UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: The Ben Franklin Mine, San Juan County, Colorado Eureka Gulch Properties LLC and Ryan Bennett, Respondents Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	Docket No. **CERCLA-08-2019-0003** **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Eureka Gulch Properties LLC and Ryan Bennett ("Respondents"). This Settlement provides for the performance of a removal action by Respondents in connection with the historic Ben Franklin Mine in the Eureka Creek drainage within the "Bonita Peak Mining District Superfund Site" (the "BPMD Site"), generally located near Silverton, San Juan County, Colorado. Respondents shall perform, at a minimum, all actions necessary to implement the removal action to reduce, to the extent practicable, concentrations of metals in Eureka Creek associated with the historic operation of the Ben Franklin Mine.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-A (Determinations of Imminent and Substantial Endangerment), 14-14-C (Administrative Actions Through Consent Orders) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders). These authorities were further redelegated to the undersigned official.

3. EPA has notified the State of Colorado (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). With respect to this Settlement, for purposes of notice under Section 106(a) and involvement by the State under 40 C.F.R. § 300.500 in any response activity at the BPMD Site, EPA has been advised that the Colorado Department of Public Health and Environment's Hazardous Materials and Waste Management Division ("HMWMD") is the designated State agency acting on behalf of the State.

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

II. PARTIES BOUND

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

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to

implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

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

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

III. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Ben Franklin Mine and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the removal action, including, but not limited to, the following properties: the Benjamin Franklin Lode mining claim patent (Mineral Survey 1011); Hidden Hand Lode mining claim patent (Mineral Survey 1658); the Adventure and Iron Mask Lode mining claim patent (Mineral Survey 14443).

"Ben Franklin Mine" or "Property" shall mean the property in the northern part of San Juan County, Colorado (Township 42 North, Range 7 West, Section 14, New Mexico Principal Meridian; Latitude 37°53'40.9" North, Longitude 107°36'28.5" West, WGS84), approximately 6.5 miles north-northeast of Silverton, within the BPMD Site.

"Bennett" shall mean Ryan Bennett, one of two Respondents to this Settlement.

"Bonita Peak Mining District Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the BPMD Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"BPMD Site" shall mean the Bonita Peak Mining District Superfund Site located in San Juan County, Colorado.

"CDMG" n/k/a the Colorado Division of Mine Reclamation, Mining and Safety (DRMS) shall mean the Colorado Division of Minerals and Geology within the Colorado Department of Natural Resources and any successor department or agencies of the state.

"CDPHE" shall mean the Colorado Department of Public Health and Environment and any successor departments or agencies of the State.

"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.

"DRMS" shall mean the Colorado Division of Reclamation, Mining and Safety within the Colorado Department of Natural Resources and any successor department or agencies of the state.

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

"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.

"Eureka Gulch" shall mean Eureka Gulch Properties LLC, one of two Respondents to this Settlement.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 85 (Work Takeover), 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 XIV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Ben Franklin Mine.

"HMWMD" shall mean the Hazardous Materials and Waste Management Division within CDPHE.

"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.

"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 Respondents.

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

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

"Respondents" shall mean Eureka Gulch Properties LLC and Ryan Bennett.

"Restrictive Notice" shall mean a Notice of Environmental Use Restrictions pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317, *et seq.*

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

"State" shall mean the State of Colorado.

"Statement of Work" or "SOW" shall mean the document describing the activities Respondents must perform to implement the removal action pursuant to this Settlement, as set forth in Appendix A, and any modifications made thereto in accordance with this Settlement.

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

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of

CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

10. The Ben Franklin Mine is located immediately below the confluence of the headwaters of Eureka Gulch, situated on a relatively gentle, rocky slope within an alpine tundra biome. It is at an elevation of 11,920 feet NGVD29 in the northern part of San Juan County, Colorado (Township 42 North, Range 7 West, Section 14, New Mexico Principal Meridian; Latitude 37°53'40.9" North, Longitude 107°36'28.5" West, WGS84), approximately 6.5 miles north-northeast of Silverton, the county seat of San Juan County, adjacent to County Road 25 and on the southwest side of Eureka Creek.

11. Approximately 1.2 acres of the Property show visible disturbance from mine-related activities. The entire disturbed area is owned by private parties.

12. Vehicular access to the Property is provided by unpaved roads requiring four-wheel drive vehicles. By road, it is located roughly 11.4 miles from Silverton. Access to the Property is limited by snowfall, steep grades, narrow roads with sharp turns, and rough, rocky road conditions. Due to the significant amount of snowfall in the area, the Ben Franklin Mine often is inaccessible to vehicular traffic from November to May.

13. No external sources of potable water or power are available at the Ben Franklin Mine.

Mine Workings and Geology

14. The Ben Franklin Mine is comprised of two main sets of workings, both of which occur on the Ben Franklin Lode claim. An adit that is approximately 325 feet in length bears North 73° West (the Colorado Division of Reclamation, Mining and Safety ("DRMS") designated the portal as EG9 at 37°53'40.2" North, 107°36'28.7" West). Two cross cuts run to the left and right of the adit. The left cross cut was driven for 45 feet and occurs in rhyolitic rocks with disseminated pyrite. The right cross cut was driven for a distance of about 65 feet, where a large room sized opening was made with a winze at the northeast end. An underhand open stope designated by DRMS as EG11 is located at approximately 37°53'41.2" North, 107°36'30.4" West. The stope contains the winze connecting to the Ben Franklin adit as well as a caved shaft.

