APPENDIX D
USFS Region 2 and EPA Region 8
Memorandum of Understanding

INTERAGENCY AGREEMENT
BETWEEN
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8
AND
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE, REGION 2

This INTERAGENCY AGREEMENT is hereby made and entered into by and between the U.S. Environmental Protection Agency, hereinafter referred to as USEPA, and United States Department of Agriculture Forest Service, Region 2, hereinafter referred to as Forest Service, under the provisions of the Economy Act of June 30, 1932 (31 U.S.C. 1535, Pub.L. 97-258 and 98-216).

A. PURPOSE:

Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated authority to conduct various activities under CERCLA to several executive departments and agencies, including the USEPA and the United States Department of Agriculture (USDA). The delegated authorities include performing investigations, response activities, and cost recovery, entering into agreements with potentially responsible parties (PRPs) to perform investigations and response actions, and issuing unilateral administrative orders (UAOs).

The Secretary of Agriculture has redelegated the authorities under Executive Order 12580 to the Chief of the Forest Service with respect to land and facilities under Forest Service authority (7 CFR § 2.60(a)(39)). The Secretary of Agriculture has redelegated the CERCLA Section 106 Order authority with respect to National Forest System (NFS) lands and resources to the Director, Office of Procurement and Property Management, to be exercised with the Chief of the Forest Service and with the concurrence of the General Counsel (7 CFR § 2.93(a)(17)(xiv)). In the context of this Agreement, the Forest Service expects to exercise a variety of its CERCLA authorities beyond the authority to issue orders under CERCLA Section 106.

The Forest Service and USEPA have determined that the Bueno/Streamside Tailings Site warrants a CERCLA response actions due to the on-going uncontrolled release of mine waste and associated metals into James Creek and Little James Creek. This site is a “mixed ownership” site. Here, the term “mixed ownership” means the site is located partly on private or State-owned land and partly on NFS land. In order to perform a complete CERCLA action on this mixed ownership site, USEPA and the Forest Service must exercise their respective CERCLA authorities. By Memorandum of Understanding (MOU) dated June 2, 2005, the USEPA and Forest Service have agreed on a framework for coordination of CERCLA response actions on mixed ownership sites.

The Bueno/Streamside Tailings Site is located just west of Jamestown, Colorado in the Lefthand Creek Watershed. The Bueno Mill and associated mine wastes are

located on lands with multiple private property owners as well as NFS Lands and lands owned by the Town of Jamestown. Because of the mixed ownership nature of the site, the USEPA and Forest Service need to coordinate CERCLA activities and designate a lead agency pursuant to the Mixed Ownership MOU. USEPA has a designated contractor for CERCLA Removal Actions that can be quickly mobilized for additional site characterization work and to implement a response action. In addition, because of USEPA's previous work in the watershed, some engineering survey and design work has been completed by USEPA's contractor. Based on this information and the Mixed Ownership MOU criteria, USEPA and the Forest Service have determined that it will be most efficient to designate the USEPA as the lead agency for this action.

This Interagency Agreement between the USEPA and the Forest Service is intended to 1) describe agency roles and responsibilities as related to the proposed CERCLA Actions at the Bueno/Streamside Tailings Site, 2) designate the USEPA as the lead agency for this Action, and 3) provide Forest Service funding to USEPA for specific CERCLA Action costs.

The USEPA and the Forest Service recognize that implementing CERCLA response actions on this site requires coordinating the agencies' respective use of their CERCLA authorities.

B. FOREST SERVICE SHALL:

1. Adhere to Agreements C-O as outlined in Part II of the Mixed Ownership MOU dated June 2, 2005 (Attachment A).
2. Provide funding to the USEPA in the amount of $500,000.
3. Designate an On-Scene Coordinator for this Action.

