Director, Pacific Southwest Region, USFWS on behalf of USDOI;
- Administrator, CDFG/OSPR;
- Division Chief, Restoration Center, Fisheries Office of Habitat Conservation, NOAA,

**III. AUTHORITY**

The Trustees enter into this MOU pursuant to the authority provided to Natural Resource Trustees by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. §§ 9601, *et seq.*]; the Federal Water Pollution Control Act [33 U.S.C §§ 1251, *et seq.*]; and CERCLA Damage Assessment Regulations [43 C.F.R., Part 11]. In addition, the Federal Trustees enter into this MOU pursuant to the authority provided in Subpart G of the National Contingency Plan [40 C.F.R. §§ 300.600, *et seq.*]; and Executive Order 12580 [52 Fed.Reg. 2923 (January 23, 1987)], as amended by Executive Order 12777 [56 Fed.Reg. 54757 (October 19, 1991)]. CDFG also enters into this MOU pursuant to its natural resource trustee authority under California Fish and Game Code section § 1802.

### III. DEFINITIONS

Whenever the following terms are used in this MOU, they shall have the following meanings:

- A. “Natural Resource” and “Natural Resources” - land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State of California and/or the United States.
- B. “Natural Resource Damage Assessment (NRDA)” or “Assessment” - the process of collecting and analyzing information to evaluate the nature and extent of injuries resulting from a release of hazardous substances, and determining the restoration actions needed to bring injured natural resources and services back to baseline condition and make the environment and public whole for interim losses.
- C. “Natural Resource Damages” - damages specified in section 107 of CERCLA [42 U.S.C. § 9607], and includes the costs of assessing these damages, as defined in section 101(6) of CERCLA [42 U.S.C. § 9601(6)].
- D. “Release” or “Releases” - the discharge of oil and hazardous substances from the Chevron Refinery in Richmond, California, into Castro Cove and the San Pablo Bay.
- E. “Restoration” or “Restore” - any action or combination of actions to restore, replace, rehabilitate, and/or acquire the equivalent of the Natural Resources and the “services” that were injured, lost, or destroyed by the Releases.
- F. “Restoration Funds” - Natural Resource Damages recovered in a settlement between the United States, the State of California, and Chevron related to the Releases. These Restoration Funds are to be used for the design, implementation, permitting (as necessary), monitoring, and oversight of restoration projects, and for the Trustees’ costs of complying with the requirements of the law to conduct a restoration planning and implementation process. It does not include the cost of assessing natural resource damages.
- G. “Voting Castro Cove Trustee Council Members” - shall mean the three (3) primary representatives appointed and authorized to vote on behalf of the participating Trustees, (i.e.; CDFG/OSPR, USFWS on behalf of DOI, and NOAA) or in the event one (1) or more of the primary representative(s) is (are) unable to participate at a given meeting of the Castro Cove Trustee Council, their respective alternate(s).

### IV. BACKGROUND

Castro Cove is a shallow, protected embayment in San Pablo Bay with extensive mudflats and salt marsh habitat that is influenced by tidal action. It is located entirely within Contra Costa County and is bordered to the north by San Pablo Bay, to the east by the West Contra Costa Sanitary Landfill and Wildcat Creek Salt Marsh, and to the south and west by the Chevron refinery in Richmond. In 1902, refinery operations began adjacent to Castro Cove. Standard Oil Company, a predecessor of Chevron, discharged wastewater treated by an oil water separator into the south side of Castro Cove. After

implementation of the Clean Water Act in 1972, all process water was biologically treated prior to being discharged into a 250-Foot Channel that was dredged from San Pablo Bay in the early 1900s for navigation purposes. In 1987, discharge of treated effluent to Castro Cove ended when all discharge water was rerouted to a Deep Water Outfall located offshore of Point San Pablo outside of Castro Cove.

Although the waste water discharge was relocated outside of Castro Cove in 1987, some of the sediments within the Cove retained elevated levels of contaminants including mercury and Polycyclic Aromatic Hydrocarbons. In addition from 1960 to 1994, Chevron operated a trap and skeet shooting range at the northwestern end of the Richmond refinery on Skeet Hill. This resulted in the deposition of lead shot over approximately nine (9) acres of Castro Cove. In 2007 and 2008, Chevron removed some of the most highly contaminated sediments within Castro Cove pursuant to an order issued by the California Regional Water Quality Control Board.

