

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2008 FEB -8 PM 1:30

IN THE MATTER OF:)
 McLaren Tailings Site, Cooke City,)
 Park County, Montana)
)
)
)
 STATE OF MONTANA,)
 SETTling RESPONDENT)
)
 UNDER THE AUTHORITY OF THE)
 COMPREHENSIVE ENVIRONMENTAL)
 RESPONSE, COMPENSATION, AND)
 LIABILITY ACT OF 1980, 42 U.S.C. §§ 9601-)
 9675)

EPA REGION VIII
HEARING CLERK

AGREEMENT AND COVENANT
NOT TO SUE
THE STATE OF MONTANA

Docket No.: CERCLA-08-2008-0003

I. INTRODUCTION AND BACKGROUND

This Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the United States, on behalf of the Environmental Protection Agency ("EPA"), and the State of Montana ("State"), acting by and through the Department of Environmental Quality ("DEQ"), ("Settling Respondent"), (collectively the "Parties").

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601 et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States. The State enters into this Agreement pursuant to CERCLA, the Montana Comprehensive Environmental and Responsibility Act ("CERCA"), as amended, §§ 75-10-701 et seq., Montana Code Annotated ("MCA"); Title IV of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. §§ 1231 et seq., and Title 82, Chapter 4, Part 3, MCA.

The McLaren Tailings Site is located just east of Cooke City in Park County, Montana, near the northeast entrance to Yellowstone National Park ("Site"). The Site, for purposes of this Agreement, consists of approximately 33.21 acres and is described in Appendix A.

Between approximately 1870 and 1952, ore from the McLaren Mine (part of the New World Mining District) was processed primarily for gold and copper extraction, using mineral floatation technology. During the time ore from the Mine was processed at the Site, approximately 150,000 cubic yards of waste ("tailings") were deposited on the valley floor of Soda Butte Creek, which originally meandered through the area currently overlain by the mill tailings.

In the late 1960's, Bear Creek Mining Company leveled the tailings piles, capped the tailings with 1.5 to 3.0 feet of soil material obtained from the slope that faces to the south, and re-routed Soda Butte Creek around the northern edge of the tailings.

In 1989, the Bureau of Reclamation ("BOR"), pursuant to an Interagency Agreement with EPA, acted to reinforce and stabilize the Soda Butte stream bank by constructing a 150 foot-long dike along the northeast side of the tailings pond. The modification of the stream bank was designed to contain a 100-year flood event.

In 1990, the BOR conducted subsurface investigations regarding the stability of the tailings dam and the source of groundwater movement through the tailings.

Between 1990 and 1995, the Kennecott Corporation ("Kennecott"), into which Bear Creek Mining Company, which owed and operated the Site previously, had merged, performed work at the Site. This work was performed, pursuant to an administrative order issued to Kennecott by EPA. The EPA administrative order was issued, in part, based upon a request from the National

Park Service and the Montana Department of Fish, Wildlife and Parks because of concerns of the potential for increased run-off and seepage from the tailings to Soda Butte Creek after extensive fires in Yellowstone National Park during 1988 had reduced the vegetation in the vicinity of the Site. In 1990, Kennecott completed reinforcement of the tailings dam with the installation of a stability berm at the downstream face of the dam. In 1991, Kennecott took action to dewater the tailings, including the installation of a toe drain for the tailings dam and a French drain on the south side of the tailings. In 1994 and 1995, Kennecott addressed erosion channels in the tailings piles and revegetated areas near and around the tailings dam.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX and X of this Agreement, the potential liability of Settling Respondent for the existing contamination at the Site, as described in Appendix A, which would otherwise result from Settling Respondent's acquisition of the Site. The Parties agree that Settling Respondent's entry into this Agreement, and the actions undertaken by Settling Respondent in accordance with the Agreement do not constitute an admission of any liability by Settling Respondent.

The resolution of potential liability, in exchange for the provisions by Settling Respondent of a substantial benefit, is in the public interest.

II. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

2. "DEQ" shall mean the Montana Department of Environmental Quality and any other successor departments or agencies of the State.
3. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
4. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants present or existing on or under the Site as of the effective date of this Agreement.
5. "Institutional Controls" shall mean restrictions or controls on the use of the Site that are enforceable through legal or institutional mechanisms, such as deed restrictions, easements, restrictive or affirmative covenants, or ownership and control over access to and use of the Property, as set forth in Appendix B.
6. "Parties" shall mean the United States, on behalf of EPA, and Settling Respondent.
7. "Settling Respondent" shall mean the State of Montana, acting through and by DEQ.
8. "Site" shall mean the McLaren Tailings Site, located at or near Cooke City, Park County, Montana, and more fully described in Appendix A.
9. "State" shall mean the State of Montana, its departments, agencies, and instrumentalities.
10. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.
11. "Work" shall mean the measures and actions set forth in Appendix B, which Settling Respondent will implement at the Site.

III. STATEMENT OF FACTS

12. Camjac, Inc. ("Camjac") acquired the Site in approximately 1982 and currently owns it.

13. In response to the release or threatened release of hazardous substances from the Site which would have posed an imminent and substantial endangerment, EPA has undertaken and caused other entities to undertake response actions at the Site pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

14. In 1996, EPA certified that the work performed by Kennecott at the Site was complete. In order to maintain the protectiveness of Kennecott's work, operation and maintenance activities are required to be performed. To date, these activities have been performed by EPA and not by the Site's current owner, Camjac. Additionally, a portion of the Site which abuts U.S. Forest Service lands contains some contamination from a historic mill located on the Site. MDEQ has approached EPA about purchasing the Site in order to perform operation and maintenance activities at the Site and to clean up the Site historic mill area and other areas of the Site requiring cleanup, all of which EPA acknowledges will serve as a benefit to the public.

15. In 2001, DEQ advised EPA of its interest in acquiring the Site from Camjac to control access to and future use of the Site, impose Institutional Controls, monitor past response actions, perform limited operations and maintenance activities, further investigate the nature and extent of contamination on the Site, evaluate, and, if the State determines it is necessary, plan and implement future additional response/reclamation activities on the Site, all of which EPA acknowledges will serve as a benefit to the public.

16. The Settling Respondent represents, and for the purposes of this Agreement EPA relies upon those representations, that DEQ, in the course of carrying out a State abandoned mine reclamation plan, approved under SMCRA, has made a number of visits to the Site and performed investigations of and activities on the Site, from the time of its inclusion in DEQ's Hard Rock Priority Site Inventory of mining and mineral processing sites begun in 1993. The following work products have been produced by the State in association with the McLaren Tailings Site:

a. August, 1993. DEQ prepared a Hazardous Materials Inventory as part of Priority Hard Rock Mine Site Investigation Project. Media sampled: Tailings, Mine Waste Rock, Surface Water and Groundwater seeps. DEQ observed releases of iron identified at levels exceeding chronic aquatic life criteria. The McLaren Site was ranked and scored using Abandoned/Inactive Mine Scoring System (AIMSS).

b. March 2001. DEQ prepared a Final Site Evaluation for the McLaren Tailings Site. The purpose of the report was to evaluate if there were continuing adverse effects of past mining practices and to assess the feasibility of further reclamation at the Site. The report compiled data collected as well as data collected as part of previous studies. The contaminants As, Cd, Cu, Fe and Hg in the tailings materials were identified as being significantly elevated above background levels. The report identified need for detailed topographic map and additional tailings depth measurements. The information contained in the report was presented at public meeting at Cooke City Fire Hall.

c. December 2001. DEQ prepared a Detailed Topographic and Legal Boundary Survey. The topographic mapping of the Site included survey monuments, boundary lines, seep locations and identification of surface contamination.

