CATHERINE CORTEZ MASTO
Attorney General

CAROLYN E. TANNER (Bar No. 5520)
NHU Q. NGUYEN (Bar No. 7844)
Senior Deputy Attorneys General
5420 Kietzke Lane, Suite 202
Reno, NV 89511
Telephone: (775) 688-1818
Facsimile: (775) 688-1822
Attorneys for State of Nevada

Additional counsel listed on next page

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, STATE OF NEVADA THROUGH ITS DEPARTMENT OF NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION, A and THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION, Plaintiffs, v. ATLANTIC RICHFIELD COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, E.I. DU PONT DE NEMOURS AND COMPANY, TECK AMERICAN INCORPORATED, and MOUNTAIN CITY REMEDIATION, LLC, Defendants.	Civ. Action No. 3:12-cv-00524-RCJ-WGC **UNOPPOSED REQUEST FOR ENTRY OF CONSENT DECREE**

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

ELISE S. FELDMAN
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105
Telephone: (415) 744-6470
Facsimile: (415) 744-6476
E-mail: Elise.Feldman@usdoj.gov

DANIEL G. BOGDEN
United States Attorney
District of Nevada
HOLLY VANCE
Assistant United States Attorney
100 West Liberty
Suite 600
Reno, NV 89501
Telephone: (775) 784-5438
Facsimile: (775)784-5181
E-mail: Holly.Vance@usdoj.gov
Attorneys for Plaintiff United States of America

LLOYD B. MILLER (AK Bar No.7906040)
Sonosky, Chambers, Sachse, Endreson & Perry, LLP
900 West Fifth Avenue
Suite 700
Anchorage, AK 99501-2029
Telephone: (907) 258-6377
Facsimile: (907) 272-8332
Email: Lloyd@sonosky.net
Attorney for the Shoshone-Paiute Tribes of the Duck Valley Reservation

Now come the State of Nevada on behalf of the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection and the Department of Wildlife; the United States of America, on behalf of the United States Environmental Protection Agency, the Department of the Interior's Bureau of Indian Affairs and the United States Fish and Wildlife Service, the Department of Agriculture's United States Forest Service; and the Shoshone-Paiute

Tribes of the Duck Valley Reservation (collectively, "Plaintiffs"), and ask that this honorable court enter the Consent Decree entered into by the Plaintiffs and Defendants Atlantic Richfield Company, Cliffs Natural Resources f/k/a Cleveland-Cliffs Iron Company, E.I. du Pont de Nemours and Company, Teck American Incorporated f/k/a Teck Cominco American Inc., f/k/a Cominco American Inc., and Mountain City Remediation LLC, and lodged with this honorable court on September 27, 2012. See Attachment 1 to Notice of Lodging, (Document No. 2). In support of this Request, the Plaintiffs submit the Memorandum in Support of Unopposed Request to Enter Consent Decree and its attachments, filed herewith.

Respectfully submitted,

FOR THE STATE OF NEVADA

CATHERINE CORTEZ MASTO
Attorney General

Date: 12/12/12

/s/ Carolyn E. Tanner
CAROLYN E. TANNER (Bar No. 5520)
Senior Deputy Attorney General

Date: 12/12/12

/s/ Nhu Q. Nguyen
NHU Q. NGUYEN (Bar No. 7844)
Senior Deputy Attorney General
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511
Telephone: (775) 688-1818
Facsimile: (775) 688-1822

FOR THE UNITED STATES OF AMERICA

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: 12/12/12

/s/ Elise S. Feldman
ELISE S. FELDMAN

Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6470
Facsimile: (415) 744-6476

DANIEL G. BOGDEN
United States Attorney
District of Nevada
HOLLY VANCE
Assistant United States Attorney
100 West Liberty, Suite 600
Reno, Nevada 89501
Telephone: (775) 784-5438
Facsimile: (775)784-5181
E-mail: Holly.Vance@usdoj.gov

Of counsel:
JOSHUA WIRTSCHAFTER
Assistant Regional Counsel
United States Environmental Protection Agency

KIRK MINCKLER
Attorney
Office of General Counsel
United States Department of Agriculture

SONIA OVERHOLSER
Attorney Advisor
United States Department of the Interior

THE SHONSHONE-PAIUTE TRIBES OF THE

DUCK VALLEY RESERVATION

DATE: 12/12/12

/s/ Lloyd B. Miller

LLOYD B. MILLER
Sonosky, Chambers, Sachse, Endreson & Perry, LLP
900 West Fifth Avenue
Suite 700
Anchorage, Alaska 99501-2029

CERTIFICATE OF SERVICE

I, Gayle Simmons, hereby certify and declare:

1. I am over the age of 18 years and am not a party to this case.

2. My business address is 601 D Street, Washington, DC, 20004

3. I am familiar with the U.S. Department of Justice's mail collection and processing practices, know that mail is collected and deposited with the United States Postal Service on the same day it is deposited in interoffice mail, and know that postage thereon is fully prepaid.

4. Following this practice, on December 12, 2012, I served a true copy of the foregoing, attached document(s) entitled:

UNOPPOSED REQUEST FOR ENTRY OF CONSENT DECREE

MEMORANDUM IN SUPPORT OF UNOPPOSED REQUEST FOR ENTRY OF CONSENT DECREE ,(including Exhibits A-B)

PROPOSED ORDER TO ENTER CONSENT DECREE

via an addressed sealed envelope with postage fully prepaid, and deposited in regularly maintained office mail to the following parties (who do not yet appear on the Court's ECF system for this matter):

Jen Unekis
707 W. 4th St.
Lawrence , KS 66044

Betsy Temkin
Temkin Wielga & Hardt LLP
1900 Wazee Street, Ste 303
Denver, CO 80202

Carolyn Tanner
State of Nevada - Office of the Attorney General
5420 Kietzke Lane, Suite 202
Reno, NV 89511

Nhu Nguyen
Nevada Dept. of Wildlife
100 N. Carson Street
Carson City, NV 89706

Lloyd Miller
Sonosky, Chambers, Sachse, Miller & Munson, LLP
900 West Fifth Avenue, Suite 700
Anchorage, AK 99501

Joshua Wirtschafter
U.S. Environmental Protection Agency
Office of Regional Counsel
75 Hawthorne Street, ORC-3
San Francisco, CA 94105

Kirk Minckler
U.S. Dept. of Agriculture
Office of General Counsel
740 Simms Street, Room 309
Golden, CO 80401-4720

Sonia Overholser
U.S. Dept. of Interior - Field Solicitor
401 W. Washington, SPC 44
Phoenix, AZ 85003

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2012, at Washington, DC

GAYLE SIMMONS

CATHERINE CORTEZ MASTO
Attorney General

CAROLYN E. TANNER (Bar No. 5520)
NHU Q. NGUYEN (Bar No. 7844)
Senior Deputy Attorneys General
5420 Kietzke Lane, Suite 202
Reno, NV 89511
Telephone: (775) 688-1818
Facsimile: (775) 688-1822
Attorneys for State of Nevada

Additional counsel listed on next page

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, STATE OF NEVADA THROUGH ITS DEPARTMENT OF NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION, A and THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION, Plaintiffs, v. ATLANTIC RICHFIELD COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, E.I. DU PONT DE NEMOURS AND COMPANY, TECK AMERICAN INCORPORATED, and MOUNTAIN CITY REMEDIATION, LLC, Defendants.	Civ. Action No. 3:12-cv-00524-RCJ-WGC **MEMORANDUM IN SUPPORT OF UNOPPOSED REQUEST FOR ENTRY OF CONSENT DECREE**

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

ELISE S. FELDMAN
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105
Telephone: (415) 744-6470
Facsimile: (415) 744-6476
E-mail: Elise.Feldman@usdoj.gov

DANIEL G. BOGDEN
United States Attorney
District of Nevada
HOLLY VANCE
Assistant United States Attorney
100 West Liberty
Suite 600
Reno, NV 89501
Telephone: (775) 784-5438
Facsimile: (775)784-5181
E-mail: Holly.Vance@usdoj.gov
Attorneys for Plaintiff United States of America

LLOYD B. MILLER (AK Bar No.7906040)
Sonosky, Chambers, Sachse, Endreson & Perry, LLP
900 West Fifth Avenue
Suite 700
Anchorage, AK 99501-2029
Telephone: (907) 258-6377
Facsimile: (907) 272-8332
Email: Lloyd@sonosky.net
Attorney for the Shoshone-Paiute Tribes of the Duck Valley Reservation

I. INTRODUCTION

On September 27, 2012, The State of Nevada on behalf of the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection ("NDEP") and the Department of Wildlife ("NDOW"); the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), the Department of the Interior's Bureau of Indian

Affairs ("BIA") and the United States Fish and Wildlife Service ("FWS"), the Department of Agriculture's United States Forest Service ("USFS"); and the Shoshone-Paiute Tribes of the Duck Valley Reservation ("Tribes") (collectively, "Plaintiffs"), filed a complaint asserting claims under Sections 106(a) and 107(a)(1) and (2) of the Comprehensive Environmental Response, Compensation, & Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9607(a)(1) and (2), and Nevada Water Pollution Control Law NRS § 445A.300 to 445A.730 against Settling Defendants Atlantic Richfield Company, Cliffs Natural Resources f/k/a Cleveland-Cliffs Iron Company, E.I. du Pont de Nemours and Company, Teck American Incorporated f/k/a Teck Cominco American Inc., f/k/a Cominco American Inc., and Mountain City Remediation LLC, (collectively, "Settling Defendants") and contemporaneously filed a Notice of Lodging attaching a Consent Decree, ("Consent Decree"). The Consent Decree was the product of years of extensive negotiations and resolves all of the claims asserted in the Complaint. Declaration of David Seter, attached hereto as Attachment A ("Seter Decl."), ¶ 4. In accordance with 28 C.F.R. § 50.7, notice of the settlement was published in the Federal Register for a period of 30 days. See Federal Register at Volume 77, Number 193 (October 4, 2012) at pages 60723 – 60724. Declaration of Elise S. Feldman attached hereto as Attachment B ("Feldman Decl.") ¶ 3. As of the end of the public comment period, November 5, 2012, the United States had received only one comment from the public pertaining to the settlement. Feldman Decl. ¶ 4. For the reasons set forth below, Plaintiffs request that this Court approve and enter the Consent Decree as an Order of the Court at this time.

II. DESCRIPTION OF SETTLEMENT

The Rio Tinto Mine Site ("Site") is an abandoned copper mine located approximately 2.5 miles south of Mountain City, in northern Elko County, Nevada. Mountain City Copper Company conducted mining operations at the Site from 1932-1947. As asserted in the

Complaint, the Plaintiffs have incurred, and will continue to incur response costs in addressing contamination of the Owyhee River and Mill Creek, and natural resources have been affected by the contamination.

As asserted in the Complaint, each of the Settling Defendants are either current owners or owner/operators of the mine at the time releases occurred and are therefore liable under Section 107(a) of CERCLA, 42 U.S.C. 9607(a) for the past and future response costs and for costs of assessing damages to natural resources. The Consent Decree resolves the claims and requires the Settling Defendants to do the following: (1) implement the remedy selected for the Site which includes, among other things, removal of mine tailings from the Owyhee River, achieving certain water quality standards, and providing fish passage and stream bank restoration, ("Remedy"), at an estimated cost of over $25 million; (2) implement additional work if monitoring after Remedy Construction identifies elevated levels of Site contaminants, and if NDEP or EPA requires such additional work; (3) provide performance guarantees; (4) pay EPA $1,234,067 for past response costs; (5) pay NDEP and EPA certain future oversight costs; (6) pay federal natural resource trustees, United States Department of Interior and USFS, damage assessment costs of $709,527; (7) pay $150,000 to the Tribes for their past and future costs; and (8) undertake other commitments such as providing access, institutional controls, insurance, stipulated penalties in the event of non-compliance and retention of records. *See* Sections VI (Performance of Work by Settling Defendants), XVI (Payments for Response Costs), XVII (Payments to Natural Resource Trustees), IX (Access and Institutional Controls), XXI (Stipulated Penalties), XXVI (Retention of Records) and XIII (Performance Guarantee) of the Consent Decree.

III. ANALYSIS

A. General Principles

"The initial decision to approve or reject a settlement proposal is committed to the sound

discretion of the trial judge." *SEC v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984), quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982); accord; *United States v. Union Elec. Co.*, 132 F.3d 422, 430 (8th Cir. 1997); *United States. v. Jones & Laughlin Steel Corp.*, 804 F.2d 348, 351 (6th Cir. 1986). Courts typically accord substantial deference to settlement agreements because "[t]he law generally favors and encourages settlements." *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 616 F.2d 1006, 1013 (7th Cir. 1980). *United States v. Akzo Coatings of Am. Inc.*, 949 F.2d 1409, 1436 (6th Cir. 1991) (there is a "presumption in favor of voluntary settlement").

Judicial deference to negotiated settlements is particularly appropriate where the government has entered into a consent decree. The Supreme Court has itself articulated the significant deference owed to the judgment of the United States in settling a matter:

> [S]ound policy would strongly lead us to decline . . . to assess the wisdom of the Government's judgment in negotiating and accepting the . . . consent decree, at least in the absence of any claim of bad faith or malfeasance on the part of the Government in so acting.

Sam Fox Publ'g Co. v. United States, 366 U.S. 683, 689 (1961). 81 S.Ct. 1309, 1312-1313, 6 L.Ed.2d 604 (1961).

As the Ninth Circuit has explained, "[the] policy of encouraging early settlements is strengthened when a government agency charged with protecting the public interest 'has pulled the laboring oar in constructing the proposed settlement'"; indeed, "a district court reviewing a proposed consent decree 'must refrain from second-guessing the Executive Branch.'" *United States. v. Montrose Chem. Corp.*, 50 F.3d 741, 746 (9th Cir. 1995), quoting *United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990).

Judicial deference to a settlement negotiated by the government is "particularly strong where a consent decree has been negotiated by the Department of Justice on behalf of a federal

administrative agency like EPA which enjoys substantial expertise in the environmental field." *Akzo Coatings*, 949 F.2d at 1436. See also *United States v. Chevron USA, Inc.*, 380 F.Supp. 2d 1104, 1111 (N.D. Cal 2005); *Int'l Fabricare Inst. v. United States EPA*, 972 F.2d 384, 389 (D.C. Cir. 1992) ("The rationale for deference is particularly strong when the EPA is evaluating scientific data within its technical expertise"). Courts have expressed a presumption in favor of settlement where the governmental agencies charged with enforcing environmental statutes have negotiated a consent decree. *Cannons*, 899 F.2d at 84; *Montrose Chem. Corp.*, 50 F.3d at 746-47; *Kelley v. Thomas Solvent Co.*, 790 F.Supp. 731, 735 (W.D. Mich. 1991). This limited standard of review for governmental actions reflects the "strong public policy in favor of settlements, particularly in very complex and technical regulatory contexts." *United States. v. Davis*, 261 F.3d 1, 27 (1st Cir. 2001) (internal quotation and citation omitted).

B. The Legal Standard to be Applied

In light of the policy in favor of settlements and the deference given to settlements negotiated by the government, a court should approve entry of a consent decree under CERCLA when the decree is fair, reasonable, and in conformity with applicable laws. *United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990).

A court is not required to make the same in-depth analysis of a proposed settlement that it would be required to make when entering a judgment on the merits after trial. *Citizens for a Better Env't v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983); *United States v. County of Muskegon*, 33 F.Supp. 2d 614, 620 (W.D. Mich. 1998) ("Because a consent judgment represents parties' determination to resolve a dispute without litigating the merits, the court's role is not to resolve the underlying legal claims, but only to determine whether the settlement negotiated by the parties is in fact a fair, reasonable and adequate resolution of the disputed claims"). The relevant standard "is not whether the settlement is one which the court itself might have

fashioned, or considers as ideal, but whether the proposed decree is fair, reasonable, and faithful to the objectives of the governing statute." *Cannons*, 899 F.2d at 84; *United States. v. DiBiase*, 45 F.3d 541, 543 (1st Cir. 1995); *United States. v. Charles George Trucking, Inc.*, 34 F.3d 1081, 1084 (1st Cir. 1994).

IV. ARGUMENT

The settlement is fair, reasonable, consistent with the goals of CERCLA, and is in the public interest.

A. The Consent Decree is Fair

In determining whether a settlement is fair, the Court considers both procedural fairness and substantive fairness. *Cannons*, 899 F.2d at 86; *Chevron*, 380 F.Supp. 2d at 1111. "To measure procedural fairness, a court should ordinarily look to the negotiation process and attempt to gauge its candor, openness, and bargaining balance." *Cannons*, 899 F.2d at 86. The settlement is procedurally fair if it was negotiated in a fair manner. *Id.* at 84.

This settlement was procedurally fair. Each party to this Consent Decree was represented by experienced counsel and assisted by knowledgeable environmental consultants. Seter Decl. at ¶ 3. Given the complexity of the technical issues involved in this case, the teams from each party worked together in negotiating resolution of difficult technical issues as well as resolving the legal issues this case presented. Seter Decl. at ¶ 3. Negotiations have been on-going for many years and have included multiple in-person negotiation sessions among the various parties in Nevada, California, and Colorado, as well as years of telephone and email negotiations. Seter Decl. at ¶ 4. In light of these facts, this settlement is fair. See *Cannons*, 899 F.2d at 86.

B. The Consent Decree is Substantively Fair

As the product of "adversarial vigor," this settlement comes to the Court with an assurance of substantive fairness. *United States v. Montrose Chem. Corp.*, 793 F. Supp. 237, 240

(C.D. Cal. 1992). As the First Circuit stated in *Cannons* "[s]ubstantive fairness introduces into the equation concepts of corrective justice and accountability: a party should bear the cost of the harm for which it is legally responsible." 899 F.2d at 87. See also *Davis* 261 F.3d at 23 ("A finding of procedural fairness may also be an acceptable proxy for substantive fairness, when other circumstantial indicia of fairness are present."); *United States v. Charles George*, 34 F.3d at 1087-89. In reviewing substantive fairness, the Court need only determine whether a proposed consent decree reflects a reasonable compromise of the litigation. *Rohm & Haas*, 721 F. Supp.666, 685 (D.N.J. 1989). Factors considered by courts reviewing CERCLA consent decrees for fairness include "'the strength of the plaintiffs' case, the good faith efforts of the negotiators, the opinions of counsel, and the possible risks involved in the litigation if the settlement is not approved.'" *Kelley v. Thomas Solvent Co.,* 717 F. Supp. 507, 517 (W.D. Mich. 1989) (citing *United States v. Hooker Chem. & Plastic Corp.*, 607 F. Supp. 1052, 1057 (W.D.N.Y.), *aff'd*, 776 F.2d 410 (2d Cir. 1985); *cf. Hiram Walker*, 768 F.2d at 899.

The Consent Decree is also substantively fair. It resolves the liability of the Settling Defendants and gives them time to accomplish the Remedy, but requires from them a significant cleanup effort that will extend over a period of many years and cost millions of dollars. Consent Decree at Section VI (Performance of the Work by Settling Defendants). Moreover, it requires that the Settling Defendants provide funding for the Tribes and reimbursement of Nevada and the United States' response costs and past natural resource damage assessment costs. Consent Decree at Section V (General Provisions). Importantly, this settlement also takes into account litigation risks and the avoided costs of resolution short of litigation. Seter Decl. at ¶ 5. Accordingly, the Consent Decree is fair. See *United States v. Oregon*, 913 F.2d at 580.