In 2006 consistent with standard practice, the Trustees invited Chevron to participate in a cooperative NRDA. Chevron accepted the Trustees' invitation and representatives of Chevron and the Trustees coordinated technical activities to determine and quantify the injuries to intertidal and subtidal habitats and evaluate potential injuries to other natural resources that may have been impacted by the contaminated sediments. In addition, the Trustees coordinated certain scaling and restoration planning activities with Chevron. As a result of these activities, the Trustees' estimated that approximately 203 acres of tidal wetland restoration would be needed to compensate for the injured resources.

The Trustees prepared and released the Castro Cove/Chevron Richmond Refinery Draft Damage Assessment and Restoration Plan/Environmental Assessment (DARP/EA) in November 2008. The Draft DARP/EA details the results of the NRDA activities and describes the restoration projects considered by the Trustees. The Trustees' preferred alternative included funding a proportional share of tidal wetlands restoration at Cullinan Ranch located at the north end of San Pablo Bay and funding tidal wetlands restoration at Breuner Marsh located in the City of Richmond. After considering and responding to public comments on the Draft DARP/EA, the Trustees prepared the Final DARP/EA. While the projects selected in the Final DARP/EA did not change, the allocation of restoration acreages between the Cullinan Ranch project and the Breuner Marsh was adjusted in response to comments. The Trustees released the Final DARP/EA in September 2010.

Finally, pursuant to a Consent Decree entered by the United States District Court for the Northern District of California (Civil No. C10-00375), the Trustees recovered Restoration Funds in the amount of \$2.85 million from Chevron (the "Settlement"). The Restoration Funds will be used to help fund the design, permitting (as necessary), implementation, monitoring, and/or oversight of the selected restoration projects, and for the Trustees' costs of complying with the requirements of the law to conduct the restoration implementation process pursuant to this MOU.

## V. WILDLIFE CONSERVATION BOARD

In September 2010, the Trustees entered into an agreement<sup>1</sup> with the Wildlife Conservation Board (WCB) regarding implementation of the Cullinan Ranch project. The WCB has been delegated State Trustee authority under CERCLA for purposes of implementing the Final DARP/EA. In addition, WCB has authority under State law to preserve, protect and restore wildlife habitat. The WCB in this limited State Trustee capacity under CERCLA is expected to facilitate the implementation of the selected restoration projects.

## VI. PURPOSE

The purpose of this MOU is to provide a framework for coordination and cooperation among the Trustees and with the WCB in overseeing implementation of the Castro Cove/Chevron Richmond Refinery Final DARP/EA. This document also outlines procedures regarding use of the Restoration Funds.

The Trustees commit to expending the Restoration Funds for the design, permitting (as necessary), implementation, monitoring and oversight of restoration projects, and for the costs of complying with the requirements of the law to conduct the restoration implementation process. The Trustees share joint responsibilities regarding the injured resources.

The Trustees retain the ultimate authority and responsibility to determine the use of Restoration Funds received in accordance with the Final Restoration Plan, provisions of applicable federal and state law, and the CERCLA Damage Assessment Regulations.

## VII. ORGANIZATION – CASTRO COVE TRUSTEE COUNCIL AND LEAD TRUSTEES FOR SPECIFIC PROJECTS

To implement this MOU, there is hereby created the Castro Cove Trustee Council (the “Trustee Council”) to which each of the Trustees will appoint one (1) primary representative and one (1) alternate representative. Each party to this agreement shall have one (1) vote that shall be cast by the party’s primary representative, or in the absence of the primary representative, by an alternate representative.

Prior to or within twenty (20) working days after the final execution of this MOU, each Trustee shall notify the other Trustees of the names, addresses, email addresses, telephone numbers, and facsimile numbers of that Trustee’s primary and alternative representatives to the Trustee Council. Communications regarding Trustee Council business shall be addressed to the primary and, unless the Trustee Council directs otherwise, copied to the alternate representative and to the Trustees’ legal representatives.

