

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF: Anaconda Copper Mine	)	
	)	CERCLA Dkt. No. _____
	)	
	)	SETTLEMENT AGREEMENT
	)	AND ORDER ON CONSENT
	)	FOR REMOVAL ACTION BY
	)	BONA FIDE PROSPECTIVE
	)	PURCHASER PURSUANT TO
SINGATSE PEAK SERVICES, LLC,	)	THE COMPREHENSIVE
	)	ENVIRONMENTAL RESPONSE,
Respondent.	)	COMPENSATION, AND
	)	LIABILITY ACT, 42 U.S.C.
	)	§§ 9604, 9606, 9607, 9622

**I. INTRODUCTION**

1 This Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser (“Settlement Agreement”) is voluntarily entered into by and between the United States on behalf of the Environmental Protection Agency (“EPA”) and Singatse Peak Services, LLC (“Purchaser”) (collectively, the “Parties”) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9601, *et seq.* Under this Settlement Agreement, Purchaser agrees to the performance of a removal action at or in connection with the property located at 102 Birch Drive in Yerington, Lyon County, Nevada, known as the “Anaconda-Yerington Mine Site” or the “Site.”

**II. JURISDICTION AND GENERAL PROVISIONS**

2 This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the undersigned Regional official, and the authority of the Attorney General to compromise and settle claims of the United States.

3 The Parties agree that the United States District Court for the District of Nevada will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action brought with respect to this Settlement Agreement.

4 EPA has notified the State of Nevada (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

5 The Purchaser represents that it is a bona fide prospective purchaser (“BFPP”) as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Section 101(40) during its ownership of the Site, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Site. In view, however, of the complex nature and significant extent of the removal action and Purchaser’s obligations to be undertaken in connection with the Site, and the risk of claims under CERCLA being asserted against Purchaser notwithstanding Section 107(r)(1) as a consequence of Purchaser’s activities at the Site pursuant to this Settlement Agreement, one of the purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section XVIII (Reservations of Rights by United States), potential liabilities as set forth in Section XVII (Covenant Not to Sue by the United States).

6 The resolution of this potential liability, in exchange for Purchaser’s performance of the obligations under this Settlement Agreement is in the public interest.

7 EPA and Purchaser recognize that this Settlement Agreement has been negotiated in good faith. EPA and Purchaser agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

### **III. PARTIES BOUND**

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

9 Purchaser shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement, and, where appropriate, receive a copy of this Settlement Agreement. Purchaser shall be responsible for any noncompliance with this Settlement Agreement by Purchaser, its contractors, subcontractors and representatives.

### **IV. DEFINITIONS**

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

a “Action Memorandum” shall mean the Request for a Time-Critical Removal Action at the Anaconda Yerington Mine Site, Yerington, Lyon County, Nevada, dated June 8, 2012, and included as Appendix C to this Settlement Agreement.

b “Anaconda Copper Mine Special Account” or “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), and in the Administrative Settlement Agreement for Response Costs and Technical Assistance Plan, EPA dkt # CERCLA 09-2008-0005.

- c “BFPP” shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).
- d “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 - 9675.
- e “Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or federal or state holiday. 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.
- f “Direct Extramural Costs” shall mean all direct costs that EPA pays toward external consultants or contractors to perform the work detailed in the Action Memorandum, and to implement the results of the Study as defined below.
- g “Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XXVI.
- h “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies or instrumentalities.
- i “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- j “Existing Contamination” shall mean:
  - i any hazardous substances, pollutants or contaminants present or existing on or under the Site as of the Effective Date;
  - ii any hazardous substances, pollutants or contaminants that migrated from the Site 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 Site after the Effective Date.
- k “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.
- l “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.

- m “OSC” shall mean the On-Scene Coordinator as defined in 40 C.F.R. § 300.5.
- n “Paragraph” shall mean a portion of this Settlement Agreement identified by an arabic numeral or a lower case letter.
- o “Parties” shall mean EPA and Purchaser.
- p “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- q “Settlement Agreement” shall mean this Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser and all appendices attached hereto (listed in Section XXIV). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.
- r “Purchaser” shall mean Singatse Peak Services, LLC.
- s “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 – 6992 (also known as the Resource Conservation and Recovery Act).
- t “Response Activities” shall mean the response actions anticipated by this Settlement Agreement as set forth in Paragraph 30 (a) – (c), but subject to limitation by the election requirements in Paragraph 30(c).
- u “Site” shall mean the Anaconda-Yerington Mine Site encompassing approximately 3,600 acres, located at 102 Birch Drive, Yerington, Lyon County, Nevada, and depicted generally on the map attached as Appendix A. The Site includes all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be.
- v “Study” shall mean the evaluation of the fluid management system (“FMS”) to determine the options available to ensure that the FMS is capable of handling the fluids expected to be managed during the five year period subsequent to the date on which Purchaser submits the Study for EPA review. The Study is further detailed in Appendix B.
- w “Supervising Contractor” shall mean the principal contractor retained by Purchaser to supervise and direct the implementation of the Work agreed to in this Settlement Agreement and to sign and approve the Final Report submitted concerning such Work.
- x “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

- y “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- z “Work” shall mean the activities Purchaser is required to perform under Paragraph 30 (b) of this Settlement Agreement, generally, the Purchaser’s performance of the Study.

## V. FINDINGS OF FACT

EPA and Purchaser agree that these Findings of Fact as stated below are relevant to the Agreement and not intended to be a complete recitation of the history of the Site or the activities thereon.

- 11 The Site is an abandoned, low-grade copper mine and extraction facility located in the Mason Valley, in Lyon County, Nevada. The Site is located approximately one mile west of Yerington, directly off of Highway 95. Approximately fifty percent of the Site is privately owned land, and the rest is land within the jurisdiction, custody and control of the United States Bureau of Land Management (“BLM”). The Site occupies 3,468.50 acres of disturbed land in a rural area, bordered to the north by residential acreage and open fields of alfalfa and onions, and to the east by Highway 95, which separates the Site from the city of Yerington, Nevada. To the south continues BLM range land, and to the west and southwest the Singatse mountains.
- 12 Facilities associated with historic mining operations at the Site include an open-pit mine, mill buildings, tailing piles, waste fluid ponds, and the adjacent residential settlement known as Weed Heights. A network of leach vats, heap leaching pads and evaporation ponds remains throughout the Site.
- 13 The Site began operation in or about 1918, originally known as the Empire Nevada Mine. In 1953, Anaconda Copper Mining Company (“Anaconda”) acquired and began operating the Site. In or about 1977, Atlantic Richfield Company (“ARC”) acquired Anaconda and assumed its operations at the Site. In June 1978, ARC terminated operations at the Site. In or about 1982, ARC sold its interests in the private lands within the Site to Don Tibbals, a local resident, who subsequently sold his interests with the exception of the Weed Heights community to Arimetco, Inc. (“Arimetco”), the current owner. Arimetco operated a copper recovery operation from existing ore heaps within the Site from 1989 to November 1999. Arimetco has terminated operations at the Site and sought protection from creditors in the United States Bankruptcy Court in Tucson, Arizona.
- 14 On April 27, 2011, Purchaser bought certain assets of Arimetco associated with the Site through a proceeding in the United States Bankruptcy Court in Tucson, Arizona.
- 15 During the 25-year operational period that Anaconda and ARC operated the Site, they removed approximately 360 million tons of ore and debris from the open pit mine, much of which now remains in tailings or heap leach piles. Anaconda and ARC benefited

