

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Camp Bird Mine Site,
Ouray County, Colorado

The Bankruptcy Estate of
Camp Bird Colorado, Inc.,

Respondent.

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

U.S. EPA CERCLA Docket No. **CERCLA-08-2017-0007**

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION**

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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 the Chapter 7 trustee for the bankruptcy estate of Camp Bird Colorado, Inc. (Respondent). This Settlement pertains to Work at the Camp Bird Mine Property (Property) located approximately six miles south of the Town of Ouray in Ouray County, Colorado. The Camp Bird Mine Site (Site), as defined herein, is part of the Property, which is part of the Camp Bird Colorado, Inc. (CBCI) bankruptcy estate. This Settlement is entered into to facilitate the sale of the Property by Respondent and to provide for the performance of Work at the Site and the payment of certain response costs incurred by the United States at or in connection with the Site by Purchaser.

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, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). 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. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 8 to the Director, Preparedness, Assessment, and Emergency Response Program, Office of Ecosystems Protection and Remediation and to the supervisors in the Legal Enforcement Program and supervisors in the Technical Enforcement Program, Office of Enforcement, Compliance and Environmental Justice.

3. EPA has notified the State of Colorado (State) 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 to be undertaken by Purchaser in accordance with this Settlement do not constitute an admission of any liability. 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.

5. Respondent and Purchaser do not admit any liability to EPA, each other or any third party arising out of the Findings of Fact or Conclusions of Law set forth herein and reserve the rights to dispute said findings and conclusions in any legal proceedings, except in a proceeding to enforce this Settlement.

II. PARTIES BOUND

6. This Settlement is binding upon EPA and upon Respondent and its successors and assigns. Upon ratification of this Settlement by Purchaser, this Settlement is binding upon Purchaser and any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser's responsibilities under this Settlement, except in accordance with Paragraph 39.

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

III. DEFINITIONS

8. 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:

“Camp Bird Mine 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).

“CBCI” shall mean Camp Bird Colorado, Inc., a Chapter 7 debtor in a bankruptcy case being jointly administered under Case No. 14-33427 filed in the United States Bankruptcy Court for the District of Utah.

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

“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 or State holiday, the period shall run until the close of business of the next working day.

“DRMS” shall mean the Division of Reclamation, Mining and Safety within the Colorado Department of Natural Resources.

“DRMS Permit” shall mean DRMS active mine permit #M-1982-090 originally issued to CBCI in 1982 and which is to be transferred via the DRMS administrative process to Purchaser in connection with the sale of the Property to Purchaser by Respondent.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXXI (Effective Date).

“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.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access Section XIII (Emergency Response and Notification of Releases), Paragraph 79 (Work Takeover), Paragraph 102 (Access to Financial Assurance), Paragraph 30 (Community Involvement Plan) (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution) and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

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

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

“Parties” shall mean EPA, Respondent and Purchaser.

“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the Work to be performed pursuant to this Settlement consistent with Sections 300.415(*l*) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

“Phase 1 Work” shall mean the Work described in Paragraph 24.a, as more fully detailed in the Removal Work Plan.

“Phase 2 Work” shall mean shall mean the Work described in Paragraph 24.b, as more fully detailed in the Removal Work Plan.

“Property” shall mean the Camp Bird Mine, including, but not limited to, the mining claims and real property covering approximately 1,200 acres approximately 6 miles south of

the Town of Ouray on land within the Uncompahgre National Forest, in Ouray County, Colorado. The Property includes the Site, as defined herein.

“Purchaser” shall mean Caldera Mineral Resources, LLC, a Delaware limited liability company.

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

“Respondent” shall mean the CBCI bankruptcy estate represented by Duane H. Gillman as the Chapter 7 trustee.

“Removal Work Plan” shall mean the work plan attached hereto as Appendix B for the implementation of the Work.

“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 XXIX (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Camp Bird Mine Site. The Site includes the two tailings piles, known as the historic and modern tailings, located at the Property, as more specifically delineated by the map included in Appendix A and all suitable areas in very close proximity to the contamination necessary for implementation of the Work. The Site also includes the 3-Level Area rock glacier for the limited purpose, and to the extent that, this area is used as a source of rip rap or cover material. “State” shall mean the State of Colorado.

“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); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities and obligations Purchaser is required to perform under this Settlement, including the Phase 1 and Phase 2 Work, except those required by Section XI (Record Retention). Work includes activities and obligations as delineated herein with respect to both Phase 1 and Phase 2 of the Work, except that Phase 2 Work shall be excluded from the definition of “Work” if Purchaser successfully elects to discontinue its obligations under this Settlement for Phase 2 Work pursuant to Paragraph 26.c herein.

IV. FINDINGS OF FACT

9. The Property is located six miles south of the Town of Ouray, on land within the Uncompahgre National Forest, in Ouray County, Colorado. It consists of numerous mining claims and real property covering approximately 1,200 acres.

10. Mining activities began at the Camp Bird Mine in 1877 when the first claims were staked. Silver was discovered the following year. The Camp Bird Mine produced about 1.5 million troy ounces of gold, and 4 million troy ounces of silver, from 1896 to 1990. Milling activities began at the Site in the late 1800s. Large quantities of tailings were deposited in cells that border Sneffels, Imogene and Canyon Creeks, which ultimately combine and flow downstream to Ouray.

11. CBCI acquired the Property in 1958 and owned and operated the Property for over the past 50 years. CBCI applied for and obtained a mining permit from the predecessors of DRMS in 1982. CBCI undertook reclamation of the tailings cell located on the north side of Sneffels and Canyon Creeks, placing cover materials on the top and slopes of the tailings piles.

12. In May 2015, EPA visually inspected the Site. EPA conducted more extensive sampling on May 27 and 28, 2015. EPA's sampling showed that conditions at the Site present a variety of environmental problems including, but not limited to, the existence of uncovered mine waste deposits. These mine waste deposits are roughly bisected by Canyon Creek, with the so-called "historic tailings" south of Canyon Creek and the "modern tailings" north of Canyon Creek. Waste materials are being readily eroding into the creek, which, in turn, are loading significant amounts of heavy metals into the stream system.

13. EPA's sampling shows there are concentrations of copper, zinc and lead in the mine waste deposits at the Site, at levels toxic to aquatic life. Copper, zinc and lead are listed as hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). An uncontrolled release of hazardous substances threatens the creek's benthic invertebrate community and could pose a threat to fish.

14. In December 2014, CBCI filed for reorganization under Chapter 11 of the Bankruptcy Code along with its parent corporation, Federal Resources Corporation, in the U.S. Bankruptcy Court, District of Utah, Central Division. In response, the United States filed a proof of claim in the Utah bankruptcy court to recover EPA response costs at multiple sites.

15. On March 23, 2016, the Chapter 11 bankruptcy was converted to Chapter 7, and Duane H. Gillman was appointed Chapter 7 trustee for Respondent.

16. Respondent and Purchaser intend to settle their claims against each other in CBCI's and Federal Resources Corporation's bankruptcy case pursuant to a compromise of controversies in accordance with Bankruptcy Rule 9019. As part of the settlement, Respondent shall transfer the Property to Purchaser free and clear of liens pursuant to Bankruptcy Code section 363. In order to facilitate such sale, EPA and Respondent have entered into this Settlement to address the Work at the Site necessary to remedy certain environmental conditions.

17. The Work required by this Settlement is necessary to protect the public health, welfare or the environment.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

a. The Camp Bird Mine Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

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

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent is a former “operator” and current “owner” and/or “operator” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

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

f. The Work 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.

VI. SETTLEMENT AGREEMENT AND ORDER

19. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations and the administrative record, it is hereby Ordered and Agreed as follows.

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

20. Purchaser 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 30 days after the Effective Date. Purchaser 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 30 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 Purchaser. If EPA disapproves of a selected

contractor, Purchaser shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 30 days after EPA's disapproval.

21. Purchaser has designated Mike Thompson of Reardon Steel, LLC as its Project Coordinator for Work under this Settlement for Phase 1, and Phase 2 if Purchaser does not successfully elect to conduct Phase 2 Work pursuant to the DRMS permit. The Project Coordinator shall be responsible for administration of all actions by Purchaser required by this Settlement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. If Purchaser changes its Project Coordinator, EPA retains the right to disapprove of the new Project Coordinator. If EPA disapproves of the new Project Coordinator, Purchaser shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 30 days following EPA's disapproval.

22. EPA has designated Martin McComb of the Emergency Response and Preparedness Program, Region 8, as its On-Scene Coordinator (OSC). EPA and Purchaser shall have the right, subject to Paragraph 21, to change their respective designated OSC or Project Coordinator. Purchaser shall notify EPA 7 days before such a change is made. The initial notification by Purchaser may be made orally, but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

24. Purchaser shall perform, at a minimum, all actions necessary to implement the Work. The Work shall be implemented in two phases:

a. Phase 1 Work includes:

(1) Stabilizing the historic tailings, as described in the Removal Work Plan; and

(2) Recontouring the historic tailings and reinforcing the associated stream banks to the extent necessary to prevent erosion of mine waste from a 100-year flood event, as described in the Removal Work Plan.

b. Phase 2 Work includes:

(1) Stabilizing the slopes of the modern tailings, as defined in the Removal Work Plan.

25. 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 Purchaser receives notification from EPA of the modification, amendment or replacement.

26. Removal Work Plan and Implementation.

a. Purchaser shall implement the Removal Work Plan, attached to this Settlement as Appendix B, in accordance with the schedule approved by EPA.

b. Within 10 working days of the Effective Date, Purchaser shall commence implementation of Phase 1 of the Work in accordance with the schedule included in the Removal Work Plan. Purchaser shall not commence any Work except in conformance with the terms of this Settlement.

c. Purchaser may elect to implement Phase 2 Work as follows. Prior to August 1, 2017, Purchaser shall submit to DRMS a request for transfer of mineral permit and succession of operator's application ("Request for Transfer"). A template can be found at: <http://mining.state.co.us/SiteCollectionDocuments/TransferMineralPermitpackage.pdf>. Within 120 days of the Effective Date, Purchaser shall submit to DRMS an application for a Technical Revision or Amendment to the DRMS permit, to implement the approved Phase 2 Work, beginning in the 2018 construction season ("DRMS Permit Revision Application"). DRMS will oversee the implementation of the Phase 2 Work and set financial warranty requirements pursuant to the terms of the DRMS Permit and in accordance with the requirements of the Colorado Mined Land Reclamation Act, C.R.S., § 34-32-101, *et seq* and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal and Designated Mining Operations. Purchaser has successfully elected to discontinue its obligations under this Settlement for Phase 2 Work when it successfully receives an amended DRMS permit approval from DRMS of the DRMS Permit Revision Application within 90 days after submittal of the DRMS Permit Revision Application, subject to weather conditions that delay approval.

(1) If DRMS approves a Technical Revision or Amendment to the DRMS permit, Purchaser's obligations for Phase 2 Work under this Settlement will become null.

(2) If Purchaser does not comply with the DRMS Technical Revision or Amendment to the DRMS permit, Purchaser's obligations for Phase 2 Work under this Settlement will revive.

(3) If DRMS does not approve a Technical Revision or Amendment to the DRMS permit, Purchaser's obligations for Phase 2 Work under this Settlement remain.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the Removal Work Plan shall be reviewed and approved by EPA in accordance with Paragraph 27.

27. Submission of Deliverables.

a. General Requirements for Deliverables.

(1) Purchaser shall submit all deliverables required by this Settlement or any approved work plan to EPA in accordance with the schedule set forth in such plan to the OSC at mccomb.martin@epa.gov as provided in Section XXX (Notices and Submissions).

(2) Purchaser shall submit all deliverables in electronic form. If any deliverable includes maps, drawings or other exhibits that are larger than 8.5" by 11", Purchaser shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

(1) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format, which can be found on the OSC webpage at: https://epaossc.org/site/doc_list.aspx?site_id=8756. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/policies.html> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Purchaser does not, and is not intended to, define the boundaries of the Site.

28. Health and Safety Plan.

a. By August 1, 2017 or within 15 working days after Purchaser ratifies this Settlement pursuant to Paragraph 112, whichever date occurs later, Purchaser shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at

<http://www.epa.gov/nscep/index.html>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaossc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Purchaser shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the Work.