15. The main waste dump associated with the adit, which principally is on the Adventure and Iron Mask Lode claims, is located along Eureka Creek, and consists primarily of fine to coarse sulfide-bearing rock containing pyrite, galena, and sphalerite in quartz and rhodonite. The Colorado Division of Minerals and Geology ("CDMG") estimated the volume of waste rock is approximately 500 cubic yards.

Recorded Production

16. The Ben Franklin vein apparently was discovered by George Howard, a member of the Baker Exploration Party in the 1860s. Howard filed the discovery in 1872. Exploration and mining on the property occurred intermittently until the 1980s. No production records have been identified.

Property Ownership

17. The mine workings occur on four patented mine claims located in the Eureka Mining District. The Benjamin Franklin Lode mining claim patent (Mineral Survey 1011) was issued on June 15, 1883 to William E. Webb and William H. Whiton. The Hidden Hand Lode mining claim patent (Mineral Survey 1658) was issued on September 4, 1888 to Webb and Whitton. The Adventure and Iron Mask Lode mining claim patents (Mineral Survey 14443) were issued November 17, 1902 to Whiton.

18. Marguerite L. MacCulloch, subsequently known as Marguerite L. Atkinson, acquired the Property through tax deed in 1940.

19. Brodie Exploration Corp. leased the Property from 1980 until 1982.

20. Bennett and Bruce Norquist acquired the Property through a Treasurer's Deed on February 26, 1996. Eureka Gulch Properties LLC acquired from Bennett a 50 percent undivided interest in the Property on January 16, 2016. Cymoid Minerals LLC acquired from Norquist a 50 percent undivided interest in the Property on December 23, 2017. Respondents represent that neither Bennett, Norquist, Eureka Gulch Properties LLC, nor Cymoid Minerals LLC have conducted mining operations at the Property.

Environmental Investigation

21. The Ben Franklin Mine was part of a sampling program the CDMG conducted in 1998 and 1999 that resulted in a reclamation feasibility investigation report (Herron, et al. 2000). The report identified water-quality impacts from the EG9 adit discharge and its interaction with the waste rock pile. At the time, the west stem of Eureka Creek was flowing through stope EG11.

22. During low flow there was a slight increase in zinc, copper, and iron as the water passed through the mine workings. However, during high flow, zinc concentrations decreased, but copper and iron concentrations increased.

23. CDMG reported that the waste rock pile leachate had elevated concentrations of iron, aluminum, copper, and zinc.

24. EPA conducted additional sampling in 2015, 2016, and 2017.

25. In 2015 to 2017, EPA collected samples at four water-quality sampling locations at the Ben Franklin Mine, which included the drainage through the waste rock pile (ARD1), upstream of the mine before culvert under road (EG3A), near the midpoint of the Ben

Franklin Mine waste rock pile in Eureka Gulch (EG5), and downstream of the mine (A39A). At the upstream location, pH ranged from 6.24 to 7.25, with the lower pH occurring during spring high-flow conditions in 2016. At the mine midpoint location, pH ranged from 7.01 to 7.14, while pH was 7.59 in June 2016 at the downstream location. At the waste rock pile drainage location (ARD1), which includes flow from a number of natural seeps emerging from the vein, pH ranged from 2.76 to 3.10. At the waste rock pile drainage location, acute standards were exceeded for Al, Cd, Cu, Mn, Pb, and Zn, and chronic standards were exceeded for Fe. These metals concentrations from the waste rock pile were orders of magnitude above those found upstream and downstream of the mine in Eureka Gulch. Upstream of the Ben Franklin Mine, in June 2016 and July 2017 acute standards were exceeded for Cd, Cu, and Zn, while in September 2015 and 2017 the acute standard for Zn, and chronic standards for Cd, Cu, and Pb were exceeded. Downstream in June 2016, acute standards for Cd, Cu, and Zn, and chronic standards for Al and Pb were exceeded. Aluminum, cadmium, copper, lead, manganese and zinc concentrations were high at the downstream location in September 2017 compared to either the upstream or the midpoint location. In June 2016, the midpoint waste rock sample exceeded acute standards for Cd, Cu, and Zn, and chronic standards for Al and Pb. Metals concentrations were generally higher during spring high-flow conditions compared to fall low-flow conditions at the upstream sample location while the opposite was the case for the downstream location with higher concentrations during low flow.

26. DRMS has advised the EPA of its intent to conduct a safety closure of the Ben Franklin Mine stope. This action will be taken by DRMS pursuant to its independent statutory authority under State statute and regulations.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. Respondent Eureka Gulch is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

f. Respondent Bennett was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of

CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

g. The conditions described in Paragraphs 22, 23, and 25 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

h. The conditions described in Paragraphs 22, 23, and 25 of the Findings of Fact above may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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

VI. SETTLEMENT AGREEMENT AND ORDER

28. 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 Respondents 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.

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

29. Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within 30 days after the Effective Date. Respondents shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least 15 days prior to commencing such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents 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. The qualifications of the persons undertaking the Work for Respondents 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.