C. USEPA SHALL:

1. Adhere to Agreements C-O as outlined in Part II the Mixed Ownership MOU dated June 2, 2005 (Attachment A).
2. Limit the use of Forest Service Funds to the implementation of the CERCLA Response Action and subsequent maintenance of the remedy.
3. Designate an On-Scene Coordinator for this Action
4. To the extent possible, the EPA will limit the FS funds spent on overhead and personnel related costs.

D. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

1. <u>FUNDING EQUIPMENT AND SUPPLIES</u>. Federal funding under this instrument is not available for reimbursement of recipient/cooperator purchase of equipment (and supplies).
2. <u>MODIFICATION</u>. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification,

signed and dated by all parties, prior to any changes being performed. The Forest Service is not obligated to fund any changes not properly approved in advance.

3. EXTENSION OF PERFORMANCE PERIOD. The Forest Service, by written modification may extend the performance period of this instrument for a total duration not to exceed 5 years from its original date of execution.

4. TERMINATION. Any of the parties, in writing, may terminate the instrument in whole, or in part, at any time before the date of expiration.

   No parties shall incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination. Excess funds shall be refunded within 60 days after the effective period.

5. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

Forest Service Project Contact
Andrew Archuleta
On-Scene Coordinator
Arapaho & Roosevelt NF's
3063 Sterling Circle, Suite #1
Boulder, Colorado 80301
Phone: 303-245-6411
FAX: 303-443-1083
E-Mail: asarchuleta@fs.fed.us

Cooperator Project Contact
Steve Way
On-Scene Coordinator
US EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Phone: 303-312-6723
FAX: 303-312-6962
E-Mail: Way.Steven@epa.gov

Forest Service Administrative Contact
LuAnn Waida,
Grants and Agreements Coordinator
USDA Forest Service
740 Simms Street
Golden, CO 80401
Phone: 303-275-5280
FAX: 303-275-5453
E-Mail: lwaida@fs.fed.us

Cooperator Administrative Contact
Carol O'Donnell, Mail Code: 8TMS-G
Grants Specialist
USEPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Phone: 303-312-6824
FAX: 303-312-6685
E-Mail: ODonnell.Carol@epa.gov

8. BILLING. The maximum total cost liability to the Forest Service for this instrument is $500,000. Transfer of funds to the USEPA will be through the Treasury Intra-Governmental Payment and Collection System (IPAC) billing.

The IPAC billing document which the USEPA prepares shall contain the following information as the first line of the description or the reference section:

FS Reference Document No. (MO)	
FS Accounting Station	0216
Job Code	HWT2BT
FS Agreement No.	05-IA-11020000-077
FS Agency Location Code	12-40-1100-
Budget Object Code	2550
Performing Agency Location Code	68-01-0727
FS DUNS No.	929332484
Performing Agency DUNS No.	029128894

Send copy of bill to:

LuAnn Waida,
USDA Forest Service
Grants and Agreements Coordinator
740 Simms Street
Golden, CO 80401

A detailed list of charges incurred will be made available upon request. Any excess funds not used for the agreed costs shall be refunded to the Forest Service upon expiration of this instrument.

10. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of last signature and is effective through July 1, 2010 at which time it will expire unless extended.

11. AUTHORIZED REPRESENTATIVES. By signature below, the cooperator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below.

USEPA	USDA FOREST SERVICE
Max Dodson Assistant Regional Administrator	Glenda L. Wilson Director of Engineering
DATE	DATE

The authority and format of this instrument has been reviewed and approved for signature.

_____
DATE
FS Agreements Coordinator

Job Code - HWT2BT - $ 500,000

FOR FOREST SERVICE USE ONLY

Agreement #.:	04-IA-11020000-077
Spending Limit for FY05:	500,000
Burden (overhead rate):	N/A
Job Code:	HWT2BT
Billing Frequency (advance lump sum, monthly, quarterly, semi-annual, annual):	quarterly
Vendor ID (multiple partners?):	EPA
If Federal, Agency Location Code:	68-01-0727
Program Manager and phone #:	Suzanne Buntrock, 303-275-5457
Termination Date:	2009

CC: Mike Zimmerman, USEPA R8, Removal Program, 303-312-6828, Zimmerman.Mike@epa.gov

ATTACHMENT A: **Part II. Agreements from MOU between USEPA, Region 8 and USDA Forest Service, Region 2 for Mixed Ownership CERCLA Sites, Dated June 2, 2005**.

