

Staff Report 55

PARTY:

California State Lands Commission

PROPOSED ACTION:

Authorize the Executive Officer, or her designee, to execute the Memorandum of Understanding Relating to the Refugio Beach Oil Spill Natural Resources Damage Assessment and Restoration or comparable agreements; and authorize staff to participate in the Refugio Beach Oil Spill Trustee Council.

BACKGROUND:

On May 19, 2015, oil pipeline Line 901, owned by Plains Pipeline, ruptured in Santa Barbara County, resulting in the release of approximately 2,934 barrels of heavy crude oil, some of which flowed into the Pacific Ocean at Refugio State Beach.

The crude oil that entered the ocean injured marine plants and wildlife, including seagrasses, kelp, invertebrates, fish, birds, and mammals. Additionally, the closure of beaches and fisheries occurred just days before the Memorial Day weekend, resulting in lost opportunities for the public to visit and enjoy the shore and offshore areas.

Following the spill, the Commission, California Department of Fish and Wildlife, California Department of Parks and Recreation, Regents of the University of California, U.S. Fish and Wildlife Service, and National Oceanic and Atmospheric Administration joined together as natural resource trustees to conduct a natural resource damage assessment. Earlier this year, after years of investigation and negotiations, the Trustees and Plains Pipeline executed a settlement consent decree, which was approved by a federal court on October 14. Under the terms of the settlement, Plains Pipeline will pay \$22,325,000 in damages, most of which will be spent on projects to restore impacted biological resources and compensate the public for lost recreation opportunities.

THE REFUGIO BEACH OIL SPILL TRUSTEE COUNCIL:

To promote the coordination and cooperation of the Trustees in restoring, rehabilitating, replacing, and acquiring the equivalent of resources injured by the Refugio Beach Oil Spill, the Trustees intend to form the Refugio Beach Oil Spill Trustee Council (Trustee Council). The Trustee Council would include the California Department of Fish and Wildlife, Office of Spill Prevention and Response; California Department of Parks and Recreation; California State Lands Commission; Regents of the University of California; U.S. Department of the Interior (represented by the U.S. Fish and Wildlife Service and National Park Service); and National Oceanic and Atmospheric Administration. The Trustee Council will oversee the Trustees' development and implementation of a restoration plan for lands and resources impacted by the oil spill. This oversight includes monitoring the progress of restoration projects and oversight of the allocated funds.

The Trustee Council's actions would be governed by the Memorandum of Understanding Relating to the Refugio Beach Oil Spill Natural Resources Damage Assessment and Restoration (MOU). Participation in the Trustee Council and MOU would be voluntary, as the MOU allows Trustees to end their participation after giving notice to the other Trustees. A copy of the proposed MOU is attached as Exhibit A.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code section 6005, 6216, and 6301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Part of the State's duty as trustee of the public's Public Trust interests is managing, protecting, and enhancing the wildlife and its habitats dependent on Public Trust lands. Some of the species impacted by the oil spill include the brown pelican, snowy plover, long-beaked common dolphin, harbor seal, and grunion. The Trustee Council will manage these Public Trust resources by identifying, evaluating, and funding projects to restore the numbers of impacted species dependent on California's coastal waters near Santa Barbara. Potential restoration projects may include habitat creation and removal of existing threats to marine species, such as discarded fishing nets.

Executing the MOU and joining the Trustee Council would allow the Commission to participate in the development and implementation of restoration projects. Staff

believes that the Commission's participation would enhance the Trustee Council's success. As the agency with jurisdiction over the State's tide and submerged lands, the Commission's experience managing coastal lands and resources would bring an additional layer of expertise to the Trustee Council. Therefore, staff recommends that the Commission authorize the Executive Officer, or her designee, to execute the MOU (or comparable agreements) and authorize staff to participate in the Trustee Council to help maximize the council's success.

CONCLUSION:

For these reasons, staff believes that execution of the MOU and participation in the Trustee Council will further the Public Trust and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Execution of the MOU and participation in the Trustee Council is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBIT:

- A. Memorandum of Understanding Relating to the Refugio Beach Oil Spill Natural Resources Damage Assessment and Restoration.