copper ores from the mine by two separate methods depending on the type. The mined ore contained copper oxides in the upper portion of the open pit and copper sulfides in a lower portion of the open pit. During on-Site milling operations, a copper precipitate was produced from the oxide ore and a copper concentrate was produced from the sulfide ore. In the first of two processing methods for the oxide ore, the operator placed the copper oxide ore in leaching vats and leached out copper with sulfuric acid. The copper precipitated out after passing over iron scraps. The second process, which started in 1965, used dilute sulfuric acid spread over the top of low grade oxide ore piles from which copper would leach out with the resulting acidic solution, with the copper again precipitated out after passing over iron scraps. Anaconda and ARC utilized this dump leaching method for over 10 years at the W-3 dump at the Site. To facilitate their leaching operations, Anaconda and ARC produced their own sulfuric acid at the Site at a rate of over 400 tons per day. To process the copper sulfide ore, Anaconda and ARC crushed the ore and produced copper, concentrate by flotation, with lime (calcium oxide) added to maintain an alkaline pH. The resulting copper concentrate was shipped off-Site for final processing.

- 16 Arimetco had used solvent extraction and electro-winning in its operations to extract copper from copper oxide ore, including the reprocessing of some ore first processed by Anaconda or ARC. The process used by Arimetco involved heap leaching the ore with sulfuric acid and collecting the pregnant acidic solution in a fluid management system with various collection ponds. Arimetco then refined the copper through an electro-winning operation, and recirculate the acid solution from the electro-winning vats back to the leach heaps. The leach heap pads continue to drain acidic fluids.
- 17 In 1999, at the request of the Yerington Paiute Tribe, EPA began an evaluation of the Site to determine the effectiveness of the existing pump-back system in preventing off-Site migration of contaminated groundwater and to determine whether any domestic wells had been impacted by the Site. EPA collected groundwater samples from on-Site monitoring wells, from the Wabuska Drain, and from nearby residential and community wells, including the wells of the Yerington Paiute Tribe. In November 1999, the Nevada Division of Environmental Protection (“NDEP”) collected additional samples. Analyses of samples from the monitoring wells indicated concentrations of arsenic at 50 to 100 parts per billion (“ppb”), cadmium at 8 to 20 ppb, iron up to 1,400,000 ppb, mercury at 0.4 to 0.7 ppb, and nickel at 100 to 1200 ppb. In addition, samples from a shallow groundwater monitoring well located less than a quarter mile from the Site contained concentrations of arsenic at 60 ppb, copper at 30 ppb, and iron at 4,300 ppb. Drinking water maximum contaminant levels, for comparison, are as follows: arsenic at 10 ppb; cadmium at 5 ppb; iron at 600 ppb; mercury at 2 ppb; and nickel at 100 ppb.
- 18 Results of surface water analyses indicated elevated concentrations of arsenic, iron, lead, manganese and sulfate immediately downgradient of the Site in the Wabuska Drain. These concentrations diminished with distance from the Site along the length of the drain.
- 19 In October 2000, EPA conducted an Expanded Site Inspection at the Site, which consisted of collecting groundwater samples from six monitoring wells on and around the Site, and samples of standing water from a below ground cellar, pregnant leachate

solution, tailings and leachate salts. These samples again confirmed high concentrations of contaminants, including beryllium, cadmium, chromium, lead, mercury, and selenium. The groundwater monitoring well samples revealed levels above the regulatory limits for drinking water of arsenic, beryllium, cadmium, chromium, lead, and selenium. EPA concluded from this study that toxic heavy metals exist in source materials at the Site and have contaminated groundwater.

20 Early in April 2006, the United States Fish and Wildlife Service reported observing a dead bird nearby some standing fluid on the sulfide tailings during the course of a natural resource damage assessment. In considering whether the bird mortality resulted from the ingestion of the fluid, which appeared to be the result of precipitation that had dissolved existing residues from past mining activities, EPA obtained and analyzed fluid samples from five areas of standing fluids on the north end of the Site. The sampling areas included the Arimetco pregnant solution collection ditch adjacent to the Vat Leach Heap Leach Pad. Preliminary analytical results of the Arimetco fluid sampled exhibited a pH of 2.7, uranium at 8,900 ug/l and elevated metals at approximately the same magnitude as seen in EPA's October 2000 sampling of similar pregnant solutions. Fluids with such low pH and elevated metals potentially pose acute toxicity to wildlife. Additionally, the elevated uranium concentrations pose a threat of substantial harm to the public health or welfare or the environment. In 2007 and 2008, EPA became aware of additional bird casualties at the Site.

21 In 2006, EPA completed a removal action to address a damaged Arimetco heap leach draindown evaporation pond, and conducted a removal assessment of the remaining Arimetco heap leach draindown ponds from July through August 2007. EPA also conducted a remedial investigation of the ponds and heap leach pads in September through October 2007. Samples from sediment below the ponds contained metals (copper, iron, and lead) and total petroleum hydrocarbons ("TPH") at concentrations exceeding industrial or residential soil PRGs. Samples from heap leach draindown solutions exhibited pH and specific conductance values ranging from 1.9 to 2.8 and 31,000 to 45,000 microhmos per centimeter, respectively. Metals, specifically aluminum, antimony, arsenic, beryllium, boron, cadmium, chromium, copper, iron, lead, manganese, mercury, thallium and zinc exceeded primary or secondary drinking water maximum contaminant levels ("MCLs"). Radiological measurements from the heap leach draindown solutions generally exceeded the MCL for thorium isotopes 228, 230, and 232; uranium isotopes 234, 235, 238; and gross alpha particles. TPH (as diesel and kerosene) in the same samples ranged from 750 to 2,100 micrograms per liter ("µg/L"), and all but one draindown solution sample exceeded the state of Nevada cleanup guideline of 1,000 µg/L for TPH. In August 2007 and from August through October 2008, EPA conducted additional removal actions to close inactive draindown ponds and repair the active draindown ponds for the Arimetco heap draindown system, as well as conduct a removal of high TPH soils.