Designated representatives of the Office of the General Counsel of CDFG/OSPR, NOAA Office of General Counsel, and DOI’s Office of the Solicitor shall serve as legal counsel to the Trustee Council. The Trustee Council may seek advisory participation from other Federal, State, or local agencies or any other entity as deemed appropriate by the Trustee Council.

The Trustee Council shall select a lead agency (Lead Trustee) for each restoration project. The primary representative of the Lead Trustee selected for the Cullinan Ranch project shall also serve as the primary point of contact for purposes of communications with the WCB regarding the Cullinan Ranch project.

## VIII. DECISION MAKING

### A. Unanimous Approval of Voting Members Required

The Trustees agree that, except as specifically delegated to an individual Trustee pursuant to Section IX below, decisions implementing this MOU shall require the unanimous approval of the voting Castro Cove Trustee Council members as defined. Such decisions shall be recorded in writing, either by resolution signed by the voting Castro Cove Trustee Council members participating in the Council meeting, or in minutes approved as to content and form by the voting Castro Cove Trustee Council members participating in the Council meeting.

### B. Authorization of Expenditures

All decisions authorizing disbursements and/or expenditures of Restoration Funds shall be memorialized in a Trustee Council resolution signed by the members, including without limitation, decisions authorizing restoration planning activities and associated budgets, disbursements to Trustee agencies (including disbursements to the WCB) for project implementation, and disbursements to Trustee agencies for agency costs associated with complying with the requirements of the law to conduct the restoration implementation process. Such resolutions may cover the entire sum approved for a given activity, project, or project phase. Approval authority for individual invoices associated with a particular restoration activity, or restoration project may be delegated by the Trustee Council to one (1) or both representatives of the Lead Trustee for the restoration project and/or to the WCB representative for the restoration project. In all cases, use of funds must be documented and an accounting provided to the Trustee Council in a manner and according to a schedule specified by the Trustee Council.

### C. Dispute Resolution

In the event that unanimous agreement cannot be reached among the members of the Trustee Council for any matter under deliberation by the Trustee Council, the matter in dispute will be elevated among the Trustee agencies for resolution. If necessary, the Trustees may establish further mechanisms to resolve disputes.

## IX. POWERS, DUTIES, AND RESPONSIBILITIES

### A. Castro Cove Trustee Council

On behalf of the Trustees, the Trustee Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the procedures contained in Section VIII (Decision Making) above. The Trustee Council in its discretion may take whatever actions it determines are necessary to fulfill the trust responsibilities of each Trustee under, and to effectuate the purposes of, applicable Federal and State law. Any Trustee on the Trustee Council may request that a meeting be convened. The

Trustee Council in accordance with applicable laws and policies may take the following actions to address the Trustees' restoration responsibilities:

1. **Oversee implementation of the Final DARP/EA;**
2. **Arrange for the letting of contracts or other agreements through one (1) or more of the Trustees that the Trustee Council determines are necessary with consultants, contractors, agencies, or cooperators best qualified to provide services to the Trustee Council;**
3. **Oversee the management and administration of the Restoration Funds currently deposited in a segregated account within the DOI NRDAR Fund which may include transferring all or a portion of the funds to WCB, transferring all or a portion of the funds to an account established with the National Fish and Wildlife Foundation (NFWF), and/or transferring all or a portion of the funds to some other similar non-profit organization to the extent permitted by state and Federal law;**
4. **Oversee the management and administration of WCB grant agreements that are funded in whole or in part with Restoration Funds, in accordance with the *Agreement among the California Department of Fish and Game, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration and the Wildlife Conservation Board concerning the Cullinan Ranch Project* and/or any similar agreement concerning other selected projects;**
5. **Authorize or direct the Lead Trustee for specific projects to request, through submittal of an approved resolution, disbursements from the NRDAR Fund for specific Restoration Plan project costs, and to take all steps necessary to effect the disbursements when so directed by the Trustee Council;**
6. **Select alternative restoration projects if: (1) either of the preferred projects described in the Final DARP/EA prove infeasible, impractical, or otherwise not in the public interest; or (2) any funds remain after the successful implementation of the projects described in the Final DARP/EA provided that such alternative projects address the injuries caused by the releases of contaminants into Castro Cove are subject to public review and comment and otherwise meet the requirements of applicable Federal and State law;**
7. **Delegate specific duties to individual Trustee representatives. Certain duties set out below are hereby delegated to the Lead Trustee for specific projects.**