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that execution of the MOU and participation in the Trustee Council would further the Public Trust and be in the best interests of the State.

AUTHORIZATION:

Authorize the Executive Officer, or her designee, to execute the Memorandum of Understanding Relating to the Refugio Beach Oil Spill Natural Resources Damage Assessment and Restoration or comparable agreements; and authorize staff to participate in the Refugio Beach Oil Spill Trustee Council.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING
RELATING TO THE *REFUGIO BEACH OIL SPILL*
NATURAL RESOURCES DAMAGE ASSESSMENT AND RESTORATION
AMONG

THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, OFFICE OF SPILL
PREVENTION AND RESPONSE,
CALIFORNIA DEPARTMENT OF PARKS AND RECREATION,
THE CALIFORNIA STATE LANDS COMMISSION,
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
THE U.S DEPARTMENT OF THE INTERIOR (REPRESENTED BY THE U.S. FISH AND
WILDLIFE SERVICE AND NATIONAL PARK SERVICE), AND
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

INTRODUCTION

This Memorandum of Understanding ("MOU") is between the California Department of Fish & Wildlife ("CDFW"), the California Department of Parks and Recreation ("CDPR"), the California State Lands Commission ("CSLC"), Regents of the University of California ("Regents"), the U.S. Department of the Interior ("DOI"), represented by the U.S. Fish and Wildlife Service ("FWS") and the National Park Service ("NPS"), and the National Oceanic and Atmospheric Administration ("NOAA")(collectively referred to as the "Trustees," and each, individually, as a "Trustee"). This MOU is entered into to promote the coordination and cooperation of the Trustees in restoring, rehabilitating, replacing, and/or acquiring the equivalent of resources injured by the discharge of heavy crude oil from the Line 901 pipeline, owned and operated by Plains Pipeline, L.P., a wholly owned subsidiary of Plains All American Pipeline, L.P. (jointly, "Plains").

I. PARTIES

- A. 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:
1. Administrator, California Department of Fish and Wildlife, Office of Spill Prevention and Response;
 2. Director, California Department of Parks and Recreation;
 3. Executive Officer, California State Lands Commission;
 4. Executive Director, University of California Natural Reserve System
 5. Regional Director, California-Great Basin Region (Interior Region 10) U.S. Fish and Wildlife Service on behalf of the Department of the Interior; and
 6. Division Chief, Restoration Center, Fisheries Office of Habitat Conservation, NOAA

II. AUTHORITY

The CDFW, CDPR, DOI, and NOAA enter into this MOU pursuant to the authority provided to Natural Resource Trustees by the Oil Pollution Act ("OPA"; 33 U.S.C. §§ 2701, *et seq.*); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*); and the OPA Natural Resource

Damage Assessment Regulations (15 C.F.R. Part 990). 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)). The CDFW also enters into this MOU pursuant to its natural resource trustee authority under the California Fish and Game Code, §§ 711.7 and 1802 and the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Gov. Code § 8670.1 *et seq.*).

The CSLC enters into this MOU pursuant to its natural resource trustee authority under the California Public Resources Code sections 6009, 6301, *et seq.*

The Regents enter into this MOU pursuant to its natural resource trustee authority under the California Constitution and other state law. (See, California Code of Regulations, Title 14, section 15386.)

III. DEFINITIONS

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

- A. "Consent Decree" means the Consent Decree that was entered on October 15, 2020, by the United States District Court for the Central District of California, in the matter of the United States and the People of the State of California v. Plains All American Pipeline, L.P. et al., Civil Action No. 2:20-cv-002415 (C.D. Cal.). The Consent Decree resolved claims brought by the United States and the State of California, by and through the CDFW, the CDPR, the CSLC, the Regents, the Regional Water Quality Control Board for the Central Coast Region, and the California Department of Forestry and Fire Protection's Office of State Fire Marshal.
- B. "Natural Resource" and "Natural Resources" mean 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.
- C. "Incident" means the discharge of approximately 2,934 barrels of heavy crude oil from the Line 901 pipeline, owned and operated by Plains, in the vicinity of Refugio State Beach in Santa Barbara County, California, on May 19, 2015.
- D. "NRD Settlement Funds" means certain natural resource damages totaling twenty-two million three hundred twenty-five thousand dollars (\$22,325,000), plus interest, which the Trustees recovered pursuant to the terms of the Consent Decree. These NRD Settlement 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, as well as reimbursement of outstanding assessment costs.
- E. "Restoration Project" and "Restoration Projects" mean the preferred or tier 2 restoration projects described in the Refugio Beach Oil Spill Final Damage Assessment and Restoration

Plan/Environmental Assessment (“Final DARP/EA”) or any alternative restoration project selected through a legally compliant restoration planning process.