C. The Consent Decree is Reasonable

A consent decree is reasonable if it is designed to recover costs and provide a practical

and appropriate redress that the defendant is in a position to implement, and the United States can efficiently enforce. See *Cannons*, 899 F.2d at 89-90. As noted above, this Consent Decree achieves these goals through work and payment requirements that the Consent Decree places on the Settling Defendants. See above at Section II of this Memorandum listing obligations of the Settling Defendants.

D. The Consent Decree is in the Public Interest and Consistent with CERCLA

A primary role of the Court in reviewing an environmental settlement is to determine "whether the decree comports with the goals of Congress." *Sierra Club v. Coca-Cola Corp.*, 673 F.Supp. 1555, 1556 (M.D. Fla. 1987). The Court's role is not to determine whether the settlement is one that will best serve society, but rather to confirm that the settlement is within the reaches of the public interest. *United States v. Microsoft Corp.*, 56 F.3d 1448, 1460 (D.C. Cir. 1995), quoting *United States v. W. Elec. Co.*, 900 F.2d 283, 309 (D.C. Cir. 1990) (emphasis in original) (additional citations omitted).

The proposed Consent Decree is consistent with the goals of CERCLA. CERCLA was enacted to combat the environmental and health risks posed by industrial pollution by creating a mechanism for cleaning up sites contaminated with hazardous substances. *United States v. Bestfoods*, 524 U.S. 51, 55, 118 S.Ct. 1876, 1881, 141 L.Ed.2d 43 (1998); *Key Tronic Corp. v. U.S.*, 511 U.S. 809, 814, 114 S.Ct. 1960, 1964, 128 L.Ed.2d 797 (1994). The Consent Decree implements CERCLA's statutory goals by requiring the Settling Defendants to undertake the Remedy which will permanently protect the Owyhee River from contamination from tailings on Site, and in addition, to undertake further investigation to determine whether a second source for the contamination exists in underground mine workings. Consent Decree at Section VI (Performance of the Work by Settling Defendants). Thus, consistent with the goals of CERCLA, the Consent Decree will result in preventing releases of hazardous substances into portions of the

Owyhee River and Mill Creek. Moreover, the settlement provides for payment of certain future costs of EPA and NDEP, as well as $1,234,067.74 of past EPA response costs and $709,527.81 of past natural resource damage assessment costs of the United States Department of the Interior and USFS; and payment of $150,000 to the Tribes to fund their continued participation at the Site. Consent Decree at Section XVI (Payments of Response Costs and Section XVII (Payments to Natural Resource Trustees) Accordingly, this settlement meets the goals of CERCLA of effecting a cleanup and recovering response costs. The Consent Decree is also in the public's best interest because avoiding litigation spares taxpayer resources as well as the resources of the other parties and the Court.

E. The Comment Received Does Not Impact the Fairness of the Settlement

The United States received one comment from the public pertaining to this settlement: an email sent by Jennifer Unekis. Attachment A to Feldman Decl., ("Comment"). Ms. Unekis is the daughter of Doris Widerberg, the owner of the Rio Tinto Mine, ("Property"). Feldman Decl. ¶ 4. Pursuant to the terms of the Consent Decree, the State and the United States reserved the right to withdraw or withhold its consent for the entry of the Consent Decree if any comments received "disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate." The Comment does not disclose any relevant facts or considerations indicating that the Consent Decree is in any way inappropriate, improper or inadequate.

The Comment provides a history of Ms. Widerberg's ownership of the Property and references discussions by the RTWG with Ms. Widerberg for the purchase of the Property. See Comment, generally. The Comment describes frustration regarding ownership of contaminated property, and references a rejected offer made by the RTWG to Ms. Widerberg to purchase the Property. Neither subject is relevant to the analysis of whether this Consent Decree is fair and achieves the goals of the statute. The offer by the RTWG would have resulted in a separate real

estate transaction with Ms. Widerberg that would not involve the Plaintiffs to this action. Accordingly, the concerns raised by the Comment do not impact the conclusion that this Consent Decree is fair and in the public interest.

V. CONCLUSION

The Consent Decree is fair, reasonable, and in the public interest, and the Court should grant the Plaintiffs' Unopposed Request for Entry of the Consent Decree.

Respectfully submitted,

FOR THE STATE OF NEVADA

CATHERINE CORTEZ MASTO
Attorney General

Date: 12/12/12

/s/ Carolyn E. Tanner
CAROLYN E. TANNER (Bar No. 5520)
Senior Deputy Attorney General

Date: 12/12/12

/s/ Nhu Q Nguyen
NHU Q. NGUYEN (Bar No. 7844)
Senior Deputy Attorney General
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511
Telephone: (775) 688-1818
Facsimile: (775) 688-1822

FOR THE UNITED STATES OF AMERICA

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: 12/12/12

/s/ Elise S. Feldman
ELISE S. FELDMAN
Trial Attorney

Exhibit A

Exhibit A

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, STATE OF NEVADA THROUGH ITS DEPARTMENT OF NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION, A and THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION, Plaintiffs, v. ATLANTIC RICHFIELD COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, E.I. DU PONT DE NEMOURS AND COMPANY, TECK AMERICAN INCORPORATED, and MOUNTAIN CITY REMEDIATION, LLC, Defendants.	Civil Action No. **DECLARATION OF DAVID SETER IN SUPPORT OF UNOPPOSED REQUEST FOR ENTRY OF CONSENT DECREE**

I, David Seter, pursuant to 28 U.S.C. § 1746, hereby swear and affirm under penalty of perjury that the following is true and correct, either of my own personal knowledge or based on my review of records of the United States Environmental Protection Agency ("EPA") related to the Rio Tinto Mine Site located in Elko County, Nevada ("Site"), and that I am competent to testify regarding these matters.

1. I am employed by the United States Environmental Protection Agency. I currently hold the position of Remedial Project Manager in the Superfund Division of Region 9, in San Francisco, California. I have worked at EPA since May, 1987 and I have been employed as a Remedial Project Manager since August, 1993. I am the currently EPA's Remedial Project Manager assigned to the Site.

2. The Site is an abandoned copper mine located approximately 2.5 miles south of

Mountain City, in northern Elko County, Nevada. Mountain City Copper Company conducted mining operations from 1932-1947.

3. Each party in this case was represented by experienced counsel and assisted by knowledgeable environmental consultants. Given the complexity of the technical issues involved in this case, these teams worked together in negotiating resolution of difficult technical issues as well as resolving the legal issues this case presented.

4. Negotiations have been on-going for many years and have included multiple in-person negotiation sessions among the various parties in Nevada, California, and Colorado, as well as years of telephone and email negotiations.

5. This settlement also takes into account litigation risks and the avoided costs of resolution short of litigation.

6. Implementation of the Remedy selected in the Record of Decision for this Site is estimated to cost $25 million.

Dated: 11-20-12

By: _____
David Seter

Exhibit B

Exhibit B

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, STATE OF NEVADA THROUGH ITS DEPARTMENT OF NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION, A and THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION, Plaintiffs, v. ATLANTIC RICHFIELD COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, E.I. DU PONT DE NEMOURS AND COMPANY, TECK AMERICAN INCORPORATED, and MOUNTAIN CITY REMEDIATION, LLC, Defendants.	Civ. Action No. 3:12-cv-00524-RCJ-WGC **DECLARATION OF ELISE S. FELDMAN IN SUPPORT OF UNOPPOSED REQUEST FOR ENTRY OF CONSENT DECREE**

I, Elise S. Feldman, pursuant to 28 U.S.C. § 1746, hereby swear and affirm that the following is true and correct, related to the Rio Tinto Mine Site.

1. I am a Trial Attorney at the United States Department of Justice, Environment and Natural Resources Division, Environmental Protection Section. My office is located at 301 Howard Street, San Francisco, California. I have been a Trial Attorney for the United States Department of Justice since April of 1999. I am the United States' lead counsel for the above captioned litigation pertaining to the Rio Tinto Mine Site, located in Elko, Nevada.

2. On September 27, 2012, the State of Nevada, the United States, and the Shoshone-Paiute Tribes of the Duck Valley Reservation ("Tribes"), (collectively, "Plaintiffs") lodged a Consent Decree setting forth the terms of the agreement between the State of Nevada, the United States, the Tribes, and Defendants Atlantic Richfield Company, Cliffs Natural Resources f/k/a

Cleveland-Cliffs Iron Company, E.I. du Pont de Nemours and Company, Teck American Incorporated f/k/a Teck Cominco American Inc., f/k/a Cominco American Inc., and Mountain City Remediation LLC, (collectively, "Settling Defendants") setting forth the agreement between the Plaintiffs and the Settling Defendants.

3. The United States published notice of the lodging of this Consent Decree in the Federal Register at Volume 77, Number 193 (October 4, 2012) at pages 60723 - 60724.

4. The United States received one comment on the Consent Decree, an email from Jennifer Unekis dated November 5, 2012, 5:57 pm., a true and accurate copy is attached hereto as Attachment A.

Dated: 12-12-12

By: Elise S. Feldman
Elise S. Feldman

ATTACHMENT A

ATTACHMENT A

From: Jennifer Unekis [mailto:j_unekis@hotmail.com]
Sent: Monday, November 05, 2012 5:57 PM
To: ENRD, PUBCOMMENT-EES (ENRD)
Subject: Rio Tinto remediation Mountain City, Nevada

To whom it may concern in regards to the remediation project at the Rio Tinto mine site outside of Mountain City Nevada.

My mother Doris Widerburg purchased the Rio Tinto mine located near Mountain City, NV 30 years ago with her brother Richard who had been missing from the family for many years. He had been living on the property (I believe as a caretaker) and he felt it would be a good investment. Although I feel he prayed on her desire to keep him in contact with the family too.

One of the questions she asked the attorney involved in the sale at the time was if the property had any environmental concerns and was told it did not. Whether misguided or not we will never know.

Shortly after purchase of the property she found out that it did have environmental concerns and was told that she could not do mining or use the property for any other uses due to its toxicity. When I was was thirteen to about sixteen my family would stay at the mine from time to time and she would work with her brother on possible uses for the property and take ore samples around the property. No work was done because we didn't want to contribute to the environmental concerns. During this time we would also work in the Diner in Mountain City.

About 15 years ago after many years of discussion among the EPA and other agencies she agreed to contractual agreement with the prior mining companies (The Working Goup) that owned the Rio Tinto and were responsible for it's contamination. She agreed to allow the remediation to take place and was also released from any contributing factors to the properties contamination. Shortly after she also agreed to have some B.L.M. Forestry land signed over to her. The B.L.M. did a full title search for transfer of the property.

At the time she agreed to the contract for remediation she had been told that this project would take about two years to complete and she would be able to have use of the land again. This did not happen. After many years of not being cleared to use the property and the failing of the remediation project another plan had been considered by the mining companies. .

Currently the "Working Group" is in the process of continuing forward with the remediation. After almost 30 years of having land that we purchased on hold due to contamination the Working Group made us an offer of purchase after many months of stringing us along of 50,000 in 2011. 50,000 dollars for 250 acres of land that has been tied up for 30 years and is involved in a 25 million dollar remediation project seemed like a slap in the face. It probably took more money to pay the attorney fees to come up with the offer. They also offered a 1 1/2 % allowance of gross of any future money that may be made from minerals. If they so strongly feel there is not value in the property why would they have included that. Especially since we had asked to not have it be a part of the agreement.

Doris is now 79 years old. She was 49 at the time she purchased the property. Oddly the same age I am today. She has very little financial support. She is attached to this property in part due to her attachment to the memory of her brother who died on the property and the hope that she would be able to some day at least be able to reclaim her investment in the property. She originally purchased the property using a divorce settlement with my father whom we suffered from years of abuse. And although it was not a lot of money, it at the time could have helped she and my two siblings when we didn't have a very stable life and virtually no income. It in many ways was her dream for a new start.

Thirty years later this property has been a drain on her emotionally and financially as well as being a drain on our entire family.

She was also told that the water rights that the property had would transfer to her at the time of purchase. Soon after she hired someone to trace the rights and had received copies of the claims from the Nevada Dept. of Water Resources that she was later told were no good. One of the possible uses for the property that the "Working Group" along with consent of the EPA had suggested at one time was a fresh water fish farm. Which would of course mean the use of water. Or if the remediation is successful possible grazing use. Losing the water rights also of course keeps any more even small scale mining out of the question for the property. Whether that would be feasible or not.

I personally have an emotional dis-attachment to this property. It has caused our family many years of battles with the previous mining companies, lawyers, attempting to be helpful to the needs of the EPA and even enduring people who stole an entire building for scrap from the property. My mother has lived far below the poverty level for many years. With her children helping as we can. And the dollar amount that has been thrown around by lawyers and the Mining Group for the remediation is unreal. She has been completely kept out of the loop with plans for the project and treated as though she is not the one who has had her land tied up for any use for 30 years.

I greatly appreciate the time you have taken to read this letter. I am not sure how this letter could help my mothers situation, but in looking into the status of
the remediation project today I found this notice (attached). It had this address to respond to the notice. The drive to write this letter was due to the quotations in various media posts about what a great job the Working Group are doing toward their goal of completing this remediation. They have worked closely with the native people in the area and the EPA. We on the other had have been strung along and told lies for years. Lies that they wanted to work with us, that they would make us a "fair" offer on the land and lies that after the first failed remediation that we would have use of the property.
Another concern is weather or not there is value in the tailings that they are planning on moving. At one time my mother was told that they planned on processing them to help pay for the remediation. We still have not idea if that is or is not happening.

My mother may have been used to try to shield the mining companies from having to pay for the pollution and toxic waste they created on the property. I am still not sure how they could have not disclosed the hazards the property had at the time of sale. Yet some how we praise the Working Group for their good deeds in caring for our environment. Meanwhile my mother has paid taxes for years she has not use of, not to mention not being able to receive government financial support due to it being considered "income property".

I am sorry if this letter is a little confusing. I had about an hour to come up with something to send before the deadline had passed.

Thank you,

Jen Unekis
707 W. 4th St.
Lawrence, KS 66044
785-766-1469

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, STATE OF NEVADA THROUGH ITS DEPARTMENT OF NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION, A and THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION, Plaintiffs, v. ATLANTIC RICHFIELD COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, E.I. DU PONT DE NEMOURS AND COMPANY, TECK AMERICAN INCORPORATED, and MOUNTAIN CITY REMEDIATION, LLC, Defendants.	Civ. Action No. 3:12-cv-00524-RCJ-WGC ORDER TO ENTER CONSENT DECREE

For the reasons set forth in the Plaintiffs' Unopposed Request for Entry of Consent Decree and Memorandum in Support thereof and for good cause shown, the Consent Decree is hereby ENTERED and shall constitute a final judgment of the Court as to the above captioned matter pursuant to Fed. R. Civ. P. 54 and 58.

IT IS SO ORDERED:

May 20, 2013
Date

HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT JUDGE

CATHERINE CORTEZ MASTO
Attorney General

CAROLYN E. TANNER (Bar No. 5520)
NHU Q. NGUYEN (Bar No. 7844)
Senior Deputy Attorneys General
5420 Kietzke Lane, Suite 202
Reno, NV 89511
Telephone: (775) 688-1818
Facsimile: (775) 688-1822
Attorneys for State of Nevada

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

ELISE S. FELDMAN
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105
Telephone: (415) 744-6470
Facsimile: (415) 744-6476
E-mail: Elise.Feldman@usdoj.gov
Additional counsel listed on next page

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, STATE OF NEVADA THROUGH ITS DEPARTMENT OF NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION, A and THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION, Plaintiffs, v. ATLANTIC RICHFIELD COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, E.I. DU PONT DE NEMOURS AND COMPANY, TECK AMERICAN INCORPORATED, and MOUNTAIN CITY REMEDIATION, LLC, Defendants.	Case No. **NOTICE OF LODGING OF CONSENT DECREE**

DANIEL G. BOGDEN
United States Attorney
District of Nevada
HOLLY VANCE
Assistant United States Attorney
100 West Liberty
Suite 600
Reno, NV 89501
Telephone: (775) 784-5438
Facsimile: (775)784-5181
E-mail: Holly.Vance@usdoj.gov
Attorneys for Plaintiff United States of America

LLOYD BENTON MILLER (AK Bar No.7906040)
Sonosky, Chambers, Sachse, Endreson & Perry, LLP
900 West Fifth Avenue
Suite 700
Anchorage, AK 99501-2029
Telephone: (907) 258-6377
Facsimile: (907) 272-8332
Email: Lloyd@sonosky.net
Attorney for the Shoshone-Paiute Tribes of the Duck Valley Reservation

Plaintiffs, the State of Nevada ("State"), the United States of America ("United States"), and the Shoshone Paiute Tribes of the Duck Valley Reservation ("Tribes"), hereby serve notice that they are lodging with the Court a Consent Decree, included as Attachment A, that resolves the claims raised in this matter.

Under the terms of this Consent Decree, the United States will publish notice in the Federal Register and accept public comment on the proposed Consent Decree for a period of thirty (30) days. 28 C.F.R. § 50.7. Accordingly, Plaintiffs respectfully request that the Consent Decree not be entered prior to the expiration of the public comment period.

At the expiration of the public comment period and after Plaintiffs have reviewed any public comments that are received, Plaintiffs will either request that the Court enter the Consent Decree, or advise the Court that public comments have been received that warrant the Plaintiffs' withdrawal from the Consent Decree.

Respectfully submitted,

FOR THE STATE OF NEVADA

CATHERINE CORTEZ MASTO
Attorney General

Date: 9/27/12

/s/
CAROLYN E. TANNER (Bar No. 5520)
Senior Deputy Attorney General

Date: 9/27/12

/s/
NHU Q. NGUYEN (Bar No. 7844)
Senior Deputy Attorney General
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511
Telephone: (775) 688-1818
Facsimile: (775) 688-1822

FOR THE UNITED STATES OF AMERICA

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date: 9/27/12

/s/
ELISE S. FELDMAN
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105
Telephone: (415) 744-6470
Facsimile: (415) 744-6476

DANIEL G. BOGDEN
United States Attorney
District of Nevada
HOLLY VANCE
Assistant United States Attorney

100 West Liberty, Suite 600
Reno, Nevada 89501
Telephone: (775) 784-5438
Facsimile: (775)784-5181
E-mail: Holly.Vance@usdoj.gov

Of counsel:
JOSHUA WIRTSCHAFTER
Assistant Regional Counsel
United States Environmental Protection Agency

KIRK MINCKLER
Attorney
Office of General Counsel
United States Department of Agriculture

SONIA OVERHOLSER
Attorney Advisor
United States Department of the Interior

THE SHONSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION

DATE: 9/27/12

/s/
LLOYD BENTON MILLER
Sonosky, Chambers, Sachse, Endreson & Perry, LLP
900 West Fifth Avenue
Suite 700
Anchorage, Alaska 99501-2029

CERTIFICATE OF SERVICE

I, Victoria Reeder, hereby certify and declare:

1. I am over the age of 18 years and am not a party to this case.

2. My business address is 301 Howard Street, Suite 1050, San Francisco, California 94105.

3. I am familiar with the U.S. Department of Justice's mail collection and processing practices, know that mail is collected and deposited with the United States Postal Service on the same day it is deposited in interoffice mail, and know that postage thereon is fully prepaid.

