

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX and REGION VI

IN THE MATTER OF:)	
)	CERCLA Docket No. 09-2026-01
)	CERCLA Docket No. 06-03-25
Haystack Mines Site)	
)	
BNSF Railway Company,)	
)	
Respondent)	
)	
Proceeding Under Sections 104, 106(a),)	ADMINISTRATIVE SETTLEMENT
107 and 122 of the Comprehensive)	AGREEMENT AND ORDER ON CONSENT
Environmental Response, Compensation)	FOR BACKGROUND STUDY, DATA GAP
and Liability Act, 42 U.S.C. §§ 9604,)	ANALYSIS, AND ENGINEERING
9606(a), 9607 and 9622)	EVALUATION AND COST ANALYSIS

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and BNSF Railway Company, formerly known as Burlington Northern and Santa Fe Railway Company (“Respondent”). This Settlement provides for the performance of a background study, data gap analysis, and Engineering Evaluation/Cost Analysis (“EE/CA”) by Respondent and the payment of certain response costs incurred by the United States at or in connection with the Haystack Mines Site (the “Site”) generally located at SE ¼ Section 13, T13N, R11W; NE ¼ Section 24, T13N, R11W; SW ¼ Section 18, T13N, R10W; and Section 19, T13N, R10W, in McKinley County, New Mexico, and the Baca/Prewitt Chapter of the Navajo Nation.

2. This Settlement 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 (“CERCLA”), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region IX to the Branch Manager, Superfund and Emergency Management Division (now Assistant Director) by Region IX Delegation Nos. R9 14-14C (May 1, 2019) and R9 14-14D (May 9, 2018), and by the Regional Administrator of EPA Region VI to the Director, Superfund Division, by EPA Region 6 Delegations R6-14-14-C and R6-14-14-D.

3. EPA has notified 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 has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement 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, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondent and its successors, and assigns. Any change in ownership or corporate status of Respondent including, but not

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limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement.

6. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondent or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

7. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that 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 or its attached appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions are needed to implement the removal action, including, but not limited to, the following properties: SE ¼ Section 13, T13N, R11W, New Mexico ("Section 13"); NE ¼ Section 24, T13N, R11W, New Mexico ("Section 24"); SW ¼ Section 18, T13N, R10W, New Mexico ("Section 18"); and Section 19, T13N, R10W, New Mexico ("Section 19").

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal, State, or Navajo Nation holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXVI.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

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“Future Response Costs” shall mean all costs including direct, indirect, payroll, contractor, travel, and laboratory costs that the United States pays after the Effective Date in implementing, overseeing, or enforcing this Settlement, including: (i) in developing, reviewing and approving deliverables generated under this Settlement; (ii) in overseeing Respondent’s performance of the Work; (iii) in implementing community involvement activities under Section VIII (Performance of the Work); (iv) in assisting or taking action to obtain access under Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation); (v) in taking action under Paragraph 101 (Access to Financial Assurance); (v) in taking response action because of Respondent’s failure to take emergency action under Section XI (Emergency Response and Notification of Releases); (vi) in implementing a Work Takeover under Paragraph 40; and (vii) in enforcing this Settlement, including all costs paid under Section XIII (Dispute Resolution) and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (“ATSDR”) costs regarding the Site and all Interim Response Costs.

“Haystack Mines Site Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the Administrative Settlement Agreement and Order on Consent for the performance of an interim time-critical removal action by Respondent at the Site entered into by BNSF and EPA in 2017 (CERCLA Docket Nos. 09-2017-02 and 06-02-17).

“Including” or “including” means “including but not limited to.”

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established under Section 9507 of the Internal Revenue Code, 26 I.R.C. § 9507, compounded annually on October 1 of each year, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the date EPA signs this Settlement, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Interim Response Costs” shall mean all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States: (a) pays in connection with the Site between May 27, 2023 and the Effective Date; or (b) incurred between May 27, 2023 and the Effective Date, but paid after the Effective Date, in implementing, overseeing, or enforcing this Settlement, including: (i) in developing, reviewing and approving deliverables generated under this Settlement; (ii) in overseeing Respondent’s performance of the Work; (iii) in implementing community involvement activities under Section VIII (Performance of the Work); (iv) in assisting or taking action to obtain access under Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the

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amount of just compensation); (v) in taking action under Paragraph 101 (Access to Financial Assurance); (v) in taking response action because of Respondent's failure to take emergency action under Section XI (Emergency Response and Notification of Releases); (vi) in implementing a Work Takeover under Paragraph 40; and (vii) in enforcing this Settlement, including all costs paid under Section XIII (Dispute Resolution) and all litigation costs. Interim Response Costs shall also include ATSDR costs regarding the Site.

"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.

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

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

"Parties" shall mean EPA and Respondent.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k (also known as the Resource Conservation and Recovery Act).

"Respondent" shall mean BNSF Railway Company.

"Scope of Work" or "SOW" means the document attached as Appendix A which describes the activities Respondent shall perform to implement the background study, data gap analysis, and EE/CA, and any modifications made thereto in accordance with this Settlement.

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

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

"Site" shall mean the Haystack Mines Site, encompassing approximately 174 acres, located at Sections 13, 18, 19, and 24, in McKinley County, New Mexico, and the Baca Prewitt Chapter of the Navajo Nation. A removal assessment identified three abandoned uranium mines ("AUMs") within the Site: the Haystack No. 1 AUM; the Bibo Trespass AUM; and the Section 24 AUM. The Site is depicted generally on the map attached as Appendix B.

"State" shall mean the State of New Mexico.

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“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (d) any toxic pollutant or water contaminant as defined by Title 20, Chapter 6, Part 2 of the New Mexico Administrative Code or any constituent identified in Table A-1 of the New Mexico Environment Department’s *Risk Assessment Guidance for Site Investigation and Remediation*; and (e) any “hazardous substance” under Section 2104(Q) of Navajo Nation CERCLA, 4 N.N.C. § 2104(Q).

“Work” shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Paragraph 46 (Retention of Records and Information).

“Work Plan” shall mean the Background Study and Field Investigation and Data Gap Work Plans outlined in Appendix A.

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with Paragraph 40.

IV. FINDINGS OF FACT

EPA makes the following Findings of Fact:

8. The Site is located atop the Haystack Butte, approximately 500 feet south of Haystack Mountain, and approximately five miles east of Prewitt, McKinley County, New Mexico. The Site encompasses Section 13 (federal land administered by the Bureau of Indian Affairs (“BIA”)), Section 18 (allotment land), Section 19 (privately-owned land), and Section 24 (allotment land).

9. EPA performed a removal assessment pursuant to 40 C.F.R. § 300.410 at the Site in 2014. The removal assessment area consists of a former open pit complex including at least three adjacently located AUMs where elevated surface gamma activity has been detected.

10. The AUMs that make up the Site were owned and operated by various persons and entities from approximately 1952 to 1981 and produced a total of over 400,000 tons of uranium ore.

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11. The removal assessment area encompassed a total of approximately 174 acres. Approximately 10 residences and a church are located within one quarter mile of the removal assessment area.