29. Quality Assurance, Sampling and Data Analysis.

a. If necessary, Purchaser will submit, EPA will review, comment on and approve a Quality Assurance Project Plan (QAPP) for Work under this Settlement for Phase 1, and Phase 2 if Purchaser does not successfully elect to conduct Phase 2 Work pursuant to the DRMS permit. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Removal Work Plan, the NCP and 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). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

b. If a QAPP is necessary, Purchaser shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Purchaser in implementing this Settlement. In addition, Purchaser 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 the Agency’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondents shall ensure that the laboratories they utilize 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” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> 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/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www3.epa.gov/ttnamti1/airtox.html>).

c. Notwithstanding Paragraph 29.b, upon approval by EPA, Purchaser may use other appropriate analytical method(s), as long as (i) quality 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. Purchaser shall ensure that all laboratories they use 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 as meeting the Quality System requirements. Purchaser 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.

d. Upon request, Purchaser shall provide split or duplicate samples to EPA or its authorized representatives. Purchaser shall notify EPA not less than 7 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 Purchaser split or duplicate samples of any samples it takes as part of EPA's oversight of Purchaser's implementation of the Work.

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

f. Purchaser waives any objections to any data gathered, generated or evaluated by EPA or Purchaser in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Purchaser objects to any other data relating to the Work, Purchaser shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

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

30. Community Involvement Plan. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, Purchaser 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. Purchaser'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 assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Purchaser at EPA's request are subject to EPA's oversight. At EPA's discretion, Purchaser shall establish a community information repository at or near the Site to house one copy of the administrative record.

31. Post-Removal Site Control. In order to ensure the long-term monitoring and maintenance of the Phase 1 and Phase 2 Work, and of any features constructed to support the same, Purchaser shall, upon completion of the Phase 1 Work, record a Notice of Environmental Use Restrictions for the Site, in accordance with C.R.S. § 25-13-321, in substantially the same form as attached hereto as Appendix F.

32. Progress Reports. Purchaser shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement on a monthly basis, or as otherwise requested by EPA, starting in the next calendar month after the Effective Date of this Settlement and continuing until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the OSC, from April-November, plus any other month when there are activities to report. The progress report for the month just ended will be due on the 10th day of the next month, or the next business day thereafter. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems and planned resolutions of past or anticipated problems.

33. Final Report. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 109 (Notice of Completion), Purchaser 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 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 the 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 Work (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Purchaser or Purchaser'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 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."

34. Off-Site Shipments.

a. Purchaser 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. Purchaser will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Purchaser 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). Purchaser may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Purchaser complies with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

b. Purchaser 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 environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten 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. Purchaser also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Purchaser shall provide the written notice after the award of the contract for the Work and before the Waste Material is shipped.

IX. PROPERTY REQUIREMENTS

35. Agreements Regarding Access and Non-Interference. Purchaser shall provide to officers, employees and authorized representatives of EPA and the State access to the Site for the activities set forth below. Purchaser shall, with respect to any property owned or controlled by another person where EPA determines, at any time, that access is needed to implement the Work, use best efforts to secure from such person an agreement, enforceable by Purchaser and EPA, providing that such person shall, with respect to any property: (i) provide EPA, Purchaser, and their representatives, contractors and subcontractors with access at all reasonable times to such property conduct any activity regarding the Work, including those activities listed in Paragraph 35.a (Access Requirements); and (ii) refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity or protectiveness of the Work.

a. Access Requirements. The following is a list of activities for which access is required regarding the Site and any property subject to an agreement between Purchaser and any other person relating to the Work:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;

- (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 construction quality assurance quality control plan as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 79 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Purchaser or its agents, consistent with Section X (Access to Information);
- (9) Assessing Purchaser's compliance with the Settlement; and
- (10) Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted.

36. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Purchaser 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 Purchaser is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Purchaser, 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 XIV (Payment of Response Costs).

37. Prior to notice of completion of the Work pursuant to Paragraph 109, Purchaser shall not Transfer its Property unless it has first secured EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by Purchaser and EPA; and (ii) requires the transferee to provide access to and refrain from using the Property to the same extent as is provided under Paragraphs 35.a.

38. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions or other governmental controls or notices are needed in addition to the Notice of Environmental Use Restrictions referenced in Paragraph 31, Purchaser shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

39. Prior to notice of completion of the Work pursuant to Paragraph 109, in the event of any Transfer of the Property, unless the United States otherwise consents in writing, Purchaser shall continue to comply with its obligations under the Settlement.

40. Notice to Successors-in-Title.

a. Within 10 working days of the Effective Date, Purchaser shall record the Notice to Successors-in-Title attached hereto as Appendix E in the Ouray County clerk and recorder's office. Purchaser shall submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. Prior to notice of completion of the Work pursuant to Paragraph 109, Purchaser shall, prior to entering into a contract to Transfer its Property, or 60 days prior to Transferring its Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected Work regarding the Site, that it has entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such Work, (identifying the name, docket number and the effective date of this Settlement); and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

41. 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

42. Purchaser shall provide to EPA, upon request, copies of all records, reports, documents and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as Records) within Purchaser's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information regarding the Work. Purchaser 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.

43. Privileged and Protected Claims.

a. Purchaser 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 Purchaser complies with Paragraph 43.b, and except as provided in Paragraph 43.c.

b. If Purchaser 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, Purchaser shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Purchaser 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 Purchaser's favor.

c. Purchaser may make no claim of privilege or protection regarding: (1) any data regarding the Work, 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 related to the Work; or (2) the final version of any Record or portion thereof that Purchaser is required to create or generate pursuant to this Settlement.

44. Business Confidential Claims. Purchaser may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) 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). Purchaser shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Purchaser assert 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 Purchaser that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Purchaser.

45. 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. RECORD RETENTION

46. Until 10 years after EPA provides Purchaser with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Purchaser shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site. Purchaser must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Purchaser (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned

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

47. At the conclusion of the document retention period, Purchaser shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 43 (Privileged and Protected Claims), Purchaser shall deliver any such Records to EPA.

48. Purchaser 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 and that it has fully complied with any and all EPA requests for information regarding 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.

XII. COMPLIANCE WITH OTHER LAWS

49. Nothing in this Settlement limits Purchaser's obligations to comply with the requirements of all applicable state 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 environmental or facility siting laws.

50. No local, state 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 or state permit or approval, Purchaser shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Purchaser may seek relief under the provisions of Section XVI (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 it 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 or state statute or regulation.

XIII. 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, Purchaser shall immediately take all appropriate action to prevent, abate or minimize such release or threat of release. Purchaser shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Purchaser shall also immediately notify the OSC or, in the event of

his/her unavailability, the Regional Duty Officer at (800) 424-8802 of the incident or Site conditions. In the event that Purchaser fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Purchaser shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

52. Release Reporting. In addition, in the event of any release of a hazardous substance from the Site, Purchaser shall immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at (800) 424-8802, and the National Response Center at (800) 424-8802. Purchaser shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

XIV. PAYMENT OF RESPONSE COSTS

53. Payments for Future Response Costs. Purchaser shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Purchaser a billing notification to the individuals listed for Purchaser in Section XXX (Notices and Submissions). If the billing notification is undeliverable, EPA will mail a paper copy to the billing notification to Purchaser at the mailing address set forth in Section XXX.

b. The billing notification will include a standard regionally-prepared cost report with the direct and indirect costs incurred by EPA and its contractors, subcontractors and the United States Department of Justice. Purchaser shall make all payments within 30 days of receipt of the bill, subject to Paragraph 56 (Contesting Future Response Costs). Purchaser shall make payments using one of the payment methods set forth in the billing notification.

c. Purchaser may change its email billing address or mailing address by providing notice of the new address to:

Financial Management Officer
US EPA Region 8 (TMS-FMP)
1595 Wynkoop Street
Denver, Colorado 80202

54. Deposit of Future Response Costs Payments. The total amount to be paid by Purchaser pursuant to Paragraph 53.a shall be deposited by EPA in the Camp Bird Mine 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. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance

Superfund shall not be subject to challenge by Purchaser pursuant to the dispute resolution provisions of this Settlement or in any other forum.

55. Interest. In the event that any payment for Future Response Costs is not made by the date required, Purchaser 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 Purchaser's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Purchaser's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 67 (Stipulated Penalties).

56. Contesting Future Response Costs. Purchaser may submit a Notice of Dispute, initiating the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 53 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to EPA in accordance with Section XXX (Notices and Submissions). Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Purchaser submits a Notice of Dispute, Purchaser shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 53. Simultaneously, Purchaser shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Purchaser shall send to EPA a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Purchaser shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 53. If Purchaser prevails concerning any aspect of the contested costs, Purchaser shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 53. Purchaser shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Purchaser's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

57. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

58. Informal Dispute Resolution. If Purchaser objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within 30 days after such action. EPA and Purchaser shall have 30 days from EPA's receipt of Purchaser's Notice of Dispute to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA and Purchaser pursuant to this Section shall be in writing and shall, upon signature by EPA and Purchaser, be incorporated into and become an enforceable part of this Settlement.

59. Formal Dispute Resolution. If EPA and Purchaser are unable to reach an agreement within the Negotiation Period, Purchaser shall, within 20 days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Assistant Regional Administrative level or higher will issue a written decision on the dispute to Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

60. Except as provided in Paragraph 56 (Contesting Future Response Costs) 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 Purchaser 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 59. 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 Purchaser does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

61. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Purchaser, of any entity controlled by Purchaser, or of Purchaser's contractors that delays or prevents the performance of any obligation under this Settlement despite Purchaser's best efforts to fulfill the obligation. The requirement that Purchaser exercise "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 Purchaser intends or may intend to assert a claim of Force Majeure, Purchaser shall notify EPA's OSC orally or, in his or her absence, the Director of the Waste Management Division, EPA Region 8, within 7 days of when Purchaser first knew

that the event might cause a delay. Within 30 days thereafter, Purchaser 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; Purchaser's rationale for attributing such delay to a Force Majeure; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Purchaser shall include with any notice all available documentation supporting its claim that the delay was attributable to a Force Majeure. Purchaser shall be deemed to know of any circumstance of which Purchaser, any entity controlled by Purchaser, or Purchaser's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Purchaser 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 Purchaser have exercised their best efforts under Paragraph 61, EPA may, in its unreviewable discretion, excuse in writing Purchaser'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 Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a Force Majeure, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure.

64. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Purchaser 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 Purchaser complied with the requirements of Paragraphs 61 and 62. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser 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 Purchaser from meeting one or more deadlines under the Settlement, Purchaser may seek relief under this Section.

XVII. STIPULATED PENALTIES

66. Purchaser 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 specified

below, unless excused under Section XVI (Force Majeure). “Compliance” by Purchaser 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 – Compliance Milestones.

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

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 14th day
\$ 2,000	15th through 30th day
\$ 4,000	31st day and beyond

b. Compliance Milestones.

(1) Failure to comply with the schedule set forth in the Removal Work Plan for Phase 1;

(2) Timely submission of the Final Report of Phase 1;

(3) Failure to comply with the schedule set forth in the Removal Work Plan for Phase 2 if Purchaser’s Phase 2 obligations remain obligations under this Settlement pursuant to Paragraph 26.c and are not performed under a DRMS permit;

(4) Timely submission of the Final Report of Phase 2 if Purchaser’s Phase 2 obligations remain obligations under this Settlement pursuant to Paragraph 26.c and are not performed under a DRMS permit; and

(5) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XXV (Financial Assurance).

68. Stipulated Penalty Amounts – Other Non-compliance. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement or to comply with any other requirement of this Settlement:

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

69. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the

correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 26 (Removal Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Purchaser of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Assistant Regional Administrator level or higher, under Paragraph 59 of Section XV (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. 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.

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

71. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Purchaser's receipt from EPA of a demand for payment of the penalties, unless Purchaser invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 53 (Payments for Future Response Costs).

72. If Purchaser fails to pay stipulated penalties when due, Purchaser shall pay Interest on the unpaid stipulated penalties as follows: (a) if Purchaser 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 due pursuant to Paragraph 69 until the date of payment; and (b) if Purchaser fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 71 until the date of payment. If Purchaser fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

74. 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 Purchaser'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 79 (Work Takeover).

75. 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.

XVIII. COVENANTS BY EPA

76. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs; provided however if Purchaser successfully elects to conduct Phase 2 Work pursuant to a DRMS permit, EPA's covenant not to sue is limited to the Phase 1 Work. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. These covenants extend only to Purchaser and do not extend to any other person. Any Work that is successfully elected out of this Settlement pursuant to Paragraph 26.c and is performed under a DRMS permit is not subject to this covenant.