30. Respondents have designated, and EPA has not disapproved, the following individuals as Project Coordinators, who shall be responsible for administration of all actions by Respondents required by this Settlement:

Margaret "Poppy" Staub
Jeff Kurtz
Geosyntec Consultants
5670 Greenwood Plaza Blvd., Suite 540

Greenwood Village, Colorado 80111
Phone: (303) 790-1340
Poppy Staub Cell Number: 202-550-3337
Jeff Kurtz Cell Number: 303-775-1726
PStaub@Geosyntec.com
JKurtz@Geosyntec.com

To the greatest extent practicable, a Project Coordinator shall be present on site or readily available during Work at the Ben Franklin Mine. EPA retains the right to disapprove of the designated Project Coordinator(s) who does not meet the requirements of Paragraph 29. If EPA disapproves of a designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 15 days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator(s) shall constitute notice or communication to all Respondents.

31. EPA has designated Robert Parker of EPA Region 8 as its Remedial Project Manager (RPM). EPA and Respondents shall have the right, subject to Paragraph 30, to change their respective designated RPM or Project Coordinator. Respondents shall notify EPA 10 days before such a change is made. The initial notification by Respondents may be made orally but shall be promptly followed by a written notice.

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

VIII. WORK TO BE PERFORMED

33. Respondents shall perform, at a minimum, all actions necessary to implement the SOW, which is designed to reduce, to the extent practicable, concentrations of metals in Eureka Creek associated with the historic operation of the Ben Franklin Mine. The actions to be implemented generally include, but are not limited to, the following:

a. To the extent necessary, secure the mine portal to prevent public access to the mine workings.

b. Install pH buffering for remaining adit discharge following DRMS's closure of the Ben Franklin stope.

c. Channelize and divert adit discharge to minimize interaction with any remnant anthropogenically derived mineralized material.

d. Following DRMS's closure of the Ben Franklin stope, evaluate the need for, and implement as necessary, measures to prevent any seeps originating from Eureka Creek passing through the embankment above the stope or passing through the road adjacent to the stope.

e. Monitor adit discharge for five years to assess changes in flow and chemistry.

34. 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 Respondents receive notification from EPA of the modification, amendment, or replacement.

35. **Work Plan and Implementation**

a. Attached as Appendix A is the approved Statement of Work ("SOW") for performing the removal action generally described in Section VIII above.

b. Within 30 days after the Effective Date, in accordance with Paragraph 36 (Submission of Deliverables), Respondents shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Appendix A. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

c. Respondents shall commence implementation of the Work in accordance with the schedule included therein. Respondents shall not commence or perform any Work except in conformance with the terms of this Settlement.

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

e. Respondents shall notify the EPA RPM at least 5 days prior to commencement of the Work.

36. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to the RPM at Robert Parker, U.S. EPA, Region 8, Mailcode 8SEM-RB-SB, 1595 Wynkoop Street, Denver, CO 80202-1129, 303-312-6664, parker.robert@epa.gov. Concurrently, Respondents shall send copies of all submissions required by the Settlement to Mark Rudolph, Project Manager, Colorado Department of Health and Environment, mark.rudolph@state.co.us. Respondents shall submit all deliverables required by this Settlement, the attached SOW, or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 36.b. All other deliverables shall be submitted to EPA in the form specified by the RPM. If any deliverable includes maps, drawings, or

other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA with paper copies of such exhibits.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

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

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

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Ben Franklin Mine.

37. **Health and Safety Plan.** Within 15 days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at https://www.epa.gov/nscep, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at https://www.epaRPM.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning, shall incorporate all changes to the plan recommended by EPA, and shall implement the plan during the pendency of the removal action.

38. **Quality Assurance, Sampling, and Data Analysis**

a. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with Sampling and

Analysis Plan/Quality Assurance Project Plan 2016 Sampling Events (Final, Revision 0), Bonita Peak Mining District (DCN: EP8-3-1242 May 2016).

b. Respondents shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/clp), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (https://www.epa.gov/hw-sw846), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www3.epa.gov/ttnamti1/airtox.html).

c. However, upon approval by EPA, after a reasonable opportunity for review and comment by the State, Respondents may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondents 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. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

d. Upon request, Respondents shall provide split or duplicate samples to EPA and the State or their authorized representatives. Respondents shall notify EPA and the State not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional

samples that EPA or the State deem necessary. Upon request, EPA and the State shall provide to Respondents split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work.

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

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

39. **Community Involvement Plan**. EPA has prepared a Bonita Peak Mining District Superfund Site Community Involvement Plan (August 2017), in accordance with EPA guidance and the NCP. If requested by EPA, Respondents shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Ben Franklin Mine. Respondents' support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondents at EPA's request are subject to EPA's oversight.

40. **Post-Removal Site Control**. In accordance with Paragraph 44 and the SOW, or as otherwise directed by EPA, Respondents shall submit a proposal for Post-Removal Site Control. This proposal shall include measures to restrict access to the waste rock piles and engineered features or structures to be constructed under this Settlement, as identified in Appendix A. Upon EPA approval, Respondents shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondents shall provide EPA with documentation of all Post-Removal Site Control commitments. In the event that a county ordinance satisfying the requirements of C.R.S. § 25-15-320(3)(b) is not promulgated, at the request of EPA, Respondents shall execute and record a Restrictive Notice approved by EPA pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317, *et seq*.