ATTACHMENT A

Part II. Agreements C through O from MOU between USEPA, Region 8 and USDA Forest Service, Region 2 for Mixed Ownership CERCLA Sites, Dated June 2, 2005.

C. EPA and the Forest Service agree to designate an overall Lead Agency for each mixed ownership site on a site-by-site basis. In determining which agency should be the Lead Agency, EPA and the Forest Service will evaluate such factors as: the ownership pattern of the site; the layout of any mine features or contamination; the benefits associated with cleanup work; and, the resources available from each agency. The designation of the Lead Agency will be by consensus and will take the form of a letter agreement. For each site that is addressed under this MOU, there may be Action Memoranda or Records of Decision (RODs) issued pursuant to the National Oil and Hazardous Substances Contingency Plan (NCP) found at 40 CFR Part 300, *et seq*. The agency that has not been designated as Lead Agency will still be required, per the requirements of the NCP, to issue an Action Memorandum/ROD or concur in the Lead Agency's Action Memorandum/ROD for that portion of any site for which the non-Lead Agency has jurisdiction. The non-Lead Agency will have the option, at its own election, of issuing its own Action Memorandum/ROD or of concurring in the Lead Agency's Action Memorandum/ROD. In determining whether to issue its own Action Memorandum/ROD or to concur in the Lead Agency's Action Memorandum/ ROD, the non-Lead Agency may evaluate such criteria as: whether the Lead Agency's Action Memorandum/ROD adequately addresses all issues of concern to the non-Lead Agency; the efficiency associated with issuing a single Action Memorandum/ ROD; community relations and public input into the selected remedy; and, any other factors as may be appropriate.

D. All response actions shall be conducted in accordance with the requirements of CERCLA and the NCP.

E. The EPA project representative and the FS project representative will coordinate with each other to implement response activities at each site. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings related to activities at each site, or any significant on-site activities. In most cases, reasonable prior notice shall be considered seven (7) days. In the event that EPA and the Forest Service wish to schedule a meeting on shorter notice, the EPA project representative or the FS project representative shall contact his/her counterpart and shall determine the counterpart's availability prior to scheduling the meeting.

F. A schedule of activities for each site will be established by mutual agreement of EPA and the Forest Service. The schedule will be for planning purposes and will be updated periodically to reflect actual progress on work at each site and current projections.

G. The EPA project representative and the FS project representative will provide each other with copies of documents such as project proposals, sampling and analysis plans, work plans, and enforcement documents as needed to fulfill the purposes of this agreement. The EPA project representative and the FS project representative will cooperatively determine which documents related to each site are to be copied and provided to the other agency, either directly by the agencies or by third parties. Where EPA or the Forest Service need to obtain comments of the other party on a document, the EPA project representative and FS project representative will cooperatively determine how and when those comments will be provided.

H. The EPA project representative and the FS project representative should communicate regularly to review work status and resolve any existing or anticipated technical issues. Status calls concerning all active sites will be held no less frequently than twice a year, and will generally be held quarterly or at such other regular interval as agreed by the EPA project representative and the FS project representative, based on need and the level of site activities, and will include the EPA project representative and the FS project representative. PRP and contractor representatives will be included when appropriate.

I. EPA and the Forest Service will develop a coordinated position on enforcement against any PRPs at each site.

J. For response actions on portions of each site that include private property and NFS land, the EPA project representative and the FS project representative will co-sign or concur on technical correspondence, including, but not limited to, comments on deliverables that might be required from PRPs, and approval of sampling and analysis plans.