**B. Lead Trustee for the Restoration Projects**

A Lead Trustee (State or Federal) shall be designated for the projects selected in the Final DARP/EA. Each Lead Trustee shall, for those projects for which it has been designated:

1. **Ensure that the amounts allocated toward the project(s) are well managed for the benefit of the injured resources;**
2. **Serve as the primary point of contact to act on behalf of the Trustees for purposes of communications with WCB and overseeing WCB grant agreements in**

accordance with the *Agreement among the California Department of Fish and Game, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration and the Wildlife Conservation Board concerning the Cullinan Ranch Project* and/or in accordance with any similar agreement concerning other selected projects<sup>2</sup>;

3. Ensure that the project(s) and any use of funds for the project(s), comply with all applicable laws, including the National Environmental Policy Act [42 U.S.C.A. §§ 4321, *et seq.*], the Endangered Species Act [16 U.S.C. § 1531, *et seq.*], the Coastal Zone Management Act [16 U.S.C. § 1451, *et seq.*], the regulations pertaining to Essential Fish Habitat [50 C.F.R. §§ 600.805, *et seq.*], and the California Environmental Quality Act (Pub. Resources Code §§ 21000, *et seq.*);

4. Provide for the Trustee Council's approval a detailed statement of the proposed projects, project schedules, and estimated budgets for the life of the project(s), including an estimate of any contract, administrative, or overhead costs to be charged to the project(s);

5. Oversee, coordinate, and monitor the progress of the project(s);

6. Submit annual reports (unless otherwise agreed) to the Trustee Council which shall include a progress report, and an estimate of funds spent;

7. Establish and maintain records and relevant documents and provide these on a timely basis to the Lead Administrative Trustees for inclusion, as appropriate, in the administrative record or the official case working file;

8. Provide a final accounting to the Castro Cove Trustee Council when the project(s) is(are) completed and an interim accounting(s) at any other time requested by the Trustee Council;

9. Prepare agenda items for meetings of the Castro Cove Trustee Council regarding the project(s);

10. Inform the other Trustees of all pertinent developments regarding the project(s) on a timely basis; and

11. Carry out such other duties as directed by the Castro Cove Trustee Council.

C. Lead Administrative Trustee

The NOAA shall be the Lead Administrative Trustee. The Lead Administrative Trustees shall carry out the following duties:

1. Coordinate and monitor all aspects of the restoration implementation process even if not specifically addressed above;

<sup>2</sup> A separate lead Trustee from the Council may be designated as the primary point of contact to act on behalf of the Trustees for purposes of communications with WCB and overseeing WCB grant agreements concerning the Cullinan Ranch project, the Breuner Marsh project, and/or any other project the Council ultimately chooses to fund.

2. Schedule, provide notice of, and prepare agendas and minutes for general meetings of the Castro Cove Trustee Council;
3. Act as the central contact points for the Castro Cove Trustee Council;
4. Establish and maintain records and relevant documents other than those regarding specific restoration projects and with the assistance of all Trustees establish and maintain an administrative record and official case working file;
5. Carry out such other duties as directed by the Castro Cove Trustee Council; and
6. Perform routine administrative duties related to the NRDAR Fund account established to hold Restoration Funds with the approval of the Castro Cove Trustee Council (e.g., investments, disbursements, and distribution of regular statements of account activity).

The Lead Administrative Trustee may delegate any of their duties to another Trustee with the concurrence of the Castro Cove Trustee Council.

#### **X. CONFLICT OF INTEREST**

A Castro Cove Trustee Council representative will abstain from discussing and voting on any issue coming before the Castro Cove Trustee Council in which that representative has a personal financial interest. The Trustee Council representative will identify this conflict to the Castro Cove Trustee Council prior to consideration and voting on the issue(s).