12. The Haystack No. 1 AUM comprises the eastern portion of the removal assessment area. The geographic coordinates for the approximate center of the AUM are 35.345713 North latitude and 107.943650 West longitude. Ore-mining operations occurred across the area and included numerous pits. The pits on Section 19 were reclaimed in 1991 by private parties and are no longer present at the AUM. The AUM was screened in 2008 by EPA for surface gamma activity, at which time elevated gamma activity was found.

13. The Bibo Trespass AUM comprises the northwestern portion of the removal assessment area. The geographic coordinates for the approximate center of the Bibo Trespass AUM are 35.349522 North latitude and 107.94863 West longitude. The former ore-mining operations included at least one pit. The pit was reclaimed in 1992 by EPA, and is no longer present at the Site. The AUM was screened in 2008 by EPA for surface gamma activity, at which time elevated gamma activity was found.

14. The Section 24 AUM comprises the southwestern portion of the removal assessment area. The geographic coordinates for the approximate center of the Section 24 AUM are 35.346544 North latitude and 107.947928 West longitude. The former ore-mining operations included at least three pits. The pits were reclaimed in 1991 by EPA and are no longer present at the AUM. The AUM was screened in 2008 by EPA for surface gamma activity, at which time elevated gamma activity was found.

15. In 1952, Santa Fe Pacific Railroad Company ("SFPR") formed the Haystack Mountain Development Company ("HMDC"), which began exploration of uranium deposits in limestone at the Haystack Butte. HMDC conducted mining operations on a portion of the Site from 1952 to 1957, 1959 to 1961, and 1963 to 1965.

16. In 1987, HMDC merged into the Atchison, Topeka and Santa Fe Railway Company. On December 31, 1996, the Atchison, Topeka and Santa Fe Railway Company merged into Burlington Northern Railroad Company and the surviving company was called Burlington Northern and Santa Fe Railway Company. In 2005, the Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

17. At the time uranium ore was mined on Section 19, Township 13N, Range 10W, SFPR owned the mineral rights to Section 19. SFPR is a subsidiary of BNSF Railway Company.

18. In 1990, EPA conducted a preliminary radiological assessment at the Bluewater Uranium Mine Sites, which included the areas known as Brown-Vandever and Nan-a-bah Vandever mines (aliases for the mines at the Haystack Mines Site). EPA issued an action

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memorandum in 1991 to address hazards at the four parcels that included the mines. EPA conducted response actions at the two allotment parcels (Sections 18 and 24). In addition, EPA conducted work on Section 13 pursuant to an Interagency Agreement with the Department of Energy. EPA also issued an administrative order to the Cerrillos Land Company, SFPR, and the Atchison, Topeka & Santa Fe Railway Company to conduct hazard reclamation on Section 19. Following the work conducted in 1991 and 1992 on the four parcels, EPA concluded at that time that the areas had been reclaimed to levels protective of public health.

19. In 2014, EPA performed a gamma activity survey of the surface soils at the Site and collected surface and subsurface soil samples and co-located one-minute surface gamma activity counts at the removal assessment area. A summary of the Radium 226 (“Ra-226”) analytical data for surface and subsurface soil samples and the co-located one-minute surface gamma activity counts are presented in a 2015 Removal Assessment Report. Elevated concentrations of Ra-226 in surface soil were found at locations across the Site, including in the one-acre area surrounding the residence located within the boundary of Section 18. Analytical results indicated that concentrations of Ra-226 identified in approximately 108 acres of surface soil at the Site exceeded the corresponding derived concentration guidance levels and may pose a potential threat to human health and the environment. Elevated Ra-226 concentrations and increased gamma activity were also detected in nearby drainages. The Removal Assessment Report suggested that a time-critical removal action (“TCRA”) might be appropriate to address potential exposure to contamination migrating off-site.

20. In 2017, the Parties entered into an Administrative Settlement Agreement and Order on Consent (“ASAOC”) pursuant to which Respondent carried out an interim TCRA to address six areas at the Site that contained surface and near-surface soils conditions that posed an imminent and substantial endangerment to human health and the environment. Pursuant to the TCRA ASAOC, Respondent manually and mechanically excavated material with elevated gamma counts from six areas, including near the residence. Respondent backfilled the excavation areas with clean material and carried out confirmation gamma scanning. Respondent placed excavated material in a temporary consolidation waste pile on Section 19 and covered it with a geotextile membrane and soil. Fencing and signage was installed to prohibit trespassing near the waste pile. Respondent also coordinated, paid for, and implemented the relocation of on-Site residents into brand new homes located outside of the Site. On May 26, 2023, EPA issued Respondent a notice of completion of work pursuant to the TCRA ASAOC.

21. The TCRA reduced immediate risks posed by Ra-226 to human health and the environment at the Site in the short-term by excavating contaminated soils from six areas, consolidating them in one place at the Site, and placing a temporary cover atop the waste pile to reduce the likelihood of exposure. The Removal Assessment Report also recommended that an EE/CA be performed for the Site to further evaluate the need for a non-time critical removal action.

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22. As described above, Ra-226 has been documented in soils at the Site. Radium is formed when uranium and thorium break down in the environment. Two of the main radium isotopes found in the environment are radium-226 and radium-228. During the decay process, alpha, beta, and gamma ionizing radiation are released. Radium may be found in air and water. Radium in the soil may be absorbed by plants.

23. Analytical results indicate that concentrations of Ra-226 identified in some soils at the Site are elevated and may pose a potential threat to human health and the environment. Acute inhalation exposure to high levels of radium can cause adverse effects to the blood (anemia) and eyes (cataracts). Radium exposure also has been shown to affect the teeth, causing an increase in broken teeth and cavities. Exposure to high levels of radium can result in an increased incidence in bone, liver, and breast cancer. EPA and the National Academy of Sciences, Committee on Biological Effects of Ionizing Radiation have stated that radium is a known human carcinogen (ATSDR 1999a). Inhalation of radium contaminated particulates is of particular concern. Radium emits alpha radiation, which, when inhaled, becomes a source of ionizing radiation in the lung and throat, possibly leading to toxic effects.

24. Some of the soils containing elevated concentrations of Ra-226 are fine-grained and therefore could potentially result in human exposure via inhalation or ingestion. The Site contamination is potentially readily accessible to offsite residents. Persons traversing the Site may be exposed to contaminated dust by inhalation or ingestion of contamination sorbed to particulate matter. Incidences of direct contact with natural and mechanically generated dust during such activities account for known contamination exposure scenarios at the Site. Ra-226 and uranium may be entrained in naturally and mechanically generated dust and/or transported on shoes and clothing of residents passing over contaminated areas. Gardening and other yard work, including gathering traditional herbs and plants, also may result in exposure to contamination.

25. Activities that occur in contaminated areas that may put persons at risk include walking or hiking, livestock grazing, and different modes of transportation including all-terrain vehicles, motorcycles, or horses. Persons may drive their vehicles over contaminated areas as well, which could contribute to exposure pathways via dust generation. Children may eat contaminated soils during play activities. In addition, Navajo ceremonies conducted on grazing land may also put persons at risk.

26. Contamination documented in soils at the Site may migrate off-site via wind and water transport mechanisms including mechanical dust generation. Some of the radium daughter particles, such as radon, also have a specific tendency to adhere to dust particles and migrate.

