· UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION9

IN THE MATTER OF:
Ruby Mines Site
New Mexico

Western Nuclear, Inc.,
Respondent

ADMINISTRATIVE SETTLEMENT AGREEMENT AND _ORDER ON CONSENT FOR REMOVAL SITE EVALUATION AND INTERIM REMOVAL ACTION

U.S. EPA Region 9
CERCLA Docket No. 2013-07

Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Western Nuclear, Inc. ("WNI" or "Respondent"). This Settlement Agreement provides for the performance by Respondent of a removal site evaluation, interim removal action, and other actions as provided herein, and the reimbursement by Respondent of certain response costs incurred by the United States at or in connection with the Ruby Mines site (the "Site") located in the Smith Lake Chapter of the Navajo Nation, near Thoreau, New Mexico. A map of the Site and the Site vicinity is attached as Attachment 1 to the Scope of Work (Appendix A). The Site lies within Navajo tribal trust lands administered by the Bureau of Indian Affairs ("BIA") on behalf of the Eastern Agency of the Navajo Nation.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the Environment Department and the Mining and Minerals Division of the State of New Mexico (the "State") and the Navajo Nation of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and, subject to the terms of this Settlement Agreement, agrees to perform all actions required by this Settlement Agreement and any modifications thereto, and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

5. Under this Settlement Agreement, Respondent will perform a removal site evaluation and interim removal action, as provided herein. EPA will evaluate the results of the evaluation and, after consultation with the Navajo Nation, EPA will make a response action decision for the Site. The parties will then discuss the terms of another Settlement Agreement which, if executed, may provide for Respondent's execution of the selected response action and for payment of past response costs and other costs for the Site.

II. PARTIES BOUND

6. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and their successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

7. Respondent shall ensure that its contractors, subcontractors, and representatives performing any portion of the Work as defined herein receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

8. EPA intends to consult with and coordinate with the Navajo Nation throughout the performance of the Work and implementation of this Settlement Agreement, and to take Navajo Nation's comments and concerns into consideration. EPA's failure to do so, however, will not affect Respondent's rights or obligations under this Settlement Agreement.

III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are

used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, 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.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

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

e. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred to prepare decision documents, the costs incurred pursuant to Paragraph 32 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 43 (emergency response), and Paragraph 68 (work takeover). Future Response Costs shall also include all Interim Response Costs.

f. "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 each year.

g. "Interim Response Costs" shall mean all costs, including direct and indirect costs, a) paid by the United States in connection with the Site between June 30, 2012 and the Effective Date, or b) incurred in connection with the Site prior to the Effective Date, but paid atter that date.

h. "Mine Area" shall mean the Ruby Mines, consisting of former uranium mines and associated structures and lands, collectively encompassing approximately 40 acres, plus roads, washes and other areas in the vicinity impacted by past mining and hauling activities related to the Ruby Mines.

i. "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.

j. "Navajo Nation EPA" or "NNEPA" shall mean the Navajo Nation Environmental Protection Agency.

k. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

l. "Parties" shall mean EPA and Respondent.

m. "RCRA" shall mean the Solid Waste Disposal Act, as ame11:ded, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "Removal Site Evaluation" shall mean the activities required under Paragraph 23 of this Settlement Agreement.

o. "Respondent" shall mean Western Nuclear, Inc.

p. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral (except when context indicates reference to codes or regulations).

q. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

r. "Site" shall mean the Mine Area and other areas where hazardous substances associated with the Ruby Mines have been deposited, stored, disposed of, placed, or otherwise come to be located.

s. "State" shall mean the State of New Mexico.

t. "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); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

u. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

EPA hereby finds the following facts, which Respondent neither admits nor denies:

10. The Mine Area includes four underground mines of approximately 40 acres combined. Only two of the mines (Ruby 1 and Ruby 3) had adits. This removal action will consist of a Removal Site Evaluation of surface soils and sediments at the Site related to historic mining and processing operations, an interim removal action, and other response actions as detailed herein.

11. Respondent operated the mines during approximately the following dates: Ruby 1 - September 1975 to September 1981; Ruby 2 - April 1979 to November 1981; Ruby 3 - December 1980 to February 1985; and Ruby 4 - May 1982 to February 1985. The mining operations consisted of two underground mine shafts, a series of vent holes, and support facilities. The Site currently includes uranium mine waste piles, a concrete slab associated with former support facilities, former vent holes, exploration drill holes, and sites of unknown materials. The conditions at the Site present a risk of potential releases of hazardous substances to the air, surrounding soils, sediments, surface water, and ground water.

12. Under a 1991 Memorandum of Agreement between the Navajo Nation and EPA Regions 6, 8 and 9, EPA Region 9 has the lead on any EPA response action on lands within the Navajo Nation.

13. Respondent previously performed certain reclamation and closure work at the Site, which was reviewed and approved by government agencies.

