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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK  
REGION 6 EPA REGION VI

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IN THE MATTER OF: )  
Homestake Mining Company Site )  
Cibola County, New Mexico )  
Homestake Mining Company of California, )  
Respondent )  
Proceeding Under Sections 104, 107 )  
and 122 of the Comprehensive )  
Environmental Response, Compensation, )  
and Liability Act, 42 U.S.C. §§ 9604, )  
9607 and 9622. )  
\_\_\_\_\_)

CERCLA Docket No. 06-03-20

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR FEASIBILITY STUDY**

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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 Homestake Mining Company of California (“Respondent”). This Settlement provides for the performance of a Feasibility Study (“FS”) by Respondent and the payment of certain response costs incurred by the United States at or in connection with the Homestake Mining Company Superfund Site (the “Site”) generally located near Milan, Cibola County, New Mexico.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9604, 9607 and 9622. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 6 to the Director of the Superfund and Emergency Management Division, EPA Region 6 by EPA Delegation Nos. R6-14-14-C and R6-14-14-D on June 8, 2001.

3. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Section V (Findings of Fact) and VI (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

## II. PARTIES BOUND

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

5. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondent to this Settlement.

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

nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

### III. STATEMENT OF PURPOSE

7. In entering into this Settlement, the objectives of EPA and Respondent are to: (a) identify and evaluate remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, to complete an FS as more specifically set forth in the Statement of Work (“SOW”) in Appendix A to this Settlement; and (b) recover Future Response Costs incurred by EPA with respect to this Settlement.

8. Respondent has conducted activities since the late 1970s to determine the nature and extent of contamination, identify and evaluate remedial alternatives, and implement remedies at the Site under the U.S. Nuclear Regulatory Commission (“NRC”) Source Materials Licenses, New Mexico Environment Department (“NMED”) groundwater discharge permits, and other regulatory authorities. Respondent has provided documentation of earlier activities substantially equivalent to those required to conduct a Remedial Investigation and Feasibility Study (“RI/FS”) under CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”). Respondent submitted this documentation to EPA in a November 2013 report entitled “CERCLA Equivalency of Investigation and Remediation Efforts at the Homestake Mining Company of California Uranium Mill Facility – Grants, New Mexico,” and included a collection of supporting documents (collectively referred to as the “CERCLA Equivalency Package”). The CERCLA Equivalency Package has been supplemented with additional data collection and technical reports generated since submission. Respondent is performing the Work to further demonstrate equivalency with CERCLA and NCP requirements.

9. This Site is undergoing reclamation, groundwater corrective action, and closure activities under NRC Source Materials License SUA-1471 to ensure that such activities meet all relevant NRC requirements, including 10 CFR part 40, Appendix A, as amended. The Site is subject to the requirements of CERCLA and NMED Discharge Permit DP-200 pursuant to the New Mexico Water Quality Act (NMSA 1978 §§74-6-1 to 74-6-17). Respondent has conducted Site investigations and analyses pursuant to NRC, EPA, and State of New Mexico (“State”) authorities that are recorded in reports dating from the 1970s. EPA, with overlapping regulatory authority under CERCLA, agreed to provide formal review, consultation, and comment on the NRC-licensed reclamation, groundwater corrective action and monitoring, and closure activities under the 1993 Memorandum of Understanding between NRC and EPA. EPA monitors all such activities to assure that they will achieve attainment of applicable or relevant and appropriate requirements (“ARARs”) under CERCLA outside of the byproduct material disposal site. EPA and Respondent intend to rely upon information gathered to date under the authorities of the NRC, the State, and EPA, as well as any new information necessary to prepare an FS.

10. Respondent believes that satisfying all ARARs for groundwater cleanup is technically impracticable pursuant to CERCLA § 121(d)(4)(C). As such, Respondent intends to prepare a technical impracticability waiver evaluation for specific ARARs as part of the FS for EPA’s review.

11. Respondent has prepared a Final Remedial Investigation Report (“RI Report”), including a baseline human health risk assessment and baseline ecological assessment, attached as Appendix C. EPA approved the RI Report on June 15, 2020.

12. The Work conducted under this Settlement is subject to approval by EPA as described herein and shall provide all appropriate and necessary information to evaluate remedial alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the NCP. The Work conducted under this Settlement shall be in compliance with all applicable EPA guidance documents, policies, and procedures.

13. The Future Response Costs to be recovered under this Settlement as defined in Section IV consist of costs to oversee and enforce CERCLA Work conducted pursuant to this Settlement. Costs of ongoing state and federal regulatory actions pursuant to non-CERCLA statutory authorities will be addressed in accordance with the relevant statutes, outside the definition of Future Response Costs in this Settlement.

#### IV. DEFINITIONS

14. 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:

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

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

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

“Engineering Controls” shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

“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 XII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), Section XVI (Emergency Response and Notification of Releases), Paragraph 103 (Work Takeover), Paragraph 127 (Access to Financial Assurance), community involvement (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 XIX (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site. Future Response Costs shall not include costs the United States incurs under Section XIX (Dispute Resolution) or in litigation if Respondent prevails.

“Homestake Mining Company Site Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site (SSID # 0618) by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

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

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

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

“NMED” shall mean the New Mexico Environment Department and any successor departments or agencies of the State.

“Operable Unit 1” or “OU1” shall mean tailings seepage contamination of groundwater aquifers.

“Operable Unit 2” or “OU2” shall mean long-term tailings stabilization, surface reclamation, and site closure.

“Operable Unit 3” or “OU3” shall mean radon concentrations in neighboring subdivisions.

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

“Parties” shall mean EPA and Respondent.

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

“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 Homestake Mining Company of California.

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

“Site” shall mean the Homestake Mining Company Superfund Site, located near Milan, Cibola County, New Mexico, and depicted generally on the map attached as Appendix B.

“State” shall mean the State of New Mexico.

“Statement of Work” or “SOW” shall mean the document describing the activities Respondent must perform to develop the FS for the Site, as set forth in Appendix A to this Settlement. The SOW is incorporated into this Settlement and is an enforceable part of this Settlement as are any modifications made thereto in accordance with this Settlement.

“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 Respondent is required to perform under this Settlement, except those required by Section XIV (Record Retention).

## **V. FINDINGS OF FACT**

The Findings of Fact herein are solely those of EPA. Respondent neither admits nor denies these findings.

15. The Site is located in Cibola County, New Mexico, approximately 5.5 miles north of Milan, at the intersection of Highway 605 and County Road 631. The Site consists of three operable units: tailing seepage contamination of groundwater aquifers (OU1), long-term tailings stabilization, surface reclamation and site closure (OU2), and radon concentrations in neighboring subdivisions (OU3). The Site also consists of 394 acres of land owned by Respondent that were used for land treatment/crop irrigation as part of groundwater corrective action.

16. The Site was a uranium processing mill operated by Respondent and others through partnerships and joint ventures from approximately 1958 to 1990. The mill historically supplied uranium to the United States under contracts with the Atomic Energy Commission, as well as to private commercial entities. The mill was and is regulated under Title II of the Uranium Mill Tailings Radiation Control Act, authorizing the NRC to regulate byproduct material at uranium processing sites to ensure sound management of tailings throughout the production, reclamation, and disposal phases. NRC initially issued NRC Source Materials License SUA-708 in 1958 to address uranium milling operations at the Site. From 1974 to 1986, the State regulated uranium milling operations at the Site. After the State relinquished its licensing authority in 1986, the mill operated, and is presently undergoing reclamation, groundwater corrective action, and closure, pursuant to NRC Source Materials License SUA-1471, as amended.

17. The mill was built in 1958 on remote ranch land. In the 1960s and 1970s several residential subdivisions were developed in the vicinity of the mill, within two miles south and southwest of the facility.

18. The mill used alkaline leach-caustic precipitation processes for concentrating uranium oxide from ores. Tailings from the mill operations, entrained in solutions from the milling process, were placed into lagoons on the top of two disposal impoundments at the Site.

19. The Large Tailings Pile ("LTP") covers an area of approximately 200 acres and is approximately 85 to 100 feet high, containing an estimated 21 million tons of mill tailings. The Small Tailings Pile ("STP") covers an area of about 40 acres and is 20 to 25 feet high. It contains approximately 1.2 million tons of tailings. Seepage from these two tailings impoundments has resulted in contamination of the underlying groundwater aquifers.

20. Remediation and monitoring activities began circa 1976 under applicable state and federal licenses and authorities. The following is a brief summary of the groundwater remediation efforts conducted at the Site:

- a. 1976: twenty monitoring wells were installed in the alluvial aquifer.
- b. 1977–1983: multiple hydraulic containment and collection wells were installed in the alluvial aquifer.
- c. 1984: hydraulic containment of the Upper Chinle aquifer was initiated.
- d. 1986: installation of extension of the Milan water supply for Broadview Acres, Felice Acres, Murray Acres, and Pleasant Valley Estates subdivisions.



- e. 1990: first evaporation pond was constructed within the footprint of the STP to assist in the dewatering of the LTP and to hold water pumped from the collection wells. Additional hydraulic containment and collection wells were installed in the alluvial aquifer.
- f. 1992: toe drains were installed around the tailings piles.
- g. 1993–2000: corrective action and monitoring well networks were revised through addition of wells.
- h. 1996: second evaporation pond was constructed and commissioned.
- i. 1999: the reverse osmosis (“RO”) treatment facility was constructed and operated, and treated water is used for hydraulic containment of the alluvial aquifer.
- j. 2000: land treatment/crop irrigation of 270 acres of land owned by Respondent to manage extracted contaminated groundwater was initiated as part of groundwater corrective action (referred to as the land application program); flood irrigation was performed on 120 acres of land, center pivot spray irrigation was performed on 150 acres of land.
- k. 2002: 60 acres of irrigation area owned by Respondent were added to the land application program and used for center pivot spray irrigation; RO treatment facility capacity increased from 300 gallons per minute (“gpm”) (one unit) to 600 gpm (two units).
- l. 2002–2009: corrective action and monitoring well networks were revised through addition of wells.
- m. 2004–2005: 64 acres of irrigation area owned by Respondent were added to the land application program; 40 acres were used for center pivot spray irrigation and 24 acres were used for flood irrigation.
- n. 2007: memorandum of understanding signed by Respondent and NMED to install municipal water supply connections to residences whose owners had either moved into the area since the 1980s or had opted not to have the water supply connections when originally offered.
- o. 2010: third evaporation pond was constructed and commissioned.
- p. 2012: land application program ceased operation, and 300 gpm Zeolite pilot treatment started operation.
- q. 2015: RO treatment facility was expanded to a maximum throughput of 1200 gpm with the addition of a 600 gpm low pressure skid, a 250 gpm high pressure skid, and two microfiltration skids to replace the existing sand filters amongst other updates. Tailings flushing was discontinued as it was considered no longer effective due to heterogeneity of the tailing pile particle size.
- r. 2016: 1200 gpm Zeolite system began operation for water treatment.