27. Rainfall events may lead to transport of the contamination from the Site. High soil erosion rates may indicate transport of contamination from the Site constituting a release

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of hazardous substances and resulting in secondary contamination sources. In addition, contaminants may migrate during high wind events due to the propensity for contaminants to adhere to windborne dust particles.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

28. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The 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). Respondent was an “owner” and/or “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 Paragraphs 18-27 of the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance at or from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions described in the Findings of Fact above constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP, 40 C.F.R. § 300.700(c)(3)(ii).

VI. SETTLEMENT AGREEMENT AND ORDER

29. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply

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with all provisions of this Settlement, including, but not limited to, all attachments to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND REMEDIAL PROJECT
MANAGER

30. 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 15 days after 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 10 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 30 days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements.

31. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement:

Thomas Jones
BNSF Railway Company
11925 W Thompson Ranch Rd
El Mirage, AZ 85335
(623) 463-4080
Thomas.Jones3@BNSF.com

To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

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32. EPA has designated Danielle Huang, Region IX, as the Remedial Project Manager (“RPM”). Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to EPA’s RPM, Danielle Huang, and Karen Berecz, Region VI Site Assessment Manager (“SAM”). EPA and Respondent shall have the right, subject to Paragraph 30, to change their respective designated RPM or Project Coordinator. Respondent shall notify EPA 10 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

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

VIII. PERFORMANCE OF THE WORK

34. Respondent shall perform the Work in accordance with this Settlement, including all EPA-approved, conditionally approved, or modified deliverables as required by this Settlement. The Work includes, at a minimum, all actions necessary to implement the SOW attached as Appendix A.

35. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from EPA of the modification, amendment, or replacement.

36. Final Report. Within 60 days after completion of all Work required by the Settlement, other than continuing obligations listed in Paragraph 37 (Notice of Completion of Work), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP, 40 C.F.R. § 300.165, entitled “OSC Reports.” The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with this Settlement, 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 accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent’s Project Coordinator: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system

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designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.”

37. Notice of Completion of Work. When EPA determines, after EPA’s review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Future Response Costs and record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the corresponding Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the corresponding modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement.

38. Compliance with Applicable Law. Nothing in this Settlement limits Respondent’s obligations to comply with the requirements of all applicable 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). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (“ARARs”) under federal environmental or state or Tribal environmental or facility siting laws. The activities conducted in accordance with this Settlement, if approved by EPA, will be deemed to be consistent with the NCP as provided under Section 300.700(c)(3)(ii), 40 C.F.R. § 300.700(c)(3)(ii).

39. Permits. No local, state, Tribal, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal, Tribal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XIV (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that Respondent has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal, Tribal or state statute or regulation.

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40. Work Takeover

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of 20 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the circumstances giving rise to EPA’s issuance of such notice shall be remedied in 10 days.

b. If, after expiration of the three-day notice period specified in Paragraph 40.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 thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 40.b. Funding of Work Takeover costs is addressed under Paragraph 101 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in Paragraph 58 (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 40.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 Paragraph 40.b. until the earlier of (1) the date that Respondent remedies, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 58 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

IX. PROPERTY REQUIREMENTS

41. Agreements Regarding Access and Non-Interference. If the Site, or any other property where access is needed to implement this Settlement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA, the State, and their 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. Where any action under this Settlement is to be performed in areas owned or controlled by someone other than Respondent, Respondent shall use best efforts to obtain all necessary

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agreements for access, enforceable by Respondent and EPA, within 30 days after the Effective Date, or as otherwise specified in writing by the RPM. A sample consent for access form is enclosed in Appendix C.

a. Respondent shall, with respect to Section 13, use best efforts to obtain from the Department of the Interior, BIA, written consent to provide EPA, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement.

b. Respondent shall, with respect to Sections 18 and 24, use best efforts to obtain individual access consent forms signed by allottees for each parcel that may be impacted by any activity conducted by Respondent pursuant to this Settlement. Additionally, Respondent shall obtain individual access consent forms signed by any other persons who reside and/or have a homesite lease on the Affected Property. Respondent shall notify all allottees who have an interest in the Affected Property about the nature and scope of the work to be performed by Respondent at least 20 days before such work begins. The list of allottees with an interest in the Affected Property should be obtained from the BIA Regional Land Office at Crownpoint, New Mexico.

c. Access Requirements. The following is a list of activities for which access is required regarding the Affected Property:

- (1) Performing and monitoring the Work;
- (2) Verifying any data or information submitted to EPA;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plan ("QAPP", discussed in more detail in Section 2.6.2 of Appendix A, Scope of Work);
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 40.b (Work Takeover);

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(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information); and

(9) Assessing Respondent's compliance with the Settlement;

42. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA, and include a description of the steps taken to comply with the requirements. EPA may assist Respondent or take independent action in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XII (Payments for Response Costs). Respondent may seek relief under the provisions of Section XIV (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any access and/or use restriction agreement, provided that Respondent has used best efforts to secure such access and/or use restriction agreement as described in this subparagraph.

43. If Respondent owns or controls any property at the Site, Respondent shall, prior to entering into a contract to Transfer any of its property that is part of the Site, or 60 days prior to a Transfer of such property, whichever is earlier: (a) give written notice to the proposed transferee that the property is subject to this Settlement; and (b) give written notice to EPA and the State of the proposed Transfer, including the name and address of the transferee. For any property it owns or controls at the Site, Respondent also agrees to require that its successors comply with this Section and Paragraph 46 (Retention of Records and Information).

44. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

45. Respondent's Certification. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding

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the Site 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, and state law.

46. Retention of Records and Information

a. Respondent shall retain, and instruct its contractors and agents to retain,
the following documents and electronically stored data (“Records”) until 10 years after the
Notice of Completion of Work under Paragraph 37 (“Record Retention Period”):

(1) All records regarding Respondent’s liability and the liability of any
other person under CERCLA regarding the Site;

(2) All reports, plans, permits, and documents submitted to EPA in
accordance with this Settlement, including all underlying research and data;

(3) All data developed by, or on behalf of, Respondent in the course
of performing the Work; and

(4) Any other records related to the Work and the Site.

b. At the end of the Record Retention Period, Respondent shall notify EPA
that it has 90 days to request the Respondent’s Records subject to this Section. Respondent
shall retain and preserve its Records subject to this Section until 90 days after EPA’s receipt of
the notice. These record retention requirements apply regardless of any corporate record
retention policy.

47. Respondent shall provide to EPA, upon request, copies of all Records and
information required to be retained under this Section. Respondent shall also make available to
EPA, for purposes of investigation, information gathering, or testimony, its employees, agents,
or representatives with knowledge of relevant facts concerning the performance of the Work.

48. Privileged and Protected Claims

a. Respondent may assert all or part of a Record requested by EPA is
privileged or protected as provided under federal law, in lieu of providing the Record, provided
Respondent complies with Paragraph 48.b, and except as provided in Paragraph 48.c.

b. If Respondent asserts such a privilege or protection, it shall provide EPA
with the following information regarding such Record: its title; its date; the name, title,
affiliation (e.g., company or firm), and address of the author, of each addressee, and of each
recipient; a description of the Record’s contents; and the privilege or protection asserted. If a
claim of privilege or protection applies only to a portion of a Record, Respondent shall provide
the Record to EPA in redacted form to mask the privileged or protected portion only.