d. May 2002. DEQ prepared a Draft Final Engineering Evaluation and Cost Analysis (“EE/CA”) for the McLaren Tailing Site. The document analyzed alternatives for possible future response actions at the Site. This document identified a preferred alternative of an on-site repository for the contaminated tailings and waste rock (from former mill site area). The information contained in the draft final EE/CA and alternatives identified, including the preferred alternative, was presented at a public meeting at Cooke City Fire Hall.

e. July 2003. DEQ prepared a Final Appraisal Report. The report contained an estimate of the fair market value of the contaminated Site.

f. October 2005. DEQ installed 3 monitoring wells and prepared a Monitoring Well Installation Report for the McLaren Tailings Site. The report described the installation of 3 monitoring wells in the proposed on-site repository location and the initial monitoring results from those wells.

g. October 2005 - May 2007. DEQ has continued quarterly monitoring of water levels at the proposed on-site repository location. The continued monitoring confirms dry hole conditions documenting adequate separation of wastes from groundwater at proposed repository location.

The State of Montana has never owned or operated the Site, nor did it arrange for the disposal of waste at the Site or transport waste to the Site. All activities undertaken by the State of Montana were taken in its sovereign capacity, seeking to protect the health, welfare and the environment for its citizens.

IV. UNDERTAKINGS

17. On or about May 21, 2003, Camjac agreed to convey the Site to Settling

Respondent, subject to Settling Respondent obtaining this Agreement. Camjac has agreed to transfer the Site to Settling Respondent, subject to Camjac, at or near the time of any such transfer, entering into a Consent Decree with the United States that resolves any response cost claim the United States may have against Camjac in connection with the Site. On or about _____, 2007, the United States and Camjac executed a Settlement Agreement that resolves the United States' response cost claim against Camjac. Section XVIII (Property Transfer) of the Settlement Agreement requires that Camjac transfer the Site to Settling Respondent, pursuant to the requirements of Section XVIII therein.

18. In consideration of, and in exchange for, the United States' Covenant Not to Sue in Section VIII herein, Settling Respondent agrees to acquire the Site, at no cost to the United States, and agrees to implement the cleanup activities and the Institutional Controls for the Site, as set forth in Appendix B, upon acquisition of the Site.

19. Further, the U.S. Forest Service has approached EPA and DEQ about conveying 2 parcels, which it owns and which are adjacent to the Site, to the State of Montana. These parcels, consisting of approximately 3.09 acres, contain contamination from the Site. Should these parcels, as identified on Appendix C, be conveyed to the State on or before July 1, 2008, the Parties to this Agreement agree that the definition of Site shall be deemed modified to include said parcels. EPA and DEQ may mutually agree, in writing, to extend the above-referenced July 1, 2008 date for conveyance of the U.S. Forest Service property to Settling Respondent. If such acquisition occurs by the above date, DEQ shall provide EPA a copy of the deed conveying the two parcels to the State of Montana within 15 days of the effective date of the conveyance, and Settling Respondent shall, within 15 days of the effective date, comply with the requirements of

Paragraph 21 with respect to the parcels acquired from the U.S. Forest Service and any requirements in Appendix B.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

20. Notwithstanding any provision of this Agreement, EPA and DEQ retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k (“RCRA”), and any other applicable statute or regulation, including any amendments thereto. Settling Respondent agrees to provide EPA, its authorized employees and representatives, the right of access at all reasonable times to the Site for the purpose of inspecting the Work Settling Respondent is undertaking pursuant to Paragraph 18 herein and monitoring compliance with this Agreement.

21. With respect to the Site, within 15 days after the effective date of this Agreement [or the date of acquisition of the Site, whichever date is later], Settling Respondent shall submit to EPA for review and approval a notice to be filed with the Recorder’s Office, Park County, Montana, which shall (a) provide notice to all successors-in-title of the location of the Site, (b) describe the conditions of the Site, and (c) state any response activities Settling Respondent has performed at the Site and response activities planned for the Site. Settling Respondent shall record the notice within 10 days of EPA’s approval of the notice. Settling Respondent shall provide EPA with a certified copy of the recorded notice within 10 days of recording such notice. Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees of the Site or any portion thereof are provided a copy of this Agreement and shall provide access and cooperation. Settling Respondent shall ensure that any subsequent leases, subleases, assignments

or transfers of the Site or any portion thereof or an interest in the Site are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant) of the Agreement.