21. Windblown materials from the tailings piles contaminated soils with radium-226. The contaminated soils were excavated from surrounding areas and placed on the piles beginning in 1988 and ending in 1993. There was a period of inaction during the soil cleanup due to decommissioning activities. The radium-226 cleanup criterion was established by the NRC as License Condition No. 19 in accordance with 10 CFR Part 40, Appendix A – Criterion 6. The cleanup criterion for radium-226 was 10.5 picocuries per gram (pCi/g) (5.0 pCi/g above background) in the top 15 centimeters of soil and 20.5 pCi/g (15 pCi/g above background) at depths greater than 15 cm. Surface soils from approximately 1,200 acres of land were removed during the removal of off-pile windblown tailing contamination. The remediation resulted in the cleanup of surface soils to an average radium-226 concentration of 1.11 pCi/g (standard deviation 1.05 pCi/g) for the inner zone of the cleanup area and 2.95 pCi/g (standard deviation 1.89 pCi/g) for the outer zone of the cleanup area, based on verification soil sampling that was biased high (ERG 1995).

22. The mill was decommissioned and demolished in 1993–1995. The tailing piles were closed and covered by interim soil covers upon closure of the mill. One foot of soil cover was initially placed on top of the LTP. Additional cover material was placed on top of the pile to fill in depressions caused by settlement, to improve drainage, and to address specific areas with elevated radon flux measurements. Six to nine inches of rock cover was placed on the side slopes for erosion protection.

23. At the former mill area, an average of two feet of contaminated soil (containing elevated radium-226 concentrations) were excavated following the completion of mill demolition. Excavated soils were transported to the LTP and STP for burial. Excavated areas were backfilled with alluvial soils.

24. Remediation continues with the operation of the groundwater extraction and injection system, RO treatment facility, two zeolite treatment systems, two lined collection ponds, three lined evaporation ponds for disposal of contaminated groundwater, and associated equipment and structures. Accounting for scheduled and unscheduled maintenance, the functional capacity of RO treatment based on the last four years of operations is currently about 500 gpm.

25. EPA conducted a CERCLA removal action in 2012 to install radon-222 abatement systems in ten residences in the subdivisions south of the LTP with annual average radon-222 concentrations above EPA's action level of 4 pCi/liter.

26. Pursuant to a 2012 CERCLA Section 122(h)(1) Settlement Agreement for Recovery of Response Costs, Respondent agreed to pay \$244,652 to the Homestake Mining Company Site Special Account to support EPA's response to mitigate indoor radon gas. Respondent and EPA executed an amendment to the 2012 CERCLA Section 122(h)(1) Settlement Agreement for Recovery of Response Costs, allowing EPA to retain and use the remaining unused funds in the Homestake Mining Company Site Special Account to reimburse EPA costs incurred in connection with the Site RI/FS activities.

27. The primary contaminants of concern in groundwater at the Site are uranium, selenium, radium-226, radium-228, thorium-230, molybdenum, vanadium, sulfate, chloride,

nitrate, and total dissolved solids. The primary contaminants of concern in soil are radium-226 and uranium. The primary contaminant of concern in indoor and outdoor air is radon.

28. Radon is a radioactive gas produced from the decay of radium-226. Radon decays into short-lived alpha-emitting radon progeny. Exposure to alpha radiation is a known cause of cancer. Inhalation of radon and radon progeny has been shown to cause an increased incidence of cancer of the lung, bronchial epithelium, and other parts of the body of humans.

29. Radium-226 is principally a source of alpha and gamma radiation, although some beta radiation is also produced during the decay process. According to the ATSDR ToxFAQs for Radium (July 1999), exposure to radium-226 can cause adverse effects to the eyes (cataracts) and blood (anemia). Radium-226 has been identified as a known human carcinogen, being specifically linked to cancers of the bone and breast, and also leukemia.

30. Uranium is a widespread mineral forming heavy metal that in nature is composed of three isotopes, uranium-238, uranium-235, and uranium 234, with the uranium-238 isotope generally composing over 98% of the mixture. All of these isotopes are the same chemically, but have different energy and decay properties. According to the ATSDR ToxFAQs for Uranium (October 1999), uranium is an alpha ionizing radiation emitter and in general, weakly radioactive. Exposure to excess levels of uranium can cause human tissue damage, primarily in the kidneys. Cancer risk from exposure to excess uranium levels appears to be low to none. The primary risk from uranium is cancer caused by exposure to the progeny generated by uranium decay.

31. The former uranium mill and associated tailings disposal areas are currently owned by Homestake Mining Company of California, a wholly owned indirect subsidiary of Barrick Gold Corporation.

32. The Site was placed on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605 on September 8, 1983.

33. From at least 1977 to the present, Respondent has completed a number of environmental studies and response measures required by NRC Source Materials Licenses, NMED and its predecessor agencies under state discharge permits and Memoranda of Understanding, as well as by EPA.

## **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

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

a. The Site is an appropriate site to meet its CERCLA obligations through CERCLA equivalency pursuant to 40 CFR § 300.700(c)(3).

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

c. 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).

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

e. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent is the owner and/or operator of the facility, as well as an arranger for disposal as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1)-(3) of CERCLA, 42 U.S.C. § 9607(a)(1)-(3).

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

g. The actions required by this Settlement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

h. EPA has determined that Respondent is qualified to conduct the FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Settlement.

## VII. SETTLEMENT AGREEMENT AND ORDER

35. Based upon the Findings of Fact, Conclusions of Law and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

## VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

36. **Selection of Contractors, Personnel.** All Work performed under this Settlement shall be under the direction and supervision of qualified personnel. Respondent has notified EPA that it intends to use the following personnel in carrying out the Work: HDR Engineering, Inc. under the direction of Joseph R. Shields. EPA hereby approves Respondent's selection of the foregoing contractor and personnel. If, after the commencement of Work, Respondent retains additional contractors or subcontractors, Respondent shall notify EPA of the names, titles, contact information, and qualifications of such contractors or subcontractors retained to perform the Work at least 14 days prior to commencement of Work by such additional contractors or subcontractors. EPA retains the right, at any time, to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within 30 days after EPA's disapproval. With respect to any proposed contractor, Respondent

shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs – Requirements with guidance for use” (American Society for Quality, February 2014), by submitting a copy of the proposed contractor’s Quality Management Plan (QMP). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2),” EPA/240/B-01/002 (Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA’s review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

37. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement: Daniel Lattin of Barrick Gold of North America, Inc. Respondent has also designated, and EPA has not disapproved, Adam Arguello of Homestake Mining Company of California as its alternate Project Coordinator. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person’s name, title, contact information, and qualifications within 30 days following EPA’s disapproval. Notice or communication relating to this Settlement from EPA to Respondent’s Project Coordinator shall constitute notice or communication to Respondent.

38. EPA has designated Mark Purcell, Remedial Project Manager, of the EPA Region 6 Superfund and Emergency Management Division as its Project Coordinator. EPA has also designated Nathaniel Applegate, Remedial Project Manager, of the Superfund and Emergency Management Division as its alternate Project Coordinator. EPA will notify Respondent of a change of its designated Project Coordinator or alternate Project Coordinator. Communications between Respondent and EPA, and all documents concerning the activities performed pursuant to this Settlement, shall be directed to the EPA Project Coordinator in accordance with Paragraph 49.a (General Requirements for Deliverables).

39. EPA’s Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA’s Project Coordinator shall have the authority, consistent with the NCP, to halt, conduct, or direct any Work required by this Settlement, or to direct any other response action when he/she determines that conditions at the Site constitute an emergency situation or may present a threat to public health or welfare or the environment. Absence of the EPA Project Coordinator from the area under study pursuant to this Settlement shall not be cause for stoppage or delay of Work.

## **IX. WORK TO BE PERFORMED**

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

41. Respondent shall conduct the FS in accordance with the provisions of this Settlement, the attached SOW, CERCLA, the NCP, and EPA guidance, including, but not limited to the “Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA” (“RI/FS Guidance”), OSWER Directive # 9355.3-01 (October 1988), available at <https://semspub.epa.gov/src/document/11/128301> and guidance referenced in the SOW. EPA and Respondent understand that the Site is proceeding under a CERCLA equivalency process pursuant to 40 CFR § 300.700(c)(3). As such, the FS will be sufficient if it substantially complies with NCP requirements, and the Work carried out in accordance with this Settlement will be considered consistent with the NCP. The FS shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, 40 C.F.R. § 300.430(e), and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and 40 C.F.R. § 300.430(e).

42. All written documents prepared by Respondent pursuant to this Settlement shall be submitted by Respondent in accordance with Section X (Submission and Approval of Deliverables). With the exception of progress reports and the updated Health and Safety Plan (HASP), all such submittals will be reviewed and approved by EPA in accordance with Section X (Submission and Approval of Deliverables). Respondent shall implement all EPA approved, conditionally-approved, or modified deliverables.

43. Within 30 days after the Effective Date, Respondent shall submit for EPA review and comment an updated HASP that ensures the protection of on-site workers, federal and state officials, and the public during performance of on-site Work under this Settlement or other on-site activities. The updated HASP shall account for the Center for Disease Control’s (and/or other state or local health department) restrictions, advisories, or guidelines to address the COVID-19 pandemic disease and the safety practices that will be employed at the Site to minimize the impact of COVID-19, including maintaining social distancing. The updated HASP shall ensure that on-site workers and other response personnel have or can readily access the necessary personal protective equipment to minimize the impact of COVID-19 and to respond to an environmental emergency in an area that is employing active mitigation for COVID-19. In addition, the updated HASP shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. Respondent shall incorporate all changes to the HASP provided by EPA.