41. **Final Report and Annual Reports**.

a. **Final Report.** Within 45 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 107, Respondents shall

submit for EPA and CDPHE review a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off the Ben Franklin Mine or handled on the Ben Franklin Mine, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondents' Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

b. **Annual Reports.** Respondents shall submit for EPA review an annual report on or before October 30, summarizing the actions taken to comply Section 1.2 of the SOW for a period of five (5) years beginning the year following the submission of the final report.

42. **Off-Site Shipments**

a. Respondents may ship hazardous substances, pollutants and contaminants from the Ben Franklin Mine to a facility off the BPMD Site (off-Site) only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain 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. Respondents may ship Waste Material from the Ben Franklin Mine to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed 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. Respondents also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Ben Franklin Mine 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 Action Memorandum. 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.

IX. PROPERTY REQUIREMENTS

43. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to Affected Property: (i) provide the EPA, the State, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 43.a. (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action.

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

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States or the State;

(3) Conducting investigations regarding contamination at or near the Ben Franklin Mine;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided in the SOW;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 85 (Work Takeover);

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

(9) Assessing Respondents' compliance with the Settlement;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

44. **Environmental Covenants Statute**. Respondents agree to comply with the substantive requirements of the Colorado Environmental Covenants Statute, C.R.S. § 25-15-317, *et seq.* In the event that a county ordinance satisfying the requirements of C.R.S. § 25-15-320(3)(b) is not timely promulgated, at the request of EPA, Respondents shall execute and record a Restrictive Notice pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317, *et seq*., which shall include land use restrictions approved by EPA to sustain the integrity of the Work. Not later than 30 days after recording the Restrictive Notice, Respondents shall provide to EPA and HMWMD a copy of the recorded Restrictive Notice. Respondents shall comply with all Restrictive Notice requirements including payment of annual fees.

45. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondents 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 Respondents are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Respondents, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

46. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

47. Notwithstanding any provision of the Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

48. Respondents shall provide to EPA and the State, 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 Respondents' possession or control or that of their contractors or agents relating to activities at the Ben Franklin Mine 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. Respondents shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

49. **Privileged and Protected Claims**

a. Respondents may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 49.b, and except as provided in Paragraph 49.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA and the State with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Ben Franklin Mine, 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 Ben Franklin Mine; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

50. **Business Confidential Claims**. Respondents may assert that all or part of a Record provided to EPA and the State under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records that Respondents claim to be 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 and the State, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

51. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

52. Until ten (10) years after EPA provides Respondents with notice, pursuant to Section XXVII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Ben Franklin Mine, provided, however, that Respondents who are potentially liable as owners or operators of the Ben Franklin Mine must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Ben Franklin Mine. Each 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 their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each 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.

53. At the conclusion of the document retention period, Respondents shall notify EPA and the State at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 49 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA or the State.

54. Each 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 Ben Franklin Mine 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 Ben Franklin Mine pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

55. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. The ARARs for the removal action being conducted under this Settlement are listed in Appendix B.

56. 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, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

57. **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 Ben Franklin Mine that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 800-424-8802 of the incident or Ben Franklin Mine conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

58. **Release Reporting**. Upon the occurrence of any event during performance of the Work that Respondents are 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, Respondents shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 800-424-8802, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

59. For any event covered under this Section, Respondents 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.

XIV. PAYMENT OF RESPONSE COSTS

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

a. **Periodic Bills**. On a periodic basis, EPA will send Respondent an electronic billing notification to the following email address: rtbenn@comcast.net. The billing

notification will include a standard regionally prepared cost report with the direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of the electronic bill, except otherwise provided in Paragraph 62 of this Settlement Agreement. Respondent shall make payments using one of the payment methods set forth in the electronic billing notification. Respondent may change its email billing address by providing notice of the new address to:

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

If the electronic billing notification is undeliverable, EPA will mail a paper copy to the billing notification to Respondent to:

Eureka Gulch Properties LLC
4936 South Fillmore Court
Englewood, Colorado 80113

b. On a periodic basis, EPA will send Respondents 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. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 62 (Contesting Future Response Costs).

c. Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site/Spill ID Number A8-M5 and the EPA docket number for this action.

For ACH payment:

Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

5700 Rivertech Court
Riverdale, Maryland 20737
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681
ABA = 051036706
Transaction Code 22 – checking

Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number A8-M5 and the EPA docket number for this action.

For online payment:

Respondents shall make payment at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.

d. At the time of payment, Respondents shall send notice that payment has been made to EPA's RPM; to Shawn McCaffrey, Enforcement Specialist, by email at Mccaffrey.Shawn@epa.gov or by mail to Shawn McCaffrey, U.S.EPA Region 8, Mailcode SEM-PA-CR, 1595 Wynkoop, Denver, CO 80202-1129; and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

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

Such notice shall reference Site/Spill ID Number A8-M5 and the EPA docket number for this action.

e. **Deposit of Future Response Costs Payments**. The total amount to be paid by Respondents pursuant to Paragraph 60.a (Periodic Bills) shall be deposited by EPA in the Bonita Peak Mining District Site Special Account to be retained and used to conduct or finance response actions at or in connection with the BPMD 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 Bonita Peak Mining District 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 BPMD Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum.

61. **Interest.** In the event that any payment for Future Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' 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 Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

62. **Contesting Future Response Costs**. Respondents may initiate the procedures of Section XIV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 60 (Payments for Future Response Costs) if they determine that EPA has made

a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe 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 dispute, Respondents shall submit a Notice of Dispute in writing to the RPM 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 Respondents submit a Notice of Dispute, Respondents 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 60, 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. Respondents shall send to the RPM 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, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 60. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 60. Respondents 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 XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

63. 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.