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Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

49. Confidential Business Information Claims. Respondent may assert that all or part of a Record provided to EPA under this Section or Section X (Access to Information) is business confidential 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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records submitted to EPA 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 Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

50. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

51. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan ("HASP", discussed in more detail in Section 2.5 of Appendix A, Scope of Work). Respondent shall also immediately notify the RPM, or, in the event of the RPM's unavailability, the Regional Duty Officer at (415) 947-8120 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 XII (Payments for Response Costs).

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52. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004, Respondent shall immediately notify the RPM, or, in the event of the RPM’s unavailability, the Regional Duty Officer at (415) 947-8120, and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven 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 EPCRA, 42 U.S.C. § 11004.

XII. PAYMENTS FOR RESPONSE COSTS

53. Payments by Respondent for Future Response Costs

a. Periodic Bills. On a periodic basis, EPA will send Respondent a bill for Future Response Costs, including a reconciled cost summary, listing direct and indirect costs paid by EPA, its contractors, and subcontractors, and the United States Department of Justice. Respondent may initiate a dispute under Section XIII regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (1) whether EPA has made an arithmetical error; (2) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (3) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Respondent shall specify in the Notice of Dispute the contested costs and the basis for the objection.

b. Payment of Bill. Respondent shall pay the bill, or if it initiates dispute resolution under Section XIII, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Respondent shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Respondent shall make all payments at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link, and including references to the Site Name, Docket Number, Site/Spill ID number A956, and the purpose of the payment. Respondent shall send notice of this payment to EPA and include these references.

54. Interest. In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent’s payment. Payments of Interest made under this Paragraph

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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 XV (Stipulated Penalties).

55. Deposit of Payments. The total amount to be paid by Respondent pursuant to Paragraph 53 shall be deposited by EPA in the Haystack Mines Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Haystack Mines Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

XIII. DISPUTE RESOLUTION

56. Unless otherwise provided in this Settlement, Respondent shall use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement.

57. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including but not limited to disputes over billings for Future Response Costs, Respondent shall first send EPA a written Notice of Dispute describing the objection(s) within 30 days after such action. EPA and Respondent shall have 20 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

58. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a Statement of Position to the RPM. EPA's responsive Statement of Position is due within 20 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. If appropriate, EPA may extend the deadlines for filing statements of position for up to 15 days and may allow the submission of supplemental statements of position. Thereafter, an EPA management official at the Region IX Superfund and Emergency Management Division Assistant Director level or higher will issue a written decision on the dispute to the Parties ("Formal Decision"). The Formal Decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondent

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shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

59. Interest on Disputed Response Cost Billings. For disputes regarding a Future Response Cost billing, Respondent shall pay any uncontested Future Response Costs by the due date. If any portion of the contested Future Response Costs are determined to be owed, the payment shall include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment. Respondent shall pay the amounts due to EPA under Paragraph 53, if any, by the deadline for such payment in Paragraph 53.

60. Except as provided in Paragraph 59 (Interest on Disputed Response Cost Billings) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 70. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XIV. FORCE MAJEURE

61. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's RPM orally or, in their absence, the Director of the Superfund and Emergency Management Division, EPA Region IX, within seven days of when Respondent first knew that the event might cause a delay. Within five days thereafter, Respondent shall provide in writing to EPA 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

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to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 61 and whether Respondent has exercised its best efforts under Paragraph 61, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

63. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure 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 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, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

64. If Respondent elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), Respondent shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 61 and 62. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

65. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

XV. STIPULATED PENALTIES

66. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 67 and 68 for failure to comply with the requirements of this Settlement

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specified below, unless excused under Section XIV (Force Majeure). "Compliance" by Respondent shall include completion of all activities and obligations, including payments, required under this Settlement, or any deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, and any deliverables approved under this Settlement and within the specified time schedules established by and approved under this Settlement.

67. Stipulated Penalty Amounts - Work (Including Payments and Excluding Deliverables)

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 67.b:

Penalty Per Violation Per Day Period of Noncompliance

\$1,500	1st through 14th day
\$2,000	15th through 30th day
\$3,500	31st day and beyond

b. Compliance Milestones

(1) Respondent's failure to pay billed Future Response Costs as required by Paragraph 53.

(2) Respondent's failure to use best efforts to secure access agreements or consent to access pursuant to Paragraph 41.

(3) Respondent's failure to maintain financial assurance in compliance with the substantive and procedural requirements of Section XXIII (Financial Assurance).

68. Stipulated Penalty Amounts - Deliverables. The following stipulated penalties shall accrue per violation per day for failure to comply with any requirements of this Settlement and the SOW other than those specified in Paragraph 67.b:

Penalty Per Violation Per Day Period of Noncompliance

\$750	1st through 14th day
\$1,500	15th through 30th day
\$2,500	31st day and beyond

69. Work Takeover Penalty. In the event that EPA assumes performance of all or any portion(s) of the Work pursuant to Paragraph 40 (Work Takeover), Respondent shall be liable

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for a stipulated penalty in the amount of \$100,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 40 (Work Takeover) and 101 (Access to Financial Assurance).

70. Accrual of Penalties. 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. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section 2.3 (Work Plans and Implementation) under the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Assistant Division Director level or higher, under Paragraph 58 of Section XIII (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

71. Demand for Stipulated Penalties. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement, 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. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed.

72. Payment of Stipulated Penalties. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. Respondent shall pay the amount demanded or, if they initiate dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Respondent shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Section XII (Payments for Response Costs).

73. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are

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due pursuant to Paragraph 70 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 72 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

74. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.

75. Nothing in this Settlement 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 or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), 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 Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 40 (Work Takeover).

76. 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.

XVI. COVENANTS BY EPA

77. Except as provided in Section XVII (Reservations of Rights by EPA), 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 the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of the requirements of this Settlement. These covenants extend only to Respondent and do not extend to any other person.

XVII. RESERVATIONS OF RIGHTS BY EPA

78. Except as specifically provided in this Settlement, nothing in this Settlement 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 in this Settlement shall

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prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, 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.

79. The covenants set forth in Section XVI (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response actions other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

XVIII. COVENANTS BY RESPONDENT

80. 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, and this Settlement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through 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;

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b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement;

c. 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 Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

d. any direct or indirect claim for return of unused amounts from the Haystack Mines Site Special Account.

81. 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 any of the reservations set forth in Section XVII (Reservations of Rights by EPA), other than in Paragraph 79.a (liability for failure to meet a requirement of the Settlement), 79.d (criminal liability), or 79.e (violations of federal/state law during or after implementation of the Work), 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 pursuant to the applicable reservation.

82. Notwithstanding the foregoing, this Settlement shall not bar or have any effect on claims, causes of action or defenses that Respondent has or may have pursuant to CERCLA against the United States or any of its agencies or departments, other than EPA, based on its alleged status as a potentially responsible party pursuant to CERCLA, 42 U.S.C. § 9607(a), relating to the Work, Future Response Costs, or this Settlement Agreement.

83. Nothing in this Settlement 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).

84. Respondent reserves, and this Settlement is without prejudice to, its rights to bring claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

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XIX. OTHER CLAIMS

85. By issuance of this Settlement, 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.

86. Except as expressly provided in Section XVI (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, 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.