44. If EPA determines that a Reuse Assessment is necessary for those areas of the Site outside of the byproduct material disposal site and outside any other areas of the Site that will be transferred to DOE’s long-term surveillance and maintenance program under an NRC general license, Respondent will perform the Reuse Assessment in accordance with applicable guidance. The Reuse Assessment should provide sufficient information to develop realistic assumptions of the reasonably anticipated future uses for the Site. Respondent shall prepare the Reuse Assessment in accordance with EPA guidance, including, but not limited to: “Reuse

Assessments: A Tool to Implement the Superfund Land Use Directive.” OSWER Directive 9355.7-06P (June 2001).

**45. Modification of the SOW**

a. If at any time during the FS process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to EPA’s Project Coordinator within 30 days after identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into deliverables.

b. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify EPA’s Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the SOW, EPA shall modify the SOW in writing accordingly or direct Respondent to modify and submit the modified SOW to EPA for approval. Respondent shall perform the SOW as modified.

c. In the event that EPA determines that additional Work consistent with Section III (Statement of Purpose) and Paragraph 41 are necessary to accomplish the purpose of the FS, EPA shall consult with Respondent and consider any concerns or objections expressed by Respondent before making a determination as to the necessary additional tasks. After such consultation, if EPA still considers the additional Work or a modification of such Work necessary to accomplish the purpose of the FS consistent with Section III (Statement of Purpose), and Paragraph 41, EPA will notify Respondent to submit for approval a modified SOW describing the additional Work and modified schedule.

d. Respondent shall confirm its willingness to perform the additional Work in writing to EPA within 7 days after receipt of the EPA notification of the necessary additional tasks. If EPA and Respondent cannot agree on the additional Work required by EPA pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XIX (Dispute Resolution). The SOW shall be modified in accordance with the final resolution of the dispute.

e. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the SOW. EPA reserves the right to conduct the work itself, to seek reimbursement from Respondent for the costs incurred in performing the work, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA’s authority to enter into additional settlements or orders to require performance of further response actions at the Site.

**46. Off-Site Shipments**

a. Respondent may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if

Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility in performance of the Work only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to EPA's Project Coordinator. This 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. Respondent shall also notify the state environmental official referenced above and EPA's Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the FS and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the SOW. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

47. **Meetings.** Respondent shall make presentations at, and participate in, meetings at the request of EPA during the preparation of the FS. In addition to discussion of the technical aspects of the FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

48. **Progress Reports.** In addition to the deliverables set forth in this Settlement, Respondent shall submit written monthly progress reports to EPA by the 15th day of the following month starting on the Effective Date until completion of the FS. At a minimum, with respect to the preceding month, these progress reports shall:

- a. describe the actions that have been taken to comply with this Settlement;
- b. include all results of sampling and tests and all other data received by Respondent;
- c. describe Work planned for the next month with schedules relating such Work to the overall project schedule for FS completion; and
- d. describe all problems encountered in complying with the requirements of this Settlement and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.



## **X. SUBMISSION AND APPROVAL OF DELIVERABLES**

### **49. Submission of Deliverables**

#### **a. General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to EPA's Project Coordinator:

Mark Purcell, Remedial Project Manager  
U.S. EPA Region 6, SEDRL  
1201 Elm St., Ste. 500  
Dallas, TX 75270  
Purcell.Mark@epa.gov.

Respondent shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan in accordance with the schedules set forth in this Settlement, the SOW, and such plan.

(2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 49.b. All other deliverables shall be submitted in the electronic form specified by EPA's Project Coordinator. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondent shall also provide paper copies of such exhibits.

#### **b. Technical Specifications for Deliverables**

(1) Technical deliverables shall be provided in accordance with Section IV.A.2 (Document Distribution) of the SOW. 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: (i) in the ESRI File Geodatabase format; and (ii) 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 <https://www.epa.gov/geospatial/geospatial-policies-and->

standards for any further available guidance on attribute identification and naming.

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

50. **Approval of Deliverables**

a. **Initial Submissions**

(1) After review of any deliverable that is required to be submitted for EPA approval under this Settlement or the attached SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing. Any disapproval or modification shall be consistent with the purposes of this Settlement Agreement set forth in Section III (Statement of Purpose) and Paragraph 41.

(2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

b. **Resubmissions.** Upon receipt of a notice of disapproval under Paragraph 50.a(1) (Initial Submissions), or if required by a notice of approval upon specified conditions under Paragraph 50.a(1), Respondent shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Respondent to correct the deficiencies; or (e) any combination of the foregoing.

c. **Implementation.** Upon approval, approval upon conditions, or modification by EPA under Paragraph 50.a (Initial Submissions) or Paragraph 50.b (Resubmissions), of any deliverable, or any portion thereof: (i) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (ii) Respondent shall take any action required by such deliverable, or portion thereof. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for penalties under Section XXI (Stipulated Penalties) for violations of this Settlement.

51. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA.

52. In the event that EPA takes over some of the tasks, but not the preparation of the FS, Respondent shall incorporate and integrate information supplied by EPA into the FS.

53. Respondent shall not proceed with any activities or tasks dependent on the following deliverable until receiving EPA approval, approval on condition, or modification of such deliverable: Development and Screening of Remedial Alternatives Technical Memorandum. While awaiting EPA approval, approval on condition, or modification of this deliverable, Respondent shall proceed with all other tasks and activities that may be conducted independently of this deliverable, in accordance with the schedule set forth under this Settlement.

54. For all remaining deliverables not dependent on the deliverable listed in Paragraph 53, Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval of the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work.

55. **Material Defects.** If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 50.a (Initial Submissions) or 50.b (Resubmissions) due to such material defect, Respondent shall be deemed in violation of this Settlement for failure to submit such plan, report, or other deliverable timely and adequately. Respondent may be subject to penalties for such violation as provided in Section XXI (Stipulated Penalties).

56. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

## **XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

57. No field work or sampling is anticipated to be necessary to complete the Work; however, in the event additional field work or sampling consistent with Section III (Statement of Purpose) and Paragraph 41 are required by EPA, Respondent shall develop a Quality Assurance Project Plan (QAPP) to which the collection and analysis of samples will conform.

58. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)," EPA/240/B-01/003 (March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)," EPA/240/R-02/009 (December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

### **59. Laboratories**

a. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent pursuant to this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure" CIO 2105-P-02.1 (9/23/2014), available at <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent 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 <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements>, and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<https://www.epa.gov/superfund/programs/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/>), and 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<https://www.epa.gov/ttnamti1/airtox.html>).

b. Upon approval by EPA, Respondent may use other appropriate analytical methods, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the methods and the methods are included in the QAPP, (ii) the analytical methods are at least as stringent as the methods listed above, and (iii) the methods 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.

c. Respondent 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.

d. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the approved QAPP.

## 60. Sampling

a. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives. Respondent 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 Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work, and any such samples shall be analyzed in accordance with the approved QAPP.

b. Respondent shall submit to EPA, in the next monthly progress report as described in Paragraph 48 (Progress Reports) the results of all sampling and/or tests or other data

obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement.

61. If Respondent objects to any data gathered, generated, or evaluated by EPA, the State, or Respondent relating to the Work to be performed under this Settlement, Respondent shall identify and explain, or submit to EPA a report that specifically identifies and explains its objections, describes the acceptable use of the data, if any, and identifies any limitations to the use of the data. The report shall be submitted to EPA prior to submitting the draft FS report.

## XII. PROPERTY REQUIREMENTS

62. **Agreements Regarding Access and Non-Interference.** Respondent shall, with respect to the Site: (i) provide EPA, the State, and their representatives, contractors, and subcontractors with access at all reasonable times to the Site to conduct any activity regarding the Settlement; and (ii) refrain from using the Site 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 or integrity of the Work. Respondent shall provide a copy of such access agreement(s) to EPA and the State. Neither EPA nor Respondent anticipates that any Work under this Settlement shall require access to areas owned or in possession of someone other than Respondent; however, in the event Work under this Settlement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after Respondent becomes aware that such access is needed, or as otherwise specified in writing by the EPA Project Coordinator. In securing such agreements from property owners, Respondent shall use its best efforts to obtain access agreements that are enforceable by Respondent and EPA, and that require the property owner to: (i) provide EPA and the State, and their representatives, contractors and subcontractors, with access at all reasonable times to such property, (ii) refrain from using the property in any manner that EPA determines will interfere with or adversely affect the implementation or integrity of the Work. Respondent shall provide a copy of such access agreement(s) to EPA and the State. The parties understand and acknowledge that any delays in obtaining access, if required, may affect the schedule and deliverables under this Settlement and SOW.

63. **Best Efforts.** As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through “best efforts” in a timely manner, 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 Respondent, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XVII (Payment of Response Costs).

64. 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, Respondent shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such Institutional Controls.

### **XIII. ACCESS TO INFORMATION**

65. Respondent 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 Respondent's possession or control or that of their 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. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

#### **66. Privileged and Protected Claims**

a. Respondent may assert that all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 66.b, and except as provided in Paragraph 66.c.

b. If Respondent asserts a claim of 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 reasonable description of the Record's contents sufficient to assess Respondent's claim of privilege or protection without revealing privileged or protected information; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

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

67. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to EPA under this Section or Section XIV (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). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records claimed as confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality

accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B and Respondent has not disputed that determination, the public may be given access to such Records without further notice to Respondent.

68. 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.

#### **XIV. RECORD RETENTION**

69. Until 7 years after EPA provides Respondent with notice, pursuant to Section XXXI (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent 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. Respondent, as potentially liable as an owner or operator of the Site, must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent 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 Respondent (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.

70. At the conclusion of the document retention period, Respondent shall notify EPA at least 60 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 66 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

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

#### **XV. COMPLIANCE WITH OTHER LAWS**

72. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations when performing the FS. 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, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XX (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.

## **XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

73. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement. Respondent shall also immediately notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at (214) 665-6444 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XVII (Payment of Response Costs).

74. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify EPA's Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at (214) 665-6444, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

75. For any event covered under this Section, Respondent shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

## **XVII. PAYMENT OF RESPONSE COSTS**

76. **Payments for Future Response Costs.** Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bill.** On a periodic basis, EPA will send Respondent a bill requiring payment that includes a SCORPIOS Report, which includes direct and indirect costs



incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 79 (Contesting Future Response Costs), and in accordance with Paragraph 77 (Payment Instructions).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by Respondent pursuant to Paragraph 76.a. (Periodic Bill) shall be deposited by EPA in the Homestake Mining Company Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Homestake Mining Company Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.