64. **Informal Dispute Resolution**. If Respondents object 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 10 days after such action. EPA and Respondents shall have 30 days from EPA's receipt of Respondents' 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.

65. **Formal Dispute Resolution**. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within 30 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, within 30 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Program Director level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the

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

66. Except as provided in Paragraph 62 (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 Respondents under this Settlement. Except as provided in Paragraph 75, 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 Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

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

68. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 8, within 5 days of when Respondents first knew that the event might cause a delay. Within 10 days thereafter, Respondents 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; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents 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 67 and whether Respondents have exercised their best efforts under Paragraph 67, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

69. 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 Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

70. If Respondents elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents 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 Respondents complied with the requirements of Paragraphs 67 and 68. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

71. 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 Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

XVII. STIPULATED PENALTIES

72. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 73.a for failure to comply with the obligations specified in Paragraph 73.b, unless excused under Section XVI (Force Majeure). "Comply" as used in the previous sentence include compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

73. **Stipulated Penalty Amounts - Payments, Major Deliverables, and Other Milestones**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 73.b:

Penalty Per Violation Per Day	Period of Noncompliance
$125.00	1st through 14th day
$250.00	15th through 30th day
$750.00	31st day and beyond

b. **Obligations.**

(1) Payment of any amount due under Section XIV (Payment of Response Costs).

(2) Failure to submit timely or adequate deliverables pursuant to this Settlement

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $10,000.00.

75. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 35 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Program Director level or higher, under Paragraph 65 (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.

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

77. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XIV (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 60 (Payments for Future Response Costs).

78. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent have 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 75 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 77 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

80. 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 Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is collected pursuant to this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 (Work Takeover).

81. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVIII. COVENANTS BY EPA

82. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents 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 extend only to Respondents and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

83. 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 BPMD 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

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

a. liability for failure by Respondents 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 Ben Franklin Mine; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Ben Franklin Mine not paid as Future Response Costs under this Settlement.

85. **Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are 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 Respondents. 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 Respondents a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 85.a, Respondents have 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 Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 85.b.

c. Respondents may invoke the procedures set forth in Paragraph 65 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 85.b. However, notwithstanding Respondents' 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 85.b until the earlier of (1) the date that Respondents remedy, 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 65 (Formal Dispute Resolution).

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

XX. COVENANTS BY RESPONDENTS

86. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

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

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

c. any claim arising out of response actions at or in connection with the Ben Franklin Mine, 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.

87. Except as provided in Paragraph 90 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 84.a (liability for failure to meet a requirement of the Settlement), 84.d (criminal liability), or 84.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

89. Respondents reserve, 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 Respondents' deliverables or activities.

90. **Waiver of Claims by Respondents**

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

b. **Exceptions to Waivers**. The waiver under this Paragraph 90 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Ben Franklin Mine against such Respondent.

XXI. OTHER CLAIMS

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

92. Except as expressly provided in Paragraphs 90 (Waiver of Claims by Respondents) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents 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.

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

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

94. Except as provided in Paragraphs 90 (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondents), 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 Ben Franklin Mine 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).

95. 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.

96. The Parties further 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 Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

97. Each 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. Each 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, each 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.

98. 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 Ben Franklin Mine, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by EPA).

XXIII. INDEMNIFICATION

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

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

101. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Ben Franklin Mine, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Ben Franklin Mine, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

102. No later than 10 days before commencing any Work on the Ben Franklin Mine, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (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 Respondents pursuant to this Settlement. In addition, until the first anniversary after issuance of Notice of Completion of Work, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, until the first anniversary after issuance of Notice of Completion of Work, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate 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, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Ben Franklin Mine, San Juan County, Colorado and the EPA docket number for this action.

XXV. MODIFICATION

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

104. If Respondents seek permission to deviate from any approved SOW, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 103.

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

XXVI. ADDITIONAL REMOVAL ACTION

106. If EPA determines that additional removal actions not included in the SOW or other approved plan(s) are necessary to protect public health, welfare, or the environment, and such additional removal actions are consistent with the SOW, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 35 (Work Plan and Implementation), Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the RPM's authority to make oral modifications to any plan or schedule pursuant to Section XXV (Modification).

XXVII. NOTICE OF COMPLETION OF WORK

107. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Post-Removal Site Controls, use restrictions, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondents. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the SOW if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved SOW and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified SOW shall be a violation of this Settlement.

XXVIII. INTEGRATION/APPENDICES

108. This Settlement and its appendices constitutes 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 state and federal ARARs.