XIX. RESERVATIONS OF RIGHTS BY EPA

77. 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 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 Purchaser in the future to perform additional activities pursuant to CERCLA or any other applicable law.

78. The covenants set forth in Section XVIII (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 Purchaser with respect to all other matters, including, but not limited to:

- a. Liability for failure by Purchaser 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 action 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 ATSDR related to the Site not paid as Future Response Costs under this Settlement.

i. Liability for Phase 2 Work in the event Purchaser successfully elects to implement such Work under the DRMS permit.

79. Work Takeover.

a. In the event EPA determines that Purchaser: (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 Purchaser. 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 Purchaser a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 79.a, Purchaser 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 Purchaser in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 79.b. Funding of Work Takeover costs is addressed under Paragraph 102 (Access to Financial Assurance).

c. Purchaser may invoke the procedures set forth in Paragraph 59 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 79.b. However, notwithstanding Purchaser'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 79.b until the earlier of (1) the date that Purchaser 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 59 (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.

XX. COVENANTS BY PURCHASER

80. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the Respondent or 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;

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

d. any direct or indirect claim for return of unused amounts from the Camp Bird Mine 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 XIX (Reservations of Rights by EPA), other than in Paragraph 78.a (Liability for Failure to Meet a Requirement of the Settlement), 78.d (Criminal Liability), or 78.e (Violations of Federal/State Law During or After Implementation of the Work), but only to the extent that Purchaser's claims arise from the same response action, response costs or damages that the United States is seeking pursuant to the applicable reservation.

82. 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).

83. Purchaser reserves, and this Settlement is without prejudice to, 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 Purchaser's deliverables or activities. Purchaser reserves, and this Settlement is without prejudice to, the Purchaser's right to assert bona fide prospective purchaser status in any other proceeding with respect to performance

of response actions other than the Work or any payment of response costs other than pursuant to this Settlement.

XXI. OTHER CLAIMS

84. 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 Purchaser. The United States or EPA shall not be deemed a party to any contract entered into by Purchaser or its directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Settlement.

85. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Purchaser 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.

86. 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).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

87. 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 XX (Covenants by Purchaser), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands and causes of action which each Party may have with respect to any matter, transaction or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this 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).

88. EPA and Purchaser agree that this Settlement constitutes an administrative settlement pursuant to which Purchaser 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 Phase 1 Work, the Phase 2 Work unless Purchaser successfully elects to conduct such work under the DRMS permit, and Future Response Costs.

89. EPA and Purchaser further agree that this Settlement constitutes an administrative settlement pursuant to which Purchaser 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).

90. Purchaser 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. Purchaser 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, Purchaser 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.

91. 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, Purchaser 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 XVIII (Covenants by EPA).

XXIII. INDEMNIFICATION

92. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Purchaser as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Purchaser 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 Purchaser, its officers, directors, employees, agents, contractors or subcontractors and any persons acting on Purchaser's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Purchaser agrees to pay the United States all costs it incurs, including but not limited to attorney 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 Purchaser, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.

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

94. Purchaser 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 any one or more of Purchaser 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, Purchaser 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 any one or more of Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

95. No later than 30 days before commencing any on-Site Work, Purchaser shall secure and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (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 Purchaser pursuant to this Settlement. In addition, for the duration of the Settlement, Purchaser shall provide EPA with certificates of such insurance and a copy of each insurance policy. Purchaser 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, Purchaser shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Purchaser in furtherance of this Settlement. If Purchaser 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 a lesser amount, Purchaser need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

96. In order to ensure completion of Phase 1 Work, Purchaser shall, on the Effective Date, provide financial assurance totaling \$1.9 million, \$1.2 million of which shall be secured in a trust fund pursuant to the Trust Agreement, or an agreement in substantially the same form, attached as Appendix C and \$700,000 of which shall be secured by a first lien on the Property pursuant to the first deed of trust and release of lien forms attached at Appendix D. By or on the Effective Date, Purchaser shall have secured all executed and finalized mechanisms or other documents necessary to establish the trust fund and record the lien and shall submit such mechanisms and documents to Region 8 CERCLA Financial Analyst, CERCLA Technical Enforcement Program, Mail Code: 8ENF-RC at 1595 Wynkoop Street, Denver, Colorado 80202.

97. Purchaser may draw down from the trust fund up to \$700,000 for Phase 1 Work performed under the Removal Work Plan by delivering a written request for payment to the trustee of the trust fund and EPA and receiving approval from the trustee and EPA, as provided in the Trust Agreement.

a. \$350,000 of the total \$700,000 will be releasable for billings submitted to and approved under the Trust Agreement as they are submitted.

b. Another \$200,000 of the total \$700,000 will be releasable for billings submitted to and approved under the Trust after EPA approval of all Phase 1 design deliverables required pursuant to the Work Plan, including identification of the source of necessary cover materials.

c. Another \$150,000 of the total \$700,000 for billings submitted to and approved under the Trust will be releasable upon EPA approval of that portion of Tasks 1-4 of the Phase 1 Work anticipated to be completed in 2017, as set forth in the Removal Work Plan.

98. To ensure clarity, if any of the financial assurance required under Paragraph 96 is available after Phase 1 of the Work is complete, that financial assurance will also be available to EPA for Phase 2 Work, unless that obligation has been nullified by Purchaser successfully electing to remove Phase 2 Work out of this Settlement and into the DRMS Permit in accordance with Paragraph 26.c., in which case any balance in the trust fund will be refunded to Purchaser pursuant to Paragraph 4.h of the Trust Agreement.

99. Within 120 days of the Effective Date, Purchaser shall have secured, \$700,000 in additional financial assurance for Work at the Site for the benefit of EPA and Purchaser shall submit such mechanisms and documents to Region 8 CERCLA Financial Analyst, CERCLA Technical Enforcement Program, Mail Code: 8ENF-RC at 1595 Wynkoop Street, Denver, Colorado 80202. The first lien on the Property will be released by EPA within 21 days of delivery of the additional \$700,000 financial assurance by completing the relevant sections of Appendix D and returning the release form to Purchaser for recording. In the event Purchaser does not fund the \$700,000 in additional financial assurance, the lien will be removed as provided in the prior sentence only after EPA certifies as complete the Work undertaken pursuant to this Settlement. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at <http://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Purchaser may use multiple mechanisms if it is limited to surety bonds, letters of credit and/or trust funds.

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; or

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.

100. In order to ensure completion of Phase 2 of the Work, within 180 days of the Effective Date, Purchaser shall provide EPA additional financial assurance, above and beyond the \$700,000 financial assurance in Paragraph 99, unless Purchaser has elected to perform its Phase 2 Work obligations under an approved DRMS permit in accordance with Paragraph 26.c and has successfully received an amended DRMS permit by January 31, 2018. If Purchaser does not elect to perform its Phase 2 Work obligations under an approved DRMS permit in accordance with Paragraph 26.c, Purchaser will provide financial assurance sufficient to assure the cost of the Phase 2 Work obligations for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed in Paragraph 99, in a form substantially identical to the relevant sample documents available from the “Financial Assurance” category on the Cleanup Enforcement Model Language and Sample Documents Database at <http://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Purchaser may use multiple mechanisms.

101. Purchaser shall diligently monitor the adequacy of the financial assurance. If Purchaser 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, Purchaser shall notify EPA of such information within 7 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 Purchaser of such determination. Purchaser 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 Purchaser, 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. Purchaser shall follow the procedures of Paragraph 103 (Modification of Amount, Form or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Purchaser’s inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Purchaser to complete the Work in accordance with the terms of this Settlement.

102. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 79.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) the payment of any guaranteed funds in accordance with Paragraph 102.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Purchaser 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 102.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 79, 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, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Purchaser shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 102 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 Camp Bird Mine Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 102 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

103. Modification of Amount, Form or Terms of Financial Assurance. Purchaser may submit, on any anniversary of the Effective Date, at the end of 2018 or any subsequent calendar year, or at any other time agreed to by EPA and Purchaser, 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 Paragraph 99.c, 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 Purchaser of its decision to accept or reject a requested reduction or change pursuant to this Paragraph. Purchaser 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 XV (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 Purchaser 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, Purchaser shall submit to EPA documentation of the reduced, revised or alternative financial assurance mechanism in accordance with Paragraph 99.c.

104. Release, Cancellation or Discontinuation of Financial Assurance. Purchaser may release, cancel or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVIII (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, final administrative decision, or final judicial decision resolving such dispute under Section XV (Dispute Resolution).

XXVI. MODIFICATION

105. The OSC may modify any plan or schedule, consistent with the Removal Work Plan, 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 OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of EPA and Purchaser.

106. If Purchaser seeks permission to deviate from any approved work plan or schedule, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 105.

107. No informal advice, guidance, suggestion or comment by the OSC or other EPA representatives regarding any deliverable submitted by Purchaser shall relieve Purchaser 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.

XXVII. ADDITIONAL WORK

108. If EPA determines that additional work not included in the Removal Work Plan or other approved plan, EPA will notify Purchaser of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional work, Purchaser shall submit for approval by EPA a work plan for the additional work. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 26 (Removal Work Plan and Implementation), Purchaser shall implement the plan for additional work in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

XXVIII. NOTICE OF COMPLETION OF WORK

109. 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 Post-Removal Site Controls, payment of Future Response Costs, or record retention, EPA will provide written notice to Purchaser. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Removal Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified Removal Work Plan shall be a violation of this Settlement. If Purchaser successfully elects to discontinue its obligations under this Settlement for Phase 2 Work, the procedures set forth in this Section XXVIII shall only apply as to the Phase 1 Work.

XXIX. INTEGRATION/APPENDICES

110. 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:

“Appendix A” is the description and/or map of the Camp Bird Mine Site.

“Appendix B” is the Removal Work Plan.

“Appendix C” is the Trust Agreement.

“Appendix D” is the Lien Forms.

“Appendix E” is the Notice to Successors in Title.

“Appendix F” is the draft Notice of Environmental Use Restrictions.

XXX. NOTICES AND SUBMISSIONS

111. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports and requests specified in this Settlement must be in writing unless otherwise specified. Whenever, under this Settlement, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Settlement regarding such Party.

As to EPA:

Martin McComb
On-Scene Coordinator
Mail Code: 8EPR-ER
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street,
Denver, Colorado 80202
Mccomb.martin@epa.gov
(303) 312-6963

and:

Kayleen Castelli
Enforcement Attorney
Mail Code: 8ENF-L
U.S. Environmental Protection Agency
1595 Wynkoop Street,
Denver, Colorado 80202
Castelli.kayleen@epa.gov
(303) 312-6174

**As to the Regional Financial
Management Officer:**

Daniela Golden
Region 8 CERCLA Financial Analyst
CERCLA Technical Enforcement Program
Mail Code: 8ENF-RC
1595 Wynkoop Street,
Denver, Colorado 80202
Golden.daniela@epa.gov
(303) 312-6772

As to Respondent:

Duane H. Gillman
Trustee
On behalf of the Bankruptcy Estate of Camp
Bird Colorado, Inc.
In the Matter before the United State
Bankruptcy Court for the District of Utah,
Case No. 14033427
111 S. Main Street Suite 2400
Salt Lake City, Utah 84111
dgillman@djplaw.com
(801) 297-1208

As to Purchaser:

Sturges Karban
Managing Member
Caldera Mineral Resources, LLC
8439 West Sunset Boulevard, Suite 101
West Hollywood, CA 90069
sturges@meridmedia.com

Dmitry Gordeychev
Dmitry.gordeychev@gmail.com
(310) 424-8794

Mike Thompson
Reardon Steel LLC
18050 County Road G
Cortez, CO 81321
mt@reardonsteel.us
(970) 565-0278

Elizabeth H. Temkin
Temkin & Hardt LLP
1900 Wazee Street, Suite 303
Denver, CO 80202
temkin@twhlaw.com
(303) 292-4922

XXXI. OBLIGATIONS OF RESPONDENT AND EFFECTIVE DATE

112. The obligations of Respondent pursuant to this Settlement are limited to the following: (i) the exercise of best efforts to require as a condition of sale to Purchaser that at the closing of the sale of the Property, the Purchaser ratify this Settlement and agree to be bound by its terms and to perform the Work; and (ii) to provide a copy of this Settlement to Purchaser. This Settlement shall be effective upon the closing of the sale of the Property to Purchaser and Purchaser's ratification of this Settlement.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

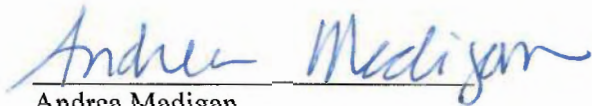
7/13/2017
Dated

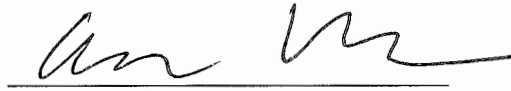


David Ostrander
Director, Preparedness, Assessment and Emergency
Response Program, Region 8

7/13/17
Dated

7/13/17
Dated


Andrea Madigan
CERCLA Supervisory Attorney
Legal Enforcement Program, Region 8


Aaron Urdiales
Director, RCRA/CERCLA Technical Enforcement
Program, Region 8

Signature Page for Settlement Regarding Camp Bird Mine Superfund Site

FOR The Bankruptcy Estate of Camp Bird Colorado, Inc.:

12 July 2017
Dated

Duane H. Gillman
Duane H. Gillman, Chapter 7 Trustee

The Undersigned Purchaser hereby ratifies this Settlement and agrees to be bound by and comply with its terms and to perform the Work.