4. Following this practice, on September 27, 2012, I served a true copy of the foregoing, attached document(s) entitled:

NOTICE OF LODGING OF CONSENT DECREE (with attached lodged Consent Decree, including Appendices A-G)

COMPLAINT

via an addressed sealed envelope with postage fully prepaid, and deposited in regularly maintained office mail to the following parties (who do not yet appear on the Court's ECF system for this matter):

Betsy Temkin
Temkin Wielga & Hardt LLP
1900 Wazee Street, Ste 303
Denver, CO 80202

Carolyn Tanner
State of Nevada - Office of the Attorney General
5420 Kietzke Lane, Suite 202
Reno, NV 89511

Nhu Nguyen
Nevada Dept. of Wildlife
100 N. Carson Street
Carson City, NV 89706

Lloyd Miller
Sonosky, Chambers, Sachse, Miller & Munson, LLP
900 West Fifth Avenue, Suite 700
Anchorage, AK 99501

Joshua Wirtschafter
U.S. Environmental Protection Agency
Office of Regional Counsel
75 Hawthorne Street, ORC-3
San Francisco, CA 94105

Kirk Minckler
U.S. Dept. of Agriculture
Office of General Counsel
740 Simms Street, Room 309
Golden, CO 80401-4720

Sonia Overholser
U.S. Dept. of Interior - Field Solicitor
401 W. Washington, SPC 44
Phoenix, AZ 85003

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on September 27, 2012, at San Francisco, California.

VICTORIA REEDER

Attachment A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,
STATE OF NEVADA THROUGH ITS DEPARTMENT OF NATURAL RESOURCES,
DIVISION OF ENVIRONMENTAL PROTECTION and
THE SHOSHONE-PAIUTE TRIBES
OF THE DUCK VALLEY RESERVATION
Plaintiffs,

v.

ATLANTIC RICHFIELD COMPANY,
THE CLEVELAND-CLIFFS IRON COMPANY,
E.I. DU PONT DE NEMOURS AND COMPANY,
TECK AMERICAN INCORPORATED, and
MOUNTAIN CITY REMEDIATION, LLC
Defendants.

CONSENT DECREE

TABLE OF CONTENTS

I. BACKGROUND

1. Plaintiffs, the United States of America (the "United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), the Secretary of the Interior, acting through the Bureau of Indian Affairs and the United States Fish and Wildlife Service ("USFWS"), and the Secretary of Agriculture, acting through the United States Forest Service; the State of Nevada (the "State"), acting through the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection ("NDEP") and the Nevada Department of Wildlife ("NDOW"); and the Shoshone-Paiute Tribes of the Duck Valley Reservation (the "Tribes"), are simultaneously filing a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607. In addition, the State has filed claims pursuant to the Nevada Water Pollution Control Law, set forth in NRS §§ 445A.300 to 445A.730, and the implementing regulations in NAC §§ 445A070 to 445A.348.

2. The United States seeks, *inter alia*: (1) reimbursement of costs incurred and to be incurred by the United States for response actions at the Rio Tinto Mine Site in Elko County, Nevada (the "Site," as defined below), together with accrued interest; (2) performance of response actions by Settling Defendants consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (3) Natural Resource Damages, including the costs of assessing such damages, arising from the release of hazardous substances at the Site. The State seeks, *inter alia*: (1) reimbursement of State Future Response Costs (as defined below) to be incurred at the Site; (2) performance of response actions consistent with State law and CERCLA; and (3) Natural Resource Damages, including the costs of assessing such damages, arising from the release of hazardous substances at the Site. The Tribes seek recovery of Natural

Resource Damages, including the costs of assessing such damages, arising from the release of hazardous substances at the Site.

3. NDEP, EPA, and other agencies have been conducting or overseeing assessment, characterization, and response activities at the Site since 1980. EPA has deferred the lead agency role at the Site to NDEP. EPA has not listed the Site on the National Priorities List ("NPL"). EPA's "Superfund Alternative Approach," as described in the Revised Superfund Selection and Settlement Approach for Superfund Alternative Sites, OSWER 9208.0-18, issued June 17, 2004, addresses response actions at sites not on the NPL in a manner consistent with the NCP.

4. The defendants ("Settling Defendants," as defined below) that have entered into this Consent Decree do not admit any liability to Plaintiffs or any third party arising out of the transactions or occurrences that are alleged or could have been alleged in the complaint, or arising out of any conditions related to the Site, nor do they acknowledge that any release or threatened release of hazardous substances has occurred at or from the Site, or that any such claimed release or threatened release constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

5. The Settling Defendants have undertaken past response actions at the Site pursuant to certain administrative orders on consent (defined below as the "Administrative Orders on Consent") entered into with NDEP. Settling Defendants have fulfilled all requirements under the Administrative Orders on Consent, which are now terminated pursuant to Paragraph 18(b) and superseded by this Consent Decree as of the Effective Date (as defined below).

6. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, NDEP published notice of its Proposed Plan for Rio Tinto Mine Site ("Proposed Plan") on October 22, 2010, in the Elko Daily Free Press, a major local newspaper of general circulation. NDEP provided an opportunity for written and oral comments from the public on the Proposed Plan. NDEP held a public meeting in Elko, Nevada on November 9, 2010. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the State, with the concurrence of EPA, based the selection of the Remedy (as defined below).

7. Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 Fed. Reg. 67249 (Nov. 6, 2000), and the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), EPA consulted with the Tribes in the development of the Proposed Plan prior to the public meeting. On November 22, 2010, the Tribes formally documented their support for the Proposed Plan and provided additional comment on its implementation.

8. The decision regarding the Remedy to be implemented at the Site is embodied in a final Record of Decision, executed on February 14, 2012. The Record of Decision includes a responsiveness summary to the public comments. Notice of the selected Remedy was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617.

9. Based on the information presently available, NDEP and EPA believe that the Remedy is consistent with the NCP and that the Work (as defined below) will be properly and promptly conducted by Settling Defendants if conducted in accordance with the requirements of this Consent Decree.

10. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedy selected by the Record of Decision, and the Work to be performed by Settling Defendants, shall constitute a response action taken or ordered by the President.

11. The Secretary of the Interior, acting through the Bureau of Indian Affairs and the United States Fish and Wildlife Service, and the Secretary of Agriculture, acting through the United States Forest Service (collectively, the "Federal Trustees"); the Administrator of the Nevada Division of Environmental Protection, as delegated by the Director of the Department of Conservation and Natural Resources, and the Director of the Nevada Department of Wildlife (collectively, the "State Trustees"); and the Tribes, are trustees for Natural Resources alleged to be affected by the release of hazardous substances at the Site. Hereinafter, the Federal Trustees, the State Trustees and the Tribes will be sometimes collectively referred to as the "Natural Resource Trustees."

12. The Natural Resource Trustees have incurred costs in assessing alleged injury to, destruction of, or loss of natural resources resulting from releases at the Site.

13. The Parties (as defined below) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup and restoration of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, in the public interest, and otherwise consistent with the goals of CERCLA.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

14. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

15. This Consent Decree applies to and is binding upon the State, United States, and the Tribes, and upon each of Settling Defendants and its respective successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

16. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired by Settling Defendants to perform the Work required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this

Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

17. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in the NCP, codified at 40 C.F.R. Part 300, shall have the meaning assigned to them in CERCLA or the NCP. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Administrative Orders on Consent" or "AOCs" shall mean all prior Administrative Orders on Consent related to the Site entered into by and between NDEP and one or more of the following entities: Atlantic Richfield Company, The Cleveland-Cliffs Iron Company, E.I. DuPont de Nemours and Company, and Teck American Incorporated f/k/a Teck Cominco American, Incorporated, f/k/a Cominco American Inc.

"Agencies" shall mean EPA and NDEP, collectively.

"Ambient Monitoring Protocol" shall mean the Protocol attached as "Appendix 2" to the Record of Decision (Appendix A to this Consent Decree).

"Area A" shall mean the area designated as such on the map attached to this Consent Decree as Appendix C, totaling approximately 400 acres and including the historic Rio Tinto mine/mill area and the townsite; the waste rock pile; hillside tailings piles 1 and 2, which are located immediately north of the former townsite; the heap leach pad, which is located immediately south of the townsite; the historic Mill Creek channel and associated mine waste

materials, which were placed in and along Mill Creek approximately 2,000 feet north of the townsite; the Mill Creek diversion channel; and the lower reaches of the Mill Creek drainage.

"Area B" shall mean the area designated as such on the map attached to this Consent Decree as Appendix C.

"BIA" shall mean the United States Bureau of Indian Affairs and any successor departments or agencies of the United States.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

"Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 133.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Hillside Remedy" shall mean the actions completed pursuant to the 2007 Work Plan for Final Remediation of the Hillside Area, attached as Exhibit A to the 2007 Administrative Order on Consent entered into by and between NDEP and Atlantic Richfield Company, The Cleveland-

Cliffs Iron Company, E.I. DuPont de Nemours and Company, and Teck Cominco American Incorporated, plus related ongoing maintenance activities.

"Independent Action by EPA" shall mean those actions which EPA may take under this Consent Decree independent of concurrence of NDEP, notwithstanding the definitions of Lead Agency and Support Agency. With regard to the following potential actions and related notice provisions, the Consent Decree allows for Independent Action by EPA, subject to Management Consultation, as defined herein: (i) under Paragraph 31(b), selecting further response actions; (ii) under Paragraph 59, determining that the Performance Guarantee provided by Settling Defendants no longer satisfies stated requirements, and reviewing for approval of a revised alternative; (iii) under Paragraph 63(a), determining that the Remedy Construction or any portion thereof has not been completed in accordance with this Consent Decree and providing further notifications described in Paragraph 63(a); (iv) under Paragraph 64(a), determining that the Performance Standards have not been achieved and providing further notifications described in Paragraph 64(a); (v) under Paragraph 65(a), determining that any work required under Paragraph 27(d) has been completed; and/or (vi) under Paragraph 80(c), denying certain extensions requested based on force majeure. With regard to the following Sections and related notice provisions, the Consent Decree allows for Independent Action by EPA not conditioned on Management Consultation: (i) Emergency Response under Section XV; (ii) Payments for Response Costs under Section XVI; and (iii) Work Takeover under Paragraph 113.

"Injury Assessment Costs" shall mean all costs associated with the planning, design, implementation, and oversight of the Natural Resource Trustees' damage assessment process which addressed the extent and quantification of the injury to, destruction of, or loss of Natural

Resources and the services provided by those resources resulting from the release of hazardous substances from the Site consistent with 43 C.F.R. § 11.15(a).

"Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedy; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Lead Agency" shall mean the agency having the role of the "lead agency" as defined in 40 C.F.R. 300.5 and in this Consent Decree. The Lead Agency for oversight of the Remedy shall mean NDEP. For potential modifications and further response actions, NDEP shall be the Lead Agency unless, pursuant to Management Consultation, it is determined that for certain actions under Paragraph 27(d) or 33, EPA shall be the Lead Agency.

"Lead Agency for Dispute Resolution" or "LADR" shall mean the agency, either NDEP, or EPA, with decision-making authority for a particular dispute raised under Section XX (Dispute Resolution). Where a Notice of Dispute under Paragraph 83 challenges a decision which was made through Independent Action by EPA, EPA shall be the LADR. For any other

dispute raised under Paragraph 83, NDEP shall be the LADR.

"Lead Agency Dispute Resolution Officer" or "LADRO" shall, in the context of disputes where NDEP is the LADR, mean the Deputy Administrator of NDEP in charge of overseeing the Bureau of Corrective Actions; in the context of disputes where the LADR is EPA, "LADRO" shall mean the Director of the EPA Region IX Superfund Division.

"Long Term Operation & Maintenance" shall mean the activities listed in the final Remedial Design that are required to maintain the effectiveness of the Remedy after certification of achievement of Performance Standards.

"Management Consultation" shall mean consultation initiated by EPA to occur between managers of NDEP and EPA Region IX Superfund Division, pursuant to the Memorandum of Agreement.

"Memorandum of Agreement" or "MOA" shall mean the agreement executed by NDEP and EPA Region IX establishing the specific process for agency coordination and Management Consultation under this Consent Decree.

"Monitoring & Maintenance " shall mean all of the activities to be performed by Settling Defendants, pursuant to the Remedial Design, after certification of completion of Remedy Construction, including all operation and maintenance and all tasks and analyses specified in the Protocols, through certification of achievement of Performance Standards. Monitoring & Maintenance does not include Long Term Operation & Maintenance.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Natural Resources" shall have that meaning set forth in Section 101(16) of CERCLA, 42 U.S.C. § 101(16).

"Natural Resource Damages" shall have the meaning set forth in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), as further defined and implemented by 43 C.F.R. § 11.14(l) and 43 C.F.R. § 11.6.

"Natural Resource Trustees" shall mean the joint trustees for the Natural Resources allegedly injured at the Site, and include NDEP, NDOW, the United States Department of the Interior, acting through BIA and USFWS, the United States Department of Agriculture, acting through USFS, and the Tribes.

"NDEP" shall mean the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection and any successor departments or agencies of the State.

"NDOW" shall mean the Nevada Department of Wildlife and any successor departments or agencies of the State.

"NWPCL" shall mean NRS §§ 445A.300 to 445A.730, and its implementing regulations set forth in NAC §§ 445A070 to 445A.348.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedy after certification of completion of Remedy Construction.

"Owner Settling Defendants" shall mean Settling Defendants that own or come to own property within Area A.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the State of Nevada, the United States, the Tribes and Settling Defendants.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedy, set forth in Section 2.3 of the Record of Decision, the RD/RA Work Plan and the Water Quality Compliance Protocol.

"Persistent Anomaly" shall have the meaning set forth in the Ambient Monitoring Protocol attached as "Appendix 2" to the Record of Decision (Appendix A to this Consent Decree).

"Plaintiffs" shall mean the State of Nevada, the United States, and the Tribes.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights, and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

"Protocols" shall mean the Ambient Monitoring Protocol and the Water Quality Compliance Protocol attached as appendices to the Record of Decision (Appendix A to this Consent Decree).

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq*. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the Record of Decision relating to the Site signed by the Administrator of NDEP, or his/her delegate, with the approval of the Regional Administrator, EPA Region IX and all attachments thereto. The ROD is attached to this Consent Decree as Appendix A.

"Remedial Design" shall mean the final design for the Remedy Construction developed and approved in accordance with Paragraph 25, below.

"Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan" shall mean the plan for completion of the Remedial Design and the Remedy Construction, attached to this Consent Decree as Appendix B, and any modifications made to the RD/RA Work Plan in accordance with Paragraph 27.

"Remedy" shall mean the remedy selected in the ROD, plus the completed Hillside Remedy.

"Remedy Construction" shall mean those activities (except for Operation and Maintenance and the tasks and analyses set forth in the Protocols) to be undertaken by Settling Defendants to construct and implement the Remedy as set forth in the ROD, the RD/RA Work Plan, and the Remedial Design.

"Scope of Remedy" is defined in Paragraph 27(c) below.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendants" shall mean the following parties: (1) Atlantic Richfield Company; (2) The Cleveland-Cliffs Iron Company; (3) E.I. du Pont de Nemours and Company; (4) Teck American Incorporated f/k/a Teck Cominco American Inc., f/k/a Cominco American Inc.; and (5) Mountain City Remediation, LLC.

"Site" shall mean the Rio Tinto Mine and any area where hazardous substances released from the Rio Tinto Mine have come to be located within the State of Nevada. The Rio Tinto Mine is an abandoned copper mine located approximately 2.5 miles south of Mountain City, in northern Elko County, Nevada, and depicted generally on the map attached to this Consent Decree as Appendix C. The Site is composed of two sub-areas, Area A and that portion of Area B within the State of Nevada.

"State" shall mean the State of Nevada.

"State Future Response Costs" shall mean all costs, including direct and indirect costs, that the State incurs after the Effective Date, which are not inconsistent with the NCP, in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Sections VII and IX (Remedy Review and Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement Institutional Controls including, but not limited to, the amount of just compensation), Section XV (Emergency Response), and Paragraph 113 (Work Takeover).

"Supervising Contractor" shall mean the principal contractor retained by Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"Support Agency" shall mean the agency having the roles of the "support agency" as defined in 40 § C.F.R. 300.5 and in this Consent Decree. The Support Agency for oversight of the Remedy shall mean EPA. For potential modifications and further response actions, EPA shall be the Support Agency unless, pursuant to Management Consultation, it is determined that for certain actions under Paragraph 27(d) or 33, NDEP shall be the Support Agency.

"Tribes" shall mean the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation.

"United States" shall mean the United States of America.

"United States Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not

limited to, payroll costs, contractor costs, travel costs, laboratory costs, and the costs incurred pursuant to Section VII (Remedy Review) (including, but not limited to, the cost of any study or investigation conducted by EPA in order to permit review of whether the Remedy is protective of human health and the environment) and Section IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), Section XV (Emergency Response), and Paragraph 113 (Work Takeover) of Section XXII.

"United States Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA incurred or paid at or in connection with the Site through the Effective Date, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through the Effective Date, but not including Injury Assessment Costs.

"USDA" shall mean the United States Department of Agriculture.

"USDOI" shall mean the United States Department of the Interior.

"USFS" shall mean the United States Forest Service and any successor departments or agencies of the United States.

"USFWS" shall mean the United States Fish and Wildlife Service and any successor departments or agencies of the United States.

"Waste Material" shall mean: (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous waste" under NRS § 445A.363 of the NWPCL.

"Water Quality Compliance Protocol" shall mean the Protocol attached as "Appendix 1" to the ROD (Appendix A to this Consent Decree).

"Work" shall mean all activities and obligations Settling Defendants are required to perform under this Consent Decree, except the activities required under Section XXVI (Retention of Records)

V. GENERAL PROVISIONS

18. Objectives of the Parties.

a. The objectives of the Parties in entering into this Consent Decree are to: (i) protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by Settling Defendants, as overseen by NDEP as Lead Agency and EPA acting as the Support Agency; (ii) reimburse response costs of Plaintiffs; (iii) resolve the Natural Resource Trustees' claims for Natural Resource Damages; and (iv) resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree. It is anticipated that the Tribes will use most of the funds recovered under this Consent Decree: (1) to secure services from an independent technical advisor or advisors who can assist the Tribes in understanding and commenting on Site cleanup issues, and (2) to share this information with others in the community during the Work.

b. In addition, NDEP hereby terminates, as of the Effective Date, the Administrative Orders on Consent and fully releases all obligations and liabilities arising from the Administrative Orders on Consent and for State Past Response Costs.