14. Roadways, washes, structures and yards near the Mine Area may have been impacted by releases of hazardous substances and contaminants transported by wind and by runoff during snow, rain and flood events.

15. EPA has detected elevated levels of alpha radiation at the Site and radium-226 in the surface soils. Radium is a known human carcinogen, and exposure may be a precursor to bone, liver and breast cancers and other health conditions.

16. This Settlement Agreement reserves and does not address investigation and cleanup of groundwater.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

17. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Ruby Mines Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response actions and for response costs incurred and to be incurred at the Site.

i. Respondent Western Nuclear, Inc. was the "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101 (22) of CERCLA, 42 U.S.C.§ 9601(22).

f The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700{c)(3)(ii) of the NCP.

g. The removal action required by this Settlement Agreement meets the criteria for a removal action under Section 300.41 S(b) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

18. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all

attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

19. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within thirty (30) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least fifteen (15) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within thirty (30) days of EPA's disapproval. The proposed contractor(s) must demonstrate compliance with ANSI/ASQC E-4-1994, "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/B0-1/002), or equivalent documentation as required by EPA.

20. Within fifteen (15) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within fifteen (15) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by the Respondent.

21. EPA has designated Mark Ripperda, Remedial Project Manager in the Region 9 Superfund Division, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC and to the Navajo Nation, by U.S. Mail, overnight, facsimile, or email, as follows:

Mark Ripperda
U.S. EPA, Mail Code SFD-6-2
75 Hawthorne St.
San Francisco, CA 94105
Telephone 415-972-3028
Facsimile 415-947-3518
Email Ripperda.Mark@epa.gov

and

David A. Taylor
Navajo Nation Department of Justice
P.O. Drawer 2010
Window Rock, AZ 86515
Telephone 928-871-6932
Fax 928-871-6200
Email davidataylor@navajo.org

22. EPA and Respondent shall have the right, subject to the requirements of this Section, to change their respective designated OSC(s) or Project Coordinator. Respondent shall notify EPA fifteen (15) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

23. Respondent shall perform, at a minimum, all actions necessary to implement the Scope of Work attached as Appendix A. The actions to be implemented generally include, but are not limited to, conducting a thorough investigation of the contamination on the Site and facility-related contamination in the vicinity; preparing a site-wide radiation exposure survey and soil sampling of all investigation areas, preparing a conceptual site model outlining the exposure pathways, and characterizing exposure pathways. As part of the initial Work Plans described in the attached Scope of Work, Respondent shall submit a detailed schedule for submittal of all deliverables and performance of all planned field activities required under this Settlement Agreement, for review and approval by EPA.

24. All Work under this Settlement Agreement shall be conducted in accordance with the provisions of this Settlement Agreement, CERCLA, the NCP and relevant EPA guidance. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement.

25. EPA, after consultation with NNEPA, will approve, disapprove, require revisions to, or modify, in whole or in part, all documents submitted under this Settlement Agreement (collectively, "Submittals"). If EPA requires revisions, Respondent shall submit a revised Submittal within 30 days ofreceipt of EPA's notification of the required revisions, or within such other time as required by EPA. Respondent shall implement the Submittal as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Submittal, the schedule, and any subsequent modifications shall be deemed incorporated into and become fully enforceable under this Settlement Agreement.

26. Health and Safety Plan. Within sixty (60) days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal actions.

27. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance, after consultation with NNEPA, regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 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-O 1/002, 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.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA and/or the NNEPA, Respondent shall allow EPA and/or the NNEPA, or their authorized representatives, to take split and/or duplicate samples. Respondent shall notify EPA not less than fifteen (15) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

d. Respondent shall submit validated data to EPA electronically (MS Ofiice compatible) within two (2) business days of its receipt by Respondent.

28. Reporting.

a. Unless otherwise directed in writing by the OSC, Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every month after the Effective Date of this Settlement Agreement until EPA's approval of the Removal Site Evaluation Investigation Report. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Settlement Agreement or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form whenever feasible.

c. Any Respondent who owns or controls real property at the Site shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA and the Navajo Nation of the proposed conveyance, including the name and address of the transferee. Any Respondent who owns or controls real property at the Site also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

29. Final Report. Respondent shall submit for EPA review and approval, after consultation with NNEPA, a final report on the adit closure and a final report (the Removal Site Evaluation Investigation Report) summarizing the investigations and other actions taken to comply with this Settlement Agreement. The final report on the adit closure shall be submitted within ninety (90) days after all field work has been completed for the adit closure and the Removal Site Evaluation Report shall be submitted within ninety (90) days after all investigative field work has been completed and all analytical results from the Removal Site Evaluation have been received. The

Removal Site Evaluation Report shall also contain a summary of all field work not described in the adit closure report. The final report shall conform, to the extent applicable, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports", and with "Superfund Removal Procedures: Removal Response Reporting - POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and all manifests and permits generated during the removal action. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted 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."