K. For response actions on portions of each site that include private property and NFS land, EPA and the Forest Service will work cooperatively on the following major decision points:

1. The scope and extent of any additional Preliminary Assessment or Site Inspection work;

2. Enforcement activities against PRPs including the negotiation of Administrative Orders on Consent or issuing Unilateral Administrative Orders;

3. The scope and extent of Engineering Evaluation and Cost Analysis work and Remedial Investigation/Feasibility Study work;

4. Community relations activities such as the community relations plan, public notices and public meetings;

5. Preparation of the administrative record;

6. Selection of any response actions, including, but not limited to determination of Applicable or Relevant and Appropriate Requirements (ARARs), and selection of post-removal site control requirements for completed response actions;

7. Any Action Memoranda or Records of Decision;

8. Project management procedures and contracts;

9. Design plans for implementing a jointly selected response alternative;

10. Construction contracts and change orders; and

11. Certifications of completion issued for response actions at each site.

L If any site requires a common mine waste repository, EPA and the Forest Service will enter into a Repository Agreement prior to the construction of any such repository.

M. The Lead Agency will be responsible for notifying and/or coordinating with the State, the natural resources trustees, and the public, as required by CERCLA.

N. The EPA project representative should advise the FS project representative regarding any issues and concerns of special interest to EPA. The EPA project representative will assist the FS project representative in identifying and communicating with EPA personnel who can provide information concerning each site. The FS project representative should advise the EPA project representative regarding any issues and concerns of special interest to the Forest Service. The FS project representative will assist the EPA project representative in identifying and communicating with Forest Service personnel who can provide information concerning each site.

O. Resolution of and communication regarding legal issues will be coordinated among EPA counsel and USDA counsel and, as appropriate, United States Department of Justice attorneys.

USEPA Agreement #
USDA Forest Service Agreement # 04-MU-11020000-081

MEMORANDUM OF UNDERSTANDING

between

U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION 8

and

USDA FOREST SERVICE

ROCKY MOUNTAIN REGION - REGION 2

for

MIXED OWNERSHIP CERCLA SITES LOCATED IN THE STATES OF COLORADO, WYOMING AND SOUTH DAKOTA

I. Recitals

A. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC §§ 9601- 9675, the President is authorized to respond to the release or threat of release of hazardous substances to protect the public health or welfare or the environment.

B. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated authority to conduct various activities under CERCLA to several executive departments and agencies, including the United States Environmental Protection Agency (EPA) and the United States Department of Agriculture (USDA). The delegated authorities include performing investigations, response activities, and cost recovery, entering into agreements with potentially responsible parties (PRPs) to perform investigations and response actions, and issuing unilateral administrative orders (UAOs).

C. By Memorandum of Understanding (MOU) dated February 19, 1998, EPA and the USDA, along with the U.S. Coast Guard, Department of Commerce, Department of the Interior, Department of Defense, Department of Energy, and Department of Justice entered into an agreement concerning the exercise of authority under Section 106 of CERCLA. This MOU between the USDA Forest Service - Region 2 and U.S. EPA - Region 8 is intended to supplement the provisions of the nationwide MOU.

D. The Secretary of Agriculture has redelegated the authorities under Executive Order 12580 to the Chief of the USDA Forest Service (Forest Service) with respect to land and facilities under Forest Service authority. 7 CFR § 2.60(a)(39). The Secretary of Agriculture has redelegated the CERCLA Section 106 Order authority with respect to National Forest System (NFS) lands and resources to the Director, Office of

Procurement and Property Management, to be exercised with the Chief of the Forest Service and with the concurrence of the General Counsel. 7 CFR § 2.93(a)(17)(xiv). In the context of this MOU, the Forest Service expects to exercise a variety of its CERCLA authorities beyond the authority to issue orders under CERCLA Section 106.

