

UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
UNITED STATES DEPARTMENT OF THE INTERIOR, AND
THE STATE OF UTAH NATURAL RESOURCE TRUSTEES

March 17, 2021
7:12 AM
Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF:)
)
Richardson Flat Tailings Site)
Operable Units 2 and 3)
Park City, Utah)
)
Big Hoss Properties, LLC)
)
Respondent)
)
Proceeding Under Sections 104, 106,)
107, and 122 of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act, as amended,)
42 U.S.C. §§ 9604, 9606, 9607,)
and 9622.)
_____)

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER
ON CONSENT

U.S. EPA Region 8

CERCLA Docket No. CERCLA-08-2021-0005

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I. JURISDICTION

1. This Settlement Agreement is issued under the authority vested in the President of the United States by Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9622, as amended (CERCLA). This authority was delegated to the Administrator of EPA and the Secretary of the Interior on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to EPA Regional Administrators by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 8 to the undersigned EPA officials. The authority delegated to the Secretary of the Interior is delegated to the Fish and Wildlife Service (FWS) for this Site. This Settlement Agreement is also issued under the authority vested in the State for natural resources within the State of Utah by Section 107(f) of CERCLA. The Governor of the State of Utah designated the State of Utah Natural Resource Lead Trustee and the State of Utah Natural Resource Co-Trustee (State Trustees) to act on behalf of the public as trustees for Utah's natural resources under CERCLA, 42 U.S.C. § 9601 *et seq.*, the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act (OPA), 33 U.S.C. § 2701 *et seq.* pursuant to Section 107(f)(2)(B) of CERCLA. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

2. This Settlement Agreement is made and entered into by EPA and, the Department of Interior (DOI), through FWS (the Federal Trustee), and the State Trustees (collectively, EPA, the Federal Trustee, and the State Trustees are referred to as "Agencies"), and Big Hoss Properties, LLC (Settling Party). Settling Party consents to and will not contest the authority of the Agencies to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns operable unit 2 (OU2) and operable unit 3 (OU3) of the Richardson Flat Tailings Superfund Site (Site), which comprise approximately 2700 acres of land located in Summit County, Utah. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. In response to the release or threatened release of hazardous substances at or from the Site, the Federal Trustee and State Trustees alleges Natural Resource Damages at the Site pursuant to Section 107 of CERCLA, 42 U.S.C § 9607.

8. In order to restore such Natural Resource Damages, the Federal Trustee and the State Trustees have incurred Natural Resource Damage costs and will incur additional Natural Resource Damage costs in the future.

9. Settling Party is the owner of a portion of the Site (Property) and desires to develop a portion of the Property in accordance with the Statement of Work for Development Plan attached hereto as Appendix A.

10. The Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

11. This Settlement Agreement shall be binding upon the Agencies and upon Settling Party and its successors, and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the Party represented by him or her.

IV. STATEMENT OF PURPOSE

12. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make cash payments, perform work, and implement land use restrictions requested by the State Trustees to resolve its alleged civil liability under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) with regard to the Site as provided in the Covenants by the Agencies in Section X, subject to the Reservations of Rights by the Agencies in Section XI.

V. DEFINITIONS

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

“Action Memorandum” or “Action Memoranda” shall mean the Action Memorandum or Memoranda that may be issued by EPA in the future for OU2 and OU3.

“Affected Property” shall mean all real property at the Site and any other real property, owned or controlled by Settling Party, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, any portion of Summit County parcel SS-65-A-3.

“Agencies” shall mean EPA, the Federal Trustee, and the State Trustees.

“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 Agreement, 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.

“DOI” shall mean the U.S. Department of Interior and its successor departments, agencies, or instrumentalities, including the U.S. Fish and Wildlife Service, which has asserted that there may be natural resource injuries at the Site.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“EPA” shall mean the U.S. 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.