30. Off-Site Shipments.a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method oftransportation. Respondent 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.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by subparagraphs 30.a and 30.b 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, Respondent shall obtain EPA's certification that the proposed

receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent 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 regulation cited in the preceding sentence. Off-site transfers of laboratory samples wastes pursuant to 40 C.F.R. § 300.440(a)(5) are not subject to the requirements of this subparagraph.

IX. SITE ACCESS

31. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date: (1) provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement, and (2) provide the NNEPA and its designated representatives, including technical contractors, with access at all reasonable times to the Site, or such other property, for the purpose of overseeing, observing, monitoring, and taking split samples, during any EPA activities related to this Settlement Agreement.

32. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within fifteen (15) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA and the Navajo Nation it: after using its best efforts, it is unable to obtain such agreements. With regard to access to the residences and residential yards possibly impacted by activities or materials from the Site, Respondent shall consult with EPA and NNEPA on a coordinated access approach. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs). NNEPA will provide the Navajo Nation's authorization to access Navajo lands in the form of an appropriately executed authorization letter.

33. Commencing on the Effective Date of this Settlement Agreement, Respondent shall refrain from using the Site in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response measures to be implemented pursuant to this Settlement Agreement. Restricted or prohibited activities include, but are not limited to, excavation and disturbance of any soils in any manner that might cause a release of wastes, except as needed for implementation of this Settlement Agreement.

34. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

35. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, 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. Respondent shall also make reasonably available to EPA, for purposes of investigation or information gathering, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

36. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). 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 to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public and the Navajo Nation may be given access to such documents or information without further notice to Respondent.

37. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA and the Navajo Nation 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 Respondent. However, no documents, reports or other information required to be submitted under this Settlement Agreement shall be withheld on the grounds that they are privileged.

38. 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 generated on or after January 1, 2005.

XI. RECORD RETENTION

39. Until seven (7) years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent 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 the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 7 years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

40. At the conclusion of this document retention period, Respondent shall notify EPA and the Navajo Nation at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA or the Navajo Nation, Respondent shall deliver any such records or documents to EPA or the Navajo Nation. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA or the Navajo Nation 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 subject of the document, record, or information; and 6) the privilege asserted by Respondent. EPA may challenge Respondent's privilege claim by notice to Respondent within sixty (60) days following EPA's receipt of such information from Respondent. Respondent shall not destroy any records or documents subject to the privilege claim unless and until allowed by final resolution of EPA's challenge to the claim or EPA's failure to challenge the claim within the time allowed. However, no final documents, reports or other information created or generated under this Settlement Agreement shall be withheld on the grounds that they are privileged.

41. Respondent hereby certifies that to the best of its knowledge and belie±: 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 June 29, 2012 and that it has fully complied with any and all EPA requests for information pursuant to Sections 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.

XII. COMPLIANCE WITH OTHER LAWS

42. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, tribal, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j).

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

43. In the event of any action or occurrence during 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, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his unavailability, Claire Trombadore of the Region 9 Superfund Division, 415-972-3013, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

44. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC either in person or by phone at (415) 972-3028, the Region 9 Spill Response Center at 415-947-4400, and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

45. The OSC, in consultation with NNEPA, shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

46. Payments for Future Response Costs.

a. Within thirty (30) days of the Effective Date, Respondent shall pay to EPA $50,000 (fifty thousand dollars) in prepayment of Future Response Costs. The total amount paid shall be deposited by EPA in the Ruby Mines Site Special Account, within the EPA Hazardous Substance Superfund. These funds shall be retained and used by EPA to conduct or finance Future Response Actions. Any amounts received under this subparagraph will be credited to Respondent in the final accounting pursuant to subparagraph 46.c.

b. Respondent shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis, the United States will send Respondent a bill requiring payment that includes a cost summary listing the direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 48. Respondent shall make all payments required by this Paragraph in the manner required by subparagraph 46.d, with notice as required by subparagraph 46.e. The total amount paid will be deposited by EPA in the Ruby Mines Site Special Account within the EPA Hazardous Substance Superfund. These funds will be retained and used by EPA to conduct or finance future response actions in connection with the Site. Any amounts remaining in the Ruby Mines Site Special Account will be disbursed or credited in accordance with subparagraph 46.c.

c. After EPA issues its written Certification of Completion of Work and EPA has performed a final accounting of Future Response Costs, EPA shall, at EPA's election, offset the final bill for Future Response Costs by the unused amount paid by the Respondent pursuant to subparagraphs 46.a or 46.b, or apply any unused amount paid by the Respondent pursuant to subparagraphs 46.a or 46.b to any other unreimbursed response costs or response actions remaining at the Site for which the Respondent is liable, or remit and return to Respondent any unused amount of the funds paid by Respondent pursuant to subparagraphs 46.a or 46.b.

d. Respondent shall make all payments required by this Paragraph by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondent by EPA Region 9, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 09ZD, and the EPA docket number for this action (CERCLA Docket No. 2013-07).

e. At the time of payment, Respondent shall send notice that payment has been made to both:

Mark Ripperda, Mail Code SFD-6-2

U.S. Environmental Protection Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105

and

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

47. In the event that any payment required under this Section is not made within thirty (30) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

48. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, if Respondent determines that EPA has made a mathematical error, or if Re·spondent believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as agreed by the Parties. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 46 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the person listed in subparagraph 46.e above. Respondent shall ensure that the prevailing party in the dispute shall receive the amount upon which it prevailed from the escrow funds plus interest within ten (10) days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

49. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt in good faith to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

50. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within thirty (30) days of such action, unless the objection(s) has/have been resolved informally.

EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

51. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

52. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure.* For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within forty-eight (48) hours of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide to EPA in writing 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; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent 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.

54. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. 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. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

55. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 56 and 57 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII *(Force Majeure)*. "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

56. Stipulated Penalty Amounts - Major.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in subparagraph 56.b:

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

b. Compliance Milestones

i. Failure to timely submit a final report meeting the requirements of Paragraph 29; or

ii. Failure to make a payment when due.

57. Stipulated Penalty Amounts - Other. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents,

failure to timely perform actions pursuant to this Settlement Agreement, or other noncompliance other than those specified in the preceding Paragraph:

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

58. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 68 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of $250,000.

59. 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 VIII (Work to be Performed), during the period, if any, beginning on the thirty-first (31st) day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Paragraph 51 of Section XVI (Dispute Resolution), during the period, if any, beginning on the twenty-first (21st) day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

60. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

61. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to US EPA Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 09ZD, the EPA docket number for this action, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in subparagraph 46.e.

62. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

63. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

64. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 61. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(!) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622([), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(!) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 68. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. <u>COVENANT NOT TO SUE BY EPA</u>

65. In consideration of the actions that will be perfonned and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. <u>RESERVATIONS OF RIGHTS BY EPA</u>

66. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual

or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

67. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identifiedtherein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of any response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry, or other Federal agencies, related to the Site.

68. Work Takeover.

a. rn the event EPA determines that Respondent has (i) ceased implementation of any portion of the Work, or (ii) is seriously or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Respondent. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondent a period of twenty-one (21) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. a: after expiration of the twenty-one (21)-day notice period specified in subparagraph 68.a, Respondent has not remedied to EPA's satisfaction the circumstances giving

rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafi:er assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this subparagraph 68.b.

c. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution), Paragraph 50, to dispute EPA's implementation of a Work Takeover under subparagraph 68.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under subparagraph 68.b until the earlier of (i) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XVI (Dispute Resolution), Paragraph 51, requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XXVI of this Settlement Agreement in accordance with the provisions of Paragraph 85 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Respondent fails 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 85, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs).

XXI. COVENANT NOT TO SUE BY RESPONDENT

69. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

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

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New Mexico State Constitution, the Navajo Nation Code or the common law of the Navajo Nation, 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; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in subparagraphs 67.b, 67.c, and 67.e - g, but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuantto the applicable reservation.

70. Notwithstanding the foregoing, nothing in this Settlement Agreement shall be interpreted as waiving, abrogating, or resolving: (1) any claims that Respondent has or may have based upon any alleged liability that the United States, including any department thereof, including without limitation the United States Department of Energy and the United States Department oflnterior, any agency, branch or division thereof, including without limitation the United States Nuclear Regulatory Commission or any predecessor or successor agency, has or may have for conditions at the Site pursuant to CERCLA Section 107 or 113, 42 U.S.C. §§ 9607 or 9613, or the Price-Anderson Act of 1957, 42 U.S.C. §§2014, 2210 and 2282a, which amended the Atomic Energy Act, 42 U.S.C. 201 1 et seq.; or (2) any claims with respect to the Work, Future Response Costs, or this Settlement Agreement that Respondent may have against the United States pursuant to any contract between Respondent and the United States.

71. Nothing in this Settlement Agreement shall be deemed to constitute approval or 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).

XXII. OTHER CLAIMS

72. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

73. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

74. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

75. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(±)(2) ofCERCLA, 42 U.S.C. § 9613(±)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(±)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(±)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs.

76. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 1 13(f)(3)(B) of CERCLA, 42 U.S.C. § 96I3(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

77. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(±)(2) and (3) of CERCLA, 42 U.S.C. § 9613(±)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into any settlements that give rise to contribution protection pursuant to Section 113(±)(2).