87. No action or decision by EPA pursuant to this Settlement 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).

XX. EFFECT OF SETTLEMENT/CONTRIBUTION

88. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVIII (Covenants by Respondent), each of the Parties expressly reserves any and all rights, defenses (e.g. divisibility and apportionment), claims, demands, and causes of action (including those under CERCLA) which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

89. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, and Future Response Costs.

90. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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91. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

92. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVI (Covenants by EPA).

XXI. INDEMNIFICATION

93. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, 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 its behalf or under its control, in carrying out activities pursuant to this Settlement. 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. Neither Respondent nor any such contractor shall be considered an agent of the United States.

94. 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.

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95. Respondent covenants not to sue and agrees not to assert any claims or causes of action 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.

XXII. INSURANCE

96. No later than 15 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Paragraph 37 (Notice of Completion of Work), commercial general liability insurance with limits of \$1 million, for any one occurrence, and automobile insurance with limits of \$1 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, 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. 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 lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXIII. FINANCIAL ASSURANCE

97. In order to ensure completion of the Work required under Section VIII (Performance of the Work), Respondent shall secure financial assurance, initially in the amount of \$400,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must: (a) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA; and (b) be satisfactory to EPA. As of the date of signing this Settlement, the sample documents can be found under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <http://cfpub.epa.gov/compliance/models/>. Respondent may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of

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credit, trust funds, insurance policies, or some combination thereof. The following are acceptable mechanisms:

a. A surety bond 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. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdictions and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by Respondent that Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or Tribal environmental obligations financially assured through the use of a financial test or guarantee;
or

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of Respondent; or (2) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA’s satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or Tribal environmental obligations financially assured through the use of a financial test or guarantee.

98. Respondent has selected, and EPA has found satisfactory, as an initial financial assurance, a demonstration by Respondent that Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or Tribal environmental obligations financially assured through the use of a financial test or guarantee. Respondent will provide a Standby Funding Commitment Letter specific to this Agreement

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within 30 days of the Effective Date. An updated Financial Test demonstration is due by March 30, 2026, and each year thereafter until a Notice of Completion of Work has been issued.

99. If Respondent provides financial assurance by means of a demonstration or guarantee under Paragraph 97.e or 97.f, Respondent shall also comply and shall ensure that its guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the entity's chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than seven days, in accordance with Paragraph 100, after such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondent agrees that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of Paragraph 97.e or 97.f, require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or Tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Settlement; (3) the terms "owner" and "operator" include each Respondent making a demonstration or obtaining a guarantee under Paragraph 97.e or 97.f; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

100. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within seven days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondent shall follow the procedures of Paragraph 102 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure and submit to EPA financial assurance in accordance with this

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Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Respondent to complete the Work in accordance with the terms of this Settlement.

101. Access to Financial Assurance

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 40.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 101.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 101.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 40.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under Paragraph 97.e or 97.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 15 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 101 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Haystack Mines Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 101 must be reimbursed as Future Response Costs under Section XII (Payments for Response Costs).

102. Modification of Amount, Form, or Terms of Financial Assurance. Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with

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Paragraph 100, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XIII (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism 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 or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 100.

103. Release, Cancellation, or Discontinuation of Financial Assurance. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Paragraph 37 (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIII (Dispute Resolution).

XXIV. MODIFICATION

104. The RPM may modify any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

105. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written or oral 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 RPM pursuant to Paragraph 104. Respondent shall follow such oral request or approval with written documentation of such request and approval.

106. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

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XXV. INTEGRATION/APPENDICES

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

- a. Appendix A is the SOW.
- b. Appendix B is a map and description of the Site.
- c. Appendix C is a sample consent for access form.

XXVI. EFFECTIVE DATE

108. This Settlement shall be effective five days after the Settlement is signed by both the Superfund and Environmental Management Division Assistant Director of EPA Region IX and the Director of the Superfund Division of EPA Region VI, whichever is later.

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IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Will Duncan
Assistant Director
Superfund and Emergency Management Division
Region IX

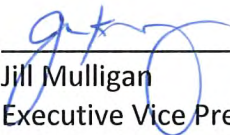
Monica Smith
Acting Director
Superfund and Emergency Management Division
Region VI

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Signature Page for Settlement Regarding Haystack Mines Site

FOR BNSF Railway Company, Respondent:

11/12/2025
Dated



Jill Mulligan
Executive Vice President & Chief Legal Officer
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131

APPENDIX A

SCOPE OF WORK

FOR CONDUCTING THE BACKGROUND STUDY, DATA GAP ANALYSIS, AND ENGINEERING EVALUATION AND COST ANALYSIS FOR THE HAYSTACK MINES SITE

1. Introduction. This Scope of Work (“SOW”) specifies actions required to be completed by BNSF Railway Company (“Respondent” or “BNSF”) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action, CERCLA Docket Nos. 09-2026-01 and 06-03-25 (“Settlement Agreement” or “ASAOC”) issued by the United States Environmental Protection Agency, Regions 9 and 6 (“EPA”). All terms used in this SOW shall be interpreted in a manner consistent with the definitions provided in the ASAOC. In the event of any conflict between this SOW and the ASAOC, the ASAOC shall control.
2. General Requirements
 - 2.1. Media to Address. Respondent shall address contaminated media at the Site, including soils, sediments, and dust.
 - 2.2. Assessment of Contaminants. Respondent shall conduct a Risk Assessment analyzing levels of radionuclides and metals present in the surface and subsurface soils, sediments, and dust at the Site. The Risk Assessment shall include Navajo Lifeways inputs for the human health exposure scenarios, consistent with the Abandoned Uranium Mines Engineering Evaluation Cost Analysis Standards Development, EE/CA Outline, March 2023, attached to this SOW. The Risk Assessment shall be completed in close coordination with EPA to determine the Site-specific contaminants of potential concern (“COPCs”) and contaminants of concern (“COCs”) and calculate risks to current and potential future receptors at the Site.
 - 2.3. Deliverables
 - 2.3.1. General Requirements. Except as otherwise provided in this Settlement, Respondent shall direct all technical submissions required by this Settlement to the EPA RPM, Danielle Huang, at huang.danielle@epa.gov, the EPA SAM, Karen Berecz, at berecz.karen@epa.gov, the Navajo Nation Environmental Protection Agency (“NNEPA”) Waste Regulatory and Compliance Department Manager, Warren Roan, at warrenjroan@navajo-nsn.gov, and to Amber Rheubottom for the New Mexico Environment Department, at amber.rheubottom@env.nm.gov, and Abimbola Ojekanmi for the Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department, at abimbola.ojekanmi@emnr.d.nm.gov. Respondent shall submit all deliverables required by this Settlement in electronic form and in accordance with the specifications and schedule set forth in this SOW.
 - 2.3.2. Technical Specifications for Deliverables. Sampling and/or monitoring data and spatial data, including spatially-referenced data and geospatial data, shall adhere

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to the EPA Navajo Abandoned Uranium Mine (“NAUM”) Program’s Geospatial Data Submission Requirements as described in Attachment 1 to this SOW.