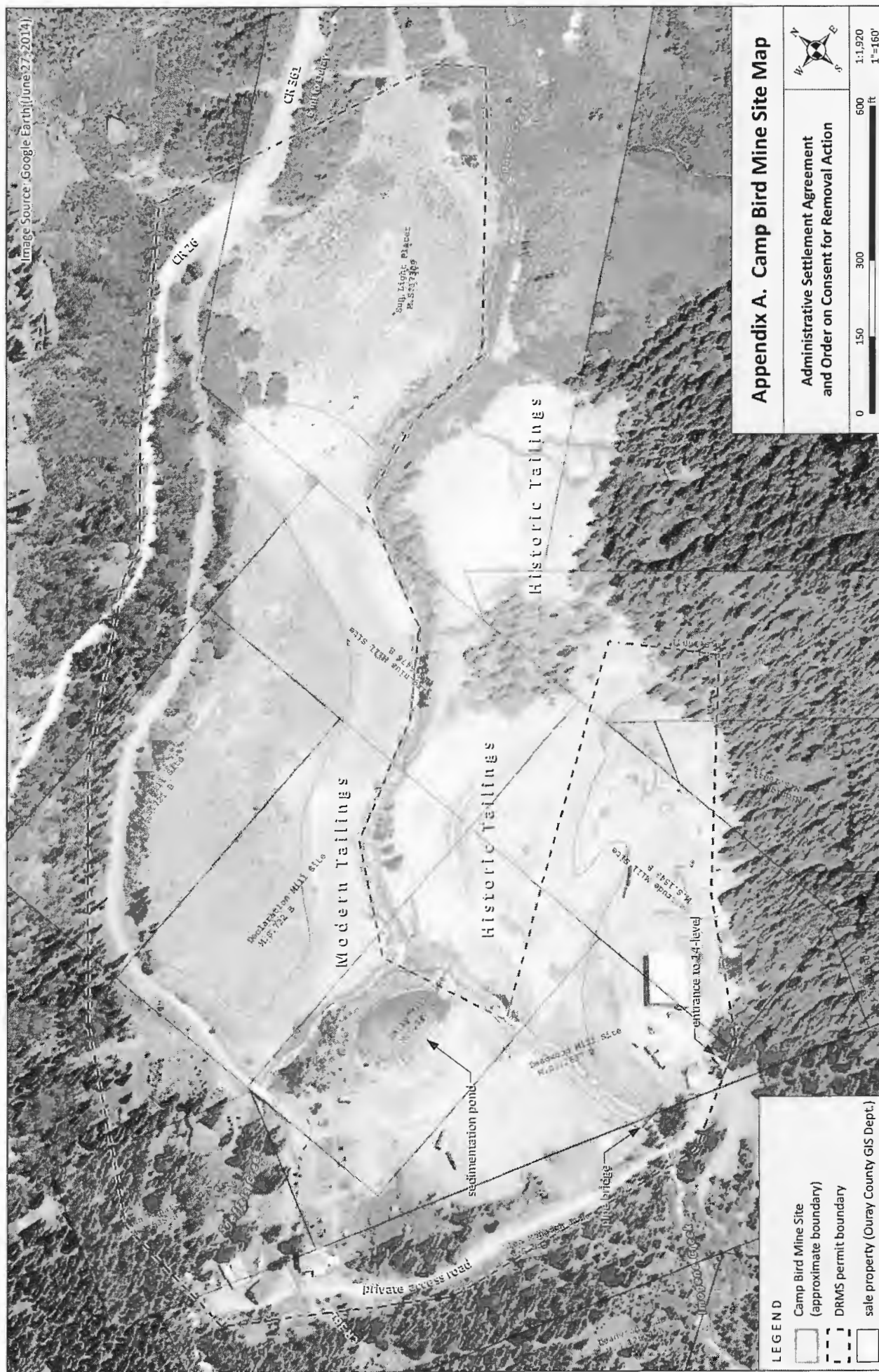
FOR Caldera Mineral Resources, LLC

Dated

Sturges Karban, Managing Member

Appendix A

Site Map



Appendix B

Work Plan

Work Plan
Camp Bird Removal Action
07/07/2017

Site Name: Camp Bird Mine
Site ID: A8H9

Purpose

This Work Plan is in support of the Administrative Settlement Agreement and Order on Consent for Removal Action (AOC) between the Bankruptcy Estate of Camp Bird Colorado, Inc. (Respondent), Caldera Mineral Resources, LLC (Purchaser), and the United States Environmental Protection Agency (EPA). Purchaser has acquired certain surface and mineral rights associated with the Camp Bird Mine through a bankruptcy settlement with Respondent. In connection with the purchase, Purchaser is required to complete certain tasks at the mine as described herein.

Site Description

The Camp Bird Mine is an underground mine, located 6 miles south of Ouray, Colorado. The Site subject to this Work Plan consists of three cells of tailings that are located near the entrance to the 14-Level of the mine. These tailings rest in direct proximity to Sneffels, Imogene and Canyon Creeks (see attached Site Map). Sneffels and Imogene Creeks enter the Site upstream and combine near the center of the tailings to form Canyon Creek. Canyon Creek flows downstream to Ouray.

Aerial View of the Camp Bird Mine at the Entrance to Level 14 in 2002¹



¹ Source: Mining History Association, <http://www.mininghistoryassociation.org/CampBird.htm>.

The two tailings cells located on the south side of Canyon Creek are referred to as the “historic tailings” and are associated with milling activities believed to date back to the early 1900s. The third and largest tailings cell located on the north side of Canyon Creek is referred to as the “modern tailings” and was last used for disposal in the late 1990s. The modern tailings occur within the boundary of an active mining permit that is administered by the Colorado Division of Reclamation, Mining and Safety (DRMS).

The Site also includes a large rock glacier around the 3-Level of the mine which may be used as a source of rip rap and cover material. The two areas are connected by a rough 2.5-mile dirt road.

Site Evaluation

The historic tailings cell that is furthest downstream is being actively eroded by a side drainage that flows into Canyon Creek. The slopes of both the historic and modern tailings are susceptible to erosion and instability from storm water runoff and flood events in the perennial drainages. The historic tailings are also largely uncovered making them susceptible to wind erosion.

Circumstances at the Site meet the requirements for a removal action under Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

Objectives

1. Prevent erosion of tailings from 100-year flood events in the adjacent perennial streams.
2. Prevent erosion of tailings from wind, storm water runoff, and side drainages that flow into the adjacent perennial streams.

Required Tasks

The tasks required by this Work Plan are divided into two phases. Phase 1 addresses erosion and erosion potential at the historic tailings. Phase 2 addresses erosion and erosion potential at the modern tailings. Deliverable dates assume August 1, 2017 as the date of ratification of the AOC by Purchaser, pursuant to the Section XXXI of the AOC. If the ratification is later, the deliverable dates will be updated accordingly. Other timeline references herein are estimates and may vary depending on adverse weather conditions (e.g. high stream flows and snow cover), availability of suitable capping, rip-rap and topsoil materials, and/or delayed access from third parties.

A. GENERAL PROJECT MANAGEMENT

Description: Perform project management duties and general support functions.

Deliverables	Due Dates
Health and Safety Plan	August 1, 2017
Emergency Notification Plan	August 1, 2017
Monthly Status Update Template	August 1, 2017
Monthly Status Update	7 th of each month
Final Report Template	February 1, 2019
Final Report	March 1, 2019

B. PHASE 1: PREVENT EROSION OF HISTORIC TAILINGS

Phase 1 Task 1: Improve the existing road between 14-Level and 3-Level of the mine and/or identify alternate sources of rip rap and cover material.

Description: Improve the approximately 2.5-mile-long, 4-wheel drive road between the tailings cells (~9,800 ft. elev.) and the large rock glacier located above the entrance to 3-Level (~11,500 ft. elev.) of the mine. The road will be used by off road haul trucks to transport a limited amount of rip-rap and cover material from the rock glacier down to the removal area. Maintain traffic control and public safety on the road during construction and use. *This task may be eliminated if suitable alternative source(s) of rip rap and cover material are identified.*

Access: The road is designated a county road by Ouray County and portions of it pass through United States Forest Service (USFS) lands. Input and/or access from both Ouray County and USFS will be required prior to initiating task.

Timeline: The road improvements are anticipated to be completed during the 2017 construction season. Use of the road for transport of capping and rip-rap materials is anticipated to begin late in the 2017 construction season and may continue into the 2018 construction season.

Deliverables	Due Dates
EPA approved map of proposed road improvements.	August 15, 2017
EPA approved Traffic Control and Public Safety Plan.	August 15, 2017
EPA approval of work completed on the road and/or approval of alternative source of rip rap material.	December 1, 2017

Phase 1 Task 2: Stabilize downstream historic tailings cell.

Description: This tailings cell is located on the southeast side of Canyon Creek, and is uncapped and bisected by a north-south trending side channel that flows into Canyon Creek. Remove and consolidate tailings east of the side channel with tailings on the west side of the side channel. Stabilize the length of the side channel with rip-rap. Design and construct erosion control features across the entire disturbed and uncapped areas. Cover the entire disturbed and uncovered areas on either side of side channel with topsoil/compost. Establish vegetation as needed to stabilize all exposed areas.

Timeline: The excavation, grading and erosion control will be completed during construction season 2017. Capping and revegetation is anticipated to be completed during the 2018 construction season.

Notes: A portion of this area is on USFS property. Input and/or access from USFS will be required prior to initiating task.

Deliverables	Due Dates
EPA approved map of planned erosion control and restoration features.	August 15, 2017
EPA approved Cut/Fill/Excavation Plan and appropriate design sketches.	August 15, 2017
EPA approval of excavation, grading and erosion control on downstream historic tailings cell.	December 1, 2017
EPA approval of capping and revegetation on downstream historic tailings cell.	December 1, 2018

Phase 1 Task 3: Stabilize upstream historic tailings cell.

Description: This tailings cell is uncapped and located east and adjacent to Imogene Creek, and southeast and adjacent to Canyon Creek. Regrade and stabilize slopes of the tailings in accordance with an engineered, geotechnical stability analysis. Construct appropriate erosion control features and cap all areas with inert cap rock and/or topsoil/compost. Establish vegetation as needed to stabilize areas where the matrix of the cover material is prone to erosion from storm water runoff.

Timeline: Geotechnical analysis and regrading is anticipated to be completed during 2017 construction season. Capping and revegetation is anticipated to be completed during 2018 construction season.

Notes: A portion of this area underlies active powerlines operated by San Miguel Power Association, Inc. (SMPA). Depending on the design criteria for this task, the powerlines may need to be reconfigured, which may need to be completed by SMPA before and during this task.

Deliverables	Due Dates
EPA approved map of planned erosion control and restoration features.	September 15, 2017
EPA approved Cut/Fill/Excavation Plan and appropriate design sketches.	September 15, 2017
EPA approval of grading and erosion control on upstream historic tailings cell.	December 1, 2017
EPA approval of capping and revegetation on upstream historic tailings cell.	December 1, 2018

Phase 1 Task 4: Enhance and reinforce streams adjacent to historic tailings.

Description: The toes of the historic tailings are susceptible to erosion from Imogene Creek and Canyon Creek during flood events. In tandem with the regrading in Task 3, excavate, widen, and armor the banks of Imogene Creek from the pipe bridge downstream to the confluence with Sneffels Creek. And in tandem with Tasks 2 and 3, excavate, widen, and armor the right bank of Canyon Creek from the confluence of Sneffels and Imogene Creeks downstream to the disturbed area in Task 2. Excavation, widening, and armoring of the streambanks shall be completed to the extent necessary to prevent erosion of tailings from 100-year flood events. Remove, the large block of San Juan Tuff resting in/near the floodplain below the historic tailings. Amend uncovered areas of the streambanks and stream channel with a combination of rip-rap, erosion control features, and topsoil/compost. Establish vegetation as needed to stabilize amendments.