XXIV. INDEMNIFICATION

78. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

79. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

80. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between Respondent 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, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

81. At least seven (7) days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its 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 Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. PERFORMANCE GUARANTEE

82. In order to ensure the full and final completion of the Work, Respondent shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of $350,000 (three hundred fifty thousand dollars) (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is 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. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

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

e. A demonstration by Respondent that Respondent meets the financial test criteria of 40 C.F.R. § 264.143(£) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(£) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of Respondent, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.14 l(h)) with Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(£) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

83. If at any time during the effective period of this Settlement Agreement, the Respondent provides a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to subparagraph 82.e or subparagraph 82.f above, Respondent also shall comply with the other relevant requirements of 40 C.F.R. § 264.143(£), 40 C.F.R. § 264.15 l(f), and 40 C.F.R. § 264.151(h)(l) relating to these methods unless otherwise provided in this Settlement Agreement, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(£)(1). For purposes of the Performance Guarantee methods specified in this Section XXVI, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Settlement Agreement, and the terms "current closure cost estimate"

"current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

84. In the event that EPA determines at any time that a Performance Guarantee provided by Respondent pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that Respondent becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondent, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of Respondent becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 82 of this Settlement Agreement that satisfies all requirements set forth in this Section XXVI. In seeking approval for a revised or alternative form of Performance Guarantee, Respondent shall follow the procedures set forth in subparagraph 86.b.ii of this Settlement Agreement. Respondent's inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Settlement Agreement, including, without limitation, the obligation of Respondent to complete the Work in strict accordance with the terms hereof.

85. The commencement of any Work Takeover pursuant to Paragraph 68 of this Settlement Agreement shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to subparagraph 82.a, 82.b, 82.c, 82.d, or 82.f, and at such time EPA 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 EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to subparagraph 82.e, Respondent shall immediately upon written demand from EPA deposit into an account specified by EPA, 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 EPA.

86. <u>Modification of Amount and/or Form of Performance Guarantee</u>

a. Reduction of Amount of Performance Guarantee. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 82 above, Respondent may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed to by the Parties, petition EPA in writing to request a

reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Respondent shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Respondent shall follow the procedures set forth in subparagraph 86.b.ii of this Settlement Agreement. If EPA decides to accept such a proposal, EPA shall notify the petitioning Respondent of such decision in writing. After receiving EPA's written acceptance, Respondent may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Respondent may reduce the amount of the Performance Guarantee required hereunder 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 84 or 86 of this Settlement Agreement.

b. Change of Form of Performance Guarantee.

i. If, after entry of this Settlement Agreement, Respondent desires to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Respondent may, on any anniversary date of entry of this Settlement Agreement, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in subparagraph 86.b.ii of this Settlement Agreement. Any decision made by EPA on a petition submitted under this subparagraph b.i shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum.

ii. Respondent shall submit a written proposal for a revised or alternative form of Performance Guarantee to 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. Respondent shall submit such proposed revised or alternative form of Performance Guarantee to the OSC in accordance with Paragraph 21 of this Settlement Agreement, with a copy to Harrison Karr, Assistant Regional Counsel, USEPA Region 9, Mail Code ORC-3, 75 Hawthorne St., San Francisco CA 94105. EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee,

Respondent 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 EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Respondent 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 the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Paragraph 21 of this Settlement Agreement, with a copy to Harrison Karr, Assistant Regional Counsel, USEPA Region 9, Mail Code ORC-3, 75 Hawthorne St., San Francisco CA 94105.

c. Release of Performance Guarantee. If Respondent receives written notice from EPA in accordance with Paragraph 90 hereof that the Work has been fully and finally completed in accordance with the terms of this Settlement Agreement, or if EPA otherwise so notifies Respondent in writing, Respondent may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Respondent 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, Respondent may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XXVII. MODIFICATIONS

87. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly and provided to Respondent and the Navajo Nation, but shall have as its effective date the date of the OSC's oral direction to Respondent's representative. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

88. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 87.

89. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

90. When EPA determines, after consultation with NNEPA, and after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including payment of Future Response Costs or record retention, EPA will provide written notice to Respondent. If EPA determines, after consultation with NNEPA, that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies. Respondent shall correct the deficiencies and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to correct the deficiencies as directed by EPA shall be a violation of this Settlement Agreement.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

91. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient' cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

92. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendix is attached to and incorporated into this Settlement Agreement:

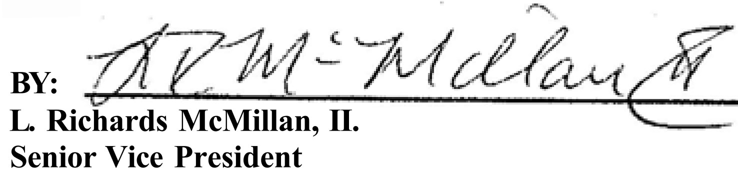
Appendix A: Scope of Work

XXX. EFFECTIVE DATE

93. This Settlement Agreement shall be effective upon signature by the Regional Administrator or his/her delegatee.

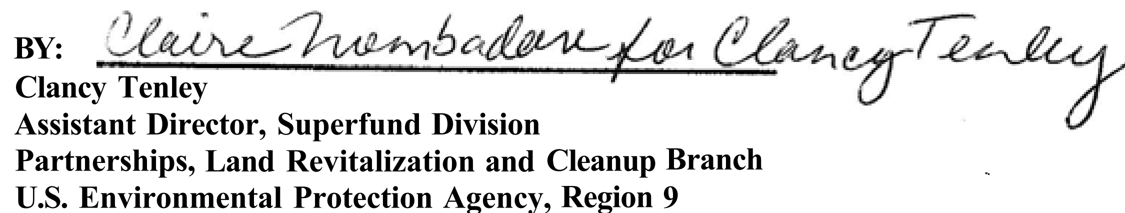
The undersigned representative(s) of Respondent certifies that s/he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party s/he represents to this document.