E. Authority to issue orders pursuant to Sections 104 and 106 of CERCLA was delegated to the Administrator of the U.S. Environmental Protection Agency on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2923. This authority was further delegated to EPA Regional Administrators on May 11, 1994 by EPA Delegation No. 14-14-E. The authority to take administrative actions through unilateral orders was redelegated to the Assistant Regional Administrator (ARA) of the Office of Ecosystems Protection and Remediation (EPR) by Regional Delegation No. 14-14-B on December 20, 1996. The authority to take administrative actions through consent orders was delegated to the ARA for EPR by Regional Delegation No. 14-14-C on December 20, 1996. The authority to enter into or exercise Agency concurrence in administrative consent orders for the recovery of costs was delegated to the ARA for the Office of Enforcement, Compliance, and Environmental Justice (ECEJ) by Regional Delegation No. 14-14-D on December 20, 1996. In the context of this MOU, EPA may exercise statutory authorities beyond the authority to issue orders under CERCLA Sections 104 and 106 (e.g., the authority to make a determination of imminent and substantial endangerment under CERCLA Section 106(a)).

F. In general terms, EPA has been delegated the President's CERCLA authority where a release or threat of release of hazardous substances occurs on private property, State-owned public land and National Priorities List sites. With certain limitations, the Forest Service has been delegated the President's CERCLA Section 104 authority where a release or threat of release of hazardous substances is on or the sole source of the release is from a facility or lands under the jurisdiction, custody or control of the Forest Service, such as NFS land.

G. There are numerous sites in Colorado, Wyoming and South Dakota that may warrant CERCLA response actions. Many of these sites are of "mixed ownership." Here, the term "mixed ownership" means sites that are located partly on private or State-owned land and partly on NFS land. In order to perform a complete CERCLA action on these mixed ownership sites, EPA and the Forest Service must exercise their respective CERCLA authorities.

H. This MOU between EPA and the Forest Service is intended to govern CERCLA actions at mixed ownership sites within the States of Colorado, Wyoming and South

Dakota. EPA and the Forest Service recognize that implementing CERCLA response actions within these States requires coordinating the agencies' respective use of their CERCLA authorities. EPA and the Forest Service wish to communicate a coordinated position to PRPs, the States of Colorado, Wyoming and South Dakota, and others.

I. This MOU provides a framework for coordination between EPA and the Forest Service on any future CERCLA response actions on mixed ownership sites in Colorado, Wyoming and South Dakota. This MOU also provides a process for resolving disputes between EPA and the Forest Service that may arise during such response actions. This MOU is not intended to address coordination regarding natural resource damage.

II. Agreements

A. EPA and the Forest Service have designated the following persons to coordinate the exercise of the agencies' respective authorities at mixed ownership sites in Colorado, Wyoming and South Dakota:

EPA Representative

Max Dodson (8EPR)
Director, Office of Ecosystems Protection and Remediation
U.S. EPA - Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Phone: (303) 312-6598
Fax: (303) 312-7025

Forest Service Representative

Suzanne Buntrock
Environmental Engineer
USDA Forest Service - Region 2
740 Simms Street
Golden, CO 80401
Phone: (303) 275-5457
Fax: (303) 275-5170

If EPA or the Forest Service change their representatives, the agency making the change will notify the other agency in writing as soon as possible.

B. EPA and the Forest Service will meet at least annually to establish joint priorities for mixed ownership sites. The agencies will strive to develop a coordinated, prioritized project list for mixed ownership sites for the following five years. The agencies will independently seek funding and resources for joint projects and will cooperatively develop strategies for funding and implementation of joint projects to ensure cost-effectiveness.

C. EPA and the Forest Service agree to designate an overall Lead Agency for each mixed ownership site on a site-by-site basis. In determining which agency should be the Lead Agency, EPA and the Forest Service will evaluate such factors as: the ownership pattern of the site; the layout of any mine features or contamination; the benefits associated with cleanup work; and, the resources available from each agency. The designation of the Lead Agency will be by consensus and will take the form of a letter agreement.

D. For each site that is addressed under this MOU, the Lead Agency may be issuing Action Memoranda or Records of Decision (RODs) pursuant to the National Oil and Hazardous Substances Contingency Plan (NCP) found at 40 CFR Part 300, *et seq*.