Timeline: By proximity, this task will begin coincident with Tasks 2 and 3 during the 2017 construction season and is anticipated to be completed during the 2018 construction season.

Deliverables	Due Dates
EPA approved Stream Restoration Plan and appropriate design sketches.	September 1, 2017
EPA approved schedule for completion of specific restoration features.	September 1, 2017
EPA approval of condition of stream corridors in anticipation of 2018 spring runoff.	December 1, 2017
EPA approval of final condition of stream corridors.	December 1, 2018

C. PHASE 2: PREVENT EROSION OF MODERN TAILINGS

Description: As delineated in the AOC, the design and implementation of this phase may be completed under the authority and oversight of DRMS. The work will include regrading and stabilizing the slopes of the modern tailings in accordance with an engineered, geotechnical stability analysis, and enhancing the left banks of Sneffels and Canyon Creeks to prevent erosion of the modern tailings from 100-year flood events.

Timeline: The Permit will be amended by January 31, 2018 and the implementation of the task will begin during the 2018 construction season.

Notes: If the Permit is not amended by January 31, 2018 unless this date is extended by DRMS, this Work Plan shall be amended to include the design and implementation of this task under EPA authority and oversight.

Deliverables	Due Dates
Apply for Succession of Operator with DRMS	August 1, 2017
Submit amendment to Active Mining Permit including design of proposed erosion control features on the modern tailings.	December 1, 2017
DRMS approval of amended Active Mining Permit to include components of a work plan.	January 31, 2018
Initiate construction of erosion control features on the modern tailings.	July 1, 2018



Appendix C
Trust Agreement

TRUST AGREEMENT
Camp Bird Mine Site
Dated: [Insert date]

This Trust Agreement (“Agreement”) relating to [insert trustee-provided trust account number] is entered into as of [insert date] between Caldera Mineral Resources, LLC, a Delaware limited liability company (“Grantor”), and [insert name of trustee], [insert as appropriate: “incorporated in the state of [insert name of state]” or “a national bank”] (“Trustee”).

Whereas, the United States Environmental Protection Agency (“EPA”) and the Grantor have entered into an Administrative Settlement Agreement and Order on Consent dated [insert date], [insert: EPA docket number] (“Settlement”), pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675;

Whereas, the Settlement provides that the Grantor shall provide assurance that funds will be available as and when needed for performance of the Work required by the Settlement;

Whereas, in order to provide such financial assurance, Grantor has agreed to establish and fund the trust created by this Agreement; and

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) “Agreement” shall have the meaning assigned thereto in the first paragraph of this Agreement.

(b) “Beneficiary” shall have the meaning assigned thereto in Section 3 of this Agreement.

(c) “CERCLA” shall have the meaning assigned thereto in the second paragraph of this Agreement.

(d) “Claim Certificate” shall have the meaning assigned thereto in Section 4(b) of this Agreement.

(e) “EPA” shall have the meaning assigned thereto in the second paragraph of this Agreement.

(f) “Fund” shall have the meaning assigned thereto in Section 3 of this Agreement.

(g) “Grantor” shall have the meaning assigned thereto in the first paragraph of this Agreement, along with any successors or assigns of the Grantor.

(h) “Objection Notice” shall have the meaning assigned thereto in Section 4(c) of this Agreement.

(i) “Phase 1 Work” shall have the meaning assigned thereto in the Settlement.

(j) “Phase 2 Work” shall have the meaning assigned thereto in the Settlement.

(k) “Settlement” shall have the meaning assigned thereto in the second paragraph of this Agreement.

(l) “Site” shall have the meaning assigned thereto in the Settlement.

(m) “Trust” shall have the meaning assigned thereto in Section 3 of this Agreement.

(n) “Trustee” shall mean the trustee identified in the first paragraph of this Agreement, along with any successor trustee appointed pursuant to the terms of this Agreement.

(o) “Work” shall have the meaning assigned thereto in the Settlement.

(p) “Work Takeover” shall have the meaning assigned thereto in the Settlement.

Section 2. Identification of Site and Cost Estimate. This Agreement pertains to costs for Work required at the Site, pursuant to the Settlement.

Section 3. Establishment of Trust Fund. The Grantor and the Trustee hereby establish a trust (“Trust”), for the benefit of the EPA (“Beneficiary”), to ensure that funds are available to pay for performance of the Work in accordance with the terms of the Settlement. The Grantor and the Trustee intend that no third party shall have access to monies or other property in the Trust except as expressly provided herein. The Trust is established initially as consisting of cash and/or cash equivalents in the amount of \$ 1,200,000, which is acceptable to the Trustee and described in Schedule A attached hereto. Such funds, along with any other cash and/or cash equivalents hereafter deposited into the Trust, and together with all earnings and profits thereon, are referred to herein collectively as the “Fund.” The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor owed to the United States.

Section 4. Payment for Work Required Under the Settlement. The Trustee shall make payments from the Fund in accordance with the following procedures.

(a) From time to time, the Grantor and/or its representatives or contractors may request that the Trustee make payment of up to \$700,000 total for Phase 1 Work performed under the Settlement from the Fund for the following items:

(i) \$350,000 of the total \$700,000 for billings submitted to and approved under the Trust as they are submitted;

(ii) Another \$200,000 of the total \$700,000 for billings submitted to and approved under the Trust after EPA approval all Phase 1 design deliverables required pursuant to the Work Plan, including identification of the source of necessary cover materials; and

(iii) Another \$150,000 of the total \$700,000 for billings submitted to and approved under the Trust will be releasable upon EPA approval of that portion of Tasks 1-4 of the Phase 1 Work anticipated to be completed in 2017, as set forth in the Removal Work Plan.

(b) The Grantor and/or its representatives or contractors may request that the Trustee make payment from the Fund for Work performed under the Settlement by delivering to the Trustee and the EPA a written invoice and certificate (together, a "Claim Certificate") signed by an officer of the Grantor (or the relevant representative or contractor). Any Claim Certificate should be in a form substantially identical to the sample provided in Exhibit A and, at a minimum, should:

(i) Include a certification that the invoice is for Work performed at the Site in accordance with the Settlement;

(ii) Describe the Work that has been performed;

(iii) Specify the amount of funds requested from the Trust; and

(iv) Identify the payee(s) of the funds request.

(c) The EPA may object to any payment requested in a Claim Certificate submitted by the Grantor (or its representatives or contractors), in whole or in part, by delivering to the Trustee a written notice ("Objection Notice") within 25 days after the date of EPA's receipt of the Claim Certificate as shown on the relevant return receipt. EPA may object to a request for payment contained in a Claim Certificate only on the grounds that the requested payment is either: (1) not for the costs of Work completed under the Settlement; or (2) otherwise inconsistent with the terms and conditions of the Settlement. In the event that EPA delivers an Objection Notice to the Trustee, Grantor may invoke the dispute resolution procedures set forth in Section XV of the Settlement. An Objection Notice sent by the EPA shall state:

(i) whether the EPA objects to all or only part of the payment requested in the relevant Claim Certificate;

(ii) the basis for such objection,

(iii) that the EPA has sent a copy of such Objection Notice to the Grantor and the date on which such copy was sent; and

(iv) the portion of the payment requested in the Claim Certificate, if any, which is not objected to by the EPA.

(d) If the Trustee receives a Claim Certificate and does not receive an Objection Notice from the EPA within the time period specified in Section 4(c) above, the Trustee shall, within 10 days after the expiration of such time period, make the payment from the Fund requested in such Claim Certificate.

(e) If the Trustee receives a Claim Certificate and also receives an Objection Notice from the EPA within the time period specified in Section 4(c) above, but which Objection Notice objects to only a portion of the requested payment, the Trustee shall, within 10 days after the expiration of such time period, make payment from the Fund of the uncontested amount as requested in the Claim Certificate. The Trustee shall not make any payment from the Fund, pursuant to a Claim Certificate to which EPA has submitted an Objection Notice, for the portion of the requested payment to which the EPA has objected in its Objection Notice until Trustee receives joint notice from EPA and the Grantor that the dispute has been resolved, following which, Trustee shall make such payment within 10 days.

(f) If the Trustee receives a Claim Certificate and also receives an Objection Notice from the EPA within the time period specified in Section 4(c) above, which Objection Notice objects to all of the requested payment, the Trustee shall not make any payment from the Fund for amounts requested in such Claim Certificate until Trustee receives joint notice from EPA and the Grantor that the dispute has been resolved, following which, Trustee shall make such payment within 10 days.

(g) If, at any time during the term of this Agreement, the EPA implements a "Work Takeover" pursuant to the terms of the Settlement and intends to direct payment of monies from the Fund to pay for performance of Work during the period of the Work Takeover, the EPA shall notify the Trustee in writing of EPA's commencement of the Work Takeover. Upon receiving written notice from the EPA, the disbursement procedures set forth in Sections 4(a)-(f) above shall immediately be suspended for costs of Work taken over by the EPA, and the Trustee shall thereafter make payments from the Fund only to such person(s) as the EPA may direct in writing from time to time for the sole purpose of providing payment for performance of Work required by the Settlement. Further, after receiving such written notice from the EPA, the Trustee shall not make any disbursements to the Grantor for costs of Work taken over by the EPA from the Fund at the request of the Grantor, including its representatives and/or contractors, or of any other person except at the express written direction of the EPA. If the EPA ceases such a Work Takeover in accordance with the terms of the Settlement, the EPA shall, within 10 days, notify the Trustee in writing and, upon the Trustee's receipt of such notice, the disbursement procedures specified in Sections 4(a)-(f) above shall immediately be reinstated.

(h) In the event that EPA certifies all Phase 1 Work as complete in accordance with Paragraph 109 of the Settlement and Grantor's obligation to EPA for Phase 2 Work is

nullified in accordance with Paragraph 26.c of the Settlement, then Grantor may provide a written request to EPA that EPA provide direction to the Trustee, in accordance with Paragraph 15(a) of this Agreement to terminate the Trust and disburse any remaining Trust Property to the Grantor. If EPA does not provide that written direction within 20 days after receipt of Grantor's request, Grantor may invoke the dispute resolution procedures set forth in Section XV of the Settlement.

(i) In the event that Grantor's obligation to EPA for Phase 2 Work does not become nullified in accordance with Paragraph 26.c of the Settlement, then Grantor may, following EPA's certification of all Phase 2 Work as complete in accordance with Paragraph 109 of the Settlement, provide a written request to EPA that EPA provide direction to the Trustee, in accordance with Paragraph 15(a) of this Agreement to terminate the Trust and disburse any remaining Trust Property to the Grantor. If EPA does not provide that written direction within 20 days after receipt of Grantor's request, Grantor may invoke the dispute resolution procedures set forth in Section XV of the Settlement.

(j) While this Agreement is in effect, disbursements from the Fund are governed exclusively by the express terms of this Agreement.

Section 5. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with directions which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge its duties with respect to the Trust solely in the interest of the Beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) securities, notes and other obligations of any person or entity shall not be acquired or held by the Trustee with monies comprising the Fund, unless they are securities, notes, or other obligations of the United States federal government or any United States state government or as otherwise permitted in writing by the EPA;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent such deposits are insured by an agency of the United States federal or any United States state government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 6. Commingling and Investment. The Trustee is expressly authorized in its discretion to transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions hereof and thereof, to be commingled with the assets of other trusts participating therein.

Section 7. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(b) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States federal government or any United States state government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund; and

(c) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the United States federal government.

Section 8. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund shall be paid from the Fund. All other expenses and charges incurred by the Trustee in connection with the administration of the Fund and this Trust shall be paid by the Grantor.

Section 9. Annual Valuation. The Trustee shall annually, no more than 30 days after the anniversary date of establishment of the Fund, furnish to the Grantor and to the Beneficiary a statement confirming the value of the Trust. The annual valuation shall include an accounting of any fees or expenses levied against the Fund. The Trustee shall also provide such information concerning the Fund and this Trust as the EPA may request from time to time.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder; provided, however, that any counsel retained by the Trustee for such purposes may not, during the period of its representation of the Trustee, serve as counsel to the Grantor or the Beneficiary.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Grantor and as notified in writing to the Beneficiary [insert as appropriate: provided, however, that the Trustee shall have

minimal duties and shall be entitled to minimal compensation, if any, for time periods in which the Trustee does not make payments from the Fund for Work performed under the Settlement].