#### 77. **Payment Instructions**

a. Respondent shall make payment on-line to [www.Pay.gov](http://www.Pay.gov) which accepts debit and credit cards and bank account ACH. On the [www.Pay.gov](http://www.Pay.gov) main page, enter SFO 1.1 in the search field to obtain EPA's Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form with the Site Name/Spill ID Number 0618 and the EPA docket number for this action.

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

- (1) By email to: [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov), or
- (2) By mail to: U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, Missouri 63197-9000

Such notice shall reference Site Name/Spill ID Number 0618 and the EPA docket number for this action.

78. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XXI (Stipulated Penalties).

79. **Contesting Future Response Costs.** Respondent may initiate the procedures of Section XIX (Dispute Resolution) regarding payment of any Future Response Costs billed under

Paragraph 76 (Payments for Future Response Costs) 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. To initiate such a dispute, Respondent shall submit a Notice of Dispute in writing to EPA's Project Coordinator within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 76, and (b) 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. Respondent shall send to EPA's Project Coordinator 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, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 76. If Respondent prevails concerning any aspect of the contested costs, Respondent 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 76. Respondent 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 XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

## **XVIII. NATURAL RESOURCE DAMAGES**

80. For the purposes of Section 113(g)(1) of CERCLA, the Parties agree that, upon the Effective Date of this Settlement for performance of an FS at the Site, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within 3 years after the completion of the remedial action for the last operable unit at the Site.

## **XIX. DISPUTE RESOLUTION**

81. 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. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

### **82. Informal Dispute Resolution.**

a. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within 30 days after such action. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through

informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

b. Initiation of Alternative Dispute Resolution. At any time during the informal dispute resolution period, either Respondent or EPA may propose the use of a mediator to assist in resolving the dispute. In addition, upon the request of Respondent or EPA, a meeting shall take place between the parties to the dispute with the assistance of a mediator for the purpose of resolving the dispute and/or determining whether to undertake further mediated discussions. This initial meeting shall take place within 10 business days of the party's request, unless Respondent and EPA agree to extend that period. Upon the written agreement of Respondent and EPA, the period for informal dispute resolution may be extended for the purpose of mediating the dispute. Formal dispute resolution, as governed by the procedures set for in Paragraph 83, shall commence immediately upon the termination of the informal dispute resolution period.

c. Decision to Continue Alternative Dispute Resolution. After the initial mediated meeting, the decision to continue the mediation shall be in the sole discretion of each party.

d. Costs of Alternative Dispute Resolution. The Parties agree that they will share equitably the costs of mediation, subject to the availability of EPA funds for this purpose. EPA's ability to share the costs of mediation will be determined by EPA in its sole discretion and shall not be subject to dispute resolution or judicial review. If EPA determines that no mediation funding is available, Respondent shall have the option to cover all of the mediation costs or to request the services of a trained mediator from EPA's in-house Alternate Dispute Resolution (ADR) program or any other dispute resolution professional who services may be available to the Parties at no cost.

e. Confidentiality. The Parties agree that participants in mediated discussions pursuant to this Section shall execute a confidentiality agreement in the form attached as Appendix D to this Settlement Agreement.

f. In the event that the Parties cannot resolve a dispute by informal negotiations under this Paragraph, then the dispute shall proceed under Paragraph 83 (Formal Dispute Resolution).

**83. Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 30 days after the end of the Negotiation Period, submit a statement of position to EPA's Project Coordinator. EPA may, within 30 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. If Respondent disagrees with the written decision of the EPA management official, it may seek appeal of the decision in the United States District Court for the District of New Mexico. If Respondent seeks appeal to the United States District Court for the District of New Mexico, EPA will contest

jurisdiction of the United States District Court to hear such appeal. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's or the United States District Court for the District of New Mexico's decision, whichever occurs.

84. Except as provided in Paragraph 79 (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 Respondent under this Settlement. Except as provided in Paragraph 93, stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

## **XX. FORCE MAJEURE**

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

86. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement, Respondent shall notify EPA's Project Coordinator orally or, in his or her absence, the alternate EPA Project Coordinator, or, in the event both of EPA's designated representatives are unavailable, the Director of the Land, Chemicals and Redevelopment Division, EPA Region 6, within 14 days of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 85 and whether Respondent has exercised its best efforts under

Paragraph 85, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

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

88. If Respondent elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 85 and 86. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

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

## XXI. STIPULATED PENALTIES

90. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 91 for failure to comply with the obligations specified in Paragraph 91 unless excused under Section XX (Force Majeure). "Comply" as used in the previous sentence includes compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

91. **Stipulated Penalty Amounts.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables required pursuant to this Settlement where an extension for the deliverable has not been granted in writing prior to the due date:

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

92. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 103 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$100,000.

93. 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 Section X (Submission and Approval of Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Branch Chief level or higher, under Paragraph 83 (Formal Dispute Resolution), during the period, if any, beginning on 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.

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

95. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XIX (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 77 (Payment Instructions).

96. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 93 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 95 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

98. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 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 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 willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 103 (Work Takeover).

99. 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.

## **XXII. COVENANTS BY EPA**

100. Except as provided in Section XXIII (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants (and all reservations thereto in this Settlement) shall also apply to Respondent's officers, directors, employees, predecessors-in-interest, affiliates, parents, successors, and assigns (the "Covered Parties"), but only to the extent that the alleged liability of the Covered Parties arises out of those matters relating to the Work, and Future Response Costs. These covenants do not extend to any other person.

## **XXIII. RESERVATIONS OF RIGHTS BY EPA**

101. 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 Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

- a. liability for failure by Respondent to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response 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 the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

### 103. **Work Takeover**

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

b. If, after expiration of the 10-day notice period specified in Paragraph 103.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 103.b. Funding of Work Takeover costs is addressed under Paragraph 127 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 103.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 103.b. until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 83 (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.



#### XXIV. COVENANTS BY RESPONDENT

104. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement, 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 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;  
or

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

105. Respondent reserves, and this Settlement is without prejudice to, claims that Respondent has or may have against the United States brought pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), relating to the Work or Future Response Costs.

106. Nothing in this Settlement Agreement shall be deemed to compromise in any way or degree any claim by Respondent against the United States for any claims authorized by Title X of the Energy Policy Act of 1992, the Atomic Energy Act of 1954, or the Uranium Mill Tailings Radiation Control Act of 1978.

107. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XXIII (Reservations of Rights by EPA), other than in Paragraph 102.a (liability for failure to meet a requirement of the Settlement), 102.d (criminal liability), or 102.e (liability for violations of federal or state law), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

109. Respondent 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 Respondent's deliverables or activities.

## **XXV. OTHER CLAIMS**

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

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

112. 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).

## **XXVI. EFFECT OF SETTLEMENT/CONTRIBUTION**

113. 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 XXIV (Covenants by Respondent), 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).

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

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

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

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

## **XXVII. INDEMNIFICATION**

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

119. EPA shall give Respondent notice of any claim for which EPA plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

120. Respondent covenants not to sue and agrees not to assert any claims or causes of action against EPA for damages or reimbursement or for set-off of any payments made or to be made to EPA, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless EPA with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any

person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## **XXVIII. INSURANCE**

121. No later than 30 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXXI (Notice of Completion of Work), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, then, with respect to the contractor or subcontractor, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to EPA under this Paragraph identify the Homestake Mining Company Superfund Site and the EPA docket number for this action.

## **XXIX. FINANCIAL ASSURANCE**

122. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$500,000 ("Estimated Cost of the Work"), for the benefit of EPA. 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 EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

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

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

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

e. A demonstration by Respondent that it meets the financial test criteria of Paragraph 124, accompanied by a standby funding commitment, which obligates the Respondent to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of Respondent or has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; and (2) can demonstrate to EPA's satisfaction that it meets the financial test criteria of Paragraph 124.

123. Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to:

Lydia Johnson, Chief  
Enforcement & Cost Recovery Section (SEDAE)  
1201 Elm Street, Suite 500  
Dallas, TX 75270

124. If Respondent seeks to provide financial assurance by means of a demonstration or guarantee under Paragraph 122.e or 122.f, it must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) Respondent or guarantor has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) Respondent or guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance-Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

125. If Respondent provides financial assurance by means of a demonstration or guarantee under Paragraph 122.e or 122.f, it must also:

a. Annually resubmit the documents described in Paragraph 124.b within 90 days after the close of Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of Respondent or guarantor in addition to those specified in Paragraph 124.b; EPA may make such a request at any time based on a belief that Respondent or guarantor may no longer meet the financial test requirements of this Section.

126. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within 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 Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondent shall follow the procedures of Paragraph 128 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

**127. Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 103.b., then, in accordance with any applicable financial assurance mechanism, and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 127.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 127.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 103.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraphs 122.e or 122.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent 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 127 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 Homestake Mining Company Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 127 must be reimbursed as Future Response Costs under Section XVII (Payment of Response Costs).

**128. Modification of Amount, Form, or Terms of Financial Assurance.** Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 123, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XIX (Dispute Resolution). Respondent may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 123.

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

### **XXX. MODIFICATION**

**130.** EPA's Project Coordinator may modify any plan or schedule or the SOW, but only consistent with Section III (Statement of Purpose) and Paragraph 41 of this Settlement, 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 EPA's Project Coordinator's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.



131. If Respondent seeks permission to deviate from any approved work plan or schedule or the SOW, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA's Project Coordinator pursuant to Paragraph 130.

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

### **XXXI. NOTICE OF COMPLETION OF WORK**

133. When EPA determines that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Record Retention, EPA will provide written notice to Respondent. If EPA determines that any Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the SOW, if appropriate, in order to correct such deficiencies. Respondent shall implement the modified and approved SOW and shall submit a modified draft FS Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified SOW shall be a violation of this Settlement.

### **XXXII. INTEGRATION/APPENDICES**

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

- a. "Appendix A" is the SOW
- b. "Appendix B" is the map of the Site.
- c. "Appendix C" is the RI Report.
- d. "Appendix D" is the Confidentiality Agreement.

### **XXXIII. ADMINISTRATIVE RECORD**

135. EPA will determine the contents of the administrative record file for selection of the remedial action. Respondent shall submit to EPA documents developed during the course of the FS upon which selection of the remedial action may be based. Upon request of EPA, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Upon request of EPA, Respondent shall additionally submit any previous studies conducted under state, local, or other federal authorities that may relate to selection of the remedial action,

and all communications between Respondent and state, local, or other federal authorities concerning selection of the remedial action.