#### **XI. TELECONFERENCING**

A Trustee Council meeting may be convened by telephone conference call. Should a Trustee Council representative(s) be unable to travel to a meeting that representative(s) may participate by telephone conference and may vote by telephone on any issue requiring a vote by the voting Castro Cove Trustee Council members.

#### **XII. TRANSPARENCY**

The Trustees agree that it is generally in the public interest that scientific data arising out of their assessment of the injuries to natural resources caused by the releases into Castro Cove be made public. Public sharing of scientific data, wherever possible, will be the general policy of the Trustees. However, all parties to this MOU recognize that oral and written communications that are privileged attorney-client communications, pre-decisional, or protected by other applicable privileges (or a combination thereof) ("privileged document") will be protected from disclosure to the extent possible under applicable Federal and State law. Nothing in this MOU is intended as, nor shall it be construed to be, a general waiver of any protection under applicable law that has been or may be asserted in this matter and shall be without prejudice to any assertion of privilege or protection as to other documents or communications concerning the same or similar subject matter(s).

The parties to this MOU further agree that whenever a request for production of any written record is received pursuant to any applicable Federal or State law, the request will be forwarded for response to the Trustee to which any privilege applies or whose representatives originally generated or contributed to the record requested. Nothing contained herein shall be construed as prohibiting or restraining a Trustee or the Castro Cove Trustee Council from agreeing to release any record. Nothing contained herein shall be construed as requiring a Trustee or the Castro Cove Trustee Council to release privileged document.

### **RESERVATION OF RIGHTS**

Nothing in this MOU is to imply that any signatory government is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over natural resources.

### **LIMITATION**

Nothing in this MOU shall be construed as obligating the United States, the State of California or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

### **THIRD-PARTY CHALLENGES OR APPEALS**

Nothing in this MOU may be the basis of any third party challenges or appeals. Nothing in this MOU creates any rights or causes of action in persons not parties to this agreement.

### **MODIFICATION OF AGREEMENT**

Modification of this MOU must be in writing and approved by all parties to this

### **TERMINATION**

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. At any time that the Trustees determine that the purposes set forth in this MOU have been satisfied, the MOU may be terminated. In the event any Trustee withdraws from the MOU, such withdrawal must be in writing and provided to the other parties to this MOU at least thirty (30) days in advance of the withdrawal.

In the event of the withdrawal of any Trustee or the termination of this MOU, the Trustees shall give a full and complete accounting to the Castro Cove Trustee Council of all Restoration Funds received, deposited, held, disbursed, managed, expended, or otherwise controlled by that Trustee in any joint or separate account as a result of the contaminant releases pursuant to this MOU.

### **XVIII. SEVERABILITY**

The terms of this MOU are severable. If any term or condition of this MOU is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms and conditions.

**EXECUTION: EFFECTIVE DATE**

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU and be retained by the Lead Administrative Trustee that maintains records, (see section IX C 4 above). The date of execution shall be the date of the signature of the last Trustee to sign the MOU.

**SIGNATURES:**

10/4, 2010

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: Stephen L. Edinger  
Stephen L. Edinger, Administrator  
Office of Oil Spill Prevention and Response

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NATURAL RESOURCES DAMAGE ASSESSMENT**

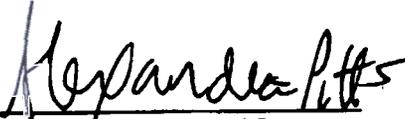
Page 11

Dated: 12 October, 2010

**UNITED STATES DEPARTMENT OF THE  
INTERIOR**

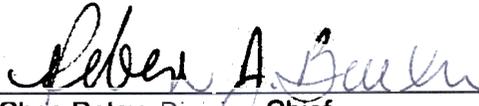
Acting

By:

  
Ren Lohoefer, Regional Director  
U.S. Fish and Wildlife Service  
Pacific Southwest Region

Dated: 10-7-, 2010

THE NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION

for By:   
Chris Doley, Division Chief  
Office of Habitat Conservation  
Restoration Center