2.3.3. Approval of Deliverables. After review of the deliverables required to be submitted for EPA approval under the Settlement and the SOW, EPA shall: (1) approve, in whole or in part, the deliverable; (2) approve the submission upon specified conditions or required revisions to the deliverable; (3) disapprove, in whole or in part, the deliverable; or (4) any combination of the foregoing. If EPA requires revisions, EPA will provide a deadline for the resubmission, and Respondent shall submit the revised deliverable by the required deadline. Once approved or approved with conditions or required revisions, Respondent shall implement the deliverables in accordance with the schedule in the SOW. Upon approval, or subsequent modification, by EPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under the Settlement; and (2) Respondent shall take any action required by such deliverable, or portion thereof. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

2.4. Health and Safety Plan. In accordance with the schedule included below, Respondent shall submit for EPA review and comment a Health and Safety Plan (“HASP”) that meets the requirements of 29 C.F.R. § 910.120 for developing the HASP, that describes all activities to be performed to protect on-site personnel and area residents from physical, chemical, biological and all other hazards related to performance of Work under this SOW. This HASP shall be prepared in accordance with EPA’s Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), available on the Agency’s website at <https://www.epaosc.org/HealthSafetyManual/manual-index.htm>. In addition, the Respondent shall ensure that the HASP complies 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 HASP shall also include contingency planning. Respondent shall incorporate all changes to the HASP recommended by EPA and shall implement the HASP during the pendency of the Work.

2.5. Quality Assurance, Sampling, and Data Analysis

2.5.1. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures, if applicable, for all samples consistent with EPA’s Environmental Information Quality Policy, CIO 2105.1 (Mar. 2021) at <https://www.epa.gov/irmpoli8/environmental-information-quality-policy>, the most recent version of Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use, ASQ/ANSI E-4 (Feb. 2014), and EPA Requirements for Quality Assurance Project Plans, EPA QA/G-5 (EPA/240/B-01/02) (Mar. 2001) at

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<https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>.

- 2.5.2. Quality Assurance Project Plan ("QAPP"). In accordance with the schedule included in the SOW, within 30 days of the Effective Date, Respondent shall submit for EPA review and comment a QAPP that is consistent with the Background Study Work Plan, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Respondent shall incorporate all changes to the QAPP recommended by EPA and shall implement the QAPP during the pendency of the Work.
- 2.5.3. If soil sampling is conducted, Respondent shall ensure that EPA personnel and EPA's authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA's Field Operations Group Operational Guidelines for Field Activities (<http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf>) and "EPA QA Field Activities Procedure" (<http://www.epa.gov/irmpoli8/policies/2105-p-02.pdf>). Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions (<http://www.epa.gov/fem/pdfs/fem-lab-competency-policy.pdf>) and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<http://www.epa.gov/superfund/programs/clp/>), SW 846 Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (<http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>), Standard Methods for the Examination of Water and Wastewater (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, Air Toxics - Monitoring Methods (<http://www.epa.gov/ttnamti1/airtox.html>).
- 2.5.4. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), if soil sampling is conducted, as long as (i) quality

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assurance/quality control ("QA/QC") criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (<http://www.epa.gov/fem/accredit.htm>) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

2.5.5. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives, if soil sampling is conducted. Respondent shall notify EPA not less than seven days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

2.5.6. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement.

2.6. Community Involvement Plan. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, Respondent shall participate in community involvement activities pursuant to the plan, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondent's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical

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assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. Community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight. At EPA's discretion, Respondent shall provide information to be added to the information repository that houses the administrative record.

2.7. Off-Site Shipments

2.7.1. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

2.7.2. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state or Tribal environmental official in the receiving facility's state or territory and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed 10 cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the NNEPA environmental official referenced above and the EPA RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

2.7.3. Respondent may ship Investigation Derived Waste ("IDW") from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992) (<https://semspub.epa.gov/work/03/136166.pdf>), and any IDW-specific requirements contained in the Work Plans. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

3. Work to be Performed. As described in further detail below, Respondent will carry out a Background Study, complete a Data Gap Analysis, and develop an Engineering Evaluation/Cost Analysis ("EE/CA"). Respondent will carry out this work in a manner that is consistent with the applicable requirements of the National Oil and Hazardous Substances

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Pollution Contingency Plan, 40 C.F.R. § 300.415, and other applicable EPA regulations, models, and guidance. Each deliverable should be submitted for and subject to EPA approval by the due date specified in Section 5 below.

3.1. Background Study

3.1.1. Background Study and Field Investigation Work Plan. Respondent shall submit a Background Study and Field Investigation Work Plan for gathering data to calculate and establish background conditions to be used at the Site for the EE/CA. The Background Study and Field Investigation Work Plan shall be consistent with the EPA NAUM Program's Risk Assessment and Site-Specific Background Methodology, included as Attachment 2 to this SOW. The objectives of this Background Study and Field Investigation Work Plan are as follows: (1) verify and confirm geologic unit assignments; and (2) propose work necessary to gather samples and calculate background at the Site. The background study will focus on the Todilto Formation limestone, at minimum, which primarily comprises the Site, and the site-specific background data shall (1) be collected from areas that are geologically and geochemically comparable to the Site, including mineralized areas of the Todilto Formation, and (2) include a representative range of naturally occurring radioactive material (NORM) found at the Site. Subject to field evaluation, verification, and EPA approval, undisturbed areas shall be prioritized for background selection where possible. Undisturbed areas in proximity to or co-located within disturbance features may also be used to establish the representative range of NORM, as long as the disturbance features do not increase potential radiological exposure(s) or soil concentrations where background data are to be collected (e.g., near former test pits).

Additional geologic formations may need to be assessed for background if waste has come to be located on these formations, but a site-specific background or a Regional Background may be used for these formations.

To carry out the components of the Background Study and Field Investigation Work Plan that require field data collection, Respondent shall draft a HASP and QAPP for collecting the necessary data. The Background Study and Field Investigation Work Plan shall include a schedule for completion of the Background Field Investigation. Upon EPA's approval, the proposed schedule shall set the completion date for field data collection.

3.1.2. Background Study Report. Respondent shall submit a Background Study Report that describes the geologic unit assignments at the Site, presents data collected during the Background Field Investigation, and calculates the background threshold value for each of the geologic units identified.

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3.1.3. Background Study Deliverables:

3.1.3.1. Background Study and Field Investigation Work Plan, HASP, and QAPP;

3.1.3.2. Background Study Report.

3.2. Data Gap Analysis

3.2.1. Data Gap Analysis Document. Respondent shall submit a Data Gap Analysis Document that evaluates the data collected for the 2015 Removal Assessment Report and the Background Study Report to identify data that still need to be collected to inform the EE/CA. The objectives of this Data Gap Analysis are as follows: (1) evaluate Site data from the 2015 Removal Assessment Report and the Background Study Report prepared under Task 1 of this SOW to evaluate the nature and extent of Site-related impacts and determine whether further data collection is necessary; (2) complete assessment and characterization of the source, nature, and extent of volumetric-type and surficial technologically enhanced naturally occurring radioactive material (“TENORM”) and other mining-related disturbances; and (3) complete assessment of the source, nature, and extent of TENORM and other contaminants deposited in drainages and other depositional areas.