- F. “Human Use Project” or “Human Use Projects” mean the restoration projects selected in accordance with one of the three processes described in the Final DARP/EA.
- G. “Refugio Beach Oil Spill Trustee Council Members” shall mean the primary and alternate representatives appointed on behalf of CDFW, CDPR, CSLC, Regents, DOI, and NOAA, pursuant to paragraph V.A below.
- H. “Voting Refugio Beach Oil Spill Trustee Council Members” shall mean the six primary representatives appointed and authorized to vote on behalf of the Trustees, specifically CDFW, CDPR, CSLC, Regents, DOI (as represented by FWS and NPS), and NOAA, except for those representatives who elect to abstain from voting pursuant to paragraph VI.B below. In the event one or more of the primary representatives are unable to participate in a given meeting of the Trustee Council, their respective alternate representatives shall be deemed the voting members for purposes of such meetings, and shall be entitled to vote or abstain from voting.

IV. BACKGROUND

- A. The Trustees prepared and released the Refugio Beach Oil Spill Draft Damage Assessment and Restoration Plan/Environmental Assessment (“Draft DARP/EA”) in April 2020. The Draft DARP/EA describes the results of the natural resource damage assessment activities and provides information concerning the natural resource restoration projects considered by the Trustees and the process for selecting projects that restore or enhance recreational opportunities. After considering and responding to public comments on the Draft DARP/EA, the Trustees will prepare a Final DARP/EA, which will select and describe the restoration projects for birds, marine mammals, subtidal and fish habitats, shoreline habitats, and describe the process for selecting recreational projects. The Trustees have tentatively allocated the NRD Settlement Funds as follows: approximately \$2,200,000 for bird restoration projects; approximately \$2,300,000 for marine mammal restoration projects, approximately \$6,100,000 for subtidal and fish habitat restoration projects; approximately \$5,500,000 for shoreline habitat restoration projects; approximately \$3,900,000 for recreational projects; and approximately \$2,000,000 to pay unreimbursed assessment costs and the costs of complying with the requirements of the law to conduct the Restoration implementation process and any additional administration and oversight costs associated with the process.
- B. Pursuant to the terms of the Consent Decree, the NRD Settlement Funds were deposited into four (4) separate accounts as follows:
 - 1. Approximately \$18,422,000 together with a proportionate share of interested accrued since November 16, 2018, on the NRD Settlement Funds was deposited into the Refugio Beach Oil Spill NRD account within the DOI Natural Resource Damage Assessment and Restoration Fund (Restoration Fund). NRD Settlement Funds in the Restoration Fund will be administered by the Trustees in accordance with the Consent Decree, the Final DARP/EA, and this MOU;

2. Approximately \$2,084,000 together with a proportionate share of interested accrued since November 16, 2018, on the NRD Settlement Funds was deposited into the State Park Contingent Fund. NRD Settlement Funds in the State Park Contingent Fund will be administered by CDPR in accordance with the Consent Decree, the Final DARP/EA, and this MOU;
3. Approximately \$1,793,000 together with a proportionate share of interested accrued since November 16, 2018, on the NRD Settlement Funds was deposited into the California South Coast Shoreline Parks and Outdoor Recreational Use account established by the National Fish and Wildlife Foundation (NFWF Rec Account). Funds in the NFWF Rec Account will be administered by the CDFW, CDPR, CSLC, and Regents (the "State Trustees") in accordance with the Consent Decree, the Final DARP/EA, this MOU, and their Memorandum of Understanding with NFWF; and
4. Approximately \$26,000 together with a proportionate share of interested accrued since November 16, 2018, on the NRD Settlement Funds was deposited into the Natural Reserve System Account. Funds in the Natural Reserve System Account will be administered by the University of California Natural Reserve System in accordance with the Consent Decree, the Final DARP/EA, and this MOU.