VI. DUE CARE/COOPERATION

22. Settling Respondent shall exercise due care at the Site with respect to any Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Settling Respondent recognizes that the Existing Contamination and completion of the activities, measures and actions described in Appendix B at the Site may interfere with Settling Respondent's use of the Site, and may require appropriate use restrictions on portions of the Site. In the event Settling Respondent becomes aware of any action or event which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VII. CERTIFICATION

23. Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Settling Respondent and all information in the possession or control of the DEQ which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release

of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

VIII. UNITED STATES' COVENANT NOT TO SUE

24. Subject to the Reservation of Rights in Section IX of this Agreement, and upon Settling Respondent acquiring the Site, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs, pursuant to Sections 106, 107(a), or 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), or 9613 or Section 7003 of RCRA, 42 U.S.C. § 6973, or CECRA, Sections 75-10-715, 717, 719, 724, 726, or 743, MCA, with respect to the Existing Contamination. This covenant not to sue is conditioned upon the satisfactory performance by Settling Respondent of its obligations set forth in Appendix B.

IX. RESERVATION OF RIGHTS

25. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' Covenant Not to Sue). The United States reserves, and this Agreement is without prejudice to, all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Undertakings), Section V (Access/Notice to Successors in Interest), and Section VI (Due Care/Cooperation);

b. any liability resulting from future releases of hazardous substances, pollutants or

contaminants, other than Existing Contamination, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

c. any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

d. criminal liability;

e. liability to any federal agency other than EPA for damages caused by Settling Respondent for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment; and

f. liability for violations of local, State or federal law or regulations.

26. With respect to any claim or cause of action asserted by the United States, Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

27. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States or the State may have against any person, firm, corporation or other entity not a party to this Agreement.

28. Nothing in this Agreement is intended to limit the right of EPA or Settling Respondent to undertake future response actions at the Site. EPA also reserves the right to seek or to compel Settling Respondent to perform or pay for response actions set forth in Appendix B that have not been performed at the Site. Settling Respondent acknowledges that upon acquisition of the Site from Camjac, it will own a Site where past response actions have been required and Settling Respondent will perform the activities specified in Appendix B.

X. SETTling RESPONDENT'S COVENANT NOT TO SUE

29. In consideration of the United States' Covenant Not To Sue in Section VIII of this Agreement, and subject to the reservation of rights in Paragraph 25, Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives, including any department, agency or instrumentality of the United States with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site.

30. Settling Respondent reserves, and this Agreement is without prejudice to, rights to actions against the United States based on (a) negligent actions taken directly by the United States, not including oversight of Settling Respondent's plans or activities, that are 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; (b) claims or causes of action accruing to the State in the consultative capacity or state role specified in CERCLA and the NCP, including but not limited to claims or actions described in Section 121 of CERCLA, 42 U.S.C. § 9621; and (c) claims or causes of action based on a failure by the United States to meet a requirement of this Agreement or any other agreement which an agency or instrumentality of the United States has entered into related to the Site.

31. Nothing herein shall be deemed to constitute preauthorization of a claim within the

meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

32. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon Settling Respondent, its officials, representatives, employees, contractors, agencies and instrumentalities. The United States' Covenant Not to Sue in Section VIII and Contribution Protection in Section XVII shall apply to Settling Respondent's officials, representatives, employees, contractors, agencies and instrumentalities to the extent that the alleged liability of the officials, representatives, employees, contractors, agencies and instrumentalities is based on their status and in their capacity as officials, representatives, employees, contractors, agencies and instrumentalities of Settling Respondent, and not to the extent that the alleged liability arose independent of the alleged liability of Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

33. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

34. Assignment or Transfer of the Site:

a. The Parties agree, and this Agreement contemplates, that Settling Respondent may without prior written consent, assign or transfer all or portions of the Site to a local governmental entity after further measures are taken to enhance or make previous response actions more protective. In such case, the local governmental entity shall, upon providing written consent to be bound by the terms and conditions of this Agreement to Settling Respondent and

EPA, be bound by all terms and conditions of this Agreement, and subject to all of its benefits.

b. For any other assignment or transfer of the Site or an assignment or transfer of an interest in the Site, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Site, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the undertakings provision of Section IV and the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

35. Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement to any person or entity that is not a local governmental entity.