E. The agency that has not been designated as Lead Agency will still be required, per the requirements of the NCP, to issue an Action Memorandum/ROD or concur in the Lead Agency's Action Memorandum/ROD for that portion of any site for which the non-Lead Agency has jurisdiction. The non-Lead Agency will have the option, at its own election, of issuing its own Action Memorandum/ROD or of concurring in the Lead Agency's Action Memorandum/ROD. In determining whether to issue its own Action Memorandum/ROD or to concur in the Lead Agency's Action Memorandum/ ROD, the non-Lead Agency may evaluate such criteria as: whether the Lead Agency's Action Memorandum/ROD adequately addresses all issues of concern to the non-Lead Agency; the efficiency associated with issuing a single Action Memorandum/ ROD; community relations and public input into the selected remedy; and, any other factors as may be appropriate.

F. All response actions shall be conducted in accordance with the requirements of CERCLA and the NCP.

G. The EPA project representative and the FS project representative will coordinate with each other to implement response activities at each site. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled

meetings related to activities at each site, or any significant on-site activities. In most cases, reasonable prior notice shall be considered seven (7) days. In the event that EPA and the Forest Service wish to schedule a meeting on shorter notice, the EPA project representative or the FS project representative shall contact his/her counterpart and shall determine the counterpart's availability prior to scheduling the meeting.

H. A schedule of activities for each site will be established by mutual agreement of EPA and the Forest Service. The schedule will be for planning purposes and will be updated periodically to reflect actual progress on work at each site and current projections.

I. The EPA project representative and the FS project representative will provide each other with copies of draft and final documents such as project proposals, sampling and analysis plans, work plans, and enforcement documents as needed to fulfill the purposes of this agreement. The EPA project representative and the FS project representative will cooperatively determine which documents related to each site are to be copied and provided to the other agency, either directly by the agencies or by third parties. Where EPA or the Forest Service need to obtain comments of the other party on a document, the EPA project representative and FS project representative will cooperatively determine how and when those comments will be provided.

J. The EPA project representative and the FS project representative should communicate regularly to review work status and resolve any existing or anticipated technical issues. Status calls concerning all active sites will be held no less frequently than twice a year, and will generally be held quarterly or at such other regular interval as agreed by the EPA project representative and the FS project representative, based on need and the level of site activities, and will include the EPA project representative and the FS project representative. PRP and contractor representatives will be included when appropriate.

K. EPA and the Forest Service will develop a coordinated position on enforcement against any PRPs at each site.

L. For response actions on portions of each site that include private property and NFS land, the EPA project representative and the FS project representative will co-sign or concur on technical correspondence, including, but not limited to, comments on deliverables that might be required from PRPs, and approval of sampling and analysis plans.

M. For response actions on portions of each site that include private property and NFS land, EPA and the Forest Service will work cooperatively on the following major decision points:

1. The scope and extent of any additional Preliminary Assessment or Site Inspection work;

2. Enforcement activities against PRPs including the negotiation of Consent Decrees, Administrative Orders on Consent or issuing Unilateral Administrative Orders;

3. The scope and extent of Engineering Evaluation and Cost Analysis work and Remedial Investigation/Feasibility Study work;

4. Community relations activities such as the community relations plan, public notices and public meetings;

5. Preparation of the administrative record;

6. Selection of any response actions, including, but not limited to determination of Applicable or Relevant and Appropriate Requirements (ARARs), and selection of site control requirements for completed response actions;

7. Any Action Memoranda or Records of Decision;

8. Project management procedures and contracts;

9. Design plans for implementing a jointly selected response alternative;

10. Construction contracts and change orders; and

11. Certifications of completion issued for response actions at each site.

N. If any site requires a common mine waste repository, EPA and the Forest Service will enter into a Repository Agreement prior to the construction of any such repository.