19. Commitments by Settling Defendants.

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the RD/RA Work Plan, the Remedial Design, the Ambient

Monitoring Protocol, the Water Quality Compliance Protocol, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved pursuant to this Consent Decree. Settling Defendants shall also reimburse Plaintiffs for United States Past Response Costs, State Future Response Costs, United States Future Response Costs and Natural Resource Damages as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the State, the United States, and the Tribes under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

20. Compliance with Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. For Work undertaken pursuant to this Consent Decree, Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the RD/RA Work Plan. The approved activities conducted pursuant to this Consent Decree to implement the Work shall be considered to be consistent with the NCP.

21. Agency Roles and Coordination.

a. In order to facilitate the sharing of information between the Lead Agency and the Support Agency, the Settling Defendants shall contemporaneously provide copies to EPA of all plans, submittals, or other deliverables required to be provided to NDEP by this Consent Decree.

b. If NDEP seeks EPA's concurrence in a decision under Paragraph 27(a) (Modification of the RD/RA Work Plan, the Remedial Design, or Related Submittals) or Paragraph 80(a) (Agency Action Regarding Force Majeure/Granting Extensions), NDEP shall provide notice of its proposed decision to EPA as provided in the MOA. EPA shall provide NDEP acknowledgement of receipt of such notice as provided in the MOA. If EPA does not comment, concur, or initiate Management Consultation in accordance with the process set forth in the MOA within thirty (30) days of acknowledgement of receipt of such notice, NDEP may act independently consistent with the proposed decision. In the event EPA initiates Management Consultation, EPA and NDEP shall follow the procedures set forth in the MOA.

22. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Pursuant to 40 C.F.R. §§ 117.11(e) and 122.3(d), any discharge of pollutants from the Site to Mill Creek or the Owyhee River during the performance of the Work and in compliance with the CD and all instructions of the Lead Agency's Project Coordinator or Remedial Project Manager shall be deemed to be in compliance with the instructions of an on-scene coordinator as defined by the NCP, 40 C.F.R. Part 300.

c. Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

d. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

23. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by Owner Settling Defendant(s) that is located within Area A, within thirty (30) days after the Effective Date, or within thirty (30) days of coming to own property within Area A, whichever is later, the Owner Settling Defendant(s) shall submit to NDEP for review and approval a notice to be filed with the Recorder's Office, Elko County, State of Nevada, which shall provide notice to all successors-in-title that the property is part of Area A, that NDEP selected a remedy for the Site on February 14, 2012, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Owner Settling Defendant(s) shall record the notice(s) within ten (10) days of NDEP's approval of the notice(s). Owner Settling Defendant(s) shall provide NDEP and EPA with a certified copy of the recorded notice(s) within ten (10) days of recording such notice(s).

b. At least thirty (30) days prior to the conveyance of any interest in property located within Area A including, but not limited to, fee interests, leasehold interests, and mortgage interests, Owner Settling Defendant(s) conveying the interest shall give the grantee written notice of: (1) this Consent Decree; (2) any instrument by which an interest in real

property has been conveyed that confers a right of access to Area A (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls); and (3) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least thirty (30) days prior to such conveyance, Owner Settling Defendant(s) conveying the interest shall also give written notice to NDEP and EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by Owner Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of Owner Settling Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of NDEP, with the concurrence of EPA. If the Agencies approve, the grantee may perform some or all of the Work.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

24. Supervising Contractor Designation and Responsibilities.

a. Initial Remedy Construction Contractor. Settling Defendants have selected, and NDEP and EPA have approved, Tetra Tech Construction, Inc. as the initial Supervising Contractor. All aspects of the Remedy Construction to be performed by Settling

Defendants pursuant to this Consent Decree shall be under the direction and supervision of the Supervising Contractor.

b. Changes to Contractors. If at any time after the Effective Date, Settling Defendants propose to change the Supervising Contractor, Settling Defendants shall notify NDEP and EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. After providing EPA an opportunity for review and comment, NDEP will issue a notice of disapproval or an authorization to proceed before the new contractor performs, directs, or supervises any Work under this Consent Decree. If NDEP disapproves a proposed Supervising Contractor, NDEP will notify Settling Defendants in writing. Settling Defendants shall submit to the Agencies a list of contractors, including the qualifications of each contractor that would be acceptable to them within thirty (30) days of receipt of NDEP's disapproval of the contractor previously proposed. NDEP, after a reasonable opportunity for review and comment by EPA, will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved

by NDEP and shall notify the Agencies of the name of the contractor selected within twenty-one (21) days of NDEP's authorization to proceed.

25. Remedial Design and Remedy Construction.

a. Attached to this Consent Decree as Appendices A and B are the ROD (which includes the Protocols) and the RD/RA Work Plan. These documents describe the plans, designs, activities and other requirements to be completed as part of the Work in order to achieve the Performance Standards and other requirements set forth in the ROD, the Protocols and this Consent Decree.

b. Settling Defendants shall submit the draft Remedial Design to NDEP and EPA within one hundred and twenty (120) days of entry of the Consent Decree. The draft Remedial Design shall include, at a minimum, the following: (1) proposed design criteria; (2) preliminary plans, drawings and sketches; (3) draft specifications; (4) preliminary calculations; (5) a preliminary construction schedule; (6) a draft Construction Quality Assurance/Quality Control Plan; (7) a draft Health and Safety Plan for Remedy Construction activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120; (8) draft Operation and Maintenance Plan; (9) draft Waste Management Plan, including procedures for decontamination of equipment and disposal of contaminated materials; (10) draft Monitoring and Field Sampling Plan (to fulfill requirements of the Ambient Monitoring and Water Quality Compliance Protocols); (11) draft Contingency Plan; (12) draft Stormwater Erosion Control Plan; (13) draft Historic Preservation and Mitigation Plan; (14) draft Construction Work Plan; and (15) a Quality Assurance Project Plan (“QAPP”), as described in Paragraph 35 below. Upon its submittal, NDEP shall have thirty (30) days to review and comment on the draft Remedial Design. NDEP

will review any comments provided by EPA, and NDEP may choose to incorporate or reject any or all of EPA's comments in the formal response to Settling Defendants. The full text of EPA's comments shall be provided as an exhibit to NDEP's formal response for consideration by Settling Defendants. After receiving such formal comments from NDEP and in light of those comments, Settling Defendants shall make any necessary revisions to the draft Remedial Design in order to develop the final Remedial Design.

c. The final Remedial Design shall include, at a minimum, the following: (1) final design criteria; (2) final plans and drawings; (3) final specifications; (4) final calculations; (5) a final proposed construction schedule; (6) a final Construction Quality Assurance/Quality Control Plan ("CQAPP"); (7) a final Health and Safety Plan; (8) a final Operation and Maintenance Plan; (9) a final Waste Management Plan; (10) a final Monitoring and Field Sampling Plan; (11) a final Contingency Plan; (12) a final Stormwater Erosion Control Plan; (13) a final Historic Preservation and Mitigation Plan; (14) a final Construction Work Plan; and (15) a QAPP, as described in Paragraph 35 below. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

d. Upon submittal of the final Remedial Design, NDEP shall have thirty (30) days to determine that its formal comments have been satisfactorily addressed and approve the final Remedial Design. If NDEP determines that its formal comments still have not been satisfactorily addressed, NDEP shall direct Settling Defendants to address such claimed deficiencies on the schedule specified by NDEP. Upon approval by NDEP, the Remedial Design shall be incorporated into and become enforceable under this Consent Decree and Settling

Defendants shall implement the activities required under the Remedial Design in accordance with the approved schedule set forth therein.

e. Settling Defendants shall submit to the Agencies all plans, submittals, or other deliverables required under the approved Remedial Design, in accordance with the approved schedule, for review and approval pursuant to the process set forth in Section XI (Approval of Plans and Other Submissions), except that the time for review of any draft deliverable shall be fifteen (15) days. Unless otherwise directed by NDEP, Settling Defendants shall not commence physical Remedy Construction activities at the Site prior to approval of the Remedial Design, provided that Settling Defendants may commence the site preparation activities described in the RD/RA Work Plan prior to such approval.

f. Any other deliverable under this Consent Decree shall be submitted for review and approval pursuant to the process set forth in Section XI (Approval of Plans and Other Submissions).

26. Settling Defendants shall continue to implement Remedy Construction until completion of the Remedy Construction has been certified complete in accordance with Paragraph 63(b) of this Consent Decree. Settling Defendants shall continue to implement Monitoring & Maintenance until the achievement of the Performance Standards has been certified in accordance with Paragraph 64(b) of this Consent Decree.

27. Modification of the RD/RA Work Plan, the Remedial Design, or Related Submittals.

a. If NDEP or EPA determines that modification to the Work specified in the RD/RA Work Plan is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedy, NDEP or EPA, with the concurrence of the other agency, may require that such modification be incorporated in the RD/RA Work Plan or

the Remedial Design; provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the Scope of Remedy as defined in Paragraph 27(c).

b. If NDEP, after fifteen (15) days for review and comment by EPA, determines that it is necessary to modify the Work specified in any submittal developed pursuant to the RD/RA Work Plan (including the Remedial Design) or the Water Quality Compliance Protocol, to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedy, and such modification is consistent with the Scope of Remedy, then NDEP may issue such modification in writing and shall notify Settling Defendants of such modification.

c. As used in Paragraphs 27, 63(a), and 64(a), the term "Scope of Remedy" shall mean: the construction of an unlined repository on the ridge east and south of the former town site; removal and relocation to the repository of mining material from Ponds 3 and 4; removal of certain alluvial materials underlying the mining materials in Ponds 3 and 4 and relocation of the alluvial materials to the repository; capping the unlined repository with an evapotranspirative cover; construction of storm water management features as part of repository cover construction; employment of a temporary seasonal water treatment system, as needed, during construction to treat water associated with the removal of mining material from Ponds 3 and 4; placement of backfill in the area of former Ponds 3 and 4; post-construction realignment and lining of a portion of Mill Creek between the east end of Pond 2 and the confluence of the restored Mill Creek and Lower Mill Creek at the west end of the Hydraulic Control Pond; stream bank stabilization in the area immediately downstream of the confluence of the restored section of Mill Creek and the existing Mill Creek channel, and construction of features to facilitate

opportunistic, seasonal passage of non-resident Redband trout through the reconstructed portion of Mill Creek during optimal flow conditions for such fish passage; construction of a lined evaporation basin to address seepage from the Hillside Heap Leach Facility (part of the Hillside Remedy); the Hillside Remedy; the re-vegetation in Lower Mill Creek Valley; and the tasks, analyses, and any additional activity specified in or required under the Water Quality Compliance Protocol, performed in the sequence specified therein.

d. Notwithstanding any other provision of this Paragraph, if after completion of the monitoring and evaluation activities set forth in the Ambient Monitoring Protocol, NDEP or, after a reasonable opportunity for review and comment by the Tribes, EPA determines that modification to the Work specified in the RD/RA Work Plan is necessary to (i) investigate whether a Persistent Anomaly is attributable to the underground mine workings in Area A, or (ii) to address a Persistent Anomaly determined through such investigation to be attributable to the underground mine workings in Area A, then NDEP or, subject to Management Consultation, EPA, may require that such modification be incorporated in the RD/RA Work Plan, even if such modification requires an amendment to the ROD, an Explanation of Significant Difference from the ROD, or a removal action. NDEP may require modification to the Work specified in the RD/RA Work Plan pursuant to this Subparagraph (d) or, if NDEP declines to do so, EPA may require modification to the Work specified in the RD/RA Work Plan pursuant to this Subparagraph (d). The agency that requires modification pursuant to this Subparagraph (d) shall be the Lead Agency for oversight of such modification.

e. If Settling Defendants object to any modification required by the Lead Agency pursuant to this Paragraph, Settling Defendants may, within thirty (30) days after agency notification, invoke dispute resolution pursuant to Section XX (Dispute Resolution).

f. Any modification under this Paragraph shall be made: (1) in accordance with the modifications issued by the Lead Agency; or (2) if Settling Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Defendants shall implement all work required by such modification. Settling Defendants shall incorporate the modification into the RD/RA Work Plan or submittals thereunder as appropriate.

g. Nothing in this Paragraph shall be construed to limit NDEP's or EPA's authority to require performance of further response actions as otherwise provided in Paragraphs 31, 63, 64, and 65 of this Consent Decree.

28. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the RD/RA Work Plan, or the Remedial Design constitutes a warranty or representation of any kind by Plaintiffs that compliance with the plans, activities, and requirements set forth in the RD/RA Work Plan will achieve the Performance Standards.

29. Off-Site Shipment of Waste Material.

a. Settling Defendants shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state, and to NDEP and EPA Project Coordinators, of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

(1) Settling Defendants shall include in the written notification the following information, where available: (a) the name and location of the facility to which the Waste Material is to be shipped; (b) the type and quantity of the Waste Material to be shipped;

(c) the expected schedule for the shipment of the Waste Material; and (d) the method of transportation. Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by Settling Defendants following the award of the contract for the Remedy Construction. Settling Defendants shall provide the information required by Subparagraph (a) of this paragraph as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440. Settling Defendants shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

30. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by NDEP, in order to permit review of whether the Remedy is protective of human health and the environment no less often than each five (5) years after initiation of the Remedy Construction, as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and the NCP.

31. Selection of Further Response Actions.

a. Selection by NDEP. If NDEP determines, at any time, that the Remedy is not protective of human health and the environment, NDEP may select further response actions for the Site in accordance with the requirements of CERCLA, State law, and the NCP. NDEP shall provide EPA an opportunity to review and comment on any proposed selected further response action.

b. Selection by EPA. During review of a completion report under Paragraph 63(a) (Certification of Completion of Remedy Construction) or during a periodic review under Paragraph 30, if EPA, subject to Management Consultation, determines that the Remedy is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA, State law, and the NCP.

32. Opportunity to Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed as a result of the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 121(c), and to submit written comments for the record during the comment period.

33. Settling Defendants' Obligation to Perform Further Response Actions.

a. NDEP may direct Settling Defendants to perform further response actions selected for the Site under Paragraph 31(a) or 31(b), or, if NDEP declines to direct Settling Defendants to perform a further response action selected for the Site under Paragraph 31(b), EPA may direct Settling Defendants to perform such further response action. The agency that directed Settling Defendant to perform any further response action under the previous sentence shall be the Lead Agency for oversight of such action.

b. Settling Defendants shall undertake any further response action directed by the Lead Agency, pursuant to Paragraph 33(a), to the extent that the reopener conditions in Paragraphs 100 (United States' Pre-Certification Reservations), 101 (United States' Post-Certification Reservations), 105 (State's Pre-Certification Reservations), or 106 (State's Post-Certification Reservations) of this Consent Decree are satisfied. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute: (1) the determination that the reopener conditions of Paragraphs 100 (United States' Pre-Certification Reservations), 101 (United States' Post-Certification Reservations), 105 (State's Pre-Certification Reservations), or 106 (State's post-Certification Reservations) are satisfied; (2) the determination that the Remedy is not protective of human health and the environment; or (3) the selection of the further response actions. Disputes pertaining to whether the Remedy is protective of human health and the environment, or to the selection of further response actions, shall be resolved pursuant to Paragraph 85 (Disputes Pertaining to Response Actions). Any water quality data for the analytes specified in the Protocols, and any other data developed pursuant to the Ambient Monitoring Protocol, obtained prior to certification of achievement of Performance Standards, shall not be considered unknown conditions or new information for purposes of this Paragraph.

34. Submissions of Plans. If Settling Defendants are required to perform any further response action pursuant to the preceding paragraph, they shall submit a plan for such response action to the Lead Agency for that further response action for approval in accordance with Section XI (Approval of Plans and Other Submissions). Settling Defendants shall implement the approved plan in accordance with this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

35. Settling Defendants shall use applicable quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Settling Defendants will not commence any future monitoring project under this Consent Decree prior to approval of the QAPP. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendants shall ensure that NDEP and EPA personnel, and their authorized representatives, are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis," and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Consent Decree; however, upon approval by EPA, after providing fifteen (15) days for review and comment by NDEP, Settling Defendants may use other analytical methods which are as stringent or more stringent than the CLP-approved methods. Settling

Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the approved QAPP.

36. Upon request, Settling Defendants shall allow split or duplicate samples to be taken by NDEP and/or EPA and/or the Tribes or their authorized representatives. Settling Defendants shall notify the Agencies seven (7) days in advance of any sample collection activity, unless shorter notice is agreed to by the Agencies. NDEP, EPA, or the Tribes shall have the right to take any additional samples that NDEP, EPA, or the Tribes deem necessary. Upon request, NDEP, EPA or the Tribes shall allow Settling Defendants to take split or duplicate samples of any samples they take under this Paragraph.

37. Settling Defendants shall submit to NDEP and EPA a copy of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree, unless NDEP or EPA waives receiving a copy of such results. NDEP, EPA, and the Tribes will provide to Settling

Defendants a copy of the results of any sampling and/or tests or other data obtained by or generated on that party's behalf.