3.2.2. Data Gap Field Investigation (if applicable). If data gaps are identified during the Data Gap Analysis that require field data collection, Respondent shall submit a Data Gap Work Plan, HASP, and QAPP to collect the necessary data. The Data Gap Work Plan shall include a schedule for completion of the field data collection. Upon EPA’s approval, the proposed schedule shall become the due date for completion of the field data collection.

3.2.3. Data Gap Analysis Report. Respondent shall submit a Data Gap Analysis Report that describes any data gaps identified in the Data Gap Analysis Document and present the results of the Data Gap Field Investigation.

3.2.4. Data Gap Analysis Deliverables:

3.2.4.1. Data Gap Analysis Document;

3.2.4.2. Data Gap Work Plan, HASP, and QAPP (if applicable); and

3.2.4.3. Data Gap Analysis Report.

3.3. Engineering Evaluation and Cost Analysis

3.3.1. Respondent shall submit an EE/CA in accordance with EPA’s “Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA” (OSWER Directive 9360.0-32, August 1993), which is available at <https://semspub.epa.gov/work/HQ/122068.pdf>. The EE/CA shall also be consistent with the EE/CA Outline, included as Attachment 3 to this SOW.

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3.3.2. Respondent shall first submit a draft EE/CA that contains removal action alternatives that meet the removal action objectives defined by EPA and NNEPA, but shall not select a recommended alternative. Respondent shall assist EPA in preparing community involvement materials regarding the draft EE/CA. EPA will select a recommended alternative after receiving feedback from NNEPA, the State, and comments from the community. Respondent shall then submit a final draft EE/CA that incorporates the recommended alternative selected by EPA and includes a recommended alternative. Respondent shall submit the final draft EE/CA in Word and pdf formats.

3.3.3. Engineering Evaluation and Cost Analysis Deliverables:

3.3.3.1. Draft EE/CA without recommended alternative;

3.3.3.2. Community involvement materials related to the draft EE/CA without recommended alternative;

3.3.3.3. Final draft EE/CA with recommended alternative.

4. Reporting

4.1. Bi-weekly Technical Calls. Respondent shall participate in regularly scheduled bi-weekly technical conference calls with EPA Region 9's RPM, EPA Region 6's SAM, EPA's consultants, NNEPA representatives, and State representatives unless an alternative schedule is approved by EPA. On the call, Respondent's representatives shall provide updates on all tasks and discuss issues that may need to be resolved to expedite completion of the Background Study, Data Gap Analysis, and EE/CA.

4.2. Progress Reports. Respondent shall submit monthly written progress reports to EPA, NNEPA, and the State concerning actions undertaken pursuant to the Settlement monthly during field work, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Background Study Work Plan until issuance of Notice of Completion of Work pursuant to Paragraph 37 of the Settlement, unless otherwise directed in writing by the RPM. 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, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

4.3. Final Report. Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with the Settlement within 60 days of completing all of the Work, consistent with Paragraph 36 of the Settlement.

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5. Schedule. The work to be performed pursuant to the ASAOC and this SOW shall be performed in compliance with the following schedule and subject to the approval provisions set forth in Section 2.3.3 of this SOW.

Section	Deliverable	Due Date
3.1.1	Background Study and Field Investigation Work Plan, HASP, and QAPP	Within 60 days of the Effective Date of the ASAOC.
3.1.1	Background Field Investigation	In accordance with the schedule approved by EPA in the Background Study and Field Investigation Work Plan.
3.1.1	Notify EPA of receipt of final laboratory data	Within one week of receipt of final laboratory data.
3.1.2	Background Study Report	Within 60 days of receipt of final laboratory data from the Background Field Investigation, Respondent will provide a draft Background Study Report. EPA will review and provide comments to Respondent, after which Respondent will have 30 days from receipt of EPA's comments to provide the final Background Study Report.
3.2.1	Data Gap Analysis Document	Within 60 days of EPA's approval of the Background Study Report.
3.2.2	Data Gap Work Plan, HASP, and QAPP	If directed by EPA, within 30 days of EPA's approval of the Data Gap Analysis Document.
3.2.2	Data Gap Field Investigation	In accordance with the schedule approved by EPA in the Data Gap Work Plan.

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3.2.2	Notify EPA of receipt of final laboratory data	Within one week of receipt of final laboratory data.
3.2.3	Data Gap Analysis Report	Within 60 days of receipt of final laboratory data from the Data Gap Field Investigation, Respondent will provide a draft Data Gap Analysis Report. EPA will review and provide comments to Respondent, after which Respondent will have 30 days from receipt of EPA's comments to provide the final Data Gap Analysis Report.
3.3	Draft EE/CA without recommended alternative	Within 90 days of EPA's approval of the Data Gap Analysis Report.
3.3	Updated draft EE/CA without recommended alternative to incorporate EPA/NNEPA/State comments	Within 60 days of receipt of comments. There may be multiple updated drafts.
3.3	Final EE/CA without recommended alternative	Within 60 days of receipt of final comments from EPA, NNEPA, and the State.
3.3	Assist EPA with preparation of community involvement materials	Within 30 days of EPA's request, following approval of the final EE/CA without recommended alternative incorporating final agency comments.
3.3	Final draft EE/CA with recommended alternative selected by EPA	Within 30 days of EPA's selection of a recommended alternative.
4.2	Progress Reports	Monthly and to begin upon the Effective Date of the ASAOC and

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		continue until EPA issues a Notice of Completion of Work.
4.3	Final Report	Within 60 days of completing the Work.