V. ORGANIZATION – REFUGIO BEACH OIL SPILL TRUSTEE COUNCIL

- A. To implement this MOU, there is hereby created the Refugio Beach Oil Spill Trustee Council ("Trustee Council"), to which CDFW, CDPR, CSLC, Regents, DOI, and NOAA will each appoint one primary representative and one alternate representative. Each party to this agreement (CDFW, CDPR, CSLC, Regents, DOI, NOAA) shall have one vote. That vote shall be cast by the party's primary representative, or in the absence of the primary representative, by the party's alternate representative.
- B. 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, and telephone numbers of that Trustee's primary and alternative representatives to the Trustee Council. Communications regarding Trustee Council business shall be addressed to the primary representatives and copied to the alternate representatives and to the Trustees' legal representatives unless the Trustee Council or a Trustee's primary or alternate representative directs otherwise.
- C. Designated representatives of the Office of the General Counsel of CDFW, the Legal Division of the CSLC, the NOAA Office of General Counsel, and the 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, California tribes, or any other entity as deemed appropriate by the Trustee Council.

VI. DECISION MAKING

- A. Unanimous Approval of Voting Members Required

The Trustees agree that, except as specifically delegated to one or more Trustee Council members pursuant to Section VII below, decisions implementing this MOU shall require the

unanimous approval of the Voting Refugio Beach Oil Spill Trustee Council members, subject to the abstention provision in Paragraph VI.B below. Such decisions shall be recorded in writing, either by resolution signed by the Voting Refugio Beach Oil Spill Trustee Council members, or in Trustee Council meeting minutes approved as to content and form by the Voting Refugio Beach Oil Spill Trustee Council members participating in the meeting. Written notice of Trustee Council meetings (which may consist of e-mail notification) shall be provided by the Lead Administrative Trustee to all Trustee Council Representatives.

B. Abstention

The Trustees acknowledge that not every Trustee will have an interest in every decision of the Trustee Council. The principles of fiscal responsibility and good governance favor an organization and decision-making process that allows a Trustee to refrain from participating in meetings or otherwise expending resources for matters unrelated to its natural resource interests. Accordingly, any Trustee Council member who does not wish to approve or disapprove an action or position may abstain from voting. The decision to abstain will be deemed a non-objection and will not prevent a decision approved by the Voting Trustee Council Members from being deemed an approved decision of the Trustee Council. In order to ensure the integrity of the Trustee Council decision-making process, if any Trustee intends to abstain from voting through non-attendance or non-participation, that Trustee's representative will provide written notice in advance of a Trustee Council meeting, to the Lead Administrative Trustee.

A written record shall be maintained of all abstentions in the Administrative Record. This written record shall consist of an annotation and signature by the abstaining Representative on the Trustee Council Resolution from which he or she abstained or an annotation in Trustee Council meeting minutes when a Trustee abstains through non-attendance. Should the annotation be in the meeting minutes, the meeting minutes must be submitted to the abstaining representative for review and approval prior to finalization. Should a Trustee representative find upon reviewing meeting minutes that an abstention was entered on his or her behalf in error, he or she shall notify the other Representatives in writing (which may consist of e-mail notification).

In the event a Trustee representative abstains from a vote authorizing an expenditure of funds pursuant to paragraph VI.C, the written record of abstention must consist of an annotation and signature by the abstaining Trustee representative on the Trustee Council Resolution from which he or she abstained.

C. Authorization of Expenditures

Restoration Fund - All decisions authorizing disbursements and/or expenditures of NRD Settlement Funds from the Restoration Fund shall be memorialized in a Trustee Council resolution signed by all Voting Refugio Beach Oil Spill Trustee Council Members, including without limitation, decisions authorizing restoration planning activities and associated budgets, disbursements to Trustee agencies for 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. Such resolutions may cover the entire sum approved for a given activity, project, or project phase. Approval authority to pay the costs of individual invoices associated with restoration activities (e.g., contract costs) may be delegated by the Trustee Council to the Lead Oversight Trustee(s) for the Restoration project.