22 EPA has confirmed that over 3,000 acres of tailings with a potentially high concentrations of metals remain at the Site, and that the abandoned process fluids emanating from the tailings have a low pH and contain excessive quantities of arsenic,

cadmium, chromium, copper, and iron. Also present are radionuclides, including uranium, thorium, and radium.

- 23 Salts precipitating from the process fluids emanating from the tailings contain even higher concentrations of such metals and are filling in available space within the fluid pond system. Precipitant accumulation in the space in the fluid management ponds associated with the heap leach system reduces the fluid storage capacity from the system, thereby reducing the available space for fluids to accumulate and evaporate, thereby leading to greater risks of discharges over the sides of the ponds. Exposure to the tailings fluids and salts may occur to workers at the Site, trespassers and, as demonstrated by dead birds at the Site, wildlife. Deterioration of ponds and associated ditches may lead to a release of these materials into the environment.
- 24 In February 2012, the volume of fluid reporting to the leak detector in one particular pond, the Vat Leach Tailings (“VLT”) Pond, increased dramatically, indicating that a leak exists in the top liner. There is no leak detection system associated with the bottom liner of the VLT Pond, so it is not possible to evaluate the integrity of the bottom liner. The fluid level in VLT Pond was lowered in order to minimize this leakage, although reducing the pond level also reduces the fluids storage capacity.
- 25 By agreement with the Nevada Department of Environmental Protection (“NDEP”) EPA has assumed the lead agency role for this Site.
- 26 Since acquisition Purchaser has obtained permits, posted the first cash bond for the Site, initiated its exploration program, initiated its exploration program, and cooperated with EPA, the State, ARC and the local community. Purchaser has provided to EPA a Consent for Access dated April 8, 2011, which is incorporated into and attached as Appendix D. On November 6, 2009, EPA provided to Purchaser a “Reasonable Steps” letter that documents EPA’s consideration of “reasonable steps” as of the date of the letter for the purpose of complying with the requirements at 42 U.S.C. § 9601(4)(D), which is attached as Appendix E.
- 27 The Administrative Record supporting this action is available for review at the EPA Region IX Records Center, located at 95 Hawthorne Street, San Francisco, California (94105).

## **VI. DETERMINATIONS**

- 28 Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:
- a The Anaconda-Yerington Mine Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
  - b The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

- c Purchaser is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d The conditions described in Section V 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).
- e The Response Activities provided in this Settlement Agreement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## **VII. AGREEMENT**

29 In consideration of and in exchange for the United States' Covenant Not to Sue in Section XVII and Response Activities, EPA and Purchaser agree to comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## **VIII. WORK TO BE PERFORMED**

- 30 Purchaser shall perform, in addition to any actions Purchaser may conduct to perform its reasonable steps, as anticipated in 42 U.S.C. § 9601(40)(D), the following actions:
- a. Purchaser will fund one-half (50%) of the total of EPA’s Direct Extramural Costs, up to a maximum of \$420,000.00, to reline the Vat Leach Tailings (VLT) Pond and repair four specific areas of the Perimeter Ditches as described in the Action Memorandum. Within thirty (30) days of the Effective Date, Purchaser shall make an initial payment of [75% of \$420,000.00 or \$315,000.00] in accordance with the payment instructions in Paragraph 40.
  - b. Purchaser will perform the Study, which is to be an evaluation of the FMS as further described in Appendix B. The conclusions of the Study will recommend appropriate activities and operations to provide fluid management capacity in the FMS for the subsequent five years from the date Purchaser submits the Study to EPA for review.
  - c. Purchaser may elect to fund one-half (50%) of the total of EPA’s Direct Extramural Costs to implement any conclusions of the Study, if any, if EPA elects to implement any conclusions of the Study. The election by either Party under this Paragraph shall be made by notice in writing to the other Party. Either Party’s failure to make its respective election shall exclude the implementation of any such conclusions from the definition of “Response Activities.”

Purchaser shall perform the above actions in accordance with all applicable local, 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 Agreement

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.

31 Work Plan and Implementation.

- a Within 30 days after the Effective Date, Purchaser shall submit to EPA for approval a draft Work Plan for performing the Work. The draft Work Plan shall provide a description of, and an expeditious schedule for Work.
- b EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Purchaser shall submit a revised draft Work Plan within 30 days of receipt of EPA’s notification of the required revisions. Purchaser shall implement the Work Plan as approved or modified by EPA in writing by EPA in accordance with the schedule approved by EPA. Once approved, approved with modifications, or modified by EPA, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.
- c Purchaser shall not commence any Work except in conformance with the terms of this Settlement Agreement. Purchaser shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval or modification pursuant to Paragraph 31(b).

32 Health and Safety Plan. Within 30 days after the Effective Date, Purchaser shall submit to EPA a copy of Purchaser’s Health and Safety Plan currently in place at the Site.

33 Post-Removal Site Control. In accordance with the Work Plan, Purchaser shall submit a proposal for post-removal site control regarding the Work and consistent with Section 300.415(l) of the NCP and considering OSWER Directive No. 9360.2-02. Upon EPA approval, Purchaser shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements for the Work.

34 Reporting.

- a Purchaser shall submit a written progress report to EPA concerning the Work every 60th day after the date of receipt of EPA’s approval of the final Work Plan until completion of the Work, unless otherwise directed in writing by the OSC. These reports shall describe, if applicable, any significant developments during the preceding period, including the actions performed as applicable and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.
- b Purchaser shall submit two (2) copies of all plans, reports or other submissions required by this Settlement Agreement or any approved work plan. Purchaser may submit such documents in electronic form to be specified by EPA.

35 Final Report. Within 30 days after completion of the Work, Purchaser shall submit for EPA review and approval in accordance with Section XXV (Notice of Completion) a final report summarizing the Work. The final report shall conform, as applicable, with the requirements set forth in Section 300.165 of the NCP entitled “OSC Reports.” The final report shall include a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by the Supervising Contractor who supervised or directed the preparation of said report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is 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.”

36 Off-Site Shipments.

- a Purchaser shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-State waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility’s state and to the OSC. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.
  - i Purchaser shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Purchaser shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
  - ii The identity of the receiving facility and state will be determined by Purchaser following the award of the contract for the removal action. Purchaser shall provide the information required above as soon as practicable after the award of the contract and before the Waste Material is actually shipped.
- b Purchaser may ship Waste Material from the Site to an off-Site facility only if it verifies, prior to any shipment, that the off-Site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that

the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

The requirements of this Paragraph 36 shall not apply to Purchaser's shipments of any material from the Site apart from the Response Activities.