Section 12. Trustee and Successor Trustee. The Trustee and any replacement Trustee must not be affiliated with the Grantor. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and the successor accepts such appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the cash and/or cash equivalents then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Fund and the Trust in a writing sent to the Grantor, the Beneficiary and the present Trustee by certified mail no less than 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.

Section 13. Instructions to the Trustee. All orders, requests, and instructions to the Trustee shall be in writing, signed by such persons as are empowered to act on behalf of the entity sending such orders, requests, and instructions to the Trustee, including those designated in the attached Exhibit B or such other designees as the Grantor may designate by amendment to Exhibit B. The Trustee shall be fully protected in acting without inquiry on such written instructions given in accordance with the terms of this Agreement. The Trustee shall have no duty to act in the absence of such written instructions, except as expressly provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, and with the prior written consent of the EPA, or by the Trustee and the EPA if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. This Trust shall be irrevocable and shall continue until terminated upon the earlier to occur of (a) the written direction of the EPA to terminate, consistent with the terms of the Settlement; or (b) the complete exhaustion of the Fund comprising the Trust as certified in writing by the Trustee to the EPA and the Grantor. Upon termination of the Trust pursuant to Section 15(a), all remaining Trust property (if any), less final Trust administration expenses, shall be delivered to the Grantor within 15 days of termination.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct made by the Trustee in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the state of Colorado.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

Section 19. Notices. All notices and other communications given under this Agreement shall be in writing, identify the Site, provide a contact person (and contact information), and be addressed to the parties as follows or to such other address as the parties shall by written notice designate:

(a) as to the Grantor, to **[insert name(s), title(s), address(es), and contact information (phone number(s), email address(es), etc.)]**.

(b) as to the Trustee, to **[insert name(s), title(s), address(es), and contact information (phone number(s), email address(es), etc.)]**.

(c) as to EPA, to:

Daniela Golden
Region 8 CERCLA Financial Analyst
CERCLA Technical Enforcement Program
Mail Code: 8ENF-RC
1595 Wynkoop Street
Denver, Colorado 80202-1129
(303) 312-6772
Golden.daniela@epa.gov

Section 20. Other. The Grantor shall provide a copy of the Settlement to the Trustee, and the Grantor shall submit an originally-signed duplicate of the executed Agreement to the EPA.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

FOR THE GRANTOR:

Date: _____

By: _____
Printed name: _____
Title: _____

State of **[insert state]**
County of **[insert county]**

On this **[insert date]**, before me personally came **[insert name of Caldera's signatory]** to me known, who, being by me duly sworn, did depose and say that she/he is **[insert title]** of Caldera Mineral Resources, LLC, the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

FOR THE TRUSTEE:

Date: _____

By: _____
Printed name: _____
Title: _____

State of **[insert state]**
County of **[insert county]**

On this **[insert date]**, before me personally came **[insert name of Trustee's signatory]** to me known, who, being by me duly sworn, did depose and say that she/he is **[insert title]** of **[insert name of Trustee]**, the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

Schedule A
Initial Trust Funding

DATE	FUNDING VALUE FOR WORK
Before or on the Effective Date of the Settlement	Initial funding of \$1,200,000

Exhibit A
Sample Claim Certificate

[Insert date]

[Insert Trustee's name pursuant to trust agreement's preamble]

[Insert Trustee's address pursuant to Section 19(b) of trust agreement]

Daniela Golden
Region 8 CERCLA Financial Analyst
CERCLA Technical Enforcement Program
Mail Code: 8ENF-RC
1595 Wynkoop Street
Denver, Colorado 80202-1129
(303) 312-6772
Golden.daniela@epa.gov

Re: Request for payment from the Trust [insert trust account number] established as financial assurance for the Camp Bird Mine Site

Dear [insert name of Trustee and Ms. Golden]:

Pursuant to Section 4 of the subject trust, the Grantor (as defined therein) and/or its representatives or contractors are authorized to request that the Trustee (as defined therein) make payment from the trust for Work (as defined therein) performed under the Settlement (as defined therein) by delivering to the Trustee (as defined therein) and the EPA (as defined therein) a written request for payment signed by an officer of the requesting entity. By this letter, Caldera Mineral Resources, LLC, requests payment from the trust. The bases for the payment request are more fully described below.

1. Certification: [insert certification from officer of requesting entity that the request is submitted for Work performed in accordance with the Settlement].
2. Description of Applicable Work: [insert description of the Work that has been performed].
3. Amount of Payment Request: [insert amount of funds requested from trust].
4. Proposed Payee: [insert identification of payee(s) of the funds requested].

Please let me know if you have any questions. I can be reached at [insert telephone number and email address].

Sincerely,

[insert name of officer of the requesting entity]
[insert address of the requesting entity]

Exhibit B

Grantor-Designated Individuals Authorized for Orders, Requests and Instructions

[Grantor to insert person(s) (and relevant contact information) designated to provide/make orders, requests, and instructions to the Trustee pursuant to Section [13] of trust agreement]

Appendix D

Deed of Trust

DEED OF TRUST

THIS DEED OF TRUST is made this ____ day of _____, 2017, between Caldera Mineral Resources, LLC, a Delaware limited liability company (Caldera), whose address is 8439 West Sunset Boulevard, Suite 101, West Hollywood, California, 90069, Attention: Sturges Karban; and the Public Trustee of the County in which the Property (see § 1) is situated (Trustee); for the benefit of the U.S. Environmental Protection Agency (Beneficiary), whose address is, U.S. Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202, Attention: Kayleen Castelli (Mail Code: 8ENF-L).

Caldera and Beneficiary covenant and agree as follows:

1. Property in Trust. Caldera, in consideration of the financial accommodations provided under the Settlement (defined below) and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the property located in the County of Ouray, State of Colorado, more particularly described on Exhibit A attached hereto.

2. Obligations Secured. This Deed of Trust is given to secure to Beneficiary, in and subject to, all of the terms and conditions of that certain Administrative Settlement Agreement and Order on Consent for Removal Action dated _____, 2017 (Settlement):

- 2.1.** performance by Caldera of certain obligations specifically set forth in Settlement, subject to the limitations of § 15.2; and
- 2.2.** the performance of the covenants and agreements of Caldera herein contained.

3. Covenants and Agreements. Caldera shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. Caldera shall perform all of Caldera's obligations under the Settlement or any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the Property.

4. Protection of Beneficiary's Security. If Caldera fails to perform the covenants and agreements contained in this Deed of Trust, or if a default occurs in a prior lien, or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, then Beneficiary, at Beneficiary's option, with notice to Caldera, may make such appearances, disburse such sums and take such action as is necessary to protect Beneficiary's interest, including, but not limited to:

- 4.1.** any general or special taxes or ditch or water assessments levied or accruing against the Property;
- 4.2.** sums due on any prior lien or encumbrance on the Property;
- 4.3.** the reasonable costs and expenses of defending, protecting, and maintaining the Property and Beneficiary's interest in the Property, including repair and maintenance costs and expenses, costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney in the employment of Beneficiary;
- 4.4.** all other costs and expenses allowable by the Settlement or this Deed of Trust; and
- 4.5.** such other costs and expenses which may be authorized by a court of competent jurisdiction.

Any amounts disbursed by Beneficiary pursuant to this § 4, with interest thereon, shall become indebtedness of Caldera secured by this Deed of Trust. Such amounts shall be payable upon notice from Beneficiary to Caldera requesting payment thereof, and Beneficiary may bring suit to collect any amounts so disbursed. Nothing contained in this § 4 shall require Beneficiary to incur any expense or take any action hereunder.

5. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary as herein provided.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Caldera. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be divided between Beneficiary and Caldera, in the same ratio as the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Caldera's equity in the Property immediately prior to the date of taking. Caldera's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all at the value immediately prior to the date of taking.

If the Property is abandoned by Caldera or if, after notice by Beneficiary to Caldera that the condemnor offers to make an award or settle a claim for damages, Caldera fails to respond to Beneficiary within 30 days after the date such notice is given, Beneficiary is authorized to collect and apply the proceeds, at Beneficiary's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

6. Forbearance by Beneficiary Not a Waiver. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

7. Remedies Cumulative. Each remedy provided in the Settlement and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Settlement and this Deed of Trust or afforded by law or equity, and may be exercised **concurrently**, independently or successively.

8. Successors and Assigns Bound; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Caldera, subject to the provisions of § 14 (Transfer of the Property; Assumption). The captions and headings of the sections in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

9. Notice. Except for any notice required by law to be given in another manner, (a) any notice to Caldera provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Caldera or (2) mailing such notice by first class U.S. mail, addressed to Caldera at Caldera's address stated herein or at such other address as Caldera may designate by notice to Beneficiary as provided herein; and (b) any notice to Beneficiary shall be in writing and shall be given and be effective upon (1) delivery to Beneficiary or (2) mailing such notice by first class U.S. mail, to Beneficiary's address stated herein or to such other address as Beneficiary may designate by notice to Caldera as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Caldera or Beneficiary when given in any manner designated herein.

10. Governing Law; Severability. This Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust or conflicts with the law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

11. Foreclosure; Other Remedies. Upon Caldera's breach of any covenant or agreement of Caldera in this Deed of Trust, Beneficiary may invoke the power of sale and any other remedies permitted by law. Beneficiary shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Beneficiary invokes the power of sale, Beneficiary shall give written notice to Trustee of such election. Trustee shall give such notice to Caldera of Caldera's rights as is provided by law. Trustee shall record a copy of such notice and shall cause publication of the legal notice as required by law in a legal newspaper of general circulation in each county in which the Property is situated, and shall mail copies of such notice of sale to Caldera and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Caldera, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think best and in such order as Trustee may determine. Beneficiary or Beneficiary's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust, subject to the limitations of § 15.2; and (c) the excess, if any, to the person or persons legally entitled thereto.

12. Appointment of Receiver; Beneficiary in Possession. Beneficiary or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after a default by Beneficiary with respect to the obligations secured by this Deed of Trust and the expiration of any applicable cure periods, and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Caldera or of the then owner of the Property, and without regard to the value thereof. Upon abandonment of the Property, Beneficiary, in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property.

13. Release. The Settlement provides that this Deed of Trust will secure performance of Caldera's obligations under the Settlement up to a maximum of \$700,000, subject to Caldera's right to substitute such security with other forms of security (Financial Assurance), as set forth in Paragraph 99 of the Settlement. Accordingly, upon the establishment by Caldera, or its successors under § 14 of this Deed of Trust, of an alternative \$700,000 in Financial Assurance as set forth in Paragraph 99 of the Settlement, Beneficiary shall cause Trustee to release this Deed of Trust. In the event that Caldera does not substitute the security with an alternative \$700,000 in Financial Assurance, then, upon performance of all obligations secured by this Deed of Trust and Beneficiary's issuance of a Notice of Completion of Work in accordance with Paragraph 109 of the Settlement, Beneficiary shall cause Trustee to release this Deed of Trust. Caldera shall pay all costs of recordation and shall pay the statutory Trustee's fees.

14. Transfer of the Property; Assumption. The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein); (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein); (iii) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in Caldera and (iv) the reorganization, liquidation or dissolution of Caldera. Not to be included as a Transfer are (y) the creation of a lien or encumbrance subordinate to this Deed of Trust; or (z) a transfer by operation of the law. At the election of Beneficiary, in the event of each and every Transfer:

14.1. If a Transfer occurs, Transferee shall be deemed to have assumed all of the Covenants and Agreements of Caldera set forth in § 3 of this Deed of Trust, whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until this deed is released in accordance with § 13.

14.2. Subject to § 14.1 above, the mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Beneficiary had actual or constructive notice of such Transfer, shall not be deemed a waiver of Beneficiary's right to make such election nor shall Beneficiary be estopped therefrom by virtue thereof.

15. Additional Provisions.

15.1. Beneficiary acknowledges that Caldera intends to operate the Property, or to cause the Property to be operated, as a mine. Accordingly, nothing herein will prohibit Caldera or its lessees or licensees from the extraction of minerals from the Property, all of which extracted minerals and the proceeds thereof will be free from the lien or security interest created by this Deed of Trust. Likewise, Caldera acknowledges that nothing herein is intended to limit the United States' rights and authorities under any law or statute, including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et. seq.