State Park Contingent Fund – Decisions approving Human Use Projects selected by CDPR shall be memorialized in a Trustee Council resolution signed by all the Voting Refugio Beach Oil Spill Trustee Council Members. CDPR shall have approval authority for individual invoices and/or disbursements associated with restoration activities funded by NRD Settlement Funds from the State Park Contingent Funds.

NFWF Rec Account – All decisions authorizing grant awards, disbursements, and/or expenditures of NRD Settlement Funds from the NFWF Rec Account shall be memorialized in a Trustee Council resolution signed by all the Voting Refugio Beach Trustee Council Members. Such resolutions may cover the entire sum approved for authorized grant awards. The CDFW, CDPR, CSLC and Regents shall have approval authority for individual invoices and/or disbursements associated with authorized grant awards from the NFWF Rec Account.

Natural Reserve System Account - Regents shall have authority to select and approve Human Use Projects that address the research, education, and outreach missions of the University of California, in coordination with the Trustee Council. In addition, Regents shall have approval authority for individual invoices and/or disbursements of NRD Settlement Funds from the Natural Reserve System Account for such projects.

Accounting - In all cases, use of NRD Settlement Funds from the Restoration Fund, the State Park Contingent Fund, the NFWF Rec Account and the Natural Reserve System Account must be documented and an accounting provided to the Trustee Council in a manner and according to a schedule specified by the Trustee Council.

D. Dispute Resolution

If 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 within the Trustee agencies for resolution. If necessary, the Trustees may establish further mechanisms to resolve disputes.

VII. POWERS, DUTIES, AND RESPONSIBILITIES

A. Refugio Beach Oil Spill Trustee Council

The Trustee Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the procedures contained in Section V and VI, above. 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, through one or more of the Trustees, with consultants or contractors that the Trustee Council determines are best qualified to provide services to the Trustee Council;
3. Oversee the management and administration of the NRD Settlement Funds;
4. Authorize disbursements from the NRDAR Account for specific Restoration Project costs, and to take all steps necessary to affect the disbursements;
5. Approve Human Use Projects selected by CDPR;
6. Authorize grant awards and disbursements/expenditures from the NFWF Rec Account.
7. Select alternative Restoration Projects or approve alternative Human Use Projects/grant awards if (1) any of the preferred Restoration Projects described in the Final DARP/EA prove infeasible, impractical, or otherwise not in the public interest; or (2) any of the Human Use projects approved or authorized by the Trustee Council prove infeasible, impractical, or otherwise not in the public interest, including failure of the grant recipient to implement or begin implementing the approved project(s) within a reasonable period of time, provided that such alternative projects address the injuries caused by the discharge of oil from the Plains' Line 901 pipeline, are subject to public review and comment, and otherwise meet the requirements of applicable federal and state law;
8. Delegate specific duties to individual Trustee representatives. Certain duties set out below are delegated to the Lead Oversight Trustee(s) for specific projects, and to the Lead Administrative Trustee for administrative purposes.

B. Lead Oversight Trustee for Restoration Projects

A Lead Oversight Trustee (state or federal) shall be designated for each of the selected Restoration Projects. State Parks is the Lead Oversight Trustee for Human Use Projects funded by the State Parks Contingent Fund. The State Trustees shall select a Lead Trustee Representative pursuant to their Memorandum of Understanding with NFWF. Each Lead Oversight Trustee and the Lead Trustee Representative 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 and/or with regard to Human Use Projects, the public;
2. Ensure that the project(s) and any use of funds for the project(s), comply with all applicable laws not previously addressed through issuance of the DARP, including but not limited to the National Environmental Policy Act (42 U.S.C. §§ 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.*);
3. Provide for the Trustee Council's approval a detailed written 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);
4. Oversee, and monitor the progress of the project(s);

5. Submit annual reports (unless otherwise agreed) to the Trustee Council, which shall include a progress report, and a statement of funds spent;
6. Establish and maintain records and relevant documents on a timely basis to the Lead Administrative Trustees for inclusion, as appropriate, in the administrative record or the official case working file;
7. Provide a final accounting to the Refugio Beach Oil Spill Trustee Council when a project is completed and an interim accounting at any other time requested by the Trustee Council;
8. Report Restoration project updates at meetings of the Refugio Beach Oil Spill Trustee Council regarding the project(s);
9. Inform the other Trustees of all pertinent developments regarding the project(s) on a timely basis; and
10. Carry out such other duties as directed by the Refugio Beach Oil Spill Trustee Council.