**XXXIV. EFFECTIVE DATE**

136. This Settlement shall be effective 5 days after the Settlement is signed by the Director, Superfund and Emergency Management Division, EPA Region 6.

IT IS SO AGREED AND ORDERED:

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

**WREN STENGER**

Digitally signed by WREN STENGER  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=WREN STENGER,  
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Date: 2020.08.12 08:57:16 -05'00'

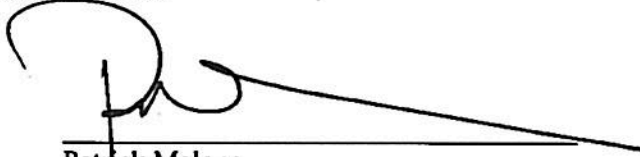
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Dated

\_\_\_\_\_  
Wren Stenger, Director  
Superfund and Emergency Management Division  
U.S. Environmental Protection Agency, Region 6

Signature Page for Settlement Regarding Homestake Mining Company Superfund Site

**FOR HOMESTAKE MINING COMPANY OF CALIFORNIA:**

Aug 4, 2020  
Dated



Patrick Malone  
President  
Homestake Mining Company of California  
2270 Corporate Circle, Suite 100  
Henderson, NV 89074

**APPENDIX A**

**STATEMENT OF WORK  
FOR CERCLA EQUIVALENCY OF  
REMEDIAL INVESTIGATION AND FEASIBILITY STUDY**

**HOMESTAKE MINING COMPANY  
URANIUM MILL SUPERFUND SITE  
OPERABLE UNITS 1 AND 2**

**Cibola County, New Mexico**

**U.S. Environmental Protection Agency  
(Region 6)**

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## I. INTRODUCTION

1. This Statement of Work (“SOW”) sets forth requirements of the Administrative Settlement Agreement and Order on Consent (the “Settlement”) for performing the Work necessary to demonstrate equivalency with the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) requirements for a feasibility study (“FS”) under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (“CERCLA”) at the Homestake Mining Company Superfund site (“Site”), Operable Units 1 and 2. Achieving equivalency with CERCLA and the NCP for the FS will allow the U.S. Environmental Protection Agency (“EPA”) to identify a remedial alternative in a record of decision (ROD) that is protective of human health and the environment and attains applicable or relevant and appropriate requirements (“ARARs”) under CERCLA. Conformance with CERCLA requirements in selecting and implementing the remedy will assist in supporting deletion of the Site from the National Priorities List (“NPL”). At the request of EPA, the Homestake Mining Company of California (“HMC”) completed a review and compilation of prior investigatory and remedial work conducted at the Site under other federal and state regulatory authorities’ programs to assess the extent to which the NCP requirements for an RI/FS have been met. This documentation was submitted to EPA in a November 2013 report entitled “*CERCLA Equivalency of Investigation and Remediation Efforts at the Homestake Mining Company of California Uranium Mill Facility – Grants, New Mexico,*” and included a collection of supporting documents (hereinafter “CERCLA Equivalency Package”). The CERCLA Equivalency Package has been supplemented with additional data collection and technical reports generated since submission. Based upon EPA’s review of the administrative record, the Work set forth herein has been determined necessary by EPA to demonstrate equivalency with CERCLA and NCP requirements.

2. HMC has completed under EPA oversight, and EPA has approved, the RI report, attached as Appendix C to the Settlement. HMC shall prepare an FS report in accordance with the Settlement, including this SOW, the *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA* (the “RI/FS Guidance”), and any other relevant guidance documents that EPA uses in conducting an RI/FS (a list of the primary guidance documents is attached). The RI/FS Guidance describes the report format and the minimally required FS report content.

3. At the completion of the FS, EPA, in consultation with the State of New Mexico, will select and document a Site remedy in a ROD. The Site remedy will meet the cleanup standards specified in CERCLA Section 121 which requires a remedy to be protective of human health and the environment; in compliance with, or include a waiver of, ARARs of other laws; cost-effective; utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and address the statutory preference for treatment as a principal element. The RI report, all human health and ecological risk assessment reports, and the FS report will, with the administrative record, form the basis for the selection of the Site remedy and will provide the information necessary to support the development of the ROD, which is necessary for deletion of the Site from the NPL.

## **II. ROLE OF EPA**

4. EPA will provide oversight of HMC's activities throughout implementation of the Work required under the Settlement and this SOW. This will include reviewing and commenting on deliverables such as reports and other required submittals. As described in Paragraph 50 of the Settlement, if a submission is inconsistent with the RI/FS Guidance or insufficiently equivalent to an FS requirement pursuant to CERCLA equivalency, EPA may require HMC to make modifications to the submission or perform additional Work consistent with Section III (Statement of Purpose) and Paragraph 41 of the Settlement. That is, if a submission reports certain work that is unacceptable to EPA, EPA may require HMC to modify the submission text or perform additional Work consistent with Section III (Statement of Purpose) and Paragraph 41 of the Settlement until it is acceptable to EPA.

5. HMC shall cooperate fully with EPA's oversight activities, including the collection of split samples for independent analysis if requested by EPA.

6. EPA will ensure that the State of New Mexico has had an opportunity to comment on all deliverables before they are approved by EPA.

## **III. HMC'S KEY PERSONNEL**

### **A. PROJECT COORDINATOR**

7. HMC has designated Daniel Lattin as its Project Coordinator who shall be responsible for administration of all actions by HMC required by the Settlement.

8. When necessary, as determined by EPA, EPA will meet with HMC and discuss the performance and capabilities of HMC's Project Coordinator. When Project Coordinator performance is not satisfactory, as determined by EPA, HMC shall take action, as requested by EPA, to correct the deficiency. If, at any time, EPA determines that the Project Coordinator is unacceptable for any reason, HMC, at EPA's request, shall bar the Project Coordinator from any work under the Settlement, and, pursuant to the provisions of Paragraph 36 of the Settlement, give notice of HMC's selected new Project Coordinator to EPA.

## **IV. WORK TO BE PERFORMED**

9. HMC shall perform the Work activities described below in accordance with the Settlement, this SOW, and 40 CFR § 300.700(c)(3)(i) in order to complete an FS.

10. Prior investigation and remediation efforts have been conducted at the Site by HMC since the late 1970s through present under applicable state and federal licenses and authorities. In addition, under a 1993 Memorandum of Understanding between EPA and NRC, EPA agreed to review and comment on the NRC's process to assure that activities to be conducted under NRC's regulatory authority would allow attainment of ARARs at the Site. HMC prepared the CERCLA Equivalency Package, which describes HMC's activities at the Site to date in the context of how, or to what degree, those activities could be considered by EPA to be equivalent with CERCLA and NCP requirements. These documents included a collection of existing data from previous investigations, analysis of alternatives, treatability studies and other

work performed at the Site. HMC has prepared a preliminary table of ARARs for Operable Units 1 and 2 of the Site under EPA oversight, and EPA has approved this preliminary ARARs table.

11. On the basis of this information, EPA, in consultation with NMED, identified key elements or activities of the RI/FS process that were not adequately documented in the CERCLA Equivalency Package or performed by HMC to demonstrate equivalency with the RI/FS requirements. Specifically, EPA identified the absence of a baseline human health risk assessment (HHRA) for receptors within the license boundary and the areas where land application has occurred (the "Land Treatment Areas"), an ecological risk assessment for receptors within the license boundary and the Land Treatment Areas, a formal RI report, and a formal FS. Additionally, EPA requested some additional data collection and technical reports. HMC has since prepared each EPA-requested deliverable but the formal FS, which will be completed pursuant to this SOW.

## **A. GENERAL REQUIREMENTS**

12. The general requirements described below shall be met by HMC when performing the Work.

### **1. Deliverables**

13. All plans, reports and other deliverables required by the Settlement or this SOW shall be submitted to EPA in accordance with the Settlement, including Section IV (Work to be Performed) of the Settlement. To the extent possible, deliverables being submitted for meetings shall be submitted five working days in advance of the meeting to EPA and other invited parties as appropriate, to allow for review prior to the meeting. A table of all the deliverables specified in this SOW, along with due dates and estimated EPA review times is attached (Attachment A).

### **2. Document Distribution**

14. HMC shall submit electronic copies of all plans, reports, and other major deliverables to the EPA Remedial Project Manager (RPM) and the EPA Oversight Contractor. The electronic copies shall be submitted in both MS Office® (Word®, Excel®, Project®, etc.) and Adobe Acrobat® in the format provided by EPA or as specified herein. The number of actual copies required by EPA will continually be reassessed throughout the Work by the RPM, and HMC shall be notified if additional or fewer copies are needed. HMC shall also be notified by the RPM if EPA requires hard copies. HMC shall provide additional hard and/or electronic copies to the New Mexico Environment Department (NMED), the Nuclear Regulatory Commission (NRC), Community Advisory Groups, Technical Assistance Grant recipients or any other entities as directed by the RPM.

### **3. Personnel, Materials and Services**

15. HMC shall furnish all necessary personnel, materials, and services needed, or incidental to, performing the Work, except as otherwise specified in the Settlement.



#### **4. Progress Reports**

16. HMC shall prepare and send to EPA's RPM monthly progress reports documenting the status of the Work, by the 15th day of the following month starting on the Effective Date of the Settlement until receiving EPA's notification that all activities required under this SOW have been performed by HMC to the satisfaction of EPA (*see* Paragraph 48 of the Settlement).

#### **B. SCOPING (RI/FS Guidance, Chapter 2)**

17. Concurrently with the negotiation of the Settlement, HMC has prepared an RI report under EPA oversight. The RI report uses: (1) information and documents compiled in the original CERCLA Equivalency Package; (2) supplemental data and information collected at EPA's request; and (3) supplemental data and information collected pursuant to NRC obligations. As such, the RI is complete and approved by EPA, and the Work to be performed by HMC in accordance with the Settlement does not include any additional field investigation or data collection for the RI. Therefore, there are no requirements for the preparation of RI work plans, sampling and analysis plans or other plans, with the exception of an updated Health and Safety Plan (HASP), set forth in this SOW.

18. HMC shall prepare an updated HASP and submit to EPA for review within 30 days after the Effective Date and in accordance with Paragraph 43 of the Settlement. EPA will review, but not approve, the HASP to ensure that all necessary elements are included and that the HASP provides for the protection of human health. HMC shall refer to the RI/FS Guidance which describes the HASP-suggested format and content.