15.2. In the event of a foreclosure or exercise of other remedies by Beneficiary under § 11 of this Deed of Trust or otherwise, the amount of the sums secured by this Deed of Trust will be deemed to be an amount equal to \$700,000, including other expenses incurred by Beneficiary in accordance with § 4 (Protection of Security), minus amounts received by Beneficiary pursuant to § 5 (Condemnation).

15.3. Nothing in this Deed of Trust shall be construed to create personal liability on the part of Caldera. Beneficiary's recourse under this Deed of Trust is limited to the Property encumbered hereby.

[Signature appears on following page]

CALDERA MINERAL RESOURCES, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF COLORADO

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2017,
by _____, as the _____ of Caldera Mineral Resources, LLC, a Delaware limited liability
company, on behalf of the limited liability company.

Witness my hand and official seal.

My commission

expires: _____

Notary Public

Exhibit A
Legal Description of Property

CMR No.	County	Patented Claim Name	Type	Mineral Survey No.	Acreage
A1	Ouray	Africa	lode	20281	6.41
A2	Ouray	Agnes	lode	721A	10.31
A3	Ouray	Agnes MS	mill site	721B	5.00
A4	Ouray	Agnew	lode	20281	11.63
A5	Ouray	Aguinalde	lode	16094	9.89
A6	Ouray	Alden	lode	15181	7.17
A7	Ouray	Apache ¹	lode	11969	6.29
A8	Ouray	Babcock No. 1	lode	17489A	9.95
A9	Ouray	Balsam	lode	14776	9.39
A10	Ouray	Barnaby	lode	14772	9.40
A11	Ouray	Basuto	lode	14773	3.43
A12	Ouray	Birdseye	lode	13406	10.33
A13	Ouray	Black Quail	lode	16041	7.54
A14	Ouray	Blewsome	lode	17489A	9.21
A15	Ouray	Blue Grass	lode	459	8.23
A16	Ouray	B.O. Smith No. 1	lode	17489A	10.25
A17	Ouray	B.O. Smith No. 2	lode	17489A	7.20
A18	Ouray	Bodega	lode	17381	6.98
A19	Ouray	Boxer	lode	14450	6.97
A20	Ouray	Bryant	lode	16094	10.28
A21	Ouray	Buckeye Girl	lode	164	10.33
A22	Ouray	Cabanas ¹	lode	13402	7.34
A23	Ouray	Camp Bird	lode	11611	7.04
A24	Ouray	Canuck	lode	12165	10.33
A25	Ouray	Channel	lode	16096	6.63
A26	Ouray	Chicago	lode	1642	10.33
A27	Ouray	Compass	lode	15370	1.99
A28	Ouray	Coney	lode	16155	10.33
A29	Ouray	Conqueror	lode	723A	9.50
A30	Ouray	Conqueror MS	mill site	723B	5.00
A31	Ouray	Constance	lode	14776	10.26
A32	Ouray	Coronado	lode	15198	10.33
A33	Ouray	Cosmos	lode	14773	1.00
A34	Ouray	Courier ¹	lode	13402	3.79
A35	Ouray	Cousin Jack	lode	16242	8.17
A36	Ouray	Crusader	lode	575	10.33
A37	Ouray	Daisy	lode	16041	9.37
A38	Ouray	Damon	lode	12877	0.10
A39	Ouray	Deadwood	lode	12637A	6.55

A40	Ouray	Deadwood MS	mill site	12637B	4.98
A41	Ouray	Declaration	lode	722A	10.31
A42	Ouray	Declaration MS	mill site	722B	5.00
A43	Ouray	Dipper	lode	17489A	8.58
A44	Ouray	Divide ¹	lode	12876	0.17
A45	Ouray	Dodo	lode	14450	9.99
A46	Ouray	Domingo	lode	18203A	9.94
A47	Ouray	Domingo No. 2	lode	18203A	6.87
A48	Ouray	Dutchess	lode	17489A	9.04
A49	Ouray	Emily	lode	547A	9.39
A50	Ouray	Emily MS	mill site	547B	5.00
A51	Ouray	Ensign	lode	17489A	10.17
A52	Ouray	Entomologist	lode	17489A	9.53
A53	Ouray	Equator	lode	17489A	9.78
A54	Ouray	Equinox	lode	17489A	8.97
A55	Ouray	Evangeline	lode	12949A	6.98
A56	Ouray	Evangeline MS	mill site	12949B	0.79
A57	Ouray	First National	lode	4852	10.33
A58	Ouray	Fox	lode	17489A	10.33
A59	Ouray	Gertrude	lode	1548A	10.24
A60	Ouray	Gertrude MS	mill site	1548B	5.00
A61	Ouray	Glen Monarch	lode	535A	10.33
A62	Ouray	Glen Monarch MS	mill site	535B	3.14
A63	Ouray	Gold Nugget Placer	placer	17112	19.88
A64	Ouray	Gore	lode	18750	0.33
A65	Ouray	Hager	lode	14776	8.96
A66	Ouray	Halifax	lode	16096	5.82
A67	Ouray	Hancock	lode	2132	9.58
A68	Ouray	Heckla	lode	15195	10.33
A69	Ouray	Hellespoint	lode	16094	8.52
A70	Ouray	Hester	lode	15195	9.65
A71	Ouray	High Line ¹	lode	16095	8.52
A72	Ouray	Honolulu	lode	15198	2.52
A73	Ouray	Humming Bird	lode	16094	10.27
A74	Ouray	Idaho	lode	16041	9.57
A75	Ouray	Imogene	lode	161	10.20
A76	Ouray	Iron Man	lode	17489A	9.34
A77	Ouray	Ivanhoe	lode	12031	10.05
A78	Ouray	Jicarilla	lode	11969	8.24
A79	Ouray	Juneau	lode	14450	8.92
A80	Ouray	Juneau No. 2	lode	14450	9.10
A81	Ouray	Keystone ¹	lode	16095	0.99
A82	Ouray	King Edward	lode	15473	8.28

A83	Ouray	Kokomo	lode	16095	9.90
A84	Ouray	Kootenai	lode	14450	7.98
A85	Ouray	Launaka	lode	8239A	9.85
A86	Ouray	Launaka MS	mill site	8239B	5.00
A87	Ouray	Manilla	lode	16094	5.62
A88	Ouray	Matanzas ¹	lode	14787	0.55
A89	Ouray	Memoranda	lode	17489A	10.20
A90	Ouray	Midnight	lode	16041	8.56
A91	Ouray	Miles	lode	16094	6.49
A92	Ouray	Modoc	lode	17489A	8.72
A93	Ouray	Mojave	lode	11969	8.36
A94	Ouray	Monte Carlo	lode	15405	9.39
A95	Ouray	Moqui ¹	lode	11969	7.46
A96	Ouray	Moraine	lode	16236	10.33
A97	Ouray	Nootka	lode	17318A	6.29
A98	Ouray	Nootka MS	mill site	17318B	4.90
A99	Ouray	Norma	lode	546A	10.33
A100	Ouray	Norma MS	mill site	546B	5.00
A101	Ouray	Old Ireland	lode	15473	5.51
A102	Ouray	Olympia	lode	13402	7.63
A103	Ouray	Omega ¹	lode	16095	9.36
A104	Ouray	Only One	lode	20280	13.77
A105	Ouray	Oro Cache	lode	11969	9.97
A106	Ouray	Otis	lode	16094	9.80
A107	Ouray	Palo Alto	lode	15370	9.13
A108	Ouray	Polar Bear	lode	16041	5.44
A109	Ouray	Priscilla	lode	15181	9.02
A110	Ouray	Pythias	lode	12877	6.90
A111	Ouray	Ranchero ¹	lode	13406	6.36
A112	Ouray	Rebecca	lode	18750	3.31
A113	Ouray	Rigel	lode	12748	2.49
A114	Ouray	Rock Lake ¹	lode	13406	8.06
A115	Ouray	Rudge	lode	14772	9.27
A116	Ouray	Saracen	lode	15474	10.33
A117	Ouray	Scorcher	lode	13406	10.33
A118	Ouray	Scorifier ¹	lode	12875	2.33
A119	Ouray	Sebastopol	lode	15405	10.29
A120	Ouray	Skyscraper ¹	lode	16095	0.10
A121	Ouray	Snapshot	lode	17489A	10.33
A122	Ouray	Spencer	lode	16094	4.91
A123	Ouray	St. Paul	lode	15370	9.46
A124	Ouray	Standish	lode	15181	7.81

A125	Ouray	Sun Light Placer	placer	17309	39.57
A126	Ouray	Tam O'Shanter	lode	13992	10.04
A127	Ouray	Tiger	lode	16041	10.19
A128	Ouray	Tipperary	lode	16155	9.87
A129	Ouray	Tom Moore	lode	14776	7.72
A130	Ouray	Tramp	lode	15405	10.31
A131	Ouray	Tuscarora	lode	17344	3.91
A132	Ouray	Tuscola	lode	11611	10.31
A133	Ouray	Una	lode	738A	10.38
A134	Ouray	Una MS	mill site	738B	4.99
A135	Ouray	U.S. Treasury	lode	17381A	10.33
A136	Ouray	U.S. Treasury Extension	lode	17381B	10.33
A137	Ouray	Verne	lode	14776	5.44
A138	Ouray	Virginus MS	mill site	6476B	4.85
A139	Ouray	White Flag	lode	17489A	5.92
A140	Ouray	White Quail	lode	16041	10.01
A141	Ouray	White Scud	lode	16236	10.33
A142	Ouray	White Swede	lode	15405	10.28
A143	Ouray	Wyoming	lode	16041	9.24
A144	Ouray	Yaller Dorg	lode	12031	10.33
A145	Ouray	Yellow Bird	lode	15473	8.16
A146	Ouray	Yellow Rose	lode	576A	10.22
A147	Ouray	Yellow Rose MS	mill site	576B	5.00
A148	Ouray	Zephyr ¹	lode	12876	6.60

SUBTOTAL ACRES 1199.67

¹ Claim is located in both Ouray and San Miguel Counties. Acreage is only for the area of the claim that is within **Ouray County**.

**REQUEST FOR ☒ FULL ☐ PARTIAL RELEASE OF DEED OF TRUST AND RELEASE
BY HOLDER OF THE EVIDENCE OF DEBT WITH PRODUCTION OF EVIDENCE OF DEBT
PURSUANT TO § 38-39-102(1)(a), COLORADO REVISED STATUTES**

☐ Check here if current address is unknown.

County Reception No. and/or Film No. and/or Book/Page No. and/or Torrens Reg. No.

Date
Original Grantor (Borrower)
Current Address of Original Grantor, Assuming Party,
or Current Owner

Original Beneficiary (Lender)
Date of Deed of Trust
Date of Recording and/or Re-Recording of Deed of Trust
Recording Information

TO THE PUBLIC TRUSTEE OF THE COUNTY OF OURAY, COLORADO (The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described therein as to a full release or, in the event of a partial release, only that portion of the real property described as:

(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE.)

Name and Address of Current Holder of the Evidence of Debt Secured by Deed of Trust (Lender)

Name, Title, and Address of Officer, Agent, or Attorney of Current Holder

Signature

Signature

State of Colorado, County of _____
The foregoing Request for Release was acknowledged before me on _____ (date), by *

Date Commission Expires
*If applicable, insert title of officer and name of current holder.

Witness my hand and official seal.

Notary Public

RELEASE OF DEED OF TRUST

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to therein; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the current holder of the evidence of debt;

NOW THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances thereto belonging.

Public Trustee Date

Deputy Public Trustee Date

(If applicable, name and address of person creating new legal description as required by § 38-35-106.5, C.R.S.)

Original Note and Deed of Trust Returned to: _____
When Recorded Return to: _____
Prepared/Received by: _____

Appendix E

Notice to Successors

After recording return to:

Caldera Mineral Resources LLC
C/O Sturges Karban
1480 Vine Street, Suite 1401
Los Angeles, California 90028

NOTICE TO SUCCESSORS-IN-TITLE OF ADMINISTRATIVE ORDER ON CONSENT
AND REMOVAL ACTION

The property ("Property") specifically described in Attachment A, hereto is the subject of a removal action undertaken by Caldera Mineral Resources, LLC, a Delaware limited liability company, ("Caldera") in accordance with the requirements of Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA), and that certain Administrative Settlement Agreement and Order on Consent for Removal Action ("AOC") entered into on _____, 2017, Docket No. _____ among Caldera, the United States Environmental Protection Agency, and the Bankruptcy Estate of Camp Bird Colorado, Inc. The Property comprises a portion of the Camp Bird Mine located approximately 6 miles south of the Town of Ouray, on land partially within the Uncompahgre National Forest, in Ouray County, Colorado. As a part of the removal action, Caldera is required to perform certain Work at the Property, as defined in the AOC.