**IX. AUTHORITY OF THE ON-SCENE COORDINATOR**

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

**X. PAYMENT OF RESPONSE COSTS**

38 EPA shall prepare and provide to Purchaser an itemized cost summary (SCORPIOS Report) stating all Direct Extramural Costs incurred by EPA in performance of the Response Activities provided in Paragraph 30(a) and (c). EPA shall first apply any advance payment made in accordance with Paragraph 30(a) against such costs stated in any invoice. EPA may, in its discretion, from time to time submit partial invoices to Purchaser; however, EPA shall make all efforts to submit invoices stating each cost incurred within six months of incurring such costs.

39 Within thirty (30) days after receipt of any invoice, Purchaser shall pay to EPA all unreimbursed Direct Extramural Costs that the United States has incurred in the performance of this Settlement Agreement and as stated in any written invoice to Purchaser, up to fifty percent of the Direct Extramural Costs of the Response Activities. EPA shall maintain payments from Purchaser in the Anaconda Copper Mine Special Account (the "Special Account"). Amounts paid by Purchaser under this Settlement Agreement and deposited into the Special Account shall be retained and used to conduct or finance the Response Activities, or to be transferred by EPA to the EPA Hazardous Substance Superfund. Purchaser may, in its discretion, advance additional funds for deposit into the Special Account. The Parties agree that the total of all payments from Purchaser for the Response Activities provided in this Settlement Agreement shall not exceed fifty percent of the Direct Extramural Costs identified in the Action memorandum, up to a maximum of \$420,000.00, in addition to any Interest or penalties as provided in Section X or to any additional payments as agreed by Purchaser, plus fifty percent of the Direct Extramural Costs that EPA may incur implementing the conclusions of the Study for a period of 60 consecutive months in accordance with Paragraph 30(c).

40 Purchaser may make all payments for Direct Extramural Costs to the Special Account by Electronic Funds Transfer ("EFT") in accordance with the following EFT procedures:

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”

- 41 At the time of each payment, the Purchaser shall send a written notice of payment identifying the Site name and the EPA docket number for this Settlement Agreement. The statement also shall include the EPA Site ID # 09GU. At the time of each payment, Purchaser shall send the written notice of payment to:

David Seter  
U.S. Environmental Protection Agency, Region 9  
(SFD 8-2)  
75 Hawthorne Street  
San Francisco, California 94105

and to:

David Wood  
U.S. Environmental Protection Agency, Region 9  
(PMD-6)  
75 Hawthorne Street  
San Francisco, California 94105

- 42 In the event that available funds within the Special Account are insufficient to cover incurred costs for the Removal Action, EPA shall submit subsequent invoices for reimbursement, as provided in Paragraph 39, subject to the limits and directions stated in this Section VIII and Section X. If Purchaser fails to timely reimburse EPA for costs stated in any invoice that EPA has provided to Purchaser, EPA may, in its discretion, halt further conduct of the Response Activities until Purchaser has made such reimbursement and paid all appropriate Interest and penalties.

## **XI. ACCESS**

- 43 The Response Activities anticipated in this Settlement Agreement are all within the scope of access provided for in the Consent for Access, Appendix D.
- 44 Purchaser shall provide a copy of this Settlement Agreement to any current lessee, sublessee, and other party with rights to use the Site as of the Effective Date.

**XII. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION**

- 45 Purchaser shall preserve all documents and information relating to the Work for 10 years after the completion of the Work and shall submit them to EPA upon completion of the Work required by this Settlement Agreement, or earlier if requested by EPA.
- 46 Purchaser may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Settlement Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as privileged or confidential by Purchaser. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2 Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Purchaser.

**XIII. DISPUTE RESOLUTION**

- 47 Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. If EPA contends that Purchaser is in violation of this Settlement Agreement, EPA shall notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to this Section.
- 48 If Purchaser disputes EPA's position with respect to Purchaser's compliance with this Settlement Agreement or objects to any EPA action taken pursuant to this Settlement Agreement, Purchaser shall notify EPA in writing of its position unless the dispute has been resolved informally. EPA may reply, in writing, to Purchaser's position within 15 days of receipt of Purchaser's notice. EPA and Purchaser shall have 60 days from EPA's receipt of Purchaser's written statement of position to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted orally but must be confirmed in writing.
- 49 Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Region 9 Director of Superfund Division level will review the dispute on the basis of the parties' written statements of position and issue a written decision on the dispute to Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Purchaser's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Purchaser shall fulfill the

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

#### **XIV. FORCE MAJEURE**

- 50 Purchaser agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Purchaser, or of any entity controlled by Purchaser, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Purchaser's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work.
- 51 If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Purchaser shall notify EPA orally within 30 days of when Purchaser first knew that the event might cause a delay. Within 15 days thereafter, Purchaser shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Purchaser from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.
- 52 If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event 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* event 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* event, EPA will notify Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.
- 53 If Purchaser elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), Purchaser shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a *force majeure* event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the

requirements of Paragraphs 56 and 57 above. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement Agreement.

#### **XV. INTEREST AND STIPULATED PENALTIES**

- 54 In the event that any payment required by Paragraphs 30(a) or 39 is not made by the due date, Interest shall accrue on the unpaid balance from the due date through the date of payment.
- 55 If any amounts due to EPA under Paragraphs 30(a) or 39 are not paid within 60 days after the due date, Purchaser shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 54, \$1000 per day that such payment is late. If Purchaser fails to submit the draft Work Plan or any revisions by the dates due under Paragraph 31, or fails to implement the Work Plan by the dates due in any approved schedule, Purchaser shall pay to EPA, as a stipulated penalty, \$500 per day that such deliverable or activity is late.
- 56 Stipulated penalties are due and payable within 60 days of the date that EPA demands in writing payment of the penalties. All payments to EPA under this Paragraph shall be made as otherwise directed in Paragraph 40, including the provision of notice to EPA's regional staff as directed in Paragraph 41.
- 57 Penalties shall accrue as provided in this Section regardless of whether EPA has notified Purchaser of the violation or made a demand for payment, but need only be paid on demand. All penalties shall begin to accrue on the day after payment is 60 days past due, and shall continue to accrue through the final day of correction.
- 58 Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the Interest or penalties that has accrued pursuant to this Settlement Agreement.
- 59 All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Purchaser of any deficiency; and 2) with respect to a decision by the EPA management official under Paragraph 49 of Section XIII (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 herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.
- 60 The payment of penalties shall not alter in any way Purchaser's obligation to complete performance of the Work required under this Settlement Agreement.