“Existing Contamination” shall mean:

- i. any hazardous substances, pollutants or contaminants present or existing on the Property as of the Effective Date;
- ii. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- iii. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

“Federal Trustee” shall mean the Department of Interior, acting through FWS. “FWS” shall mean the U.S. Fish and Wildlife Service and any successor departments or agencies of the United States.

“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.

“Natural Resource Damages” shall mean the cost of restoring injured resources to their baseline condition, compensation for the interim loss of injured resources pending recovery, and the reasonable cost of a damage assessment.

“Natural Resource Trustees” shall mean the Federal Trustee and the State Trustees.

“OU2” shall mean Lower Silver Creek, an area bounded by Highway 40 on its southern end and Interstate 80 on its northern end, ranging in width from 2,100 feet at the southern boundary to 3,800 feet near Pivotal Promontory Road, in Township 1 South Range 4 East, in Sections 10, 11, 15, 14, 22, 23, 26, 27, and 35 and approximately 500 feet in Section 2 of Township 2 South Range 4 East, Summit County, Utah and excluding any areas within OU3. OU2 is depicted generally on the map attached as Appendix B.

“OU3” shall mean an area beginning at the southern and most up gradient portion of the Silver Maple Claims and then proceeding downstream to the Middle Reach and including parcels formerly addressed by the RI/FS for OU3 identified as all or a portion of Summit County parcel numbers SS-28-A-1-X, SS-27-B-X, SS-28-A-X, SS-56, SS-56-UP-X, SS-56-A, SS-64-A, SS-64-100-UP-X, SS-65-A-3-1, SS-65-A-5, SS-65-A-3, SS-65-1, SS-65-A-6, SS-88 and excluding any areas within OU4. OU3 is depicted generally on the map attached as Appendix B.

“Oversight Costs” shall mean all direct and indirect costs incurred by EPA or the United States after the Effective Date in monitoring and supervising Respondent’s implementation of the SOW, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Agreement, as well as costs incurred in overseeing implementation of the SOW.

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

“Parties” shall mean EPA, the Federal Trustee, the State Trustees, and the Settling Party.

“Property” shall mean parcel SS-65-A-3, approximately 7 acres in size, which is within the Site and is described on Appendix C hereto.

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

“Removal Actions” shall mean all necessary actions to implement the removal action remedy to be selected in the Action Memorandum or Memoranda for OU2 and OU3.

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

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Party” shall mean Big Hoss Properties, LLC, a limited liability company registered in the State of Utah.

“Site” shall mean the Richardson Flat Tailings Superfund Site, located in and around Park City, Utah, in Summit County.

“State” shall mean the State of Utah.

“State Trustees” shall mean the Executive Director of the Utah Department of Environmental Quality as the Natural Resource Lead Trustee and the Executive Director of the Utah Department of Natural Resources as the Utah Natural Resource Co-Trustee.

“Statement of Work for Development Plan” or “SOW” shall mean the document describing the activities Settling Party must perform in the event Settling Party seeks to develop the Property or any portion thereof.

“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.

VI. PAYMENT OF RESPONSE COSTS

14. **Payment by Settling Party for EPA Response Costs.** Within 30 days after the Effective Date, Settling Party shall pay to EPA \$75,000.

15. Settling Party shall make payment at <https://www.pay.gov> to the U.S. EPA account in accordance with payment instructions found at <https://www.pay.gov>.

16. **Deposit of Payment.** The total amount to be paid by Settling Party pursuant to Paragraph 14 shall be deposited by EPA in the Richardson Flat Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

17. **Notice of Payment.** At the time of payment, Settling Party shall send notice that payment has been made to EPA in accordance with Section XV (Notices and Submissions) and to the EPA Cincinnati Finance Center by email or by regular mail at:

Email: cinwd_acctsreceivable@epa.gov

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

Such notice shall reference Site/Spill ID Number 0894 and EPA docket number for this action.