38. Notwithstanding any provision of this Consent Decree, the State and the United States hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

39. For any portion of Area A owned or controlled by an Owner Settling Defendant, ("Owner Settling Defendant Property"), such Owner Settling Defendant shall:

a. Commencing on the Effective Date, provide the State, the United States, and their representatives, including NDEP and EPA and their contractors, with access at all reasonable times to the Owner Settling Defendant Property for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the State or the United States;

(3) Conducting investigations relating to contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Owner Settling Defendant Property;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP(s);

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 113 (Work Takeover) of this Consent Decree;

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Owner Settling Defendants or their agents, consistent with Section XXV (Access to Information);

(9) Assessing Owner Settling Defendants' compliance with this Consent Decree;

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

Upon reasonable notice, Settling Defendants shall also provide the Tribes and their contractors with access at all reasonable times for the purposes of monitoring the Work or obtaining their own samples.

b. Commencing on the Effective Date, refrain from using the Owner Settling Defendant Property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the Work. The following restrictions shall apply, unless the activity is required as a part of the Work, or by the ROD, the RD/RA Work Plan, the Remedial Design, or undertaken with prior notification to and prior approval of the Lead Agency: (1) roadways providing vehicle access to the property, and roadways providing access through the property to physical elements of the Remedy, including roadways that may be constructed as part of the Remedy, shall not be altered in such a way as to prevent such access;

(2) excavation within physical elements of the Remedy, within one hundred (100) feet of physical elements of the Remedy, or which may otherwise potentially alter physical elements of the Remedy, shall not be undertaken; (3) construction of any temporary or permanent structure on top of or directly adjacent to physical elements of the Remedy shall not be undertaken; (4) any activity which otherwise disrupts the function of the vegetative cover placed on the tailings repository, which is a physical element of the Remedy, shall not be undertaken; (5) installation of any water supply or monitoring wells on-site, excavation into the mine workings, or introduction of any substance into the mine workings, shall not be undertaken; (6) diversions from, or flow alterations in, Mill Creek shall not be undertaken on the property; (7) alterations shall not be undertaken to the Sludge Pond; (8) no activities shall be undertaken which will interfere with the operation of any water treatment structures, temporary or permanent, which may be installed as part of the Remedy; and (9) no other activity shall be undertaken which adversely affects the implementation, integrity, or protectiveness of the Work. Physical elements of the Work as referred to in this Section include: the reconstructed Mill Creek channel, reaches of Mill Creek one hundred (100) feet upstream of the Fresh Water Pond and one hundred (100) feet downstream of the termination point of the reconstructed channel; the tailings repository constructed on the ridge to the east and south of the former town site; the vegetative cover; collection features, conveyance piping, and evaporation features relating to the collection of surface seeps; water treatment structures, temporary or permanent, which may be installed as part of the Remedy; and roadways that may be constructed as part of the Remedy.

c. Execute and record in the Recorder's Office of Elko County, State of Nevada, Proprietary Controls running with the land that: (1) grant a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to,

those activities listed in Paragraph 39(a) of this Consent Decree; and (2) grant the right to enforce the land use restrictions listed in Paragraph 39(b) of this Consent Decree, or other restrictions that NDEP and EPA determine are necessary to implement, ensure non-interference with, or ensure the protectiveness of the physical elements of the Work. The Proprietary Controls shall be granted to one or more of the following persons: (1) the State and its representatives; (2) the United States, on behalf of EPA, and its representatives; (3) the other Settling Defendants and their representatives; and/or (4) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA is a "third-party beneficiary," allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property. If any Proprietary Controls are granted to any Settling Defendants pursuant to this Paragraph 39, then such Settling Defendants shall monitor, maintain, report on, and enforce such Proprietary Controls.

d. Owner Settling Defendants shall, within forty-five (45) days of the Effective Date, or within 45 days of the acquisition of Owner Settling Defendant Property, whichever occurs later, submit to NDEP and EPA for review and approval with respect to such property, Draft Proprietary Controls that are enforceable under the laws of the State of Nevada, including but not limited to, the Uniform Environmental Covenants Act codified at NRS Chapter 445D, and a current title insurance commitment or some other evidence of title acceptable to the Agencies, which shows title to the land described to be free and clear of all prior liens and encumbrances where such liens or encumbrances would interfere with or adversely affect the implementation, integrity, or protectiveness of the physical elements of the Work (except when the Agencies waive the release or subordination of such prior liens or encumbrances or when,

despite best efforts, Owner Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

e. Within fifteen (15) days of the Agencies' approval and acceptance of the Proprietary Controls and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the Proprietary Controls with the Recorder's Office of Elko County. Within thirty (30) days of recording the easement, such Settling Defendants shall provide the Agencies with a final title insurance policy, or other final evidence of title acceptable to the Agencies, and a certified copy of the original recorded Proprietary Controls showing the clerk's recording stamps. If the Proprietary Controls are to be conveyed to the United States, the Proprietary Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

40. If any portion of Area A where access and/or land use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of Settling Defendants:

a. Settling Defendants shall use best efforts to secure from such persons:

1. An agreement to provide access thereto for Settling Defendants, as well as for NDEP and the United States on behalf of EPA, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 39(a) of this Consent Decree;

2. An agreement, enforceable by Settling Defendants and NDEP and the United States, to refrain from using the Site or such other property, in any manner that would

interfere with or adversely affect the implementation, integrity, or protectiveness of the physical elements of the Work. The agreement shall include, but not be limited to, the land use restrictions listed in Paragraph 39(b); and

3. The execution and recordation in the Recorder's Office of Elko County, State of Nevada, of Proprietary Controls that (1) grant a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 39(a) of this Consent Decree; and (2) grant the right to enforce the land use restrictions listed in Paragraph 39(b) of this Consent Decree, or other restrictions that NDEP and EPA determine are necessary to implement, ensure non-interference with, or ensure the protectiveness of the physical elements of the Work. The Proprietary Controls shall be granted to one or more of the following persons: (1) the State and its representatives; (2) the United States, on behalf of EPA, and its representatives; (3) the other Settling Defendants and their representatives; and/or (4) other appropriate grantees. The Proprietary Controls, other than those granted to the Agencies, or either of them, shall include a designation that the Agencies, or either of them, are a "third-party beneficiary," allowing the Agencies to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property. If any Proprietary Controls are granted to any Settling Defendants pursuant to this Paragraph 40, then such Settling Defendants shall monitor, maintain, report on, and enforce such Proprietary Controls.

b. Within forty-five (45) days of the Effective Date, Settling Defendants shall submit to the Agencies for review and approval with respect to such property, draft Proprietary Controls that are enforceable under the laws of the State of Nevada, including but not limited to, the Uniform Environmental Covenants Act codified at NRS Chapter 445D, and a current title insurance commitment, or some other evidence of title acceptable to the Agencies,

which shows title to the land described to be free and clear of all prior liens and encumbrances, where such liens or encumbrances would interfere with or adversely affect the implementation, integrity, or protectiveness of the physical elements of the Work (except when the Agencies waive the release or subordination of such prior liens or encumbrances, or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

c. Within thirty (30) days of the Agencies' approval and acceptance of the Proprietary Controls and the title evidence, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the Proprietary Controls shall be recorded with the Recorder's Office of Elko County. Within thirty (30) days of the recording of the Proprietary Controls, Settling Defendants shall provide the Agencies with a final title insurance policy, or other final evidence of title acceptable to the Agencies, and a certified copy of the original recorded Proprietary Controls showing the clerk's recording stamps. If an easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

41. Access to Certain Properties.

a. Certain Private Properties. The Settling Defendants have obtained access to those portions of Area A owned by Doris Widerburg, and have previously accessed that portion of Area A owned by Gary Clifton (the "Widerburg Property" and "Clifton Property," respectively), and have made best efforts to also obtain access from the current property owners for the Agencies. These efforts included offering to purchase the Widerburg and Clifton

properties and attempting to negotiate access to carry out the Remedy, as needed, on the Clifton Property. Settling Defendants shall continue to cooperate with both Agencies to implement environmental covenants or other suitable Proprietary Controls which will ensure access for the Settling Defendants and the Agencies, and shall reimburse the Agencies in accordance with the procedures in Section XVI (Payment of Response Costs), for all costs incurred, directly or indirectly, by the United States in obtaining such access, land-use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation. If there is a change which materially affects the ability of EPA, NDEP or the Settling Defendants to access the Widerburg and Clifton properties as necessary to carry out or oversee the physical elements of the Work, the requirements of Paragraph 40 (a), (b) and (c) shall apply.

b. Forest Service Land. USDA agrees that Settling Defendants have access to National Forest System (NFS) land within Area A necessary to conduct the Upper Mill Creek Channel remediation described in Sections 3.1.4 and 6.6.1 of the Remedial Design / Remedial Action Work Plan. The USDA Forest Service acknowledges that it may be necessary for a portion of the engineered, reconstructed channel for Mill Creek to extend onto NFS land. USDA also agrees that Settling Defendants have access to NFS land within Area A necessary to conduct the Lower Mill Creek Valley Reclamation described in Sections 3.1.5 and 6.6.4 of the Work Plan. In accessing NFS land, Settling Defendants have an affirmative duty to protect from injury and damage the land and other resources of the United States.

c. Tribal lands.

(1) Access. The Parties acknowledge that certain water monitoring locations associated with the investigation and remedial measures related to the Site are now, or

may be in the future, located on the former Wilson Ranch lands owned by the Tribes. As recognized in Tribal Resolution SPR-2011-077, adopted on April 12, 2011, the Tribes have agreed to grant the Settling Defendants access to any portions of the Site, or adjacent properties, owned by the Tribes, for purposes of performing the Work.

(2) Diversion of Mill Creek. The Parties acknowledge that, in the past, surface water from Mill Creek was, from time to time, diverted to that portion of the former Wilson Ranch previously known as the "Mori Pasture" for irrigation use. As acknowledged in Tribal Resolution SPR-2011-077, adopted on April 12, 2011, the Tribes have agreed to refrain from any diversion of water from Mill Creek to irrigate the former Wilson Ranch prior to certification of achievement of Performance Standards in accordance with Paragraph 64 of this Consent Decree.

42. If NDEP or EPA determine that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed to implement the Remedy, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with NDEP's or EPA's efforts to secure such Institutional Controls. Notwithstanding any provision of this Consent Decree, the State and the United States retain all of their access authorities and rights, as well as all of their rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

43. After the final Remedial Design is approved, Settling Defendants shall by April 1 of each year submit to NDEP, with a copy to EPA, an "Annual Summary of Planned Activities" which shall describe the anticipated activities, pursuant to the RD/RA Work Plan and

the Remedial Design, to implement the Work during the coming year, including an estimate of the costs for the ensuing twelve months' anticipated Work activities. In addition, Settling Defendants shall submit to NDEP, with a copy to EPA, written periodic progress reports. For purposes of this Paragraph, "periodic" shall mean: (a) monthly, by the 10th of each month during Remedy Construction; (b) annually, to be submitted no later than ninety (90) days after the end of the calendar year, during Monitoring & Maintenance; or (c) as otherwise approved by NDEP with a reasonable opportunity for EPA to review and comment. The periodic progress reports shall: (a) describe the activities undertaken to implement the Work during the previous period; (b) include a summary of all results of any sampling and tests and any other data received or generated by Settling Defendants or their contractors or agents in the previous period; (c) identify all work plans, plans and other deliverables required by this Consent Decree that were completed and submitted during the previous period; (d) during Remedy Construction, describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next period and provide other information relating to the progress of the Work, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (e) include any modifications to the work plans or other schedules that Settling Defendants have proposed to NDEP or that have been approved by NDEP; and (f) describe any activities undertaken in support of the community relations plan during the previous period, and any activities to be undertaken in the next period. Settling Defendants shall submit these progress reports until notified of the certification of achievement of Performance Standards pursuant to Paragraph 64(b). If requested by NDEP, after providing notice to EPA,

Settling Defendants shall also provide briefings for NDEP and/or EPA to discuss the progress of the Work.

44. Settling Defendants shall notify NDEP and EPA of any change in the schedule described in the periodic progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

45. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 1(a) of Nevada Administrative Code 445A.3473, Section 103 of CERCLA, 42 U.S.C. § 9603 or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, Settling Defendants shall, within twenty-four (24) hours of the onset of such event, orally notify the NDEP Project Coordinator and the EPA Project Coordinator, or their respective alternate coordinators, and the Tribes' Director of Environmental Protection. In the event that, at the time of an event described in this Paragraph, neither the NDEP Project Coordinator nor the Alternate NDEP Project Coordinator is available, Settling Defendants shall orally notify the release reporting hotline of NDEP. In the event that, at the time of an event described in this Paragraph, neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, Settling Defendants shall orally notify the Emergency Response Section, Region IX, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by Section 1(a) of Nevada Administrative Code 445A.3473, CERCLA Section 103, 42 U.S.C. § 9603, or EPCRA Section 304, 42 U.S.C. § 11004.

46. Within twenty (20) days of the onset of such an event, Settling Defendants shall furnish to NDEP, EPA, and the Tribes, a written report, signed by Settling Defendants' Project

Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendants shall submit a report to the same parties setting forth all actions taken in response thereto.

47. Settling Defendants shall submit a copy of all plans, reports, data and any other deliverable required by the RD/RA Work Plan, the Remedial Design, or otherwise required to NDEP and EPA in accordance with the schedules set forth therein. Upon request by NDEP, Settling Defendants shall submit in electronic form all portions of any report or other deliverable Settling Defendants are required to submit pursuant to the provisions of this Consent Decree. Settling Defendants also shall submit a copy of the following documents to the Tribes: the draft and final Remedial Design, Annual Summaries of Planned Activities, progress reports and reports requesting certification.

48. All reports and other documents submitted by Settling Defendants to Lead Agency or Support Agency which are intended to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by Settling Defendants' Project Coordinator.

XI. APPROVAL OF PLANS AND OTHER SUBMISSIONS

49. Except as stated in the last sentence of this Paragraph, after review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, the Lead Agency, after reasonable opportunity for review and comment by the Support Agency, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission directing that Settling Defendants modify the submission; or (e) any combination of the above. However, the Lead Agency shall not modify a submission without

first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within fourteen (14) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects, and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable. For any plans or other submissions where the Lead Agency's approval is to be with the concurrence of the Support Agency, or where both the Lead Agency and the Support Agency must approve the plan or submission, the Support Agency must concur with the actions to be taken by the Lead Agency under this Section XI (Approval of Plans and Other Submissions) before the Lead Agency's actions under this Section are effective.

50. In the event of approval, approval upon conditions, or modification by the Lead Agency, pursuant to Paragraph 49, Settling Defendants shall proceed to take any action required by the plan, report or other item, as approved or modified by the Lead Agency, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by the Lead Agency. In the event that the Lead Agency modifies the submission to cure the deficiencies pursuant to Paragraph 49(c) and the submission has a material defect, the Lead Agency and the Support Agency retain their right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

51. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 49(d), Settling Defendants shall, within twenty-one (21) days or such longer time as specified by the Lead Agency in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI

(Stipulated Penalties), shall accrue during the twenty-one (21) day period, or otherwise specified period, but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 52 and 53.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 49(d), Settling Defendants shall proceed, at the direction of the Lead Agency, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

52. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by the Lead Agency, the Lead Agency may again require Settling Defendants to correct the deficiencies in accordance with this Section. The Lead Agency also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report or item as modified or developed by the Lead Agency, subject only to their right to invoke the procedures set forth in Section XX (Dispute Resolution).

53. If upon resubmission, a plan, report or item is disapproved or modified by the Lead Agency due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report or item timely and adequately, unless Settling Defendants invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and the Lead Agency's action is disapproved in whole or in part pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If the Lead Agency's disapproval or modification is upheld, stipulated penalties shall

accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI (Stipulated Penalties).

54. All plans, reports and other items required to be submitted to the Lead Agency and approved under this Consent Decree shall, upon approval or modification by the Lead Agency, be enforceable under this Consent Decree. In the event the Lead Agency approves or modifies a portion of a plan, report or other item required to be submitted to the Lead Agency, and approved under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

55. Within twenty (20) days of the Effective Date, Settling Defendants, NDEP and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Defendants' Project Coordinator shall be subject to disapproval by NDEP and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendants' Project Coordinator shall not be an attorney for any of Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

56. NDEP and EPA may designate other representatives, including, but not limited to, NDEP and EPA employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. NDEP’s and

EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the NCP, 40 C.F.R. Part 300. In addition, NDEP's and EPA's Project Coordinator or Alternate Project Coordinator, after providing notice to the other agency, shall have authority, consistent with the NCP, to halt performance of any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment, due to release or threatened release of Waste Material.

XIII. PERFORMANCE GUARANTEE

57. In order to ensure the full and final completion of the Work, Settling Defendants shall establish and maintain a performance guarantee using the mechanisms and in the amounts described in the sub-paragraphs below:

a. A trust account for the Remedy Construction (the "Remedy Construction Trust Account") established in accordance with the form of trust agreement attached hereto as Appendix D (the "Remedy Construction Trust Agreement"). Settling Defendants shall make deposits into the Remedy Construction Trust Account as follows: at least $4,400,000 shall be deposited within sixty (60) days of the Effective Date; at least $9,500,000 shall be deposited on or before March 1, 2013; and at least $8,800,000 shall be deposited on or before March 1, 2014. Except in the event of a Work Takeover pursuant to Paragraph 113 of this Consent Decree, funds deposited into and maintained in the Remedy Construction Trust Agreement shall be paid out periodically to the Supervising Contractor in accordance with the Remedy Construction Trust Agreement to finance the costs of Remedy Construction.

b. A trust account for Monitoring & Maintenance and other post-Remedy Construction response actions occurring during approximately the first five (5) years following certification of completion of Remedy Construction (the "Post-Remedy Construction Trust Account") established in accordance with the form of trust agreement attached hereto as Appendix E (the "Post-Remedy Construction Trust Agreement"). Settling Defendants shall deposit at least $650,000 into the Post-Remedy Construction Trust Account within sixty (60) days of the Effective Date. Except in the event of a Work Takeover pursuant to Paragraph 113 of this Consent Decree, funds deposited into and maintained in the Post-Remedy Construction Trust Account shall be paid out periodically to the Supervising Contractor during approximately the first five (5) years after certification of completion of Remedy Construction, in accordance with the Post-Remedy Construction Trust Agreement, to finance the costs of the Monitoring & Maintenance and other post-Remedy Construction response actions.

c. A trust account for Monitoring & Maintenance, Long Term Operation & Maintenance, and other response actions occurring after approximately the first five (5) years following certification of completion of Remedy Construction (the "Operation and Maintenance Trust Account") established in accordance with the form of trust agreement attached hereto as Appendix F (the "Operation and Maintenance Trust Agreement"). Settling Defendants shall make deposits into the Operation and Maintenance Trust Account as follows: at least $200,000 shall be deposited within sixty (60) days of the Effective Date; at least $1,900,000 shall be deposited on or before March 1, 2015. Except in the event of a Work Takeover pursuant to Paragraph 113 of this Consent Decree, funds deposited into and maintained in the Operation and Maintenance Trust Account shall be paid out periodically in accordance with the Operation and Maintenance Trust Agreement to finance the costs of Monitoring and Maintenance, Long Term

Operation & Maintenance, and other response actions occurring after approximately the first five (5) years following certification of completion of Remedy Construction, as well as other administrative and related costs and expenses incurred by the Settling Defendants in connection with the Site and the performance of the Work.

d. An additional performance guarantee, which shall be maintained until certification of completion of Remedy Construction pursuant to Paragraph 63(b) below, submitted by one or more Settling Defendants in the amount of $8,500,000 and in the form of one or more of the mechanisms below:

(1) A surety bond or bonds unconditionally guaranteeing payment for the Work, payable to or at the direction of NDEP, that is/are issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury; or

(2) One or more irrevocable letters of credit, payable to or at the direction of NDEP, that is/are issued by one or more financial institution(s), (1) that has the authority to issue letters of credit; and (2) whose letter-of-credit operations are regulated and examined by a federal or state;

(3) A demonstration that the Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to such amount (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction;

(4) A written guarantee to fund or perform the Work executed in favor of NDEP and EPA by one or more of the following: (a) a direct or indirect parent or affiliate

corporation of the Settling Defendant; or (b) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with the Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to such amount (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee).

e. A premises pollution liability insurance policy with a coverage limit of at least $10,000,000 and a term of at least ten (10) years. Such policy shall provide coverage, subject to the policy's specified deductibles, exclusions, and coverage limits, in the event of third party claims arising in connection with the performance of the Work. The policy will identify NDEP and EPA as additional insureds.

58. Within ninety (90) days of the Effective Date, Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) described in Paragraph 57 legally binding to NDEP and EPA in accordance with Section XXVII ("Notices and Submissions") of this Consent Decree.