XII. DISCLAIMER

36. This Agreement in no way constitutes a finding by any Party as to the risks to human health and the environment which may be posed by contamination at the Site nor constitutes any representation by any Party that the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

37. Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Site, for at least ten years, following the effective date of this Agreement unless otherwise

agreed to in writing by the Parties. At the end of ten years, Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XIV. NOTICES AND SUBMISSIONS

38. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below either by regular mail, certified mail, overnight mail, or, if permitted by the recipient, facsimile or electronic mail, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to EPA and the Settling Respondent:

As to U.S. Environmental Protection Agency:

Richard H. Baird, Esq., Senior Enforcement Attorney
U.S. Environmental Protection Agency, Region 8
Legal Enforcement Program, MC 8ENF-L
1595 Wynkoop Street
Denver, CO 80202-1129

Steve Way 8EPR-ER
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202-1129

As to the State of Montana:

John Koerth
Montana Department of Environmental Quality
1100 N. Last Chance Gulch
P.O. Box 200091
Helena, MT 59620-0901

C. Bradley Smith
DEQ Legal Counsel
Montana Department of Environmental Quality
1100 N. Last Chance Gulch
P.O. Box 200901
Helena, Mt. 59620-0901

XV. EFFECTIVE DATE

39. The effective date of this Agreement shall be the date upon which EPA issues written notice to Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received.

XVI. TERMINATION

40. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the Party requesting such termination receives written agreement from the other Party to terminate such provision(s).

XVII. CONTRIBUTION PROTECTION

41. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States, the State of Montana or any other person for the Site with respect to the Existing Contamination. In addition, the Parties acknowledge that Settling Respondent's acquisition of the Site in order to control access to future

use of the Site, impose Institutional Controls and perform the activities, measures and actions set forth in Appendix B are all “services related to remedial action, “for purposes of Section 75-10-718(4), MCA.

42. Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

43. Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XXIII. APPENDICES

44. Appendix A shall mean the property description for the Site.

45. Appendix B shall mean a description of the activities, measures and actions which Settling Respondent has agreed to perform at the Site.

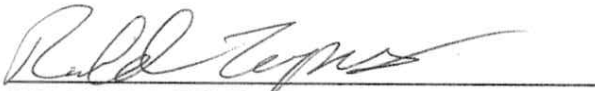
46. Appendix C shall mean the aerial photo depicting the approximately 3.09 acres that Settling Respondent contemplates acquiring from the U.S. Forest Service, which property may become subject to this Agreement, pursuant to Paragraph 19.

XX. PUBLIC COMMENT

47. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE:

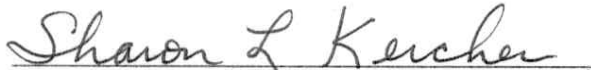


RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
Department of Justice

6 Feb. 2008
Date

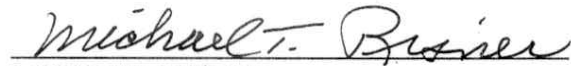
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

BY:



SHARON L. KERCHER, Director
Technical Enforcement Program, Office of
Enforcement, Compliance and Environmental Justice

December 5, 2007
Date



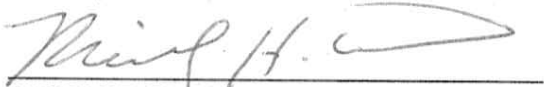
MICHAEL RISNER
Director, Legal Enforcement
Region 8

12/5/07
Date

IT IS SO AGREED:

STATE OF MONTANA:

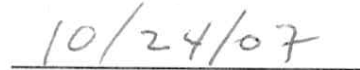
BY:



RICHARD H. OPPER

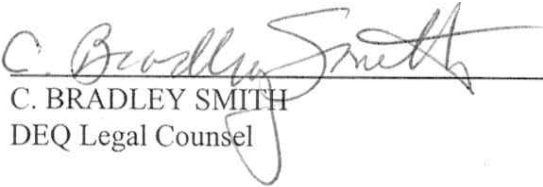
Director

Montana Department of Environmental Quality



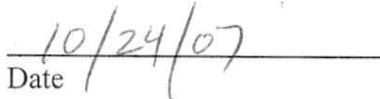
Date

Approved By:



C. BRADLEY SMITH

DEQ Legal Counsel



Date

APPENDIX A

The McLaren Tailings Site is described as follows:

Patented mining claims located in the New World (unorganized) Mining District, Township Nine (9) South, Range Fourteen (14) East, M.P.M., Park County, Montana, known as:

IDABELLE Lode Mining Claim, M.S. No.10815A;

IDABELLE Mill Site Claim, M.S. No. 10815B;

COPPER GLANCE Mill Site Claim, and COPPER GLANCE Mill Site No. 2 Claim M.S. No. 10814;

That portion of the HORSE SHOE and GREELEY Placer claim, M.S. No. 4072, located south of the R.O.W. Hwy 212;

ORE CACHE Mill Site Claim, M.S. No. 53B (also known as Blocks One (1), Two (2), and Three (3) of Vilas and Henry Addition to Cooke City, Montana); and the following mineral surveys located in New World (unorganized) Mining District, Township 9 South, Range 14 East M.P.M., Park County, Montana:

GRUBSTAKE M.S. No. 4155; FAIRVIEW M.S. No. 55B; and Blocks One (1) Two (2) and Three (3) of Vilas and Henry Addition to the Town of Cooke City, Park County, Montana.

APPENDIX B

DEQ will perform the following monitoring, maintenance and related activities with respect to the Site as set forth below:

DEED RESTRICTIONS

Deed Notice(s) will be prepared in accordance with Paragraph 21.

ACCESS RESTRICTIONS

Access restrictions will be as follows:

- Install locking barricade across access road into site from U.S. Highway 212.
- Barricade ATV trail access into site from western boundary.
- Install signs at trail and road barricades.

ANNUAL INSPECTIONS

DEQ will:

- Evaluate integrity of soil cap over tailings and take necessary measures to maintain cap. This may include:
 - a. physical site visit to visually inspect cover;
 - b. identify areas where soil cap has been disturbed by digging, motor vehicle use, etc.; and,
 - c. estimate funding needed to make any necessary repairs.
- Evaluate containment dike for signs of deterioration. This may include:
 - a. visually inspect dike for signs of additional leakage from previous inspections; and,
 - b. estimate funding needed to stabilize dike if necessary.

FURTHER INVESTIGATION / EVALUATION

DEQ will further investigate the nature and extent of contamination on the Site, including the historic mill site, evaluate, and, if it determines it is necessary, plan and implement such future additional response / reclamation activities as are necessary for protection of health, welfare and the environment.

APPENDIX C

Work To Be Accomplished MacLaren Tailings STA Section 25, T.9S., R.14E.



LEGEND

New lines to be marked and posted

New Corners to be set

Corners to tie

Existing Mineral Survey boundary

USFS Survey Drawing. Pink lines shows survey lines for areas currently on National Forest Lands that are to be conveyed to CAMJAC, Inc. due of encroachments of mine waste onto Forest Lands. These Forest parcels totaling 3.09 acres are to be included in the necessary land to be acquired to ensure successful reclamation of the McLaren Tailings Site.

Work To Be Accomplished MacLaren Tailings STA Section 25, T.9S., R.14E.



LEGEND

New line to be marked and posted

New Corners to be set

Corners to tie

Existing Mineral Survey boundary