- 61 Penalties shall continue to accrue during any dispute resolution period, except as provided in Paragraph 59 above, but need not be paid until 30 days after the dispute is resolved by agreement or by receipt of EPA's decision.
- 62 If Purchaser fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Purchaser shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 56. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Purchaser's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. 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 Agreement.
- 63 In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 69 of Section XVIII (Reservation of Rights by United States), Purchaser shall be liable for a stipulated penalty in the amount of \$50,000.00.

#### **XVI. CERTIFICATION**

- 64 By entering into this agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Purchaser is not materially accurate and complete, the Settlement Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

#### **XVII. COVENANT NOT TO SUE BY UNITED STATES**

- 65 In consideration of the actions that will be performed and the payments that will be made by Purchaser under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Response Activities addressed in this Settlement Agreement or for response costs incurred by the EPA prior to the Effective Date. Further, the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA,

42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination so long as Purchaser continues to meet the requirements of 42. U.S.C. § 9601(40)(A)-(H). This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of all obligations under this Settlement Agreement. This covenant not to sue extends only to Purchaser and does not extend to any other person.

### **XVIII. RESERVATION OF RIGHTS BY UNITED STATES**

66 Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or the United States from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary.

67 The covenant not to sue set forth in Section XVII above does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:

- a claims based on a failure by Purchaser to meet a requirement of this Settlement Agreement;
- b criminal liability;
- c liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in the Workplan, the Work, or otherwise ordered by EPA;
- e liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- f liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and
- g liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

68 With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action is attributable to

Existing Contamination and the Purchaser has complied with all of the requirements of 42. U.S.C. § 9601(40).

69 Work Takeover. In the event EPA determines that Purchaser has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Prior to taking over the Work, EPA will issue written notice to Purchaser specifying the grounds upon which such notice was issued and providing Purchaser with 30 days within which to remedy the circumstances giving rise to EPA's issuance of the notice. Purchaser may invoke the procedures set forth in Section XIII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

### **XIX. COVENANT NOT TO SUE BY PURCHASER**

70 Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination or the Response Activities anticipated in 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 claim arising out of response actions regarding the Response Activities, including any claim under the United States Constitution, the Nevada 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 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law.

71 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).

72 Purchaser reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private

person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Purchaser's plans, reports, other deliverables, or activities.

## **XX. CONTRIBUTION**

- 73 Nothing in this Settlement Agreement precludes the United States or Purchaser from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement, including any claim Purchaser may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).
- 74 In the event of a suit or claim for contribution brought against Purchaser, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC), the Parties agree that this Settlement Agreement shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Purchaser would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all Response Activities taken or to be taken provided in Paragraph 30 and all Direct Extramural Costs incurred prior to the Effective Date by the United States or any costs incurred by any other person with respect to Existing Contamination.
- 75 In the event Purchaser were found, in connection with any action or claim it may assert to recover costs incurred prior to the Effective Date with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of the Response Activities taken in compliance with this Settlement Agreement or at the direction of the OSC, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Purchaser has resolved its liability for all Response Activities taken or to be taken and all response costs incurred prior to the Effective Date by the United States or by any other person with respect to Existing Contamination.
- 76 Purchaser agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

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

#### **XXI. RELEASE AND WAIVER OF LIEN(S)**

77 Subject to the Reservation of Rights in Section XVIII of this Settlement Agreement, upon satisfactory completion of the Work specified in Section VIII (Work to be Performed), and the payment of all costs due under Section X, EPA agrees to release and waive any lien it may have on the Site now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred by EPA in responding to the release or threat of release of Existing Contamination prior to the Effective Date of this Settlement Agreement or for the Response Activities addressed in this Settlement Agreement.

#### **XXII. INDEMNIFICATION**

78 Purchaser shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out the Work pursuant to this Settlement Agreement. In addition, Purchaser agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Purchaser, Purchaser's officers, directors, employees, agents, contractors, subcontractors and any persons acting on Purchaser's behalf or under Purchaser's control, in carrying out the Work pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement Agreement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.

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

80 Purchaser waives all claims 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 Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Purchaser shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

### **XXIII. MODIFICATION**

- 81 The OSC may make minor modifications to any plan or schedule for the Response Activities set forth in Paragraph 30 in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.
- 82 If Purchaser seeks permission to deviate from any approved work plan, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from the OSC.
- 83 No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

### **XXIV. APPENDICES**

- 84 The following appendices are attached to and incorporated into this Settlement Agreement.
- a Appendix A shall mean the map of the Site.
  - b Appendix B shall mean the Scope of Work.
  - c Appendix C shall mean the Action Memorandum
  - d Appendix D shall mean the Consent to Access.
  - e Appendix E shall mean the Reasonable Steps Letter.

### **XXV. NOTICE OF COMPLETION**

- 85 When EPA determines, after EPA's review of the Final Report, that the Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including continued compliance with CERCLA Section 101(40) with respect to the Site in accordance with Paragraph 5 of this Settlement Agreement, post-removal site controls and record retention, EPA will provide written notice to Purchaser. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

**XXVI. EFFECTIVE DATE**

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

**XXVII. DISCLAIMER**

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

**XXVIII. PAYMENT OF COSTS**

88 If Purchaser fails to comply with the terms of this Settlement Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement Agreement or otherwise obtain compliance.

**XXIX. NOTICES AND SUBMISSIONS**

89 Except as otherwise noted in this Settlement Agreement, any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to Purchaser shall be addressed to:

Trey Harbert  
Environmental Manager  
Singatse Peak Services  
517 West Bridge Street, Suite A  
Yerington, Nevada 89447

With copies to:

Carla Consoli  
Lewis and Roca  
40 North Central Avenue, Suite 1900  
Phoenix, AZ 85012

Submissions to U.S. EPA shall be addressed to:

David Seter  
United States Environmental Protection Agency  
Region IX (SFD-8)

75 Hawthorne Street  
San Francisco, California 94105  
seter.david@epa.gov

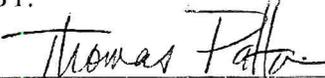
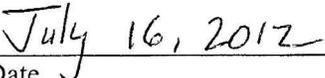
**XXX. PUBLIC COMMENT**

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

The undersigned representative of Purchaser certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

IT IS SO AGREED:

BY:

   
\_\_\_\_\_  
Thomas Patton Date  
President  
Singatse Peak Services, LLC

IT IS SO AGREED:

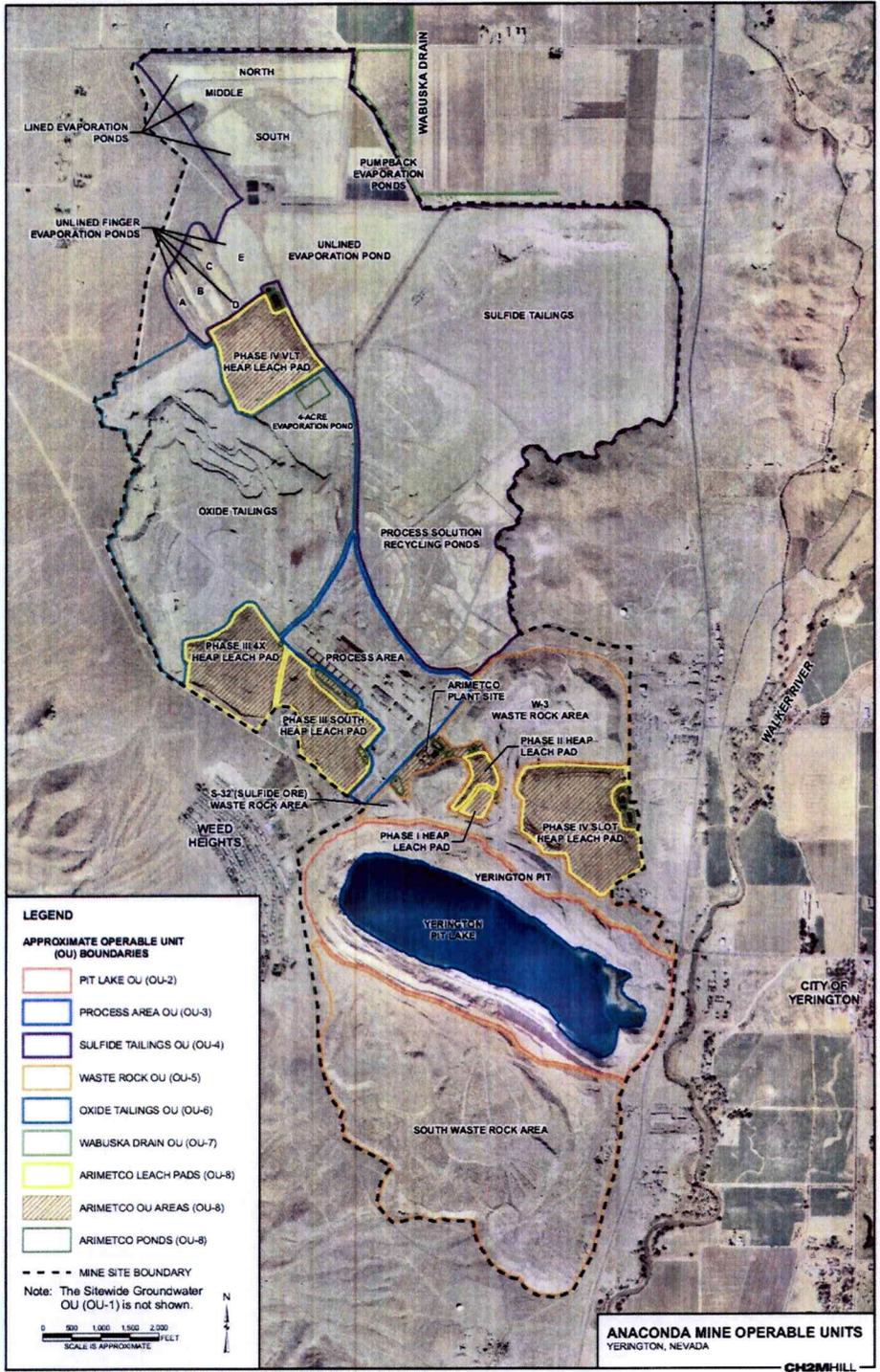
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

\_\_\_\_\_  
Michael Montgomery Date  
Assistant Director  
Superfund Division  
Environmental Protection Agency Region IX

# APPENDIX A

## Anaconda Copper Site Map



## APPENDIX B – Scope of Work

### SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION BY BONA FIDE PROSPECTIVE PURCHASER ANACONDA-YERINGTON MINE SITE

#### *FLUID MANAGEMENT SYSTEM CAPACITY STUDY*

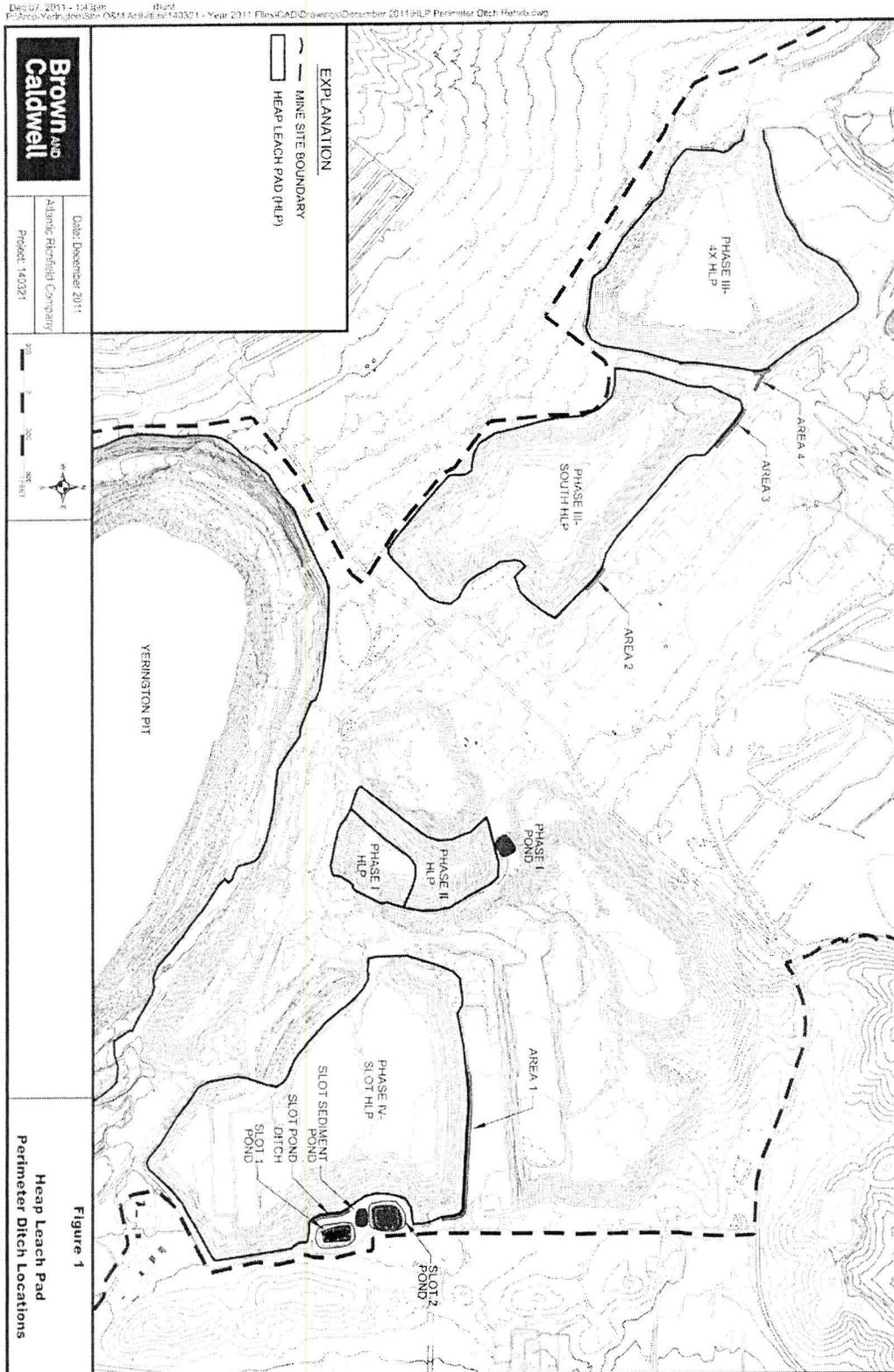
The Scope of the Study is defined as follows:

- (1) refine AR/BC water balance calculations as presented in the Technical Memorandum “Arimetco FMS Water Balance and Short-Term Mitigation Alternatives” (September 12, 2011);
- (2) Achieve the design goal of providing adequate capacity to handle the 25-year 24-hour storm per NAC 445A.433;
- (3) Project the ten-year capacity needs for the FMS; and
- (4) Evaluate alternatives to meet FMS capacity and provide physical integrity of the FMS for a minimum period of five years, to include:
  - a. Bringing back into service the former Arimetco FMS ponds that are currently non-operational by re-lining the ponds to meet NAC requirements; and
  - b. Rehabilitating ponds that are currently operational to include:
    - i. re-lining ponds to meet NAC requirements to improve integrity;
    - ii. evaluating whether and how the contents of the EPA 4-acre Pond (aka the FMS Pond) could be beneficially reused or, if not reused, appropriately managed to allow the pond to function as intended thereby increasing the capacity of the pond;
    - iii. if the EPA Pond cannot be made more functional, indentifying an alternative(s) to the EPA Pond to create sufficient capacity to manage the FMS drain down fluids. This includes expansion of the existing EPA Pond by extending the berms vertically to create sufficient capacity for five years. If this alternative is chosen, the liner extension would match the existing liner system installed by EPA. The existing liner system is reportedly a single composite liner that does not meet NAC 445 design criterion. SPS requested the as-built drawings for the EPA pond;
    - iv. other options as may be developed during the Study.

# APPENDIX B

## Scope of Work

### AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION BY BONA FIDE PROSPECTIVE PURCHASER ANACONDA-YERINGTON MINE SITE



## APPENDIX C

### Action Memorandum



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

#### MEMORANDUM

**SUBJECT:** Request for a Time-Critical Removal Action at the Anaconda Yerington Mine Site, Yerington, Lyon County, Nevada

**FROM:** Tom Dunkelman, On-Scene Coordinator  
Emergency Response Section (SFD-9-2)

**TO:** Daniel Meer, Assistant Director (SFD-9)  
Response, Planning and Assessment Branch

**THROUGH:** Harry Allen, Chief  
Emergency Response Section (SFD-9-2)

#### **I. PURPOSE**

The purpose of this memorandum is to request and document approval for a response action to incur direct extramural costs of up to \$840,000.

The proposed response action would mitigate threats to human health and the environment posed by the presence of heavy metals and corrosive liquids at the Anaconda Copper Site, near the City of Yerington, in Lyon County, Nevada (the "Site"). The response action proposed in this memorandum would address the management of certain heap leach fluid ponds and ditches that pose a substantial threat to the public health and welfare and the environment, particularly including relining the Vat Leach Tailings ("VLT") pond and conducting repairs to certain segments of the heap leach perimeter ditches. Information, discussed below, suggests that the fluids from the VLT pond are leaking to the subsurface, and risk overflowing to create broad surface exposures to highly acidic liquids. EPA has addressed other leach fluid ponds and portions of the perimeter ditch system in previous removal actions, but the VLT pond and these specific sections of the perimeter ditch system have not been previously addressed. EPA anticipates agreements with Atlantic Richfield Company ("ARC") and Singatse Peak Services ("SPS") will reimburse EPA's direct extramural costs incurred in this response, as discussed in the included Enforcement Section of this memorandum.

Conditions presently exist at the Site that, if not addressed by implementing the response action documented in this memorandum, may lead to continued off-Site migration and the release of contaminants, primarily low pH (extremely acidic) liquids and metals such as aluminum, arsenic, barium, beryllium, cadmium, chromium, cobalt,

## APPENDIX C

### Action Memorandum

copper, iron, magnesium, manganese, nickel, selenium, nickel, vanadium, and zinc. Other hazardous substances that would be subject to the proposed response action include radio-nuclides such as uranium, radium and thorium. As discussed in this memorandum, all of these hazardous substances, if unaddressed, may pose an imminent and substantial endangerment to the public health or welfare or the environment.

The proposed response to the hazardous substances is consistent with removal activities authorized pursuant to Section 104(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9604(a), and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300.415. This response action also incorporates Site investigation activities also authorized by Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b).

#### II. SITE CONDITIONS AND BACKGROUND

Site Status: Non-NPL  
Category of Removal: Emergency/Time-Critical  
CERCLIS ID: NVD083917252  
SITE ID: SSID#09GU (OU8)

##### A. Site Description

###### 1. Physical location

The Site is located approximately two miles west of Yerington, Nevada, directly off of Highway 95, at 102 Burch Drive. The Site includes portions of Township 13N, Range 25E, Sections 4, 5, 8, 9, 16, 17, 20, and 21 (Mount Diablo Baseline and Meridian) on the Mason Valley and Yerington USGS 7.5 minute quadrangles. The geographic coordinates are 38E 59' 53.06" North latitude and 119E 11' 57.46" West longitude. The Site occupies 3,468.50 acres of disturbed land in a rural area, bordered to the north by open agricultural fields and residential acreage, and to the east by Highway 95A, which separates the Site from the city of Yerington. Approximately fifty percent of the Site is privately owned by SPS, and the rest is land within the jurisdiction, custody and control of the United States Department of the Interior, Bureau of Land Management ("BLM"). To the south continues federal range land, and to the west and southwest the federally owned Singatse mountains. The community of Weed Heights is located adjacent to the Site, near the western edge of the Yerington Pit.