XXIX. EFFECTIVE DATE

109. This Settlement shall be effective 1 day after the Settlement is signed by the Regional Administrator or his/her delegatee.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

BY: _____ DATE: 8/15/19

Kenneth Schefski,
Regional Counsel
Office of Regional Counsel
Region 8
U.S. Environmental Protection Agency

BY: _____ DATE: 8/15/19

Betsy Smidinger
Director
Superfund and Emergency Management Division
Region 8
U.S. Environmental Protection Agency

RYAN BENNETT AND EUREKA GULCH PROPERTIES LLC

BY: Ryan B DATE: August 14, 2019

Ryan Bennett
Individually and as Manager of San Juan Land Holding Company, LLC, the sole member and Manager of Eureka Gulch Properties LLC
4936 South Fillmore Court
Englewood, Colorado 80113

Appendix A: Scope of Work for Ben Franklin Mine

1 Prior Work and Current Conditions

The Ben Franklin mine site has an open stope in which rain water and snow accumulate throughout the season. This creates a freeze-thaw situation, which impacts the stability of the Ben Franklin stope as well as contributes to potential discharge from the workings to surface water. The open stope also poses a potential safety hazard to the public as it is easily accessible due to its close proximity to the road. Prior work on the Ben Franklin involved diverting the stream channel around the open stope to minimize inflow into the historic workings. Prior to the Superfund Action, the Ben Franklin stope was slated for closure by the Division of Mining Reclamation and Safety (DRMS), which DRMS will complete in 2019. The Scope of Work to be completed by the Respondents is set forth below.

2 Proposed Removal Action

- Prior to initiating the removal action, provide EPA with a conceptual site model with supporting information as necessary, and a Notification and Emergency Action Plan, to support a fluid hazard consultation determination.[1] If a fluid hazard consultation is required, Respondents will assist in EPA's development of a fluid hazard consultation package by providing, if requested, on-site reconnaissance and supplemental documentation.
- To the extent necessary, secure the mine portal to prevent public access to workings
- Install pH buffering for any remaining remnant adit discharge, following DRMS's closure of the Ben Franklin stope
- Channelize and divert adit discharge to minimize interaction with any remnant anthropogenically derived mineralized material
- Following DRMS's closure of the Ben Franklin stope, evaluate the need for, and implement as necessary, measures to prevent any seeps originating from Eureka Creek passing through the embankment above the stope or passing through the road adjacent to the stope

3 Post Removal Action Monitoring

- For a five year period, monitor water quality and flow of Ben Franklin adit discharge, and Eureka Gulch upstream and downstream of Ben Franklin to assess improvements to water quality as a result of the removal action. The parameter list will include ICP/MS analysis for Total Recoverable and Dissolved Al, As, Cd, Cu, Fe, Mn, Pb, Ag, Zn, and Dissolved sulfate, Ca, Mg to calculate hardness

[1] *See* Memorandum from James E. Woolford, Director, Office of Superfund Remediation and Technology Innovation and Reggie Cheatham, Director, Office of Emergency Management, to Regional Superfund Division Directors *Re: Developing Consultation Packages for CERCLA Activities at Abandoned Hardrock Mining and Mineral Processing Sites in Preparation for the Fiscal Year (FY) 2017 Consultation Season* (April 4, 2017).

- Monitor adit discharge for five years to assess changes in flow and chemistry
- Recharge pH buffer if post removal action monitoring indicates it is appropriate

Appendix B

State and Federal Applicable or Relevant and Appropriate Requirements (ARARs)

Bonita Peak Mining District Superfund Site

Ben Franklin Mine Removal Action

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
Federal ARARs							
1	National Historic Preservation Act (NHPA) and Implementing Regulations 16 United States Code (U.S.C.) § 470; 36 CFR Part 800	Applicable	This statute and implementing regulations require federal agencies to take into account the effect of this response action upon any historic property, such as district, site, building, structure, or object that is included in or eligible for the National Register of Historic Places (generally, 50 years old or older). Historic properties are referred to as cultural resources.	Only the substantive requirements of the NHPA are applicable to this on-site response action. A cultural resource survey has been completed for the Ben Franklin Mine. This survey will be reviewed by a qualified archeologist. If the previous survey cannot be used, a literature search and field survey will be conducted prior to commencement of the removal action at the site.		✓	
2	Archaeological and Historic Preservation Act and Implementing Regulations 16 U.S.C. § 469 43 C.F.R. § 7	Applicable	This statute and implementing regulations establish requirements for the evaluation and preservation of historical and archaeological data, which may be destroyed through alteration of terrain as a result of a federal construction project or a federally approved activity or program.	To date, no such resources have been identified at the Ben Franklin Mine. If activities in connection with this removal action may cause irreparable loss to significant scientific, prehistorical, or archeological data, the Act requires the preservation of the data.		✓	
3	Bald and Golden Eagle Protection Act 16 U.S.C. §§ 668, *et seq*.	Applicable	This requirement makes it unlawful for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any bald or golden eagle, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to Federal regulations. In addition to immediate impacts, this requirement also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.	If bald or golden eagles are identified at these mining-related sources during design and action, activities must be modified and conducted to conserve the species and their habitat.		✓	