Dated this ____ day of _____, 2017.

Printed Name: _____
Caldera Mineral Resources, LLC

STATE OF _____)
_____) ss.
COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2017, by
[Caldera Resources Representative] _____.

My commission expires: _____

Notary Public

[SEAL]

Attachment A

CMR No.	County	Patented Claim Name	Type	Mineral Survey No.	Acreage
A40	Ouray	Deadwood MS	mill site	12637B	4.98
A42	Ouray	Declaration MS	mill site	722B	5.00
A50	Ouray	Emily MS	mill site	547B	5.00
A60	Ouray	Gertrude MS	mill site	1548B	5.00
A61	Ouray	Glen Monarch	lode	535A	10.33
A74	Ouray	Idaho	lode	16041	9.57
A125	Ouray	Sun Light Placer	placer	17309	39.57
A138	Ouray	Virginus MS	mill site	6476B	4.85
SUBTOTAL ACRES					84.30

Appendix F

Notice of Environmental Use Restrictions

**This property is subject to a Notice of Environmental Use Restrictions imposed by the
Colorado Department of Public Health and Environment pursuant to section 25-15-321.5,
Colorado Revised Statutes**

NOTICE OF ENVIRONMENTAL USE RESTRICTIONS

WHEREAS, Caldera Mineral Resources, LLC (“Caldera”) is the owner of certain real property commonly referred to as the Camp Bird Mine consisting of approximately ____ acres of land located approximately 6 miles south of the Town of Ouray, Colorado. The Camp Bird Mine includes certain tailings piles and other features, as more specifically delineated in the map attached hereto as Attachment A, (hereinafter referred to as “the Site”); and

WHEREAS, the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment (the “Department”), which is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to approve a Notice of Environmental Use Restrictions pursuant to § 25-15-320(4) of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.*, C.R.S.; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder’s office Grantor-Grantee index only, Caldera shall be considered the **Grantor**, and the Colorado Department of Public Health and Environment shall be considered the **Grantee**. Nothing in the preceding sentence shall be construed to create or transfer any right, title or interest in the Site; and

WHEREAS, a portion of the Site, including certain mine waste deposits, is subject to Permit No. M-82-090, issued in 1982 by the predecessor to Colorado Division of Reclamation, Mining and Safety (“DRMS”), and Technical Revisions 01-05 thereto (“Permit”). That portion of the Site subject to the Permit is identified as the “Mine Permit Area” on Attachment A. Pursuant to the Permit, certain reclamation activities have been completed on the Site, and the DRMS permit and its requirements remain in effect; and

WHEREAS, pursuant that certain Administrative Settlement Agreement and Order on Consent for Removal Action dated_____ between Caldera, the Bankruptcy Estate of Camp Bird Colorado, Inc., and the United States Environmental Protection Agency (the “Settlement”), the Site is the subject of a removal action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601, *et seq.* (“CERCLA”); and

WHEREAS, in order to carry out the removal action, Caldera has agreed to perform the Work, as that term is defined in the Site and the Work Plan attached to the Site; and

WHEREAS, the purpose of this Restrictive Notice is to ensure that the Work remains protective of human health and the environment; and

WHEREAS, Caldera has asked the Department to approve this Notice of Environmental Use Restrictions (“Restrictive Notice”) as provided in Article 15 of Title 25, Colorado Revised Statutes

NOW, THEREFORE, the Department hereby approves this Restrictive Notice pursuant to § 25-15-321.5, C.R.S., and declares that the Site as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1(a) and 1(b), below, which shall run with the Site in perpetuity and be binding on all parties holding any right, title or interest in the Site, or any part thereof, and any persons using the land, as described herein. As used in this Restrictive Notice, the term OWNER means the then current record owner of the Site and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Site or placement of encumbrances on the Site, other than by the exercise of eminent domain.

1) Activity restrictions.

- a) Activities that may damage the stream armoring and erosion control features constructed and installed at the Site as part of the Work pursuant to the Settlement are prohibited, unless undertaken pursuant to a Department-approved materials management plan or authorized by DRMS. Such activities include, but are not limited to, grazing, digging, drilling, tilling, grading, excavation, construction of any sort, use as an athletic field, placing of any objects or structures on the cover, and vehicular traffic. Nothing in the preceding sentence shall prohibit the installation of any stream flow gage, or other monitoring, maintenance or remedial activities at the Site, including monitoring, maintenance or remedial activities that require minor excavation or the use of vehicles.
- b) OWNER shall, not less than once per year, conduct a visual inspection of the Site to insure the Work, including the stream armoring, erosion control features and improvements to existing roads, remains effective to prevent erosion of mine waste from a 100-year flood event.

2) Modifications. This Restrictive Notice runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Restrictive Notice. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Restrictive Notice will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Restrictive Notice shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

- a) a proposal to perform additional remedial work;
- b) new information regarding the risks posed by the residual contamination;
- c) information demonstrating that residual contamination has diminished;

- d) information demonstrating that an engineered feature or structure is no longer necessary;
- e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
- f) other appropriate supporting information.

3) Conveyances. OWNER shall notify the Department at least fifteen (15) days in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Site. Within thirty (30) days after any such conveyance, OWNER shall provide the Department with the name, mailing address and telephone number of the new OWNER.

4) Notice to Lessees. OWNER agrees to incorporate either in full or by reference the restrictions of this Restrictive Notice in any leases, licenses, or other instruments granting a right to use the Site.

5) Notification for proposed construction and land use. OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.

6) Inspections. The Department, including its authorized employees, agents, representatives and independent contractors, shall have the right of entry to the Site at reasonable times with prior notice for the purpose of determining compliance with the terms of this Restrictive Notice.

7) Third Party Beneficiary. The OWNER of the Site and Caldera are third party beneficiaries with the right to enforce the provisions of this Restrictive Notice as provided in § 25-15-322, C.R.S.

8) No Liability. The Department does not acquire any liability under State law by virtue of accepting this Restrictive Notice, nor does any other named beneficiary of this Restrictive Notice acquire any liability under State law by virtue of being such a beneficiary.

9) Enforcement. The Department may enforce the terms of this Restrictive Notice pursuant to § 25-15-322, C.R.S, and any other named beneficiaries of the Restrictive Notice may file suit in district court to enjoin actual or threatened violations of this Restrictive Notice.

10) Owner's Compliance Certification. OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER's compliance, and any lack of compliance, with the terms of this Restrictive Notice.

11) Severability. If any part of this Restrictive Notice shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.

12) Notices. Any document or communication required under this Restrictive Notice shall be sent or directed to:

As to the Division:

Superfund/Brownfields Unit Leader
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

As to Caldera:

Caldera Mineral Resources, LLC
C/O Sturges Karban
1480 Vine Street, Suite 1401
Los Angeles, California 90028

[Notarized Signature on Following Page]

Caldera Mineral Resources LLC has caused this instrument to be executed this ____ day of _____, 2017.

Caldera Mineral Resources LLC

By: Sturges Karban
Title: Managing Member

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ on behalf of [FACILITY].

Notary Public

My Commission Expires:

Accepted by the Colorado Department of Public Health and Environment this ____ day of _____, 2017.

By: _____
Title: _____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ on behalf of the Colorado Department of Public Health and Environment.

Notary Public

My Commission Expires:

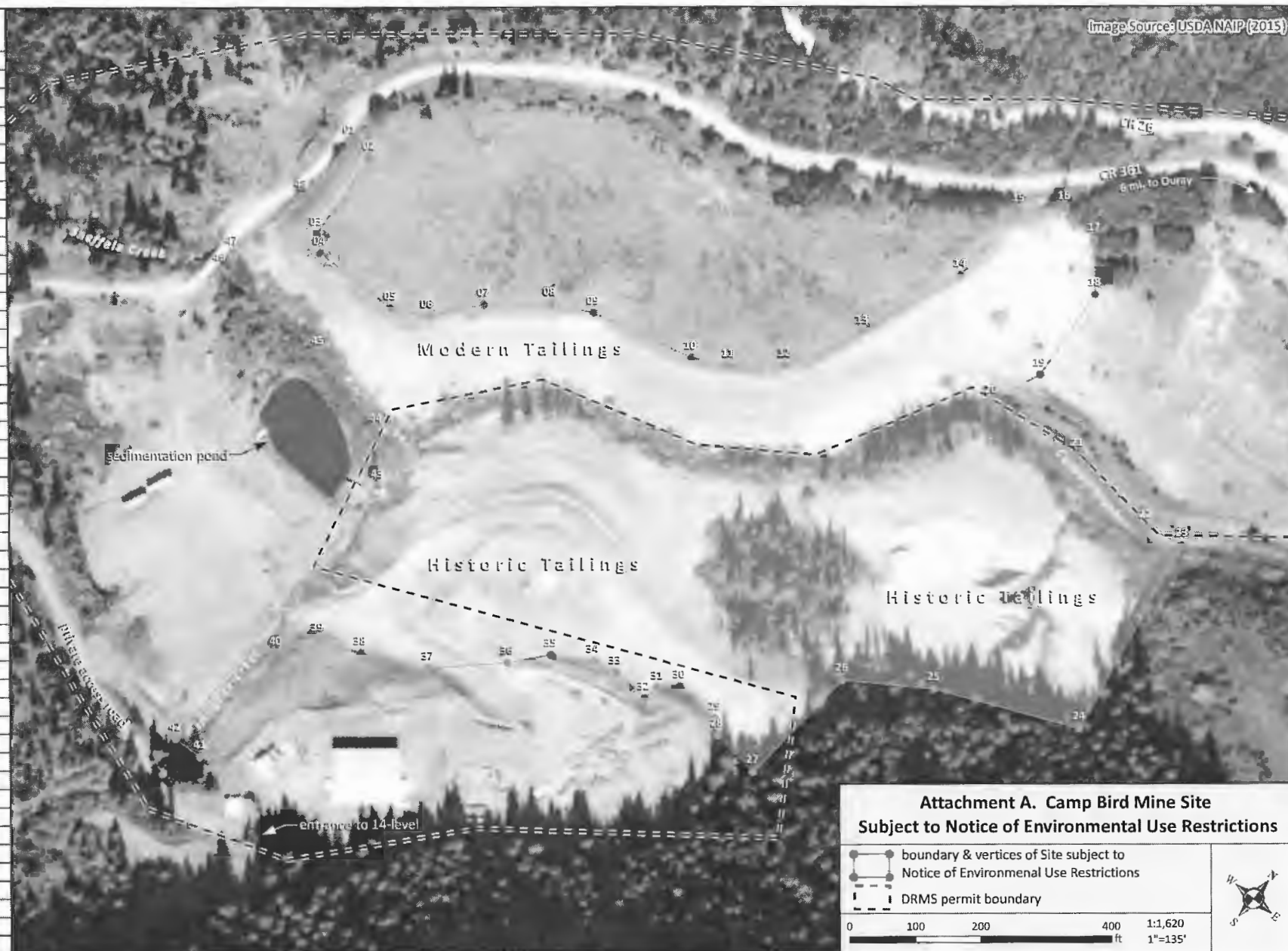
**ATTACHMENT “A”
to the
RESTRICTIVE NOTICE**

See map attached on next page.

Vertex Coordinates

NAD83 2135 UTM

Point	Easting	Northing
01	260373	4206287
02	260385	4206287
03	260387	4206244
04	260393	4206238
05	260435	4206238
06	260450	4206246
07	260468	4206266
08	260492	4206285
09	260510	4206294
10	260559	4206306
11	260575	4206313
12	260596	4206329
13	260615	4206364
14	260635	4206412
15	260638	4206452
16	260655	4206467
17	260674	4206463
18	260690	4206444
19	260692	4206399
20	260682	4206375
21	260728	4206380
22	260774	4206373
23	260793	4206377
24	260806	4206281
25	260741	4206254
26	260705	4206231
27	260698	4206171
28	260675	4206175
29	260669	4206180
30	260647	4206182
31	260639	4206175
32	260638	4206167
33	260620	4206169
34	260608	4206167
35	260591	4206157
36	260577	4206141
37	260549	4206117
38	260520	4206103
39	260501	4206096
40	260489	4206079
41	260490	4206019
42	260476	4206019
43	260480	4206169
44	260463	4206189
45	260420	4206201
46	260361	4206203
47	260361	4206213
48	260371	4206254



Attachment A. Camp Bird Mine Site Subject to Notice of Environmental Use Restrictions