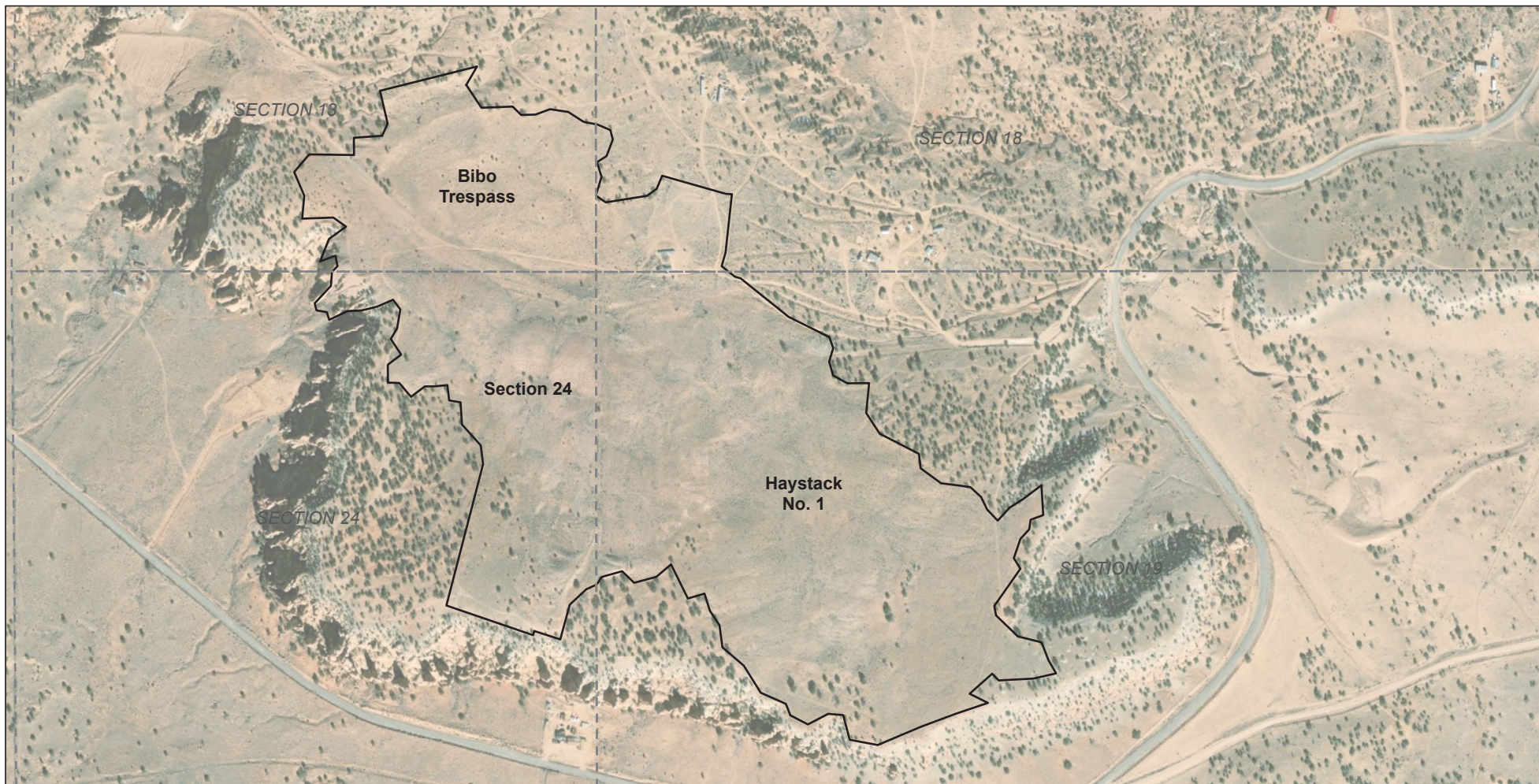
6. Attachments

6.1. EPA NAUM Program’s Geospatial Data Submission Requirements

6.2. EPA NAUM Program’s Risk Assessment and Background Methodology

6.3. EPA NAUM Program’s EE/CA Outline

**APPENDIX B
SITE MAP**



Legend

- ABANDONED URANIUM MINE CLAIM BOUNDARIES BASED ON 2009 WESTON SITE SCREEN REPORTS
- PUBLIC LAND SURVEY SYSTEM SECTION AND IDENTIFICATION NUMBER

Note:

1. These mine claim boundaries are an estimate of where the mine areas and extent of contamination are located based on geologic and gamma data surveys captured in the 2009 Weston Site Screen Reports and the 2007 Navajo Nation AUM Screening Assessment Report and Atlas with Geospatial Data.
2. Data gaps investigation will better delineate the site boundary and areas of contamination.



Base Image Source: ESRI World Imagery 2021

BNSF Railway Company Haystack Mines Site Baca/Prewitt Chapter, Navajo Nation McKinley County, New Mexico
SITE MAP
FIGURE 1

APPENDIX C
SAMPLE CONSENT FOR ACCESS FORM

**CONSENT FOR ACCESS TO PROPERTY
NEAR THE HAYSTACK MINES SITE
TO ADDRESS CONTAMINATION FROM URANIUM MINE WASTE**

I, the undersigned, consent to BNSF Railway Company, the Navajo Nation Environmental Protection Agency (NNEPA), the United States Environmental Protection Agency (USEPA), and their agents, contractors, and assignees (Authorized Parties) entering and having all necessary access to my:

- private property**
- allotment**
- homesite lease location**

(please place a checkmark next to the property interest that applies)

located at or near the Haystack Mines Site (Mine Site) on the Navajo Nation. I agree to abide by the Authorized Parties' recommendations regarding the use of the Property to avoid posing an unacceptable risk to human health or the environment or interfering with or adversely affecting the implementation, integrity, or protectiveness of the response action described below.

Authorized Parties will access the Property only as deemed necessary by NNEPA and USEPA to implement a response action relating to the release or threatened release of a hazardous substance at or around the Mine Site. Response actions may include a range of activities that could be either non-invasive or invasive in nature. For example, non-invasive activities include but are not limited to: performing surveys, such as biological and cultural resource surveys; conducting walkthroughs; taking photographs or video/audio recordings of the Property (not of residents); and, consistent with the requirements of RDCD-107-18, use of balloons or Unmanned Aircraft Systems (e.g., drones and their related components), to collect data about the Property, including photographs or video/audio recordings of the Property (not residents). Invasive activities include but are not limited to: conducting background studies; closing surface features that pose a physical threat to humans or animals; installing signage or fencing to warn of hazards and limit access; sampling surface and subsurface soils and accessible wells; removing hazardous substances; and various earth-moving activities. I understand that my consent to access is being requested for both non-invasive and invasive activities.

I understand that these response actions are part of an effort to address environmental and public health concerns at or around the Mine Site. I further understand and acknowledge that questions regarding response actions should be directed to the Navajo Superfund Program, (928) 871-6859, the USEPA Community Involvement Coordinator (CIC) (number provided on request), or BNSF Railway Company (number provided upon request).

By providing my contact information on the reverse side of this form, I consent to the sharing of my contact information with the Authorized Parties for notification of entry purposes. I recognize that advance notice of entry is not always possible, but the Authorized Parties will endeavor to provide at least fourteen (14) calendar days advance notice of the dates and times that access will be needed to the Property.

By signing this form, I represent that I have the legal interest in the Property that I have indicated above and, if requested, I have provided supporting information or documentation to NNEPA and/or USEPA as proof of my legal interest.

[See reverse side]

**NOTICE REGARDING COLLECTION AND SHARING OF
PERSONALLY IDENTIFIABLE INFORMATION**

My contact information and property interest are considered Personally Identifiable Information (PII). NNEPA has authority to collect PII under the Navajo Nation CERCLA, 4 N.N.C. § 2301, which incorporates by reference federal Privacy Act protections and permissible disclosures, as are explained below.

PRIVACY ACT STATEMENT

The purpose of collecting PII in this form is to ensure an appropriate response to protect the health and welfare of those who may be affected by the existence of a Mine Site. USEPA's authority to collect PII is established pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9604 and 9606, and 40 C.F.R. Part 300.

PII may be disclosed to public health authorities in conformity with applicable laws when necessary to protect the public health or safety, or to federal, Navajo, or local governmental agencies when it is determined that a response by that agency is more appropriate than a response by the USEPA. PII may also be disclosed to Authorized Parties who need access to the information in the performance of their duties or activities for the Agency.¹

The information I am providing is voluntary. However, I understand that failure to provide this information may prevent the Authorized Parties from properly responding to the release or threatened release of a hazardous substance at or around the Mine Site.

Signature: _____

Printed Name: _____ Date: _____

Mailing Address: _____

Property Address: _____

Email Address: _____ Phone Number: _____

Interpreter Information, if applicable: _____

¹ For a complete list of routine uses, please see Environmental Assessment of Residential Properties (EPA-74), 81 Fed. Reg. 23488-90 (April 21, 2016) and Superfund Enterprise Management System (EPA-69), 80 Fed. Reg. 21237-39 (April 17, 2015).