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
4	Endangered Species Act, 16 U.S.C. § 1531, *et seq*. and Implementing Regulations, 50 C.F.R. § 17 and § 402	Applicable	This statute and implementing regulations provide that federal activities not jeopardize the continued existence of any threatened or endangered species. 16 U.S.C. § 1536(a) of the Endangered Species Act requires consultation with the U.S. Fish and Wildlife Service to identify the possible presence of protected species and mitigate potential impacts on such species. Substantive compliance with the ESA means that the lead agency must identify whether a threatened or endangered species, or its critical habitat, will be affected by a proposed response action. If so, the agency must avoid the action or take appropriate mitigation measures so that the action does not affect the species or its critical habitat. If, at any point, the conclusion is reached that endangered species are not present or will not be affected, no further action is required.	Canada Lynx (federally threatened mammal) and southwestern willow flycatcher (federally endangered bird) have been identified in San Juan County, but not necessarily found at the Site. Surveys to identify threatened and endangered species at the Ben Franklin Mine have not been completed. If threatened or endangered species are identified at the Ben Franklin Mine during design and action, activities must be modified and conducted action to conserve the species and their habitat.		✓	
5	Migratory Bird Treaty Act 16 U.S.C. § 703; 50 C.F.R. § 10.1, *et seq*.	Applicable	This statute and implementing regulations makes it unlawful for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to these regulations.	If migratory birds are identified at the Ben Franklin Mine during design and action, activities must be modified and conducted to conserve the species and their habitat.		✓	
6	Criteria for Classification of Solid Waste Disposal Facilities and Practices 40 C.F.R. §§ 257 257.2, 257.3-1, 257.3-2(a), 257.3-2(c)	Relevant and Appropriate	This regulation establishes standards with which solid waste disposal must comply to avoid possible adverse effects on health or the environment. These criteria apply to both solid waste disposal facilities and practices that are not otherwise excepted in the regulation. Part 257.3-1 states that that facilities or practices in floodplains not restrict floods or result in washout of solid waste. Part 257.3-2 provides for the protection of threatened or endangered species.	The State is authorized to implement this portion of RCRA and therefore, the potential ARARs arise under the State regulations.			✓

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
7	Clean Water Act 404, 33 U.S.C. § 1344, et. seq., Dredge and Fill Provisions § 404 (b)(1); 40 CFR § 230	Applicable	Section 404 regulates the discharge of dredged or fill materials into waters of the United States including return flow from such activity. This program is implemented through regulations set forth in the 404 (b)(1) guidelines, 40 C.F.R. § 230. The guidelines specify: the restriction on discharge (40 C.F.R. § 230.10); the factual determinations that need to be made on short- and long-term effects of proposed discharge of dredge or fill material on the physical, chemical, and biological components of the aquatic environment (40 C.F.R. § 230.11) in light of Subpart C through F of the guidelines; and the findings of compliance on the restrictions (40 C.F.R. § 230.12). Subpart J of the guidelines provide the standards and criteria for the use of all types of compensatory mitigation when the response action will result in unavoidable impacts to the aquatic environment.	If the removal action involves the discharge of dredged or fill materials into waters of the United States identified at the Site, activities would be implemented in compliance with substantive requirements of these regulations.		✓	✓
8	FEMA Regulations to Implement EO 11990 44 CFR § 9.11(b)(2), (b)(4), (c)(3)	Relevant and Appropriate	44 CFR § 9 (Requirements for Flood Plain Management Regulations Areas) Requires measures to reduce the risk of flood loss, minimize impact of floods, and restore and preserve the natural and beneficial values of floodplains.	If the removal involves activities that affect identified floodplains or wetlands, activities will be carried out in a manner to avoid adversely affecting them.		✓	✓
9	Floodplain Management Regulations Executive Order No. 11988 as amended by 13690	To Be Considered	These require that actions be taken to avoid, to the extent possible, adverse effects associated with direct or indirect development of a floodplain, or to minimize adverse impacts if no practicable alternative exists.	If floodplains are delineated within areas designated for the removal activities, actions will be carried out in a manner to avoid adversely affecting them.		✓	
10	Protection of Wetlands Regulations Executive Order No. 11990	To Be Considered	This ARAR requires federal agencies to avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists.	If jurisdictional wetlands are delineated within areas designated for the removal, activities will be carried out in a manner to avoid adversely affecting such wetlands.		✓	✓

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
State ARARs							
1	Colorado Fugitive Dust Control Plan/Opacity, Regulation No. 1., 5 CCR § 1001-3, pursuant to Colorado Air Pollution Prevention and Control Act, CRS §§ 25-7-101, et. seq.	Applicable	Establishes regulations concerning fugitive emissions from construction activities, storage and stockpiling activities, haul trucks, and tailings ponds.	Applicable to all activities generating dust.			✓
2	Colorado Mined Land Reclamation Board Regulations ("MLRB Regulations"), Reclamation Performance Standards, 2 C.C.R. § 407-1, Rule 1.1 (definitions) and Rule 3 (Reclamation Performance Standards), pursuant to the Co. Mined Land Reclamation Act, C.R.S. § 34-32-101, et seq.	Relevant and Appropriate	The MLRB Regulations require reclamation of permitted mined lands, defined as "employment of procedures reasonably designed to minimize as much as practicable the disruption from mining operations and to provide for the establishment of plant cover, stabilization of soil, the protection of water resources, or other measures appropriate to the subsequent beneficial use of such affected lands." Reclamation must be conducted in accordance with the performance standards in Rule 3 of the Regulations.	Substantive requirements are relevant and appropriate to mine reclamation activities including adit discharge control, reclamation of waste rock and other mine related materials, and revegetation.		✓	✓