59. In the event that NDEP or, subject to Management Consultation, EPA, determines, subject to Settling Defendants' right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), that the performance guarantee provided by Settling Defendants pursuant to this Section no longer satisfies the requirements set forth in this Section due to (i) an increase in the estimated cost of completing the Work or (ii) a depletion of the funds in the trust accounts established pursuant to Paragraph 57 that causes them to be inadequate to ensure the full and final completion of the Work, then within sixty (60) days of receipt of notice

of the determination, Settling Defendants shall use best efforts to obtain and present to NDEP or EPA, as applicable, for approval a proposal for a revised, alternative or additional performance guarantee with respect to the amount of such cost increase or depletion of funds in the form of one or more of the mechanisms listed below. In the event that any Settling Defendant becomes aware of information indicating that the performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, Settling Defendants, within sixty (60) days of any Settling Defendant becoming aware of such information, shall use best efforts to obtain and present to NDEP or EPA, as applicable, for approval a proposal for a revised, alternative or additional performance guarantee with respect to the amount of such discrepancy in the form of one or more of the mechanisms listed below. In seeking approval for a revised, alternative or additional form of performance guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 62(b) of this Consent Decree. Settling Defendants' inability to post a performance guarantee shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendants to complete the Work in strict accordance with the terms hereof.

a. Surety Bond. A surety bond or bonds unconditionally guaranteeing, in the aggregate, payment and/or performance of any remaining Work that is/are issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. Letter of Credit. One or more irrevocable letters of credit, payable to or at the direction of the agency issuing the notice of determination referenced in this paragraph 59, that is/are issued by one or more financial institution(s), (1) that has the authority to issue letters

of credit; and (2) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. Trust Deposit. An increase in the amount of the funds deposited in one or more of the trust accounts described in Paragraph 57, or a new trust account established for the benefit of NDEP and EPA that is administered by a trustee, (1) that has the authority to act as a trustee; and (2) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. Insurance. A policy of insurance that (1) provides NDEP and EPA with acceptable rights as beneficiaries thereof; and (2) is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a State agency;

e. Financial Test. A demonstration that one or more of Settling Defendants meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the estimated cost of completing any remaining Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or

f. Guarantee. A written guarantee to fund or perform any remaining Work executed in favor of NDEP and EPA by one or more of the following: (1) a direct or indirect parent or affiliate corporation of one or more Settling Defendant(s); or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. §

264.143(f) with respect to the estimated cost of completing the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

60. If, at any time after the Effective Date and before issuance of the certification of achievement of Performance Standards pursuant to Paragraph 64(b), any Settling Defendant provides a performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 57(d)(3) or (4), Paragraph 59(e) or 59(f), the relevant Settling Defendant(s) shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Consent Decree, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer ("CFO") and independent certified public accountant ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf ; (b) the annual re-submission of such reports and statements by May 1 of each succeeding year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event by August 1 of any year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the estimated cost of completing the Work; the terms "owner" and "operator" shall be deemed to refer to each Settling Defendant making a

demonstration under Paragraph 57(d)(3) or Paragraph 59(e); and the terms "facility" and "hazardous waste facility" shall be deemed to include the Site.

61. The commencement of any Work Takeover by NDEP or EPA pursuant to Paragraph 113 of this Consent Decree shall trigger the right of the agency commencing the Work Takeover to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 57(a) – (d) or 59, and at such time that agency shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by that agency under the Work Takeover. If for any reason the agency commencing the Work Takeover is unable to promptly secure the resources guaranteed under any such performance guarantee(s), or in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 57(d)(3) or 59(e), Settling Defendants shall immediately, upon written demand from the agency commencing the Work Takeover, deposit into an account specified by that agency, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by that agency.

62. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount described in Paragraph 57(d) above, Settling Defendants may, on any anniversary date of the Effective Date, or at any other time agreed to by NDEP, petition NDEP and EPA in writing to request a reduction in the amount of the performance guarantee provided pursuant to Paragraph 57(d), so that the amount of the performance guarantee is equal to the estimated cost of the

remaining Work to be performed. Settling Defendants shall submit a written proposal for such reduction to NDEP and EPA that shall specify, at a minimum, the cost of the remaining Work activities to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of performance guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 62(b)(2) of this Consent Decree. If NDEP and EPA agree to accept such a proposal, NDEP shall notify the petitioning Settling Defendants of such decision in writing. After receiving written acceptance, Settling Defendants may reduce the amount of the performance guarantee described in Paragraph 57(d) in accordance with, and to the extent permitted, by such written acceptance. In the event of a dispute, Settling Defendants may reduce the amount of the performance guarantee described in Paragraph 57(d) only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 59 or 62(b) of this Consent Decree.

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Settling Defendants desire to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Settling Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by NDEP, petition NDEP and EPA in writing to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative form of performance guarantee shall be as provided in Paragraph 62(b)(2) of this Consent Decree. Any decision made by NDEP and EPA on a petition submitted under this subparagraph 62(b)(1) shall be made in NDEP's and EPA's unreviewable discretion, and such

decision shall not be subject to challenge by Settling Defendant(s) pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Defendants shall submit a written proposal for a revised or alternative form of performance guarantee to NDEP and EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative form of performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of performance guarantee to NDEP and EPA in accordance with Section XXVII ("Notices and Submissions") of this Consent Decree. NDEP and EPA shall notify Settling Defendants in writing of their decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this subparagraph. Within thirty (30) days after receiving a written decision approving the proposed revised or alternative performance guarantee, Settling Defendant(s) shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to NDEP and EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Settling Defendant(s) shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to NDEP and EPA within thirty (30) days of receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXVII (Notices and Submissions) of this Consent Decree.

c. Release of Performance Guarantee. Upon certification of completion of Remedy Construction or certification of achievement of Performance Standards, Settling Defendants may thereafter release, cancel, or discontinue the applicable performance guarantee(s) provided pursuant to this Section. Settling Defendants shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. CERTIFICATION OF COMPLETION

63. Certification of Completion of Remedy Construction.

a. Within ninety (90) days after Settling Defendants conclude that the Remedy Construction has been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, NDEP and EPA. The Tribes shall be notified when the pre-certification inspection is scheduled and shall be invited to attend. If, after the pre-certification inspection, Settling Defendants still believe that Remedy Construction has been fully performed, they shall submit a written report requesting certification to NDEP and EPA within thirty (30) days of the inspection. In the report, a registered professional engineer and Settling Defendants' Project Coordinator shall state that the Remedy Construction has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or Settling Defendants' Project Coordinator, if authorized by Settling Defendants to represent Settling Defendants on this certification:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, NDEP or, subject to Management Consultation, EPA, determines that Remedy Construction or any portion thereof has not been completed in accordance with this Consent Decree, NDEP or EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete Remedy Construction; provided, however, that Settling Defendants may only be required to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the Scope of Remedy. NDEP or EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require Settling Defendants to submit a schedule to NDEP for approval, with a copy to EPA, pursuant to Section XI (Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. Certification of completion of Remedy Construction requires the concurrence of NDEP and EPA. If NDEP, with EPA's concurrence, concludes, based on the initial or any subsequent report requesting certification of completion, that Remedy Construction has been performed in accordance with this Consent Decree, the Agencies will so certify to Settling Defendants. This certification signed by the Agencies shall constitute the certification of completion of Remedy Construction for purposes of this Consent Decree, including, but not

limited to, Section XXII (Covenants Not to Sue by Plaintiffs). Certification of completion of Remedy Construction shall not affect Settling Defendants' remaining obligations under this Consent Decree.

64. Certification of Achievement of Performance Standards.

a. Within ninety (90) days after Settling Defendants conclude that the Performance Standards have been achieved and all phases of the Monitoring & Maintenance have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, NDEP and EPA. The Tribes shall be notified when the pre-certification inspection is scheduled and shall be invited to attend. If, after the pre-certification inspection, Settling Defendants still believe that the Performance Standards have been achieved and the Monitoring & Maintenance has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Monitoring & Maintenance is complete because the Performance Standards have been achieved in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or Settling Defendants' Project Coordinator, if authorized by Settling Defendants to represent Settling Defendants on this certification:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, NDEP or, subject to Management Consultation, EPA, determines that the Performance Standards have not been achieved, NDEP or EPA will notify Settling Defendants, in writing, of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to achieve the Performance Standards; provided, however, that

Settling Defendants may only be required to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the Scope of Remedy. NDEP or EPA, as applicable, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require Settling Defendants to submit a schedule to NDEP for approval, with a copy to EPA. Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. Certification of achievement of Performance Standards requires the concurrence of NDEP and EPA. If NDEP, with EPA's concurrence, concludes, based on the initial or any subsequent request for certification of completion by Settling Defendants, that the Monitoring & Maintenance is complete and Performance Standards have been achieved in accordance with this Consent Decree, the Agencies will so certify to Settling Defendants. This certification signed by the Agencies shall constitute the certification of achievement of Performance Standards for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiffs).

65. Certification of Completion of any Work Required Under Paragraph 27(d). To the extent Settling Defendants are directed pursuant to Paragraph 27(d) to address a Persistent Anomaly attributable to releases from the underground mine workings in Area A, the provisions of this Paragraph will apply.

a. Within ninety (90) days after Settling Defendants conclude that the additional work required under Paragraph 27(d) has been completed and any performance standards selected for such work have been achieved, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, NDEP and EPA.

The Tribes shall be notified when the pre-certification inspection is scheduled and shall be invited to attend. If, after the pre-certification inspection, Settling Defendants still believe that the additional work required under Paragraph 27(d) has been completed and any performance standards selected for such work have been achieved, Settling Defendants shall submit a written report by a registered professional engineer stating those conclusions. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or Settling Defendants' Project Coordinator, if authorized by Settling Defendants to represent Settling Defendants on this certification:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, NDEP or, subject to Management Consultation, EPA, determines that additional work required under Paragraph 27(d) has not been completed or any performance standards selected for such work have not been achieved, NDEP or EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete such work or achieve such performance standards; provided, however, that Settling Defendants may only be required to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with Paragraph 27(d). NDEP or EPA, as applicable, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require Settling Defendants to submit a schedule to NDEP for approval, with a copy to EPA. Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute

Resolution).

b. Certification of completion of additional work under Paragraph 27(d) and achievement of any performance standards for such work requires the concurrence of NDEP and EPA. If NDEP, with EPA's concurrence, concludes, based on the initial or any subsequent request for certification of completion by Settling Defendants, that the additional work required under Paragraph 27(d) has been completed and any performance standards selected for such work have been achieved in accordance with this Consent Decree, the Agencies will so certify to Settling Defendants.

XV. EMERGENCY RESPONSE

66. Settling Defendants' Obligations in the Event of an Emergency Release.

a. In the event Settling Defendants know or should know of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 67, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately orally notify the NDEP Project Coordinator and the EPA Project Coordinator, or their respective alternate coordinators, and the Tribes' Director of Environmental Protection. In the event that, at the time of an event described in this Paragraph, neither the NDEP Project Coordinator nor the Alternate NDEP Project Coordinator is available, Settling Defendants shall orally notify the release reporting hotline of NDEP. In the event that, at the time of an event described in this Paragraph, neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, Settling Defendants shall orally notify the Emergency Response Section, Region IX, United States Environmental Protection Agency.

b. Settling Defendants shall take such actions in consultation with NDEP's and EPA's Project Coordinators or other available authorized NDEP or EPA officer, and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plan, and any other applicable plans or documents developed pursuant to the RD/RA Work Plan or Remedial Design. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and NDEP or EPA takes such action instead, Settling Defendants shall reimburse NDEP or EPA, as applicable, for all costs of the response action not inconsistent with the NCP, pursuant to Section XVI (Payments for Response Costs).

67. NDEP and EPA each have the authority to take independent action to address emergency releases. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the State or the United States: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site; or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXII (Covenants Not to Sue by Plaintiffs). The Agencies shall coordinate and communicate regarding emergency response actions to the extent practicable under the exigencies of the situation.

XVI. PAYMENTS FOR RESPONSE COSTS

68. Payments for United States Past Response Costs.

a. Within thirty (30) days of the Effective Date, Settling Defendants shall pay to EPA $1,234,067.74, in payment for United States Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the DOJ account in accordance with

current EFT procedures, referencing USAO File Number ____, EPA Site/Spill ID Number 09BY, and DOJ Case Number 90-11-5-08510/1. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Nevada following the Effective Date. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVII (Notices and Submissions).

c. The total amount to be paid by Setting Defendants pursuant to Subparagraph 68(a) shall be deposited in the Rio Tinto Mine Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

69. Payments for Future Response Costs.

a. Settling Defendants shall pay to EPA all United States Future Response Costs not inconsistent with the NCP, excluding the first $250,000 of United States Future Response Costs, for which Settling Defendants shall not be responsible under this Consent Decree. On a periodic basis, the United States will send Settling Defendants a bill for United States Future Response Costs requiring payment that includes the standard Region IX-prepared itemized cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Settling Defendants shall make all payments within sixty (60) days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 70

and Section XX (Dispute Resolution). Settling Defendants shall make all payments required by this Paragraph by FedWire Electronic Funds Transfer ("EFT") to the U.S. Environmental Protection Agency, EPA Hazardous Substance Superfund, in accordance with current EFT procedures, referencing the name and address of the party making the payment, EPA Site/Spill ID Number 09BY, and DOJ Case Number 90-11-3-08510/1.

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVII (Notices and Submissions).

c. The total amount to be paid by Setting Defendants pursuant to Subparagraph 69(a) shall be deposited in the Rio Tinto Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. Settling Defendants shall reimburse NDEP for all State Future Response Costs on a periodic basis. NDEP will send Settling Defendants an invoice requiring payment that includes an itemized cost summary, which includes direct and indirect costs incurred by the State and its contractors on a periodic basis. Settling Defendants shall make all payments within thirty (30) days of Settling Defendants' receipt of each invoice requiring payment, except as otherwise provided in Paragraph 69 and Section XX (Dispute Resolution). Settling Defendants shall remit payment for the full amount due and owing for (i) amounts greater than $10,000 at https://epayments.ndep.gov/ in the form of an "electronic transfer of money" per NRS § 353.1467 and in accordance with NDEP electronic payment policy, which may be found at https://epayments.ndep.nv.gov/FAQ.htm; or (ii) amounts of $10,000 or less with an electronic

payment as specified above, or by check payable to the "State of Nevada Hazardous Waste Fund," that references the name of the Site, the Settling Defendant(s)' name and address, and the billing number identified in the Division invoice and sent to:

Nevada Division of Environmental Protection
Attn: Chief, Bureau of Corrective Actions
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701

70. Settling Defendants may contest any future response costs billed under Paragraph 69 if they determine that the State or the United States has made an accounting mathematical error, or included a cost item that is not within the relevant definition of State Future Response Costs or United States Future Response Costs, or if they believe NDEP or EPA incurred excess costs as a direct result of a NDEP or an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the State (if the State's accounting is being disputed) or the United States (if the United States' accounting is being disputed) pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested future response costs and the basis for objection. In the event of an objection, Settling Defendants shall pay all uncontested State Future Response Costs to the State, and all uncontested United States' Future Response Costs to the United States, in the manner described in Paragraph 69 within sixty (60) days of Settling Defendants' receipt of the bill requiring payment. Simultaneously, Settling Defendants shall establish an interest-bearing escrow account in a federally insured bank duly chartered in the State of Nevada and remit to that escrow account funds equivalent to the amount of the contested future response costs. Settling Defendants shall send to the State and the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested State Future

Response Costs or United States' Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the State or the United States prevails in the dispute, within seven (7) days of the resolution of the dispute, Settling Defendants shall pay the sums due (with accrued interest) to the State or the United States, if the costs are disputed, in the manner described in this Paragraph. If Settling Defendants prevail concerning any aspect of the contested costs, Settling Defendants shall pay, within seven (7) days of the resolution of the dispute, any portion of the costs (plus associated accrued interest) for which they did not prevail, to the State or the United States, if the costs are disputed in the manner described in this Paragraph. Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution), shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the State and the United States for their future response costs.

71. Interest. In the event that the payments required by Subparagraph 68(a) are not made within thirty (30) days of the Effective Date or the payments required by Paragraph 69 are not made within sixty (60) days of Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on United States Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on the United States Future Response Costs and State Future Response Costs shall begin to accrue on

the date of the bill. The Interest shall accrue through the date of Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to NDEP and EPA by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XXI (Stipulated Penalties). Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 70.

XVII. PAYMENTS TO NATURAL RESOURCE TRUSTEES

72. Within thirty (30) days of the Effective Date, Settling Defendants shall pay to the United States $709,527.81. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the case name and number and DOJ Case Number 90-11-3-08510. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Nevada. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

73. At the time of payment, Settling Defendants shall send notice that payment has been made to the DOJ, USDOI, and USDA in accordance with Section XXVII (Notices and Submissions).

74. Within thirty (30) days of the Effective Date, the Settling Defendants shall pay $150,000 to the Tribes. Payment to the Tribes shall be made to the Nevada State Bank, 487 Railroad Street, Elko Nevada 89801. The routing number is 122400779; the account number is 00202286. Subject to the Tribes' reservations set forth in Paragraphs 111 and 112 of this Consent Decree, such payment shall constitute full satisfaction and resolution of all liability to

the Tribes for natural resource damages and assessment costs, and costs for the Tribes' oversight of this Consent Decree. The Settling Defendants shall not be required to reimburse the Tribes for any additional costs or expenses incurred in connection with all matters addressed by this settlement, except as provided in Paragraphs 111 and 112 of this Consent Decree.

XVIII. INDEMNIFICATION AND INSURANCE

75. Settling Defendants' Indemnification of the State, the United States, and the Tribes.

a. The State, the United States and the Tribes do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Defendants shall indemnify, save and hold harmless the State, the United States, the Tribes and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their respective officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Further, Settling Defendants agree to pay the State, the United States, and the Tribes all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the State, the United States and the Tribes, based on negligent or other wrongful acts or omissions of Settling Defendants, their respective officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the State, the

United States nor the Tribes shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the State, the United States or the Tribes.

b. The State, the United States and the Tribes shall give Settling Defendants notice of any claim for which the State, the United States or the Tribes plan to seek indemnification pursuant to Subparagraph (a) of this Paragraph, and shall consult with Settling Defendants prior to settling such claim.

76. Settling Defendants waive all claims against the State, the United States and the Tribes for damages or reimbursement, or for set-off of any payments made or to be made to the State, the United States or the Tribes, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the State, the United States and the Tribes with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

77. No later than fifteen (15) days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of the certification of completion of Remedy Construction pursuant to Paragraph 63(b), comprehensive general liability insurance with limits of two million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the State and

the United States as additional insureds. In addition, for as long as Settling Defendants are required to perform any activities under this Consent Decree, except those required by Section XXIX (Retention of Records), Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to the State, the United States and the Tribes certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. Information about the premiums for such insurance policies may be redacted. If Settling Defendants demonstrate by evidence satisfactory to the State, the United States and the Tribes that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

78. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring;

and (b) following the potential force majeure event, such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work.

79. Notification of Potential Delay. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree relating to the Work, whether or not caused by a force majeure event, Settling Defendants shall notify orally NDEP's Project Coordinator (or, in his or her absence, NDEP's Alternate Project Coordinator), and the EPA Project Coordinator (or, in his or her absence, the EPA's Alternate Project Coordinator), within seven (7) days of when Settling Defendants first knew that the event might cause a delay. Within fourteen (14) days thereafter, Settling Defendants shall provide in writing to the Agencies an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

80. Agency Action Regarding Force Majeure.

a. Granting Extensions. If NDEP and EPA agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by NDEP, with concurrence by EPA, for such time as is necessary to complete those obligations, and NDEP will notify Settling Defendants in writing of the length of such extension. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation.

b. Denial of Extensions by NDEP. If NDEP does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, NDEP will notify Settling Defendants and EPA in writing of that decision.

c. Denial of Extensions by EPA. For matters where EPA is the Lead Agency for Dispute Resolution, if EPA, subject to Management Consultation, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendants and NDEP in writing of that decision.

81. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of notice described in the previous Paragraph. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 78 and 79 above. If Settling Defendants carry this

burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree.

XX. DISPUTE RESOLUTION

82. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the State or the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

83. Any dispute which arises under or with respect to the provisions of this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one or more of the Settling Defendants sends the LADR a written Notice of Dispute.

84. Statements of Position.

a. In the event a dispute cannot be resolved by informal negotiations under the preceding Paragraph, then the position advanced by the LADR shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period, one or more of Settling Defendants invokes the formal dispute resolution procedures of this Section by serving on the State and the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendants. The Statement

of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 85 or 86.

b. Within thirty (30) days after receipt of Settling Defendants' Statement of Position, the LADR will serve on Settling Defendants its Statement of Position (the "LADR's Statement of Position"), including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the LADR. The LADR's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 85 or 86.

c. Within seven (7) days after receipt of the LADR's Statement of Position, Settling Defendants may submit a Reply.

d. If there is disagreement between the LADR and Settling Defendants as to whether dispute resolution should proceed under Paragraph 85 or 86, the parties to the dispute shall follow the procedures set forth in the paragraph determined by the LADR to be applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 85 and 86.

85. Disputes Pertaining to Response Actions. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by NDEP and/or EPA under the provisions of this Consent Decree which establish Settling

Defendants' obligations to perform the Work; and (2) the adequacy of the performance of response actions taken pursuant to the provisions of this Consent Decree which establish Settling Defendants' obligations to perform the Work. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants relating to the validity of the ROD's provisions. Any disputes relating to the Protocols, the Remedial Design, or the RD/RA Work Plan shall be resolved by the Court under Paragraph 86.

a. An administrative record of the dispute shall be maintained by the LADRO, shall contain all statements of position, including supporting documentation, submitted pursuant to this Section, and shall be made available to Settling Defendants on reasonable request. Where appropriate, the LADRO may allow submission of supplemental statements of position by the parties to the dispute.

b. The LADRO will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 85(a). This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 85(c) and 85(d).

c. Any administrative decision made by the LADRO pursuant to Paragraph 85(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all parties within thirty (30) days of receipt of the decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and/or the State may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling

Defendants shall have the burden of demonstrating that the decision of the LADRO is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the LADRO's decision shall be on the administrative record compiled pursuant to Paragraph 85(a).

86. Disputes Pertaining to Other Matters. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 84, the LADRO will issue a final decision resolving the dispute. This decision shall be binding on Settling Defendants unless, within thirty (30) days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States and/or the State may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph 10 of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

87. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless NDEP or, subject to Management Consultation, EPA, agrees, or the Court orders otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Section XXI (Stipulated Penalties). Notwithstanding the stay of payment, stipulated

penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

88. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 89, 90, and 91 of this Section to the State and/or the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure), or Paragraph 98. If both NDEP and EPA, under Paragraph 93, determine that a demand for stipulated penalties for a given violation should be made, then such stipulated penalties shall be split equally between the State and the United States; provided, however, that under no circumstances shall Settling Defendants pay more than one penalty for each separate violation. For purposes of this Section, "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree, the RD/RA Work Plan, the Protocols, the Remedial Design, and any other documents approved by NDEP or EPA pursuant to the provisions of this Consent Decree, within the specified time schedules established by and approved under this Consent Decree.

89. Stipulated Penalty Amounts – Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 89(b):

Penalty Per Violation Per Day	**Period of Noncompliance**
$ 1,000	1st through 14th day
$ 2,500	15th through 30th day
$ 8,000	31st day and beyond

b. Compliance Milestones.

(1) Implementation of any portion of the Work, according to any schedule or deadline required by this Consent Decree, the RD/RA Work Plan, the Remedial Design, Operation & Maintenance Plan, the Protocols, or any plan approved under this Consent Decree;

(2) Timely payment of United States Past Response Costs as required by this Consent Decree; and

(3) Timely payment of State Future Response Costs or United States Future Response Costs as required by this Consent Decree.

90. Stipulated Penalty Amounts - Deliverables.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Consent Decree, the RD/RA Work Plan, the Remedial Design, Operation & Maintenance Plan, the Protocols, or any plan approved under this Consent Decree:

Penalty Per Violation Per Day	**Period of Noncompliance**
$ 750	1st through 14th day
$ 1,000	15th through 30th day
$ 1,500	31st day and beyond

91. Work Takeover Stipulated Penalties. In the event that NDEP or EPA, pursuant to Paragraph 113, assumes performance of a portion or all of:

a. The O&M, Settling Defendants shall be liable for a stipulated penalty in the amount equal to the lesser of $250,000, or the cost of any O&M assumed; or

b. Any Work other than O&M, Settling Defendants shall be liable for a stipulated penalty in the amount equal to the lesser of $1,000,000, or the cost of such Work assumed.

92. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (Approval of Plans and Other Submissions), during the period, if any, beginning on the 15th day after NDEP's receipt of such submission until the date that NDEP notifies Settling Defendants of any deficiency; (2) with respect to a decision under Paragraphs 85 or 86 of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to the LADR's Statement of Position is received until the date that NDEP and/or EPA issue a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

93. Except as otherwise set forth in Paragraph 88, if NDEP or EPA determines that Settling Defendants have failed to comply with a requirement of a provision of this Consent Decree, NDEP and/or EPA may give Settling Defendants written notification of the same and describe the noncompliance. NDEP, after providing notice to EPA of its determination of noncompliance, may send Settling Defendants a written demand for the payment of the penalties.

EPA, subject to Management Consultation, may send Settling Defendants a written demand for the payment of penalties for any failure to comply with a requirement of a provision of this Consent Decree subject to or imposed through Independent Action by EPA. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether NDEP or EPA has notified Settling Defendants of a violation.

a. All penalties accruing under this Section shall be due and payable to the State and/or the United States within thirty (30) days of Settling Defendants' receipt from NDEP or EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution).

b. All payments to the State under this Section shall be paid as follows: (i) for amounts greater than $10,000, payment shall be made at https://epayments.ndep.gov/ in the form of an "electronic transfer of money" per NRS § 353.1467 and in accordance with NDEP electronic payment policy, which may be found at https://epayments.ndep.nv.gov/FAQ.htm; or (ii) amounts of $10,000 or less with an electronic payment as specified above or by check payable to the "State of Nevada Hazardous Waste Fund" that references the name of the Site, the Company name and address, and the billing number identified in the Division invoice and sent to:

Nevada Division of Environmental Protection
Attn: Chief, Bureau of Corrective Actions
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701

c. All payments to the United States under this Section shall be paid by FedWire Electronic Funds Transfer ("EFT") to the U.S. Environmental Protection Agency, EPA Hazardous Substance Superfund, in accordance with current EFT procedures, referencing the name and address of the party making the payment, shall indicate that the payment is for

stipulated penalties, and shall reference the EPA Site/Spill ID Number 09BY, and DOJ Case Number 90-11-3-08510/1. Notice of payment pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to DOJ and EPA as provided in Section XXVII (Notices and Submissions).

94. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

95. Penalty Payment Schedule. Penalties shall continue to accrue as provided in Paragraphs 89 or 90 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of NDEP or EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to the State and/or the United States within thirty (30) days of the agreement or the receipt of the order by NDEP or EPA;

b. If the dispute is appealed to this Court, but not appealed further, and the State and/or the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to the State and/or the United States within sixty (60) days of receipt of the Court's decision or order; or

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the State and/or the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate

court decision, the escrow agent shall pay the balance of the account to the State and or the United States or to Settling Defendants to the extent that they prevail.

96. If Settling Defendants fail to pay stipulated penalties when due, the State and/or the United States may institute proceedings to collect the penalties, as well as Interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 93.

97. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the State and/or the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 122(l); provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 122(l), for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

98. Notwithstanding any other provision of this Section, the State and the United States may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree and that are to be paid to the entity waiving the penalty.

XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

99. United States' Covenants Not to Sue.

In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 100, 101, 102, and 103 of this Section, the United States covenants not to sue or to take administrative actions relating to the Site against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and 7003 of RCRA, 42

U.S.C. § 6973. These covenants not to sue or take administrative action against Settling Defendants ("United States' Covenants") shall take effect upon the receipt by the United States of the payments required by Paragraph 68 of Section XVI (Payments for Response Costs) and Paragraphs 72 and 74 of Section XVII (Payments to Natural Resource Trustees), except as follows:

a. The United States' Covenants with respect to Settling Defendants' obligations to perform the Remedy Construction shall take effect upon certification of completion of Remedy Construction;

b. The United States' Covenants with respect to liability for additional response actions that EPA determines are necessary to achieve the Performance Standards or to carry out and maintain the effectiveness of the Remedy, but that cannot be required pursuant to Paragraph 27, shall take effect upon receipt of payments to the United States listed above, and shall remain in effect until twenty-one (21) years after certification of completion of Remedy Construction. If certification of achievement of Performance Standards occurs within this twenty-one (21) year period, such covenants shall remain in effect thereafter; and

c. The United States' Covenants with respect to liability for additional response actions beginning twenty-one (21) years after certification of completion of Remedy Construction shall become effective upon certification of achievement of Performance Standards.

These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants, except as provided in the following sentence. These covenants not to sue (and all reservations thereto in this Consent Decree) and the contribution protection

provisions of Section XXIV, shall also apply to Settling Defendants' officers, directors, employees, successors and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor or assign is based on its status and in its capacity as an officer, director, employee, successor or assign of the Settling Defendants, and not to the extent that the alleged liability arose independently of the alleged liability of Settling Defendants. These covenants not to sue do not extend to any other person. Each Settling Defendant shall be subject to all of its obligations under this Consent Decree regardless of whether a successor and/or assign exists.

100. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel Settling Defendants to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) prior to certification of achievement of Performance Standards, (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part; and (b) EPA determines that these previously unknown conditions or information, together with other relevant information, indicate that the Remedy is not protective of human health or the environment. For the purposes of this Paragraph, any water quality data for the analytes specified in the Protocols, and any other data developed pursuant to the Ambient Monitoring Protocol obtained prior to certification of achievement of Performance Standards, shall not be considered previously unknown conditions at the Site or information previously unknown to EPA.

101. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order, seeking to compel Settling Defendants to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) subsequent to certification of achievement of Performance Standards, (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part; and (b) EPA determines that these previously unknown conditions or this information, together with other relevant information, indicate that the Remedy is not protective of human health or the environment.

102. United States' Reservations with Respect to Natural Resource Damages.

a. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action against Settling Defendants for Natural Resource Damages if:

(1) Conditions at the Site previously unknown to the Natural Resource Trustees are discovered after the Effective Date and such conditions have resulted in releases of hazardous substances that have caused injury to, destruction of or loss of Natural Resources that was unknown to the Natural Resource Trustees before the Effective Date (for the purposes of this Paragraph, "Unknown Conditions"); or

(2) Information is first received by the United States after the Effective Date, and the new information indicates there is injury to Natural Resources of a type unknown to the Federal Trustees as of the Effective Date (for the purposes of this Paragraph, "New Information").

b. For the purposes of this Paragraph, an increase solely in the Natural Resource Trustees' assessment of the magnitude of a known injury to, destruction of or loss of Natural Resources at the Site shall not be considered Unknown Conditions or New Information. No information shall be deemed "new," and no condition shall be deemed "unknown," if the information or condition is contained or identified in, or could be reasonably determined from, documents and data in the possession or under the control of any of the Natural Resource Trustees as of the Effective Date. Any water quality data for the analytes specified in the Protocols, and any other data developed pursuant to the Ambient Monitoring Protocol obtained prior to certification of achievement of Performance Standards, shall not be considered Unknown Conditions or New Information for purposes of this Paragraph.

103. United States' General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the United States' Covenants not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

a. Claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

b. Liability arising from the past, present or future disposal, release or threat of release of Waste Material outside of the Site;

c. Liability based upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage or disposal, or the arrangement for the transportation, treatment, storage or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work or otherwise ordered by

EPA, after signature of this Consent Decree;

d. Criminal liability;

e. Liability for violations of federal or state law which occur during or after implementation of the Work; and

f. Liability, beginning twenty-one (21) years after certification of completion of Remedy Construction and prior to certification of achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 27.

104. State's Covenants Not to Sue. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 105, 106, 107, and 108 of this Section, the State covenants not to sue or to take administrative actions, relating to the Site, against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Sections 3004(u) and (v)and 7002 of RCRA, 42 U.S.C. §§ 6924(u) and (v) and 6972, or any State law enacted pursuant to those authorities. The State also covenants not to sue or take administrative actions, relating to the Site, against Settling Defendants under Section 505 of the Clean Water Act, 33 U.S.C. §§ 1365, Section 311 of the Clean Water Act, 33 U.S.C. § 1321 as it applies to any authority granted to the State of Nevada, or the Nevada Water Pollution Control Law, NRS § 445A.300 to 445A.730 and the regulations of the Nevada State Environmental Commission, NAC § 445A070 to 445A.348, or to bring any claim relating to the Site based on any common law theory of negligence, trespass or nuisance. These covenants not to sue shall take effect upon receipt by the Natural Resources Trustees of the payment required by Paragraph 72. The covenants not to sue as to the Work are conditioned upon the satisfactory performance

by Settling Defendants of their obligations under this Consent Decree to perform the Work. These covenants not to sue extend only to Settling Defendants, except as provided in the following sentence. These covenants not to sue (and all reservations thereto in this Consent Decree) and the contribution protection provisions of Section XXIV, shall also apply to Settling Defendants' officers, directors, employees, successors and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor or assign is based on its status and in its capacity as an officer, director, employee, successor or assign of the Settling Defendants, and not to the extent that the alleged liability arose independently of the alleged liability of Settling Defendants.

105. State's Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel Settling Defendants to perform further response actions relating to the Site and/or to pay the State for additional costs of response if, (a) prior to certification of achievement of Performance Standards, (i) conditions at the Site, previously unknown to the State, are discovered, or (ii) information, previously unknown to the State, is received, in whole or in part; and (b) the State determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedy is not protective of human health or the environment. For purposes of this Paragraph, any water quality data for the analytes specified in the Protocols, and any other data developed pursuant to the Ambient Monitoring Protocol obtained prior to certification of Achievement of Performance Standards, shall not be considered previously unknown conditions at the Site or information previously unknown to the State.

106. State's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order, seeking to compel Settling Defendants to perform further response actions relating to the Site and/or to pay the State for additional costs of response if, (a) subsequent to certification of achievement of Performance Standards, (i) conditions at the Site, previously unknown to the State, are discovered, or (ii) information, previously unknown to the State, is received, in whole or in part; and (b) the State determines that these previously unknown conditions or this information, together with other relevant information indicate that the Remedy is not protective of human health or the environment.

107. State's Reservations with Respect to Natural Resource Damages.

a. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action against Settling Defendants for Natural Resource Damages if: (1) conditions at the Site previously unknown to the State Trustees are discovered after the Effective Date and such conditions have resulted in releases of hazardous substances that have caused injury to, destruction of or loss of Natural Resources that were unknown to the State Trustees before the Effective Date (for the purposes of this Paragraph, "Unknown Conditions"); or (2) information is first received by the State after the Effective Date, and the new information indicates there is injury to Natural Resources of a type unknown to the State Trustees as of the Effective Date (for the purposes of this Paragraph, "New Information").

b. For the purposes of this Paragraph, an increase solely in the Trustee's assessment of the magnitude of a known injury to, destruction of or loss of Natural Resources at

the Site, shall not be considered Unknown Conditions or New Information. No information shall be deemed "new," and no condition shall be deemed "unknown," if the information or condition is contained or identified in, or could be reasonably determined from, documents and data in the possession or under the control of any of the Natural Resource Trustees as of the Effective Date. Any water quality data for the analytes specified in the Protocols, and any other data developed pursuant to the Ambient Monitoring Protocol obtained prior to certification of achievement of Performance Standards, shall not be considered Unknown Conditions or New Information for purposes of this Paragraph.

108. State's General Reservations of Rights. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the State's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the State reserves all rights against Settling Defendants with respect to:

a. Claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

b. Liability arising from the past, present or future disposal, release or threat of release of Waste Material outside of the Site;

c. Liability based upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Defendants;

d. Criminal liability;

e. Liability for violations of federal or state law which occur during or after implementation of the Work; and

f. Liability, beginning twenty-one (21) years after certification of completion of Remedy Construction and prior to certification of achievement of Performance Standards, for additional response actions that NDEP determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 27 (Modification of the RD/RA Work Plan, the Remedial Design, or Related Submittals).

109. For purposes of Paragraphs 100 and 105, the information and the conditions known to the State and the United States shall include only that information and those conditions known to the State and the United States as of the date the ROD was signed and set forth in the ROD for the Site, or the administrative record supporting the ROD. For purposes of Paragraphs 101 and 106, the information and the conditions known to the State and the United States shall include only that information and those conditions known to the State and the United States as of the date of certification of achievement of Performance Standards, or set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by the State and the United States pursuant to the requirements of this Consent Decree, including information collected under the Ambient Monitoring Protocol prior to certification of achievement of Performance Standards.

110. Tribes' Covenants Not to Sue. Except as provided in Paragraph 111 regarding Unknown Conditions or New Information, in consideration of the actions that will be performed and the payment that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 112 and 113 of this Section, the Tribes covenant not to sue Settling Defendants pursuant to Sections 107(a) and 113(f) of CERCLA, 42

U.S.C. §§ 9607(a) and 9613(f), Sections 3004(u) and (v) and 7002 of RCRA, 42 U.S.C. §§ 6924(u) and (v) and 6972, and Sections 309, 311 and 505 of the Clean Water Act, 33 U.S.C. §§ 1319, 1321 and 1365, or to bring any other claim relating to the Site based upon any tribal statute, ordinance, regulation or law for conditions relating to the Site, or to bring any claim relating to the Site based on any common law theory, including but not limited to, negligence, trespass or nuisance, including any claim for Site-related impacts at or upon property now or previously owned or occupied by, or held in trust for, the Tribes, including the property formerly known as the "Wilson Ranch." These covenants not to sue shall take effect upon receipt by the Tribes of the payment required under Paragraph 74 of this Consent Decree. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants. These covenants not to sue shall also apply to Settling Defendants' officers, directors, employees, successors and assigns, but only to the extent that the alleged liability of the officer, director, employee, successor or assign is based on its status and in its capacity as an officer, director, employee, successor or assign of the Settling Defendants, and not to the extent that the alleged liability arose independently of the alleged liability of Settling Defendants. These covenants not to sue do not extend to any other person. Each Settling Defendant shall be subject to all of its obligations under this Consent Decree regardless of whether a successor and/or assign exists.