18. **Payment to Federal Trustee.** Within 30 days after the Effective Date, Settling Party shall pay to the Federal Trustee \$32,170.

- a. Settling Party shall make the payment to the Federal Trustee in accordance with the payment instructions attached as Appendix E. The payment shall reference “Richardson Flat Tailings Site (OU2 and 3).

At the time of payment, Settling Party shall send a written notice of payment and a copy of any transmittal documentation to:

Field Supervisor
U.S. Fish and Wildlife Service Utah Ecological Services Field Office
2369 W. Orton Circle, Suite 50
West Valley City, UT 84119

With a copy to:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
DJ # 90-5-1-1-11456

19. **Payment to State Trustees.** Within 30 days after the Effective Date, Settling Party shall pay to the State Trustees \$3,727.72. Such payment shall be made payable to the Utah Department of Environmental Quality and mailed to:

Utah Department of Environmental Quality
Kimberly Shelley, Natural Resource Damage Lead Trustee
P.O. Box 144810
Salt Lake City, Utah 84114-4810

Or hand delivered to:

Utah Department of Environmental Quality
Kimberly Shelley, Natural Resource Damage Lead Trustee
195 North 1950 West
Salt Lake City, Utah

A notation on the check shall indicate that the payment is for the State Natural Resource Damage Ground Water Settlement at the Richardson Flats Superfund Site (Stoly, Summit County).

20. **Payment of Oversight Costs by Settling Party.** Settling Party shall pay EPA Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Settling Party a bill to the email address for Settling Party at danb@burtonlumber.com and bobb@burtonlumber.com. If the electronic notification is undeliverable, EPA will mail a paper copy of the billing notification to the mailing address set forth in Section XV. Settling Party shall make all payments required by this Paragraph to EPA in accordance with the billing instructions included in the billing notification. All payments shall reference Site/Spill ID Number 0894 and the EPA docket number for this action.

- a. In the event that a payment for Oversight Costs is not made within 30 days of Settling Party's receipt of a bill, Settling Party shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment.
- b. The total amount to be paid by Settling Party under this Section may be deposited by EPA in the Richardson Flat Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
- c. At the time of each payment, Settling Party shall send notice that such payment has been made to:

Enforcement Specialist, Richardson Flat Site (8ENF-RC)
EPA Region 8
1595 Wynkoop St.
Denver, CO 80202

and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

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

21. Resolution of Disputes with Settling Party Concerning Payment of Oversight Costs

- a. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding Settling Party's obligation to pay EPA for Oversight Costs. The dispute resolution procedures in this Paragraph are limited to disputes regarding recovery of Oversight Costs. Nothing in this Paragraph shall be deemed to create a right to pre-enforcement review of response actions taken by EPA.
- b. Settling Party may dispute all or part of a bill for Oversight Costs submitted under this Settlement Agreement if Settling Party determines that EPA has made a mathematical error or included a cost item that is not within the definition of Oversight Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Settling Party shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 20 (Payment of Oversight Costs by Settling Party) on or before the due date. Within the same time period, Settling Party shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and shall remit to that escrow account funds

equivalent to the amount of the contested Oversight Costs. Settling Party shall simultaneously transmit a copy of both checks in accordance with Paragraph 17 (Notice of Payment). Settling Party shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 7 days after the dispute is resolved.

- c. If Settling Party objects to any billing for Oversight Costs, it shall notify EPA in writing of its objection(s) within 7 days after such action, unless the objection(s) has/have been resolved informally. EPA and Settling Party shall have 30 days from EPA's receipt of Settling Party's written objection(s) to resolve the dispute through formal negotiations (Negotiation Period). The Negotiation Period may be extended at the sole discretion of EPA.
- d. Any agreement reached by EPA and the Settling Party pursuant to this Section shall be in writing and shall, upon signature by the parties to the dispute, be incorporated into and become an enforceable part of this Settlement Agreement. If EPA and Settling Party are unable to reach an agreement within the Negotiation Period, an EPA management official at the Supervisory level or higher will issue a written decision on the dispute to Settling Party, which shall not constitute final agency action for purposes of judicial review. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of the dispute, as provided by this Section, Settling Party shall make payment in accordance with the agreement reached or with EPA's decision, whichever occurs, in accordance with the instructions in Paragraphs 15 and 17, and EPA shall deposit the payment in accordance with Paragraph 16.