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
3a	MLRB Regulations, Rule 3.1.5(5), (10), (11)	Relevant and Appropriate	Acid forming or toxic producing mined materials must be handled and disposed in a manner that will control unsightliness and protect the surface and groundwater drainage system from pollution.			✓	✓
3b	MLRB Regulations Rule 3.1.6	Relevant and Appropriate	Reclamation activities must minimize disturbances to the prevailing hydrologic balance of the mined land and surrounding area by complying with all laws pertaining to water rights, water quality and dredge and fill activities. Minimizing measures also include removing temporary or large siltation structures from drainageways after stabilization and rehabilitation.			✓	✓
3c	MLRB Regulations Rule 3.1.7	Relevant and Appropriate	Reclamation activities that may affect the quality of any groundwater must comply with all state-wide groundwater quality standards and standards for classified areas. For unclassified areas, reclamation activities must protect the existing and reasonably potential future uses of such groundwater.			✓	✓
3d	MRLB Regulations Rule 3.1.8	Relevant and Appropriate	Reclamation activities must take into account the safety and protection of wildlife on the mined site and along access roads with special attention given to critical periods in the life cycle of species requiring special consideration (elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds).			✓	✓
3e	MLRB Regulations Rule 3.1.5(1), (3), (7)	Relevant and Appropriate	Any grading shall be done in a manner to control erosion and siltation and protect from slides and other damage. High walls shall be stabilized or eliminated. Grading shall create a final topography appropriate to the future land use. Slopes and slope combinations shall be compatible with the configuration of surrounding conditions and future land use.			✓	✓
3f	MLRB Regulations Rule 3.1.5(2)	Relevant and Appropriate	Backfilling shall ensure adequate compaction for stability and prevent leaching of toxic or acid forming materials			✓	✓

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
3g	MLRB Regulations Rule 3.1.5(7)	Relevant and Appropriate	Lakes or ponds shall be constructed with slopes no steeper than a ratio of 3:1 for slopes between 5 feet above to 10 feet below the expected waterline. All other slopes shall be no steeper than a ratio of 2:1.			✓	✓
3h	MRLB Regulations Rule 3.1.8	Relevant and Appropriate	Reclamation activities must take into account the safety and protection of wildlife on the mined site and along access roads with special attention given to critical periods in the life cycle of species requiring special consideration (elk calving, migration routes, peregrine falcon nesting, grouse strutting grounds).			✓	✓
4	Colorado Discharge Permit System Regulations, 5 CCR § 1002-61.3(2)(a) and (f)(ii), and CDPS general permit No. COR0300000 (Stormwater discharges associated with construction activity), pursuant to CRS § 25-8-501	Applicable or Relevant and Appropriate	Requires implementing management controls through defined "general limitations" and "best management practices" for stormwater pollution prevention pursuant to Colorado Discharge Permit System general permit COR0300000. This permit applies to stormwater discharges from small construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres.	If greater than one acre but less than five acres are disturbed from the response action, the substantive requirements are applicable to the response action pursuant to 5 CCR § 1002-61.3(2)(a) and (f)(ii). If less than one acre is disturbed from the response action, the substantive requirements are relevant and appropriate.			✓
5	Colorado Noxious Weed Act and the San Juan County Noxious Weed regulations, CRS § 35-5.5-101-119; 8 CCR § 1206-2	Applicable	Colorado and San Juan County Regulations addressing management of noxious weeds.	Removal activities must control the spread of noxious weeds pursuant to this Regulation.		✓	✓
6	Colorado Noise Abatement Statute, CRS §§ 25-12-101-110	Applicable	Establishes maximum permissible noise levels for particular time periods and land use zones.	Applicable to all construction, transport and backfilling activities.			✓

	Statute and Regulatory Citation	ARAR Determination	Description	Comment	Chemical-Specific	Location-Specific	Action-Specific
7	Colorado Environmental Covenant Statute, C.R.S. § 25-15-317, *et seq*.	Relevant and Appropriate	Requires environmental covenants (ECs) or notices of environmental use restrictions (RNs) for environmental remediation projects resulting in: residual contamination at levels that have been determined to be safe for one or more specific uses, but not all uses; or incorporation of engineered features or structures requiring monitoring, maintenance, or operation, or that will not function as intended if disturbed.	The substantive requirements of the Colorado Environmental Covenant Statute are applicable to components of the removal action which incorporate engineered features. C.R.S. § 25-15-321 authorizes CDPHE to accept, refuse to accept, conditionally accept, hold, modify and terminate ECs and RNs. It is anticipated that compliance with this requirement will be achieved through San Juan County enacting an ordinance and entering into an intergovernmental agreement with CDPHE pursuant to C.R.S. § 25-15-320(3)(b). In the event that a county ordinance satisfying the requirements of C.R.S. § 25-15-320)3(b) is not promulgated, at the request of EPA, Respondents shall execute and record a Restrictive Notice approved by EPA pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317, *et seq.*		✓	✓

The EPA has evaluated the following ARARs and has determined that compliance with these requirements is not practicable given the scope of the removal action: (1) Clean Water Act 33 U.S.C. §§ 1342, *et seq.* (Point Source Discharges Requirements, Section 402); (2) Colorado Basic Standards and Methodologies for Surface Water, 5 CCR § 1002-31, pursuant to CRS §§ 25-8-101-703; (3) Colorado Surface Water Quality Classifications and Numeric Standards, 5 CCR § 1002-34, pursuant to CRS §§ 25-8-203 and 204; (4) Colorado Discharge Permit System Regulations, 5 CCR § 1002-61, Regulation No. 61, pursuant to CRS § 25-8-501 -509; and (5) Colorado Effluent Limitations, 5 CCR § 1002-62, pursuant to CRS § 25-8-205.