O. The Lead Agency will be responsible for notifying and/or coordinating with the State, the natural resources trustees, and the public, as required by CERCLA.

P. The EPA project representative should advise the FS project representative regarding any issues and concerns of special interest to EPA. The EPA project representative

will assist the FS project representative in identifying and communicating with EPA personnel who can provide information concerning each site. The FS project representative should advise the EPA project representative regarding any issues and concerns of special interest to the Forest Service. The FS project representative will assist the EPA project representative in identifying and communicating with Forest Service personnel who can provide information concerning each site.

Q. Resolution of and communication regarding legal issues will be coordinated among EPA counsel and USDA counsel and, as appropriate, United States Department of Justice attorneys.

III. Dispute Resolution

A. Informal dispute resolution, through heightened consultation between the EPA project representative and the FS project representative should resolve the vast majority, if not all, technical issues between EPA and the Forest Service.

B. If the EPA project representative and the FS project representative do not reach agreement on a disputed item arising from activities at a site, the issue will be elevated to the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation within U.S. EPA - Region 8 and the Regional Engineer in the Forest Service - Region 2 within fourteen days (14) days. If these EPA and Forest Service personnel are unable to reach agreement within fourteen (14) days, the issue will be further elevated to the Regional Administrator for U.S. EPA - Region 8 and the Regional Forester for the Forest Service - Region 2.

IV. Limitations

A. Notwithstanding any provision of this MOU, EPA and the Forest Service reserve their rights and authorities under CERCLA, as well as other laws, the NCP, and applicable Executive Orders. No provision of this MOU may be used to limit those rights and authorities or to prejudge what those rights and authorities may be. This instrument in no way restricts EPA or the Forest Service from participating in similar activities with other public or private agencies, organizations, or individuals.

B. EPA and the Forest Service acknowledge and understand that the presumptive arrangement for cooperative work on mixed-ownership sites is that each party shall bear its own costs. The presumptive arrangement also is that EPA (or PRPs, as determined by EPA) would fund work related to the cleanup of mine waste from

private or State land, and that the Forest Service (or PRPs, as determined by the Forest Service) would fund work related to the cleanup of mine waste from NFS land. EPA and the Forest Service will negotiate a written agreement (such as, for example, an interagency agreement or a cost share agreement) to provide for payment or reimbursement from the other agency for response costs incurred by them at specific mixed ownership CERCLA sites. Such written agreement may be jointly modified by EPA and the Forest Service at any time after the associated project begins. EPA and the Forest Service acknowledge and understand that funding arrangements will be contingent upon the availability of appropriated funds.

C. EPA and the Forest Service and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing the objectives of this MOU. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

D. Any information furnished to EPA or the Forest Service under this instrument is subject to the Freedom of Information Act, 5 U.S.C. § 552, and any privilege claims.

E. EPA and the Forest Service recognize that each agency must operate within the requirements of the federal budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require EPA or the Forest Service to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 USC § 1341.

F. Nothing in this MOU shall obligate either EPA or the Forest Service to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of EPA and the Forest Service will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

G. This MOU shall not be deemed to create any right, benefit or trust obligation, either substantive or procedural, enforceable by any person or entity in any court against the United States, its agencies, its officers or any other person.

H. This MOU will terminate five years after the effective date. Either party may terminate this MOU upon 30 days written notice. Prior to termination, this MOU may be modified or extended only upon the written agreement of both parties.

I. This MOU may be executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.

J. This MOU is effective upon the date signed by the last of the parties.

The undersigned parties hereby agree to the terms and conditions of this Memorandum of Understanding.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - REGION 8

By: _____
(Signature)

_____
(Name)

Regional Administrator
U.S. EPA - Region 8

_____
Date

USDA FOREST SERVICE - REGION 2

By: _____
(Signature)

_____
(Name)

Regional Forester
Rocky Mountain Region
USDA Forest Service

_____
Date

The authority and format of this instrument has been reviewed and approved for signature.

_____
Forest Service G&A Specialist

_____
Date