111. Tribes' Reservations with Respect to Natural Resource Damages and Other Claims.

a. Notwithstanding any other provision of this Consent Decree, the Tribes reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action against Settling Defendants for Natural Resource Damages if:

(1) Conditions at the Site previously unknown to the Natural Resource Trustees are discovered after the Effective Date and such conditions have resulted in releases of hazardous substances that have caused injury to, destruction of or loss of Natural Resources that was unknown to the Natural Resource Trustees before the Effective Date (for the purposes of this Paragraph, "Unknown Conditions"); or

(2) Information is first received by the Tribes after the Effective Date, and the new information indicates there is injury to Natural Resources of a type unknown to the Federal Trustees as of the Effective Date (for the purposes of this Paragraph, "New Information").

b. For the purposes of this Paragraph, an increase solely in the Natural Resource Trustees' assessment of the magnitude of a known injury to, destruction of or loss of Natural Resources at the Site shall not be considered Unknown Conditions or New Information. No information shall be deemed "New", and no condition shall be deemed "Unknown", if the information or condition is contained or identified in, or could be reasonably determined from, documents and data in the possession or under the control of any of the Natural Resource Trustees as of the Effective Date. Any water quality data for the analytes specified in the Protocols, and any other data developed pursuant to the Ambient Monitoring Protocol, obtained prior to certification of achievement of Performance Standards, shall not be considered Unknown Conditions or New Information for purposes of this Paragraph.

112. Tribes' General Reservation of Rights. The Tribes reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Tribes' covenant not to sue.

113. Work Takeover.

a. In the event NDEP determines that Settling Defendants have (1) ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner which may cause an endangerment to human health or the environment, NDEP, with notice to EPA, may issue a written notice ("Work Takeover Notice") to Settling Defendants indicating that NDEP believes the circumstances justify assumption of some or all of the Work as provided by Paragraph 113(b) and (c), below. Any Work Takeover Notice will specify the grounds upon which such notice was issued and will provide Settling Defendants a period of twenty (20) days within which to remedy the circumstances giving rise to the issuance of such notice.

b. In the event EPA determines that Settling Defendants have (1) ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of any Work subsequent to Settling Defendants' submittal under Paragraph 63(a) of a written report requesting certification of completion of Remedy Construction; (3) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA, with notice to NDEP, may issue a written notice ("Work Takeover Notice") to Settling Defendants indicating that EPA believes the circumstances justify assumption of some or all of the Work as provided by Paragraph 113(c), below. Any Work Takeover Notice will specify the grounds upon which such notice was issued and will provide Settling Defendants a period of twenty (20) days within which to remedy the circumstances giving rise to the issuance of such notice.

c. If, after expiration of the notice period specified in Paragraph 113(a), Settling Defendants have not remedied to NDEP's satisfaction the circumstances giving rise to

the issuance of the relevant Work Takeover Notice, NDEP may at any time thereafter assume the performance of all or any portions of the Work as NDEP deems necessary ("Work Takeover"). If, after expiration of the notice period specified in Paragraph 113(b), Settling Defendants have not remedied, to EPA's satisfaction, the circumstances giving rise to the issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work deemed necessary; provided, however, that if EPA issues a Work Takeover Notice, EPA shall first allow NDEP to determine within thirty (30) days from the date of the Work Takeover Notice, whether NDEP will take over the Work. NDEP or EPA shall notify Settling Defendants in writing (which writing may be electronic) if NDEP or EPA determine that implementation of a Work Takeover is warranted under this Subparagraph.

d. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute NDEP's or EPA's implementation of a Work Takeover under Paragraph 113(c). However, notwithstanding Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, NDEP or EPA may in their sole discretion commence and continue a Work Takeover under Paragraph 113(c) until the earlier of the date that (1) Settling Defendants remedy, to the satisfaction of the agency which took over the Work, the circumstances giving rise to the issuance of the relevant Work Takeover Notice; or (2) a final decision is rendered in accordance with Section XX (Dispute Resolution) requiring NDEP or EPA to terminate such Work Takeover.

e. After commencement and for the duration of any Work Takeover, NDEP or EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII (Performance Guarantee) of this Consent Decree, in accordance with the provisions of Paragraph 61 of that Section. If EPA commences a Work Takeover and requests

NDEP to direct payment pursuant to a surety bond and/or letter of credit maintained under Paragraph 57(d)(1) or (2), NDEP shall direct the surety company or financial institution which issued the surety bond and/or letter of credit to make the payment as requested by EPA. If and to the extent that NDEP or EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and Settling Defendant(s) fail to remit a cash amount up to, but not exceeding, the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 61, any unreimbursed costs incurred by NDEP or EPA in performing Work under the Work Takeover shall be considered future response costs that Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs). All Work Takeover costs not otherwise reimbursed shall be reimbursed under Section XVI (Payment for Response Costs).

114. Notwithstanding any other provision of this Consent Decree, the State and the United States retain all authority and reserve all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANTS

115. Covenant Not to Sue. Subject to the reservations in Paragraphs 118 and 120, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the State, the United States or the Tribes with respect to the Site or this Consent Decree, including, but not limited to:

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112 or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612 or 9613, or any other provision of law;

b. Any claims against the State, the United States or the Tribes, including any department, agency or instrumentality thereof, under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, or 7002 of RCRA, 42 U.S.C. § 6972 related to the Site; or

c. Any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

116. Except as provided in Paragraph 118 (Waiver of Claims Against De Micromis Parties) and Paragraph 124 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States, the State or the Tribes bring a cause of action or issue an order pursuant to the reservations set forth in Section XXII (Covenants Not to Sue by Plaintiffs), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States, State or Tribes are seeking pursuant to the applicable reservation. Settling Defendants reserve, and this Consent Decree is without prejudice to:

a. Claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA, and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any "employee of the government" of the United States, as defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendants' plans, reports, other deliverables or activities.

b. Claims against the State, subject to the provisions of Chapter 41 of the Nevada Revised Statutes, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the State while acting within the scope of his office or employment under circumstances where the State, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.R.S. § 41.0307, nor shall any such claim include a claim based on approval or selection of response actions, or the oversight or approval of Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

117. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

118. Waiver of Claims Against De Micromis Parties. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613) that they may have for all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for

disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (1) 0.002% of the total volume of waste at the Site; or (2) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria, if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. Nothing in this Consent Decree shall be construed to waive or limit in any way Settling Defendants' claims and causes of action against any person who owns or operates or who previously owned or operated any portion of the Site.

119. Settling Defendants agree not to seek judicial review of any final rule listing the Site on the National Priorities List based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

120. Except as provided in Paragraph 118 (Waiver of Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 118, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each Party may have with respect to any matter, transaction or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section

113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2), (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

121. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as otherwise may be provided by law, for matters addressed in this Consent Decree. The "matters addressed" in this settlement are all response actions taken or to be taken, and all response costs incurred or to be incurred by the State, the United States, the Tribes, or any other person, with respect to the Site, as well as all claims for Natural Resource Damages; provided, however, that if the State, the United States or the Tribes exercise rights under the reservations in Section XXII other than in Paragraphs 103(a), (d) and (e), or 108 (a), (d) and (e), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions or Natural Resource Damages that are within the scope of the exercised reservation.

122. Settling Defendants shall, with respect to any suit or claim brought by them for matters related to this Consent Decree, provide notice to the State and the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

123. Settling Defendants agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the State and the United States within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the State and the United States within ten (10) days of service or

receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

124. Waiver of Claim-Splitting Defenses. In any subsequent administrative or judicial proceeding, relating to the Site, initiated by the State, the United States or the Tribes for injunctive relief, recovery of response costs, recovery of Natural Resource Damages or other appropriate relief, as available to each such Party, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting or other defenses based upon any contention that the claims raised by the State, the United States or the Tribes in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiffs).

XXV. ACCESS TO INFORMATION

125. Subject to Paragraph 126 (Business Confidential and Privileged Documents), each Settling Defendant shall provide to NDEP and EPA, upon request, copies of all documents and information within that Settling Defendant's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information related to the Work. Settling Defendants shall also make available to NDEP or EPA, for purposes of investigation, information gathering, or testimony, their respective employees, agents or representatives with knowledge of relevant facts concerning the performance of the Work.

126. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to NDEP or EPA under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), 40 C.F.R. § 2.203(b), and NRS § 459.555 or NRS § 445A.665. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Documents or information determined to be confidential business information or trade secret by NDEP, will be afforded the protection specified in NRS 445A.665 or NRS 459.555, as applicable. If no claim of confidentiality accompanies documents or information when they are submitted, or if NDEP has notified Settling Defendants that the documents or information are not confidential under NRS § 459.555 or NRS § 445A.665, the public may be given access to such documents or information without further notice to Settling Defendants. If, at any time, any confidential business information or trade secrets obtained or utilized pursuant to this Consent Decree are subpoenaed by any Court, administrative or legislative body, or are requested by any other person or entity purporting to have authority to require the production of such confidential business information or trade secret (including requests for production under NRS Chapter 239, or other freedom of information, open records, public records and similar statutes) from NDEP, NDEP, unless prohibited by law or regulation,

shall provide prompt written notice thereof to the Settling Defendants. NDEP shall not immediately and voluntarily surrender the confidential business information or trade secret in a manner that complies with NRS Chapter 239 or other applicable statutes, so that Settling Defendants may seek a protective order or other appropriate remedy. After receipt of the notice specified under this Paragraph, the Settling Defendants shall have the sole responsibility for obtaining any order they believe appropriate. If, absent the entry of such a protective order or other remedy, NDEP is, in the opinion of its counsel, required to disclose the confidential business information or trade secret, then NDEP may disclose that portion of the confidential business information or trade secret that NDEP is required to disclose.

c. Settling Defendants may assert that all or one or more portions of certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law or state law. If a Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide EPA and NDEP with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a record, the record shall be provided to the State and the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all records that they claim to be privileged until the State and the United States have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no last drafts or final versions of documents, reports or

other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged or confidential.

127. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVI. RETENTION OF RECORDS

128. Until ten (10) years after Settling Defendants' receipt of notification of certification of achievement of the Performance Standards by NDEP and EPA (Paragraph 64(b)), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control, or which come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site; provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work; provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be

retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

129. At the conclusion of this document retention period, each Settling Defendant shall notify NDEP and EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by NDEP or EPA, each Settling Defendant providing notice shall deliver any such records or documents to the requesting agency, with notice to the other. Any Settling Defendant may assert that all or one or more portions of certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide NDEP and EPA with the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

130. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the State or the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and

122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVII. NOTICES AND SUBMISSIONS

131. Except as otherwise provided in Paragraphs 45, 66, and 79, any notice or certification pursuant to this Consent Decree shall be in writing. Writing shall mean a hard copy unless the receiving agency gives prior approval for electronic submissions for a particular submission. Whenever, under the terms of this Consent Decree, written notice or certification is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, or to such other individual as has been specified in writing to the Parties. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice or certification as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the State, United States, EPA, Tribes or Settling Defendants, respectively.

As to the Nevada Division of Environmental Protection:
Scott Smale
State Project Coordinator
Nevada Division of Environmental Protection Bureau of Corrective Actions
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701

As to the United States Department of Justice:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Re: DJ #s 90-11-3-08510 and 90-11-3-08510/1

As to the United States Environmental Protection Agency:
David Seter
Remedial Project Manager
United States Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105
Re: SSID # 09BY

As to the Regional Financial Management Officer:

David Wood (MTS-4-2)
Superfund Accounting
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105

As to the Tribes:
Heather Lawrence
Director, Environmental Protection Department
Shoshone Paiute Tribes of the Duck Valley Indian Reservation
P.O. Box 219
Owyhee, NV 89832

with copies, which shall not constitute notice, to:

Lloyd B. Miller
Sonosky, Chambers, Sachse, Endreson & Perry, LLP
900 West Fifth Avenue
Suite 700
Anchorage, AK 99501-2029

As to USDA/USFS:
Kenneth Maas
On-Scene Coordinator
USFS Region 4, Humboldt Toiyabe National Forest
1200 Franklin Way
Sparks, NV 89431
775-352-1223 (ph); 775-355-5399 (fax)
775-770-4769 (cell)
Kmaas@fs.fed.us

As to USFWS:
Damian K. Higgins
Regional Coordinator,
Environmental Response, Environmental Quality Programs
U.S. Fish and Wildlife Service
Pacific Southwest Region
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825

As to Settling Defendants:
Mountain City Remediation, LLC
In Care of Marcus Ferries,
Vice President of ARCO Environmental Remediation LLC,
Its member
201 Helios Way
Houston, TX 77079

with copies, which shall not constitute notice, to:

Adam Cohen, Esq.
Davis Graham & Stubbs
1550 Seventeenth Street, Suite 500
Denver, CO 80202

and

Elizabeth H. Temkin
Temkin Wielga & Hardt LLP
1900 Wazee Street, Suite 303
Denver, CO 80202

132. NDEP or, if applicable, EPA, shall provide contemporaneous copies to the Tribes of all notices and findings or similar documents provided to Settling Defendants, including those relating to the selection of the supervising contractor, Work, remedy review, quality assurance, sampling and data analysis, approval of plans and other submissions for the Work, completion of Remedy Construction, emergency response, force majeure, dispute resolution for Work, stipulated penalties and work takeover.

XXVIII. EFFECTIVE DATE

133. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XXIX. RETENTION OF JURISDICTION

134. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction and relief, as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXX. APPENDICES

135. The following Appendices are attached to and incorporated into this Consent Decree:

"Appendix A": ROD, including appendices

"Appendix B": RD/RA Work Plan

"Appendix C": Site Map

"Appendix D": Form of Remedy Construction Trust Agreement

"Appendix E": Form of Post-Remedy Construction Trust Agreement

"Appendix F": Form of Operation and Maintenance Trust Agreement

"Appendix G": Form of Draft Easement or Environmental Covenant

XXXI. COMMUNITY INVOLVEMENT

136. If requested by either of the Agencies, Settling Defendants shall participate in community involvement activities pursuant to the community involvement plan to be developed by NDEP, in consultation with EPA, in accordance with guidance documents and the NCP. NDEP, in consultation with EPA, will determine the appropriate role for Settling Defendants under the Plan. Settling Defendants shall also cooperate with the Agencies in providing information regarding the Work to the public. As requested by the Lead Agency, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings, which may be held or sponsored by the Lead Agency to explain activities at or relating to the Site.

XXXII. MODIFICATION

137. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of NDEP, EPA and Settling Defendants. Schedules specified in this Consent Decree for submission of draft, final or modified work plans, or any documents which must be submitted pursuant to approved work plans, to the extent such modifications will not delay completion of construction or operation of the Remedy, may be modified by agreement of NDEP and Settling Defendants, upon provision of notice to EPA. All such modifications shall be made in writing.

138. Except as provided in Paragraph 26(a) (Modification of the RD/RA Work Plan and Remedial Design), no material modifications shall be made to the terms of this Consent Decree, including the RD/RA Work Plan and all the other Appendices, without written notification to and written approval of the State, the United States, the Tribes, Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii). Modifications to the terms of this Consent Decree, including the RD/RA Work Plan and all the other Appendices that do not materially alter those documents, may be made by written agreement between the State, the United States, the Tribes and Settling Defendants. Material modifications to the RD/RA Work Plan and all the other Appendices of this Consent Decree that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii), may be made by written agreement between NDEP, EPA and Settling Defendants.

139. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

140. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2) and 28 C.F.R. § 50.7. The State and the United States reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

141. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between or among the Parties.

XXXIV. SIGNATORIES/SERVICE

142. Each undersigned representative of a Settling Defendant, the State, the Tribes and the Assistant Attorney General for the Environment and Natural Resources Division of DOJ certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

143. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the State or the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

144. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree.

Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXV. FINAL JUDGMENT

145. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding between the Plaintiffs and the Settling Defendants with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings between the Plaintiffs and the Settling Defendants relating to the settlement other than those expressly contained in this Consent Decree.

146. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 2012.

_____
United States District Judge
FOR THE UNITED STATES OF AMERICA

FOR THE UNITED STATES DEPARTMENT OF JUSTICE:

Date: 9/20/12

Ignacia S. Moreno
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 9/27/12

Elise S. Feldman
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

DANIEL G. BOGDEN
United States Attorney
District of Nevada

HOLLY VANCE
Assistant United States Attorney
100 West Liberty
Suite 600
Reno, NV 89501
Telephone: (775) 784-5438
Facsimile: (775)784-5181
E-mail: Holly.Vance@usdoj.gov

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 7/18/2012

Jane Diamond, Director
Superfund Division, RegionIX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: 7/13/2012

Joshua Wirtschafter
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

FOR THE STATE OF NEVADA, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF ENVIRONMENTAL PROTECTION:

Date: 6/25/12

Colleen Cripps, PhD.
Administrator
901 S. Stewart Street, Suite 4001
Carson City, NV 89701

Approved as to form and content:

CATHERINE CORTEZ MASTO
Attorney General

By:
Carolyn E. Tanner
Senior Deputy Attorney General

FOR THE STATE OF NEVADA, DEPARTMENT OF WILDLIFE:

Date: 6/28/12

Kenneth E. Mayer
Director
1100 Valley Rd.
Reno, NV 89512

Approved as to form and content:

CATHERINE CORTEZ MASTO
Attorney General

By: _____
Nhu Q. Nguyen
Senior Deputy Attorney General

FOR SHOSHONE PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION:

Date: 7/12/12

Terry Gibson
Chairman
P.O. Box 219
Highway 225/Highway 51
Owyhee, Nevada 89832-0219

FOR ATLANTIC RICHFIELD COMPANY

Date: May 17, 2012

Marcus Ferries
Vice President
Atlantic Richfield Company
201 Helios Way
Houston, Texas 77079
Fax: 1-713-323-7487

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): The Corporation Trust Company

Title: Registered Agent

Address: 1209 Orange Street

Wilmington, DE 19801

Ph. Number: (713) 658-9486

FOR MOUNTAIN CITY REMEDIATION, LLC

Date: May 17, 2012

Marcus Ferries, Vice President of
ARCO Environmental Remediation LLC, its
member
201 Helios Way
Houston, Texas 77079
Fax: 1-713-323-7487

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): The Corporation Trust Company

Title: Registered Agent

Address: 1209 Orange Street

Wilmington, DE 19801

Ph. Number: (713) 658-9486

FOR THE CLEVELAND- CLIFFS IRON COMPANY:

Date: 7/27/2012

James D. Graham
General Counsel and Secretary
200 Public Square, Ste. 3300
Cleveland, OH 440114-2544

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): _____

Title: _____

Address: _____

_____

_____

Ph. Number: _____

FOR E.I. DU PONT DE NEMOURS AND COMPANY:

Date: 7/27/12

Sheryl A. Telford
E.I. du Pont de Nemours and Company
Director, DuPont Corporate Remediation Group
Chestnut Run Plaza - Building 715, Room 201
974 Centre Road
Wilmington, DE 19805
Tel: 302-999-3562

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Sheryl A. Telford
Title: Director, Corporate Remediation
Address: Chestnut Run 715-201
Rte 141 & Faulkland Rd
Wilmington DE 19805
Ph. Number: 302-999-3562

FOR TECK AMERICAN INCORPORATED,
f/k/a Teck Cominco American, Inc., f/k/a Cominco American, Inc.

Date: 5-17-2012

[Name] Phillip A. Resck
[Title] Vice President
[Address] 501 N. Riverpoint Blvd, Ste 300
Spokane, WA 99202

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Same as above

Title: _____

Address: _____

_____

_____

Ph. Number: 509-623-4544