19. HMC has prepared under EPA oversight the following scoping documents:

- Preliminary conceptual Site models (incorporated into RI report);
- List of preliminary remedial action objectives (incorporated into RI report);
- List of preliminary remedial action alternatives;
- List of preliminary ARARs and to be considered ("TBC") information;
- Identification of Candidate Technologies Memorandum for Treatability Studies;

#### **1. Conceptual Site Model (2.2.2.2)**

20. Using the data previously collected and compiled as well as subsequent data collected at the request of EPA, HMC developed the conceptual Site model consistent with the RI/FS Guidance at Section 2.2.2.2 and Figure 2-2. This model includes:

- Known and suspected sources of contaminants, and all affected media (ground water, soil, surface water, sediments, and air);

- Known and potential routes of migration of contaminants, and all affected media (ground water, soil, surface water, sediments, and air); and
- Known and potential human and environmental receptors of contaminants.

## **2. Preliminary Remedial Action Objectives**

21. HMC developed a list of preliminary remedial action objectives for all contaminated media based on the information included in the conceptual site model.

## **3. Preliminary Remedial Action Alternatives (2.2.2.3)**

22. HMC, in consultation with EPA, developed a list of preliminary remedial action alternatives and the rationale for each alternative based upon the preliminary remedial action objectives and the initially identified potential routes of contaminant exposure and associated receptors. The list consists of a range of broadly defined remedial action alternatives and associated technologies for each medium. HMC included with this range of alternatives, where appropriate, one or more alternatives in which treatment that significantly reduces the toxicity, mobility, or volume of waste is used as a principal element; one or more alternatives that involve containment with little or no treatment, including the off-Site relocation of uranium tailing waste to another location with engineering controls; one or more alternatives involving both treatment and containment; permanent relocation of residents; and a no-action alternative. The list is limited to alternatives that are relevant and have some potential for being implemented at the Site. As appropriate, HMC included those alternatives that have been previously evaluated under other federal or state regulatory authorities (*e.g.*, NRC's Source Materials License SUA-1471). HMC used this list to begin developing and screening remedial alternatives as part of the FS (*see* Section D.2., below).

## **4. List of Preliminary ARARs and To-Be-Considered Information (2.2.4)**

23. HMC has prepared and submitted to EPA for review and approval a proposed list of preliminary federal and state ARARs and TBC advisories, criteria or guidance as defined in 40 C.F.R. § 300.400(g). HMC categorized the ARARs and TBC information as chemical-, location-, or action-specific federal and state requirements. HMC has revised the preliminary list of ARARs and TBCs to sufficiently address all EPA comments received to date and shall continue to revise if requested by EPA.

24. HMC shall continue to identify preliminary ARARs and TBC information as Site conditions, background conditions and remedial action alternatives are better defined.

## **5. Identification of Candidate Technologies Memorandum for Treatability Studies**

25. HMC prepared a memorandum identifying candidate technologies for treatability studies. HMC identified technologies that may be appropriate for treating or disposing of wastes. Results of treatability studies performed by HMC and previously evaluated under other federal or state regulatory authorities have been included, along with sources of literature on the technologies' effectiveness, applications, and cost as appropriate.

**C. RISK ASSESSMENT AND REMEDIAL INVESTIGATION REPORT (RI/FS Guidance, Chapter 3)**

26. HMC has performed various investigations over the years under the NRC's source materials license and corrective action program, NMED's ground water discharge permitting program, and as directed by other regulatory authorities. This work is summarized in the CERCLA Equivalency Package submitted by HMC and subsequent information gathered and submitted to supplement the administrative record, which has been compiled in the formal RI report attached to the Settlement as Appendix C. For convenience the major elements of the RI report are summarized below.

27. Site characterization has been performed by HMC during prior Site investigations and remediation under the direction of other federal and state regulatory authorities as well as additional data collection activities at the request of EPA to address identified data gaps. This work included the physical characterization of the Site, the identification of sources of contamination, the definition of the nature, extent, and volumes of the sources, the exposure pathways, the extent of migration of contamination and baseline risk assessment.

**1. Baseline Risk Assessment**

28. HMC has performed prior risk assessment work under the NRC's source materials license and corrective action program, which is summarized in the CERCLA Equivalency Package. EPA performed a baseline HHRA for the residential areas outside the facility boundary. EPA's HHRA does not include risk to receptors within the license boundary and the Land Treatment Areas. This baseline HHRA is incorporated into the RI report.

29. HMC has prepared under EPA oversight, and EPA has approved, a preliminary conceptual site model for human exposure and a baseline HHRA for receptors within the license boundary and the Land Treatment Areas considering the reasonable future use of the Site. This baseline HHRA follows EPA risk assessment guidance and is incorporated into the RI report.

30. HMC has prepared under EPA oversight, and EPA has approved, a preliminary conceptual site model for ecological risk and a baseline ecological risk assessment ("BERA"). The BERA follows EPA risk assessment guidance and is incorporated into the RI report.

**2. Remedial Investigation Report (3.7.3)**

31. HMC has prepared under EPA oversight, and EPA has approved, an RI report. The RI report follows the RI report format described in Table 3-13 of the RI/FS Guidance and is attached as Appendix C to the Settlement. The major elements of the RI report are (1) Introduction, including a history of milling operations, decommissioning, groundwater remediation, and regulatory activities, (2) Site Characterization, including supplemental background soil and groundwater investigations, (3) Nature and Extent of Contamination, (4) Contaminant Fate and Transport, (5) Risk Analysis, and (6) Summary and Conclusions.

## **D. FEASIBILITY STUDY**

32. HMC shall conduct the FS in accordance with the Settlement, this SOW, EPA guidance, and 40 CFR § 300.700(c)(3)(i). The FS phase consists of the development and screening of remedial alternatives and the detailed analysis of those alternatives considered the most promising after screening.

### **1. Development and Screening of Remedial Alternatives (RI/FS Guidance, Chapter 4)**

33. The purpose of the development and screening of remedial alternatives is to develop an appropriate range of remedial options for evaluation in the Detailed Analysis of Alternatives (Section IV.D.3). HMC has initially developed and evaluated, under EPA oversight, a range of appropriate remedial options that ensure protection of human health and the environment. The initially developed remedial options are documented in a draft Development and Screening of Remedial Alternatives Technical Memorandum (Alternatives Screening Memorandum), dated August 20, 2019.

34. HMC shall continue to perform the activities described below for development and screening of remedial alternatives:

(a) Refine Preliminary Remedial Action Objectives (4.2.1)

35. HMC shall continue to refine the preliminary remedial action objectives and specify the contaminants and media of concern, potential exposure pathways and receptors, and preliminary remediation goals (“PRGs”). HMC’s proposed PRGs shall be protective of human health and the environment, and shall be developed in accordance with 40 C.F.R. §§ 300.430(e)(2)(i)(A) through (G).

(b) Develop General Response Actions (4.2.2)

36. HMC shall continue to develop general response actions for each medium of interest, defining containment, treatment, excavation, pumping, waste relocation or other actions, singly or in combination, to satisfy the remedial action objectives.

(c) Identify Volumes or Areas of Media (4.2.3)

37. HMC shall continue to identify areas or volumes of media to which general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. HMC shall take into account the radiological, chemical, and physical characterization of the Site.

(d) Identify and Screen Remedial Technologies and Process Options (4.2.4)

38. HMC shall continue to identify and evaluate technologies, including innovative technologies, applicable to each general response action. General response actions shall continue to be refined to specify remedial technology types. Technology process options for each of the technology types shall continue to be identified either concurrently with the identification of technology types, or after the screening of the considered technology types.

39. HMC shall continue to evaluate technology process options on the basis of effectiveness, implementability, and cost factors to select and retain one or more representative processes for each technology type. HMC shall continue to summarize the technology types and process options and specify the reasons for eliminating alternatives.

(e) Treatability Studies (RI/FS Guidance, Chapter 5)

40. HMC has evaluated or is currently evaluating alternative technologies and remedy enhancements for ground water treatment at the Site under the NRC Source Materials License SUA-1471.

41. Past or current treatability studies include the following:

- pilot-scale reverse osmosis (RO) treatment;
- treatability and bench-scale tests to evaluate the effectiveness of flushing treatment, including a tracer test, rebound monitoring, and leaching tests for uranium, molybdenum, and selenium from tailing solids;
- bench- and pilot-scale *in situ* phosphate treatment;
- bench- and pilot-scale *ex situ* zeolite treatment
- bench- and pilot-scale electrocoagulation testing.
- bench and pilot-scale ion exchange media treatment; and
- bench and pilot-scale *in situ* bio-reduction treatment

42. HMC, in consultation with EPA, has evaluated the results of the treatability studies identified in Paragraph 41 for application of the technology at full-scale to determine the need to compensate for the limitations of the bench- or pilot-scale test.

43. HMC has previously submitted several treatability study evaluation reports based on the Site's more than 40 years of remediation. Each treatability study evaluation report analyzed and interpreted the test results and assesses the application of the technology at full scale. In the reports, HMC also evaluated the candidate technology's effectiveness, implementability, cost, and actual results as compared with predicted results.

(f) Assemble and Document Remedial Alternatives (4.1.3 and 4.2.6)

44. HMC shall continue to assemble selected representative technologies into alternatives for each affected medium or operable unit. Together, all of the alternatives shall represent a range of treatment and containment combinations that address either the Site or an operable unit as a whole. HMC also recognizes that a single alternative may address multiple requirements identified in Paragraphs 47-49. HMC shall continue to summarize the assembled alternatives and their related action-specific ARARs.

45. For source control actions, HMC shall continue to develop alternatives that include one or more alternatives that involve little or no treatment but protect human health and the environment primarily by preventing exposure and/or reducing the mobility of contaminants through engineering controls (*e.g.*, containment) and, as necessary, institutional controls;

46. For groundwater response actions, HMC shall include one or more alternatives that attain Site-specific cleanup levels (*i.e.*, ARARs or other health-based criteria determined to be protective) within varying time periods utilizing one or more different technologies. HMC may also include one or more alternatives that waive Site-specific cleanup levels for groundwater but protect human health and the environment primarily by preventing exposure and/or reducing the mobility of contaminants through engineering controls (*e.g.*, containment) and, as necessary, institutional controls;

47. HMC shall include one or more innovative technologies (taken from the universe of innovative technologies previously studied or currently being studied at the Site) as components of alternatives if such technologies offer the potential for comparable or superior performance or implementability, fewer adverse impacts than other available approaches, or lower costs for similar levels of performance than demonstrated treatment technologies.