C. Lead Administrative Trustee

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

1. Coordinate and monitor all aspects of the Restoration implementation process even if not specifically addressed above;
2. Schedule, provide notice of, and prepare agendas and minutes for general meetings of the Refugio Beach Oil Spill Trustee Council;
3. Act as the primary contact point for the Refugio Beach Oil Spill 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 Refugio Beach Oil Spill Trustee Council;
6. Perform routine administrative duties related to the Restoration Fund account established to hold certain of the NRD Settlement Funds; and
7. Perform routine administrative duties related to the NFWF Rec account established to hold certain NRD Settlement Funds.

The Lead Administrative Trustee may delegate any of the above duties to another Trustee with the concurrence of the Refugio Beach Oil Spill Trustee Council.

VIII. CONFLICT OF INTEREST

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

IX. MEETINGS

A Trustee Council meeting may be convened in-person, telephonically, or through an alternative electronic method. Additionally, should a Trustee Council representative(s) be unable to travel to

an in-person meeting, that representative(s) may participate by telephone conference or through an alternative electronic method, and may similarly vote on any issue requiring a vote by the Voting Refugio Beach Oil Spill Trustee Council Members.

X. CONFIDENTIALITY

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 Incident and/or developed through monitoring of Restoration projects 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 Trustee Council from agreeing to release any record. Nothing contained herein shall be construed as requiring a Trustee or the Trustee Council to release a Privileged Document.

XI. 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.

XII. 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.

XIII. 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.

XIV. MODIFICATION OF AGREEMENT

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

XV. 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. Prior to termination, each Trustee shall give a full and complete accounting to the Refugio Beach Oil Spill Trustee Council of all NRD Settlement Funds received, deposited, held, disbursed, managed, expended, or otherwise controlled by that Trustee in any joint or separate account pursuant to this MOU.

XVI. WITHDRAWAL

An individual Trustee may choose to withdraw from the Refugio Beach Trustee Council. In order to effect withdrawal from the Trustee Council, the withdrawing Trustee must submit its withdrawal in writing to the other parties to this MOU at least thirty days in advance of the withdrawal. Prior to withdrawal, the withdrawing Trustee shall give a full and complete accounting to the Refugio Beach Oil Spill Trustee Council of all NRD Settlement Funds received, deposited, held, disbursed, managed, expended, or otherwise controlled by that Trustee in any joint or separate account pursuant to this MOU.

XVII. 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.

XVIII. EXECUTION: EFFECTIVE DATE

This MOU may be executed through the use of electronic signature. Each Party agrees that the electronic signature of its authorized representative shall have the same force and effect as a manual signature on this MOU. This MOU may also be executed in counterparts. A copy with all original executed signature pages affixed with manual and/or electronic signatures, shall constitute the original MOU and be retained by the Lead Administrative Trustee. The date of execution shall be the date of the signature of the last Trustee representative to sign the MOU, which shall also be the effective date.

SIGNATURES

Date: _____

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By: _____
Thomas M. Cullen, Jr.
Administrator
Office of Spill Prevention and Response

Date: _____

**CALIFORNIA DEPARTMENT OF PARKS AND
RECREATION**

By: _____

Armando M. Quintero
Director

Date: _____

CALIFORNIA STATE LANDS COMMISSION

By: _____
Jennifer Lucchesi
Executive Officer

Date: _____

REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: _____

Peggy Fiedler
Executive Director
UC Natural Reserve System

Date: _____

UNITED STATES DEPARTMENT OF THE INTERIOR

By: _____

Paul Souza
Regional Director, U.S. Fish and Wildlife Service
California-Great Basin Region (Interior Region 10)

Date: _____

**THE NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION**

By: _____

Chris Doley
Division Chief
NOAA Restoration Center