VII. ENVIRONMENTAL COVENANT

22. As additional consideration for the covenant not to sue provided by the State Trustees in Paragraph 29, Settling Party shall file an environmental covenant on the Property for the benefit of the State Trustees within 30 days of the Effective Date. Settling Party shall record the environmental covenant in the Summit County Recorder's Office and provide the State Trustees with a certified copy of the recorded environmental covenant. The environmental covenant is attached hereto as Appendix D.

VIII. DEVELOPMENT WORK

23. Settling Party shall comply with all requirements set forth in the SOW, attached hereto as Appendix A.

IX. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

24. **Interest on Late Payments.** If Settling Party fails to make any payment required by Paragraphs 14, 18, or 20 (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

25. **Stipulated Penalty**

- a. If any amounts due to EPA under Paragraph 14 or 20 are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 24 (Interest on Late Payments), \$250 per violation per day that such payment is late.

If Settling Party does not comply with Section XIV (Property Requirements), Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$250 per violation per day of such noncompliance.

- b. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Party's receipt from EPA of a demand for payment of the penalties. Settling Party shall make all payments required by this Section to EPA by Fedwire 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"

Each such payment shall reference "stipulated penalties," Site/Spill ID Number 0894, and the EPA docket number for this action.

- c. At the time of payment, Settling Party shall send notice that payment has been made as provided in Paragraph 17 (Notice of Payment).
- d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.
- e. If any amount due to the Federal Trustee under Paragraph 18 is not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to the Federal Trustee, as a stipulated penalty, in addition to the Interest required by Paragraph 24 (Interest on Late Payments), \$250 per violation per day that such payment is late.
- f. If any amount due to the State Trustees under Paragraph 19 is not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to the State Trustees, as a stipulated penalty, in addition to the Interest required by Paragraph 24 (Interest on Late Payments), \$250 per violation per day that such payment is late.

26. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, Settling Party's failure or refusal to comply with any term or condition of this Settlement Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

27. Notwithstanding any other provision of this Section, EPA and the Natural Resource Trustees may, in their unreviewable discretion, waive payment of any portion of the respective stipulated penalties that have accrued to them pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI or from performance of any other requirements of this Settlement Agreement.

X. COVENANTS BY THE AGENCIES

28. **Covenants for Settling Party by EPA.** Except as specifically provided in Section XI (Reservations of Rights by The Agencies), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to OU2 and OU3 of the Site. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. These covenants extend only to Settling Party and do not extend to any other person.

29. **Covenants for Settling Party by Natural Resource Trustees.** Except as specifically provided in Section XI (Reservations of Rights by Agencies), the Natural Resource Trustees covenant not to sue or take administrative action against Settling Party pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for natural resource damages within OU2 and OU3 of the Site. With respect to present and future liability, this covenant shall take effect upon the Effective Date. This covenant is conditioned upon the satisfactory performance by Settling Party of all obligations under this Settlement Agreement. This covenant extends only to Settling Party and does not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY THE AGENCIES

30. The Agencies reserve, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 28 (Covenants for Settling Party by EPA) and Paragraph 29 (Covenants for Settling Party by Natural Resource Trustees). Notwithstanding any other provision of this Settlement Agreement, the Agencies reserve all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement including the SOW;
- b. criminal liability;
- c. liability for performance of response actions outside OU2 and OU3 of the Site;

- d. liability based on the ownership or operation of the Site by Settling Party when such ownership or operation commences after signature of this Settlement Agreement by Settling Party;
- e. liability based on Settling Party's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of OU2 and OU3 of the Site.

31. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that EPA may have against any person, firm, corporation, or other entity not a signatory to this Settlement Agreement.

32. Notwithstanding any other provisions of this Settlement Agreement, the Natural Resource Trustees reserve, and this Settlement Agreement is without prejudice to, the right to institute proceedings against Settling Party and its successors and assigns for:

- a. additional Claims for Natural Resource Damages related to the Site if conditions, factors or information not known to the Natural Resource Trustees at the time of the execution of this Settlement Agreement are discovered that, together with any other relevant information, indicates that there is a quantifiable: (1) injury to, (2) destruction of, or (3) loss of a natural resource of a type unknown or of a magnitude unknown, or of a magnitude significantly greater than was known or should have been known at the time of execution of this Settlement Agreement; or
- b. liability for damages for injury to, destruction of, or loss of natural resources resulting from any new incident, event or release of oil or hazardous substances not caused by or resulting from Existing Contamination or brought onto the Property as part of the Removal Action, or caused by or resulting from an EPA-approved work plan, or otherwise ordered by EPA.

XII. COVENANTS BY SETTLING PARTY

33. **Covenants by Settling Party.** Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, the Agencies, or their contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on 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 arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
- c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

34. Except as provided in Paragraph 36 (claims against other PRPs) and Paragraph 41 (res judicata and other defenses), the covenants in this Section shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section XI (Reservations of Rights by the Agencies), other than in Paragraph 30.a (liability for failure to meet a requirement of the Settlement Agreement) or 30.b (criminal liability), but only to the extent that Settling Party's claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

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

36. Settling Party agrees 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 for response costs and for natural resource damages and assessment costs relating to the Site against any other person who is a potentially responsible party (PRP) under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION

37. Except as provided in Paragraph 36 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XII (Covenants by Settling Party), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement 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).

38. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability 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 Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all

response costs incurred or to be incurred, at or in connection with the Property, by the United States or by any other person, except for the State; provided, however, that if any of the Agencies exercise rights under the reservations in Section XI (Reservations of Rights by the Agencies), other than in Paragraphs 30.a (liability for failure to meet a requirement of the Settlement Agreement) or 30.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions or natural resource damages that are within the scope of the exercised reservation.

39. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party 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).

40. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party 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 Agreement.

41. In any subsequent administrative or judicial proceeding initiated by EPA, or the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party 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 by EPA, or the United States on behalf of EPA, 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 Covenants by the Agencies set forth in Section X.

42. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA or the Federal Trustee receives from such Settling Party the respective payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 38, and that, in any action brought by the United States related to the “matters addressed,” Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XIV. PROPERTY REQUIREMENTS

43. **Agreements Regarding Access and Non-Interference.** Settling Party shall, with respect to its Affected Property:

a. Provide the United States, the State, potentially responsible parties who have entered or may enter into an agreement with the United States or the State for performance of response actions at the Site (hereinafter “Performing Parties”), and their representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) verifying any data or information submitted to the United States or the State;
- (2) conducting investigations regarding contamination at or near the Site;
- (3) obtaining samples;
- (4) assessing the need for, planning, implementing, or monitoring response actions;
- (5) inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents;
- (6) assessing Settling Party’s compliance with the Settlement Agreement;
- (7) 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 Agreement; and
- (8) implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site.

44. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Settling Party shall cooperate with EPA’s and the State’s efforts to secure and ensure compliance with such institutional controls.

45. Notice to Successors-in-Title.

Settling Party shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

- a. notify the proposed transferee that EPA is performing a response action regarding the Site; and
- b. notify the Agencies of the name and address of the proposed transferee and provide the Agencies a copy of the above notice that it provided to the proposed transferee.

46. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Settling Party shall continue to comply with its obligations under the Settlement Agreement.

47. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XV. NOTICES AND SUBMISSIONS

48. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA:

Rob Parker
EPR-SR
1595 Wynkoop St.
Denver, CO, 80202
Parker.robert@epa.gov

With copy to:

Amelia Piggott
Piggott.amelia@epa.gov

As to Respondent:

Big Hoss Properties, LLC
c/o Burton Lumber
1170 South 4400 West
Salt Lake City, Utah 84104
Attn: Dan Burton and Bob Burton

As to DOI:

Field Supervisor
U.S. Fish and Wildlife Service Utah Ecological Services Field Office
2369 W. Orton Circle, Suite 50
West Valley City, UT 84119

With a copy to:

Chris Cline
NRDAR Project Manager
U.S. Fish and Wildlife Service Utah Ecological Services Field Office
2369 W. Orton Circle, Suite 50
West Valley City, UT 84119
Phone: (385) 285-7910

Email: chris_cline@fws.gov

As to the State Natural Resource Lead Trustee:

Kimberly Shelley, Executive Director
Utah Department of Environmental Quality 195 North
1950 West
Salt Lake City, UT 84111

With a copy to:

Kimberlee McEwan
Utah Attorney General's Office
P.O. Box 140873
Salt Lake City, UT 84114-0837

With a copy to:

Doug Bacon, Project Manager
Richardson Flat OU2 & 3
DERR P.O. Box 144840
Salt Lake City, Utah 84114-4840

As to the State Natural Resource Co-Trustees:

Brian Steed, Executive Director
Utah Department of Natural Resources
1594 West North Temple
P.O. Box 145610
Salt Lake City, UT 84114-5610

With a copy to:

Fredric Donaldson
Utah Attorney General's Office
1594 West North Temple, Suite 300
Salt Lake City, UT 84114-0873

XVI. INTEGRATION/APPENDICES

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

Appendix A is the Statement of Work for Development;

Appendix B is a map of the Site;

Appendix C is a legal description of the Property;

Appendix D is the Environmental Covenant; and

Appendix E is the Federal Trustee Payment Instructions.

XVII. PUBLIC COMMENT

50. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVIII. EFFECTIVE DATE

51. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 50 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Digitally signed by BETSY
SMIDINGER
Date: 2021.03.17
03:16:23 -06'00'

Dated

Betsy Smidinger
Assistant Regional Administrator
Office of Ecosystems Protection and Remediation
U.S. EPA Region 8

Digitally signed by
KENNETH SCHEFSKI
Date: 2021.03.16
16:57:18 -06'00'

Dated

Kenneth C. Schefski
Regional Counsel
U.S. EPA Region 8

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

1/15/2021
Dated

/s/ Nathaniel Douglas
Nathaniel Douglas
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

IT IS SO AGREED:

FEDERAL TRUSTEE

UNITED STATES DEPARTMENT OF THE INTERIOR

PEG ROMANIK Digitally signed by PEG ROMANIK
Date: 2021.01.19 12:04:58 -05'00'

Dated

Peg Romanik
Associate Solicitor
Division of Parks and Wildlife
Office of the Solicitor
United States Department of the Interior

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

FEDERAL TRUSTEE

MATTHEW HOGAN Digitally signed by MATTHEW
HOGAN
Date: 2021.02.02 14:22:54 -07'00'

Dated

Noreen A. Walsh
Regional Director
U.S. Fish and Wildlife Service
Department of Interior Regions 5 and 7
134 Union Boulevard, Suite 400
Lakewood, CO 80228

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

STATE TRUSTEES

02/11/2021


Kim Shelley (Feb 11, 2021 17:18 MST)

Dated

Kimberly Shelley
State of Utah Natural Resources Lead Trustee

3/2/2021



Dated

Brian Steed
State of Utah Natural Resources Co-Trustee

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

BIG HOSS PROPERTIES LLC

January 4, 2021

Dated



Robert A. Burton
Manager
Big Hoss Properties, LLC