48. HMC shall develop a no-action alternative, which may be no further action based on remediation that has already occurred at the Site.

49. HMC shall explain in writing the reasons for eliminating alternatives during the preliminary screening process.

50. HMC shall include alternatives that have been analyzed or implemented under the NRC's Source Materials License SUA-1471 for consideration in the Alternatives Development and Screening phase of the FS.

(g) Refine Alternatives (4.3.1.2)

51. HMC shall refine the alternatives to provide sufficient quantitative information to allow differentiation among alternatives with respect to effectiveness, implementability, and cost. HMC shall refine the volumes or extent (both aerial extent and depth) of contaminated media and the sizing of major technology and process options addressed by the alternatives. If sources (or contaminated soil) were found to significantly affect contaminant levels in other media, HMC shall evaluate the effect of source control actions on the remediation levels and projected time periods for cleanup of other media. HMC shall also modify PRGs for each chemical in each medium as necessary to incorporate any new risk assessment information in the risk assessments. Additionally, HMC shall update preliminary action-specific ARARs as remedial alternatives are refined.

(h) Conduct and Document Alternative Screening Evaluation (4.3.2)

52. HMC shall conduct a final screening of alternatives using the three criteria in 40 C.F.R. §§ 300.430(e)(7)(i) through (iii). The screening will preserve the range of treatment and containment alternatives that was initially developed, and will include options that use treatment technologies and permanent solutions to the maximum extent practicable. HMC shall

summarize the results and reasoning employed in screening, arraying alternatives that remain after screening and identifying the action-specific ARARs for those alternatives.

(i) Alternatives Development and Screening Deliverables

53. Within 30 days after the Effective Date of the Settlement or at a time agreed to by EPA, HMC shall submit for EPA review and approval a revised Alternatives Screening Memorandum that summarizes the Work performed and the results of SOW sub-Sections IV.D.1.(b) through (g) above, including an alternatives array summary, and that adequately addresses all the November, 19, 2019, EPA written comments on the August 20, 2019 draft Alternatives Screening Memorandum. In this revised memorandum, HMC shall document the methods, rationale, and results of the alternatives screening process and the ARARs identification process. The rationale shall include the reasons for eliminating alternatives.

**2. Technical Impracticability Waiver Evaluation**

54. Based on HMC's prior investigations and the results of over 40 years of remediation and monitoring activities (1977-2020), HMC anticipates that satisfying all ARARs is technically impracticable pursuant to CERCLA § 121(d)(4)(C).

55. Within 90 days after the Effective Date of the Settlement, HMC shall prepare and submit, for EPA review and approval, a Technical Impracticability Waiver Evaluation ("TI Waiver Evaluation") in accordance with the EPA *Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration, EPA/540-R-93-080*, to be incorporated into the FS. The TI Waiver Evaluation shall comprise the data and analyses necessary for EPA to make a TI determination in the record of decision.

56. Concurrently with submission of the TI Waiver Evaluation, and in no event more than 30 days after submission, HMC and EPA will meet to discuss the document.

**3. Detailed Analysis of Alternatives (RI/FS Guidance, Chapter 6)**

57. HMC shall conduct a detailed analysis of the remedial alternatives to provide EPA with the information needed to allow for the selection of a Site remedy. This analysis is the final phase in HMC's performance of the FS.

58. HMC shall conduct the detailed analysis on the limited number of alternatives that passed the screening stage and are approved by EPA. In the analysis, HMC shall identify pertinent advisories, criteria, or guidance documents.

(j) Analysis of Individual Alternatives (6.2.3)

59. In the detailed analysis, HMC shall assess each of the individual alternatives against the seven evaluation criteria described at 40 C.F.R. §§ 300.430(e)(9)(iii)(A) through (G), and focus on the relative performance of each alternative against each of the seven criteria. HMC shall ensure that the analysis reflects the scope and complexity of Site or operable unit problems and alternatives being evaluated, and that the analysis considers the relative

significance of the factors within each of the criteria at 40 C.F.R. §§ 300.430(e)(9)(iii)(A) through (G).

(k) Comparative Analysis of Alternatives (6.2.5)

60. Once the alternatives have been individually assessed against the criteria, HMC shall perform a comparative analysis of the alternatives to evaluate the relative performance of each alternative in relation to each of the seven evaluation criteria described in 40 C.F.R. §§ 300.430(e)(9)(iii)(A) through (G). As with the individual analyses, HMC shall ensure that the analysis reflects the scope and complexity of Site or operable unit problems and alternatives being evaluated, and that the analysis considers the relative significance of the factors within each of the criteria at 40 C.F.R. §§ 300.430(e)(9)(iii)(A) through (G). HMC shall include the results of the comparative analysis, including a narrative discussion describing the strengths and weaknesses of the alternatives relative to one another with respect to each criterion, in the draft FS report.

(l) Alternatives Analysis for Institutional Controls and Screening

61. HMC shall perform an analysis on the institutional controls (ICs) identified in the Alternatives Screening Memorandum as a component of some of the remedial action alternatives carried forward to the detailed analysis phase of the FS. The results of the analysis on ICs shall be incorporated into the FS report. HMC shall state in the FS report (1) the objectives for the ICs, (2) the types of ICs that can be used to meet the remedial action objectives, (3) the timing and duration of the ICs, and (4) the agreements needed with the appropriate entities that will be responsible for securing, maintaining and enforcing the ICs. HMC shall also include in the FS report an evaluation of these ICs against the nine evaluation criteria outlined in the NCP (40 C.F.R. 300.430(e)(9)(iii)), including, but not limited to, costs to implement, monitor and/or enforce the ICs. The ICs associated with U.S. Department of Energy's Office of Legacy Management long-term stewardship as a Title II Uranium Mill Tailing Reclamation Control Act (UMTRCA) site after remediation and closure of the Site is completed shall be considered. If any other ICs are included as remedial action components to the alternatives, they shall also be evaluated. The results of the analysis on the DOE ICs and any other ICs shall also be incorporated into the FS report.

(m) Feasibility Study Report

62. Within 120 days after the Effective Date of the Settlement, HMC shall prepare and submit, for EPA review and approval, a draft FS report which documents the activities conducted during the development and screening of alternatives and the detailed analysis of alternatives, as described above. The draft FS report shall follow the FS report format and content described in Table 6-5 of the RI/FS Guidance.

63. HMC shall incorporate the TI Waiver Evaluation prepared pursuant to Paragraph 55 into the FS report.

64. The FS Report shall provide the basis for the Proposed Plan to be developed by EPA under CERCLA. The FS Report may be subject to change following comments received during the public comment period on EPA's Proposed Plan. EPA will forward any comments



pertinent to the content of the FS Report to HMC and HMC shall submit the revised FS report to EPA for review and approval within 30 days after receipt of EPA comments or within the time period determined by the EPA RPM.

65. Concurrently with the submission of the draft FS report, but in no event more than 30 days after submission, HMC shall make a presentation to EPA on the FS report.

#### **E. COMMUNITY RELATIONS**

66. The development and implementation of community relations activities, including conducting community interviews and developing a community relations plan, are the responsibility of EPA. HMC shall continue to assist EPA as needed, and if requested by EPA, by providing logistics and presentation support for, as well as participating in, community meetings, availability sessions and open houses, and by preparing fact sheets for distribution to the general public. This assistance may include the use of mass media or Internet notification for distribution of such information to the public. This assistance may also include helping EPA to select and reserve the meeting space and setting up seating arrangements, tables, presentation equipment and visual displays. HMC shall also prepare presentation materials/handouts as instructed by EPA for the meetings. EPA will determine the final content of all community fact sheets related to the Work. EPA will notify HMC in advance of community meetings that are scheduled regarding Work at the Site. HMC's Project Coordinator shall attend EPA's community relations events such as community meetings, availability sessions and open houses as requested by EPA, unless otherwise agreed to in writing or through e-mail. If requested by EPA, HMC's support of EPA's community involvement activities shall include providing online access to final deliverables, including the RI report, to the following:

1. Bluewater Valley Downstream Alliance
2. Multi-cultural Alliance for a Safe Environment
3. Any community advisory groups;
4. Any Technical Assistance Grant recipients and their advisors; and
5. Other entities to provide them with a reasonable opportunity for review and comment.

67. Before the public comment period on the proposed plan begins, EPA will place a copy of the Administrative Record in the community information repository that EPA has established near the Site. The location of the repository is New Mexico State University (NMSU), Grants Campus, Grants, New Mexico. In addition to the Administrative Record, EPA may at any time place documents in the information repository for public review. If requested by EPA, HMC shall provide EPA one additional hard copy and one additional electronic copy of Site documents for this purpose.

V. APPENDIX

**Summary of Major Deliverables  
for Remedial Investigation and Feasibility Study**

No.	Deliverable	SOW Task/ Section	Due Date	EPA Estimated Review Time
1.	Health and Safety Plan	¶ 18	30 days after Effective Date of Settlement	N/A
2.	Revised Development and Screening of Remedial Alternatives Technical Memorandum	¶ 52	30 days after Effective Date of Settlement	30 days
3.	TI Waiver Evaluation	¶ 54	90 days after Effective Date of Settlement	60 days
4.	Draft FS report	¶ 61	120 days after Effective Date of Settlement	60 days

## VI. REFERENCES

The following list, although not comprehensive, contains many of the regulations and guidance documents that apply to the RI/FS process:

National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300

OSHA regulations at 29 C.F.R. 1910.120

“Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA,” U.S. EPA, Office of Emergency and Remedial Response, October 1988, OSWER Directive No. 9355.3-01

“Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration,” U.S. EPA, Office of Solid Waste and Emergency Response, September 1993, OSWER Directive No. 9234.2-25.

“Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies,” U.S. EPA, Office of Waste Programs Enforcement, OSWER Directive No. 9835.3

“Interim Guidance on PRP Participation in the RI/FS Process,” U.S. EPA, May 16, 1988, OSWER Directive No. 9835.1a

“Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents,” U.S. EPA, Office of Solid Waste and Emergency Response, EPA 540-R-98-031, July 1999, OSWER Directive No. 9200.1-23P.