Agreed this 25TH day of JUNE, 2013.
For Respondent Western Nuclear, Inc.



BY: ______________________
L. Richards McMillan, II.
Senior Vice President

It is so ORDERED and Agreed this 15th day of , July 2013.



BY: ______________________
Clancy Tenley
Assistant Director, Superfund Division
Partnerships, Land Revitalization and Cleanup Branch
U.S. Environmental Protection Agency, Region 9

APPENDIX A

**SCOPE OF WORK
FOR ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT
FOR REMOVAL SITE EVALUATION
AND INTERIM REMOVAL ACTION
FOR RUBY MINES SITE**

1. Introduction

The Interim Removal Action for the Ruby Mines Site ("Site") is a time-critical removal action to investigate and mitigate actual or threatened releases of hazardous substances. This Scope of Work ("SOW") specifies actions required to be completed by Western Nuclear, Inc. (WNI), Respondent, pursuant to the Administrative Order on Consent ("AOC") CERCLA Docket No. 2013-07. All terms used in this SOW shall be interpreted in a manner consistent with the definitions provided in the AOC. In the event of any conflict between this SOW and the AOC, the AOC shall control.

2. Description of the Site

The Site and vicinity are shown in Attachment 1. The areas to be addressed by this Scope of Work include:

(1) Ruby 1 and 2 mines. Only Ruby 1 had surface operations, which occupies approximately 25 acres,
(2) Ruby 3 and 4 mines. Only Ruby 3 had surface operations, which occupies approximately 15 acres,
(3) The mine haul roads, along with their shoulders, from the mine to the nearest intersection with a paved road,
(4) Vent holes related to the mines,
(5) Washes in the vicinity of the mines,
(6) Exploratory holes in the vicinity of the mines,
(?) Structures and yards located in close proximity to the mines where mine-related materials (e.g., waste rock or former structures) may be located.

In addition, Respondent may be required to characterize additional "Step Out" areas in the field, if EPA determines that this is appropriate based on exceedances of the investigation level at the margins of the areas described above, or if additional areas of mine waste are identified in proximity to the Site.

Cultural Resources Survey: Respondent shall perform a Cultural Resources Survey and shall submit a Cultural Resources Survey Report for review and approval by EPA, after consultation with the Navajo Nation. Unless required for completion of the Cultural Resources Survey, no intrusive work on the Site shall be performed until EPA approval of this Report.

3. Three Phases of the Work - Overview

This SOW requires three phases of work, to be performed pursuant to approved work plans. These three phases may overlap to some degree:

Phase 1 - Adit and Vent Hole Fencing and Closure, and Site Signage: Following the effective date of the AOC, Respondent shall maintain the fence around the adit and vent holes at Ruby #1 to preclude access to the large open holes. Respondent shall properly close the adit and vent holes as soon as reasonably possible. In addition, Respondent shall create and post bilingual (English and Navajo) signs to warn the public about potential hazards at the Site. Respondent shall also close any other physical hazard features such as additional vent holes that may be discovered during the course of the work.

Phase 2 - Gamma Scanning and Background Study : Respondent shall perform transect gamma scans of the Site areas and perform a representative Background Study based on soil sampling, consistent with the Multi-Agency Radiation Survey and Site Investigation Manual ("MARSSIM").

Phase 3 - Removal Site Evaluation ("RSE"): Respondent shall characterize the lateral and vertical extent of contamination in surface and subsurface soils and sediments in the areas of the Site defined in Section 2 above as well as any additional areas identified as a result of the transect scans in Phase 1. Respondent shall use MARSSIM as the over-arching guidance for the RSE investigation.

4. General Requirements

4.1 Priority Media: Priority media to be addressed at this Site include soils, sediments, dust, groundwater and surface water, which present the greatest potential risk to human health and the environment.

4.2 Contaminants of Concern: Contaminants of Concern (COC) include radium 226 (^{226}Ra), the primary risk driver associated with uranium ore extraction. Gamma activity levels that potentially exceed background levels have been detected at the Site, including the adjacent roads, vent holes and exploratory holes. All samples from the Site shall be analyzed for ^{226}Ra activity.

4.3 Additional Analytes at Selected Locations: In addition to ^{226}Ra activity, Respondent shall analyze soil and sediment samples from selected locations for contaminants of concern frequently associated with mining activities. The full suite of contaminants for these analyses shall include uranium, stable metals, volatile organic compounds, semi-volatile organic compounds, PCBs, total petroleum hydrocarbons and explosives, including perchlorate.

4.4 Investigation Level: For the purposes of this RSE, EPA has selected an investigation level for ^{226}Ra, of 1.24 pCi/g above background. This investigation level is based on EPA's preliminary remediation goal ("PRG") for ^{226}Ra plus daughters for a residential risk scenario at another site and is temporarily used here as a guide. Scanning measurements must meet a scan minimum detectable concentration (MDC) of 50% of the Investigation Level.

4.5 Preliminary Remediation Goals (PRG): The PRG and screening level concentration for Ra-226 shall be 1.24 pCi/g above background. PRGs for other potential contaminants of concern shall be taken from the EPA Region 9 RSL tables, available at http://www.epa.gov/region9/superfund/prg/

4.6 Multi-Agency Radiation Survey & Site Investigation Manual ("MARSSIM"): The activities conducted as part of this removal action shall be conducted in a manner consistent with MARS SIM specifications to facilitate implementation of a final status survey at the completion of all mitigation activities

4.7 Notice of Fieldwork and Sampling: Respondent shall provide US EPA and Navajo Nation EPA (collectively "the Agencies") with at least two (2) working days notice prior to conducting any on-site activities. In addition, Respondent shall provide 2-week notice of all sampling activities, including soil, sediment and groundwater sampling and scanning. This will assist the Agencies in providing appropriate oversight and notice to potentially affected residents.

4.8 Split Samples: Upon request from EPA, Respondents shall provide 10% splits to be analyzed by EPA's laboratory for corroboration analysis.

4.9 Data Reports: Respondents shall provide all data in both electronic form and hard copy. Data should be provided in Microsoft Access or Excel files. In addition, maps should be provided as Arc GIS shape files.

5. Detailed Requirements for the Three Phases of the Work

5.1 Phase 1 - Adit and Vent Hole Fencing and Closure and Site Signage

5.1.1 Adit and Vent Hole Fencing and Closure: Respondent shall maintain the recently installed fencing around the open adit and vent holes at Ruby #1 to prevent access to the physical hazard posed by the holes. The respondent shall close the holes and tunnel in an appropriate manner to prevent future entry to the adit and vent hole and to prevent collapse of the ground near the adit.

5.1.2 Site Signage: Respondent shall install bilingual (English and Navajo) signs on each cardinal direction of the two Mine Areas (Ruby 1 and Ruby 3).

5.2. Phase 2 - Transect Gamma Scan and Background Study:

5.2.1 Transect Gamma Scan: Respondent shall conduct a gamma scan of the potentially impacted areas described in Section 2. The transect scan should be designed with an appropriate step out to determine the lateral limits of contamination.

5.2.2 Background Study: Respondent shall conduct a background study consistent with MARSSIM. Respondent shall propose at least one reference area based on geologically similar soils, upgradient and upwind of the Site in an area undisturbed by uranium mining. A gamma scan of the background area(s) will be performed, in addition to collection and testing of surficial soil for ^{226}Ra activity total uranium, and stable metals (including arsenic, molybdenum, selenium, vanadium, and mercury).

5.3 Phase 3 - Removal Site Evaluation {"RSE"):

5.3.1. Respondent shall model its Ruby Mines Site RSE to the GE/UNC Removal Site Evaluation ("RSE") Work Plan (2006), or other suitable RSE Work Plan identified by EPA. Soil samples shall be collected on a grid determined on a site-specific basis using a statistical tool (such as Visual Sampling Plan).

5.3.2. Characterization of Surface, Subsurface Soils and Sediments: Respondents shall characterize the soils to a sufficient depth to confirm the absence of contamination or until bedrock is reached, as determined by a field gamma meter and confirmatory soil sampling. Respondent shall sample and analyze surface and sub-surface soils in the areas described in Section 2 of this SOW. Sampling in all mine process areas and the step out area shall include surface sampling and subsurface sampling at appropriate intervals to a depth that confirms the vertical extent of contamination, as determined by a field gamma meter and confirmatory soil sampling.

5.3.3 Screening for Additional Analytes at Mine Areas: Respondent shall sample and analyze soil samples at defined depth intervals from a minimum of eight locations, four from each of the Ruby 1 and 3 Mine Site Areas, for the full suite of contaminants referenced in paragraph 4.2 above. Respondent shall propose locations for the eight locations to be analyzed for the full suite of contaminants in the Field Sampling Plan/Quality Assurance Sampling and Analysis Plan (FSP/QASP) work plan(s), based on Site operational history and probable usage of solvents, acids, bases and other materials. Final locations shall be selected by EPA, in its approval of the Phase 3 work plan.

5.3.4 Groundwater Sampling: Respondent shall sample and analyze groundwater from the nearby livestock well DWR6T519, or report the sampling results from another agency if they exist, for uranium and a full metals suite.