“A Guide to Developing and Documenting Cost Estimates During the Feasibility Study,” U.S. EPA, Office of Solid Waste and Emergency Response, EPA 540-R-00-002, July 2000, OSWER Directive No. 9355.0-75

“Guidance for Conducting Treatability Studies under CERCLA – Final,” U.S. EPA, Office of Solid Waste and Emergency Response, EPA 540-R-92-071a, October 1992, OSWER Directive No. 9380.3-10

“A Compendium of Superfund Field Operations Methods,” Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-87/001a, August 1987, OSWER Directive No. 9355.0-14

“EPA NEIC Policies and Procedures Manual,” May 1978, revised November 1984, EPA-330/9-78-001-R

“Soil Screening Guidance for Radionuclides: User’s Guide,” U.S. EPA, Office of Radiation and Indoor Air, Office of Solid Waste and Emergency Response, EPA/540-R-00-007, October 2000, OSWER Directive 9355.4-16A.

“Guidance on Systematic Planning Using the Data Quality Objectives Process, EPA QA/G-4,” U.S.EPA, Office of Environmental Information, EPA/240/B-06/001, February 2006

“EPA Requirements for Quality Assurance Project Plans, EPA QA/R-5,” U.S.EPA, Office of Environmental Information, EPA/240/B-01/003, March 2001

“EPA Guidance for Quality Assurance Project Plans, EPA QA/G-5,” U.S.EPA, Office of Environmental Information, EPA/240/R-02/009, December 2002

“Users Guide to the EPA Contract Laboratory Programs,” U.S. EPA, Sample Management Office, August 1982

“ARARs Q's & A's: General Policy, RCRA, CWA, SDWA, Post-ROD Information, and Contingent Waivers,” Office of Solid Waste and Emergency Response Publication 9234.2-01/FS-A July 1991

“CERCLA Compliance with Other Laws Manual,” Two Volumes, U.S. EPA, Office of Emergency and Remedial Response, August 1988 (draft), OSWER Directive No. 9234.1-01 and -02

“Guidance on Remedial Actions for Contaminated Ground Water at Superfund Sites” (Interim Final), U.S. EPA, Office of Emergency and Remedial Response, December 1, 1988, OSWER Directive No. 9283.1-2

“Draft Guidance on Preparing Superfund Decision Documents,” U.S. EPA, Office of Emergency and Remedial Response, March 1988, OSWER Directive No. 9355.3-02

“Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part A),” December 1989, EPA/540/1-89/002

“Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part B) - Development of Risk-based Preliminary Remediation Goals,” 1991

“Risk Assessment Guidance for Superfund - Volume I Human Health Evaluation Manual (Part D) - Standardized Planning, Reporting, and Review of Superfund Risk Assessments,” January 1998

“Risk Assessment Guidance for Superfund, Volume I: Human Health Evaluation Manual Supplemental Guidance, Dermal Risk Assessment” Interim Guidance, 1998

“Risk Assessment Guidance for Superfund - Volume II Environmental Evaluation Manual,” March 1989, EPA/540/1-89/001

“Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments” (Interim Final), U.S. EPA, June 5, 1997

“Guidance for Data Usability in Risk Assessment,” Parts A and B, April 1, 1992, OSWER Directives 9285.7-09A and B

“Performance of Risk Assessments in Remedial Investigation/Feasibility Studies (RI/FSS) Conducted by Potentially Responsible Parties (PRPs),” August 28, 1990, OSWER Directive No. 9835.15

“Role of the Baseline Risk Assessment in Superfund Remedy Selection Decisions,” April 22, 1991, OSWER Directive No. 9355.0-30

“Health and Safety Requirements of Employees Employed in Field Activities,” U.S. EPA, Office of Emergency and Remedial Response, July 12, 1981, EPA Order No. 1440.2

“Final Guidance on Administrative Records for Selecting CERCLA Response Actions,” U.S. EPA, December 3, 1990, OSWER Directive No. 9833.3A-1

“Community Relations in Superfund: A Handbook,” U.S. EPA, Office of Emergency and Remedial Response, June 1988, OSWER Directive No. 9230.0#3B

“Community Relations During Enforcement Activities and Development of the Administrative Record,” U.S. EPA, Office of Programs Enforcement, November 1988, OSWER Directive No. 9836.0-1A

“Exposure Factors Handbook,” EPA, 1997

“Human Health Evaluation Manual, Supplemental Guidance, Standard Default Exposure Factors,” EPA, 1991

“Dermal Exposure Assessment: Principles and Applications” (Interim Report), U.S. EPA, Office of Health and Environmental Assessment, January, 1992. EPA/600/8-91/011/B

Integrated Risk Information System (IRIS), 2000

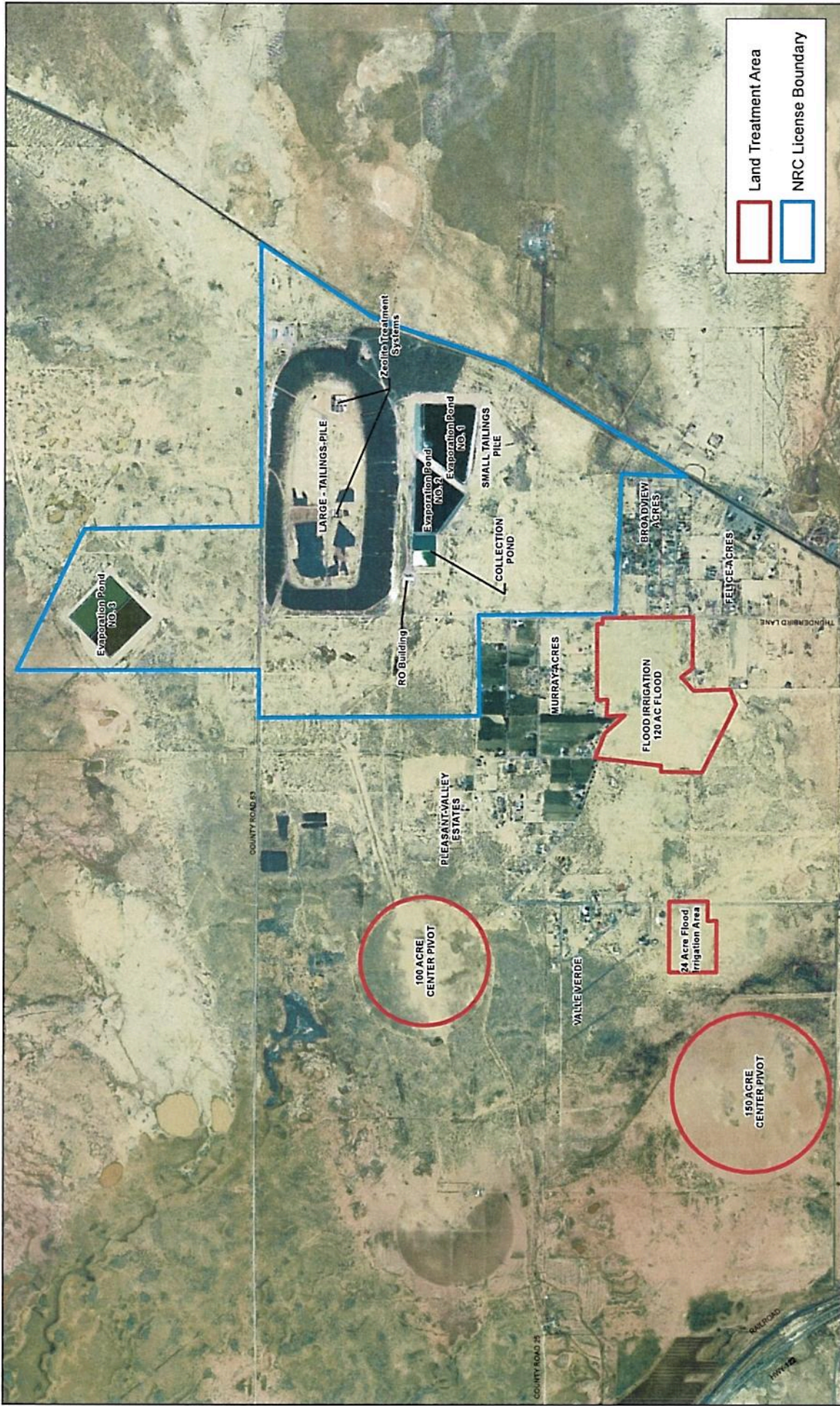
“Health Effects Assessment Summary Tables (HEAST),” U.S. EPA, Office of Solid Waste and Emergency Response, 1997, EPA/540/R-95/036

“Use of Soil Cleanup Criteria in 40 CFR Part 192 as Remediation Goals for CERCLA sites,” U.S. EPA, Office of Emergency and Remedial Response, February 12, 1998, OSWER Directive No. 9200.4-25

“Guidelines for Ecological Risk Assessment,” U.S. EPA, April 1998, EPA/630/R-95/0021 (Federal Register Vol. 63, No. 93, May 14, 1998)

# APPENDIX B

# MAP



APPENDIX C  
REMEDIAL INVESTIGATION REPORT

Note: The Remedial Investigation Report, Appendix C to the Administrative Settlement Agreement and Order on Consent, is a voluminous document maintained separately by EPA which can be obtained upon request. The report is entitled:

***Final Remedial Investigation Report***  
*Homestake Mining Company Superfund Site,*  
Operable Unit 1: Tailings Seepage  
Contamination of Groundwater Aquifers  
Operable Unit 2: Long-Term Tailings  
Stabilization, Surface Reclamation and Site  
Closure, dated June 22, 2020; approved June 15, 2020.



## APPENDIX D

# CONFIDENTIALITY AGREEMENT

**APPENDIX D**

**DRAFT CONFIDENTIALITY AGREEMENT**

In order to promote frank and productive discussion, the mediation process will be confidential. The parties, their representatives, and the mediator(s) may not disclose information regarding the negotiations, including settlement terms, proposals, offers, or other statements made during the negotiations, to third parties, unless all parties otherwise agree. The negotiations shall be treated as compromise negotiations under Rule 408 of the Federal Rules of Evidence and applicable state rules of evidence. The mediator(s) shall not appear as a witness, either by subpoena of a party to the mediation or voluntarily, or participate as a consultant or expert, in any pending or future judicial or administrative action or proceeding relating to any matters discussed in these negotiations.

**AGREED**

[name of party]

By: \_\_\_\_\_

Date: \_\_\_\_\_

[name of party]

By: \_\_\_\_\_

Date: \_\_\_\_\_

Mediator(s)

\_\_\_\_\_

Date: \_\_\_\_\_