5.3.6 Characterization of Existing Soils and Vegetation: Agronomic parameters shall be identified to help with evaluation oflong-term mitigation options, including revegetation.

6. Work Plans

Respondent is required to develop the following work plans and to submit them for EPA review and approval or approval with modifications, consistent with the AOC. All Work Plans shall be submitted no later than 60 days after the Effective Date of the AOC, unless a different schedule is approved by EPA.

6.1 Overall Removal Action Work Plan: Respondent shall develop a plan for the overall scope of work. The individual work plans for Phases 1, 2, and 3 of Work may be submitted separately or as part of a single Overall Removal Work Plan.

6.2 Health & Safety Plan: This plan shall identify all hazards and include both directives and specific operating procedures that will be used to mitigate those hazards.

6.3 Quality Assurance Project Plan: A Quality Assurance Project Plan documents the planning, implementation, and assessment procedures for a particular project, as well as any specific quality assurance and quality control activities. See the EPA "Guidance on developing Quality Assurance Project Plans that meet EPA specifications for new and existing data", dated guidance December 2002, EPA/240/R-02/009. With respect to technologically-enhanced naturally occurring radioactive material ("TENORM") in groundwater, Respondent shall develop a plan consistent with the Time-Critical Quality Assurance Sampling Plan for Radiation Assessment of Unregulated Drinking Water Sources (October 8, 2010, EPA Emergency Response Section).

6.4 Field Sampling Plan/Quality Assurance Sampling and Analysis Plan (FSP/QASP): Respondent shall develop vertical and lateral characterization and verification sampling utilizing an appropriate statistical approach and a sufficient radiological scanning approach. An approach consistent with MARSSIM should be used. Visual Sampling Plan software can be used to properly document that soil sampling approach is statistically representative.

6.5 Construction Work Plan: Specify how all construction activities will be implemented, including adit and vent hole closures.

6.6 Approved Work Plans and Schedules: Respondent shall complete all work in accordance with the work plans and schedules approved by EPA pursuant to the AOC.

7. Schedules

The Work to be performed pursuant to the AOC and this SOW shall be performed in compliance with the following schedule, unless otherwise agreed by the parties or excused by a Force Majeure:

- Draft Workplan for Phase 1 (Adit and Vent Hole Closure)- Submit within 30 days of the effective date of the AOC
- Field work for Phase 1 -

a. Adit Closure - Complete field work within 30 days from approval of Work Plan
b. Signage - Install signs within 30 days from approval of Work Plan

- Cultural Resources Survey- Submit the Survey Report within 60 days of the effective date of the AOC
- Draft Workplan for Phase 2 (Gamma Scanning and Background Determination) - Submit within 45 days of the effective date of the AOC
- Field Work for Phase 2 (Gamma Scanning and Background Data Collection) - Begin field work within 30 days from approval of the Workplan
- Phase 2 Summary Report - Submit within 45 days from completion of field work
- Draft Workplan for Phase 3 (RSE Investigation) - Submit within 30 days of submittal of the Phase 2 Summary Report
- Field work for Phase 3 (RSE)- Begin within 30 days from approval of the Workplan
- Completion Report (includes RSE Report) - Submit within 60 days of receipt of all validated analytical data.

8. Reporting

8.1. Weekly Technical Calls: Respondents shall, as needed, participate in weekly technical conference calls with EPA's project manager, EPA's consultants and Navajo Nation representatives. On the weekly call, Respondent's representatives shall provide updates on all tasks and raise issues that may need to be resolved in order to expedite completion of the Work.

8.2. Monthly Reporting - Respondent shall provide a Monthly Report to the OSC/RPM via email, no later than the last day of the first full month following the Effective Date of the AOC, and include in each report a complete update on all field, analytic and planning activities.

8.3. Laboratory Results: A copy of all laboratory results shall be provided to EPA within 5 days of Respondent's or Respondent's consultant's receipt of such results. Laboratory results need not be validated for this submittal.

8.4. Final RSE and Completion Report: Respondent shall provide a comprehensive Removal Site Evaluation Report no later than 90 days after all field work has been completed and all analytic results from the RSE have been received. The Removal Site Evaluation Report shall integrate all data used, both existing and newly collected, into a single, coherent characterization report deliverable. This report shall be provided as specified in the AOC. As part of the Removal Site Evaluation Report, Respondent shall propose post-removal site controls consistent with Section 300.415(1) of the NCP and OSWER Directive No. 9360.2-02.

9. List of Attachments

Attachment 1 - Map of Site and Site Vicinity

Historical Haul Road

Covered Waste Pile

Historical Mine Structure

Ruby Mine #1

Ruby Mine #2

Ruby Mine #4

Covered Waste Pile

Ruby Mine #3

Historical Haul Road

Legend

& Ruby Mine Locations

Bing Aerials - 2011/2012

Note: Actual Mine Locations Generalized.

0 0.5 1 Miles

Attachment 1 Ruby Mines Map