###### 2. Site characteristics

Facilities associated with copper mining operations at the Site include an open-pit mine, mill buildings, tailing piles, waste fluid ponds, and the adjacent residential settlement known as Weed Heights. A network of leach vats, heap leaching pads and

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evaporation ponds remain throughout the Site, in addition to a lead working shop, a welding shop, a maintenance shop, two warehouses, an electro-winning plant, and an office building.

The Site began operation in or about 1918, originally known as the Empire Nevada Mine. In 1953, Anaconda Minerals Company ("Anaconda") acquired and began operating the Site. In or about 1977, ARC acquired Anaconda and assumed its operations at the Site. In June 1978, ARC terminated operations at the Site. In or about 1982, ARC sold its interests in the private lands within the Site to Don Tibbals, a local resident, who subsequently sold his interests with the exception of the Weed Heights community to Arimetco, Inc. ("Arimetco"). From 1989 to November 1999, Arimetco operated a copper recovery operation from existing leach heaps within the Site and ore from the McArthur Pit. Thereafter, Arimetco terminated operations at the Site and petitioned for the protection of the United States Bankruptcy Court in Tucson, Arizona. In 2011, SPS acquired Arimetco's property through the bankruptcy court.

At respective times, ARC, Anaconda and Arimetco operated heap leaching facilities on the Site. Arimetco constructed the heap leaching facilities that currently are within the Site, which include several massive heaps that remain pregnant with low pH solution that leaches metals into a fluid recovery system comprised of pipes, canals and ponds. As discussed further herein, drawdown of the heap fluid into the ponds threatens to release acidic solutions into the environment.

### **3. Site evaluation**

In October 2000, EPA conducted an Expanded Site Inspection at the Site, which consisted of collecting ground water samples from six monitoring wells on and around the Site, and samples of standing water from a below ground cellar, pregnant leachate solution, tailings and leachate salts. These samples confirmed high concentrations of contaminants (Ecology and Environment, Expanded Site Investigation, 12/14/2000, Table 3-1), including beryllium, cadmium, chromium, lead, mercury, and selenium. The groundwater monitoring well samples revealed levels above the regulatory limits for drinking water for arsenic, beryllium, cadmium, chromium, lead, and selenium. EPA concluded from this study that toxic heavy metals exist in source materials at the Site and have contaminated groundwater. The local groundwater is the sole source of drinking water for approximately 3,000 people living within four miles of the Site.

From August to October 2006, EPA conducted a removal action to address fluids management issues associated with the Arimetco heap leach system. This removal action included relining the Slot Pond, construction of a Megapond Interceptor Trench, and construction of a new Evaporation Pond. Fluids in the heap leach system exhibit very low pH and elevated metals, and pose potentially acute toxicity to wildlife.

From October to November 2007, EPA conducted a removal action to address

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fluids management issues associated with the "Bathtub Pond." This removal action included the removal of sediments and the liner from the pond, the backfilling and grading the pond, and the construction of an interceptor trench along the shoulder of the pond.

During the fall of 2007, EPA collected another eight fluid samples, with either one or two samples obtained from each of the six Arimetco leach heap ponds/ditches. These data generally show a low pH consistent throughout the system (ranged from 1.9 to 2.8) and specific conductance ranging from 31,000 to 45,000  $\mu\text{mhos/cm}$ . Metals that exceed primary or secondary drinking water maximum contaminant levels ("MCLs") include aluminum, antimony, arsenic, beryllium, boron, cadmium, chromium, copper, iron, lead, manganese, mercury, thallium and zinc. Radiological data are currently under review but generally exceed the MCLs for thorium isotopes 228, 230, and 232; uranium isotopes 234, 235, and 238; and gross alpha particles. TPH values range from 750 to 2,100  $\mu\text{g/L}$ , which exceeds Nevada cleanup requirements of 1,000  $\mu\text{g/L}$ .

From September to October 2008, EPA conducted another removal action to address fluids management issues. This included closure of the following ponds: South Slot Pond, Plant Feed Pond, New Raffinate Pond, Old Raffinate Pond and MegaPond. The liner of the Phase I/II Pond was replaced. Repairs were also made to the VLT Pond liner. EPA also excavated approximately 10,000 cubic yards of kerosene contaminated soil present beneath the Raffinate Ponds and Vaults, and placed this material in bioremediation cells present on top of the Slot Heap. In addition, EPA made repairs and upgrades to the perimeter ditches surrounding the heap leach pads.

Between May 11, 2010 and September 9, 2010, EPA conducted removal actions that included conducting a repair to the heap leach fluids management system in the vicinity of Slot Pond #1 and the performance of an evaporation pilot test at the EPA 4-acre evaporation pond.

#### 4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

EPA confirmed that over 3,000 acres of tailings with a potentially high concentrations of metals remain at the Site, and that the abandoned process fluids emanating from the tailings have a low pH and contain excessive quantities of arsenic, cadmium, chromium, copper, and iron, as described above in Section II.A.3 of this memorandum. Salts precipitating from these fluids contain even higher concentrations of such metals and are filling in available space within the fluid pond system. Also present are radionuclides, including uranium, thorium, and radium. Exposure to the tailings fluids and salts may occur to workers at the Site, trespassers and, as demonstrated by dead birds at the Site, wildlife. The deteriorated conditions of the VLT pond and the perimeter ditches subject to

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the response action proposed in this memorandum may lead to a release of these hazardous substances into the environment with the additional volume of winter precipitation.

#### **5. National Priorities List ("NPL") status**

The Site is not currently on the NPL. EPA requested the State's position for listing on December 19, 2000. On January 25, 2001, the Governor of Nevada objected to the listing and requested that EPA defer listing. Despite not listing Site, EPA has continued to address the most immediate concerns at the Site through fund lead and enforcement lead removal actions, such as recommended in this memorandum, while advancing the remedial process through ongoing investigations and feasibility study work until such time as listing the Site becomes a necessary consideration in further response work at the Site.

#### **B. Other Actions to Date**

##### **1. Potentially Responsible Party Actions**

Effective May 1, 2009, EPA entered into an Administrative Order on Consent ("AOC") with ARC by which ARC agreed to conduct several removal actions at the Site, including the capping of evaporation ponds, assessment and removal of radiological material from the process area, removal of transite pipe, addressing electrical hazards at the Site, and conducting certain operation and maintenance of the fluids management. This AOC, along with two previous cost recovery agreements, also provided reimbursement of certain response costs that the EPA had incurred at the Site.

The removal actions in this AOC built from and continued previous response actions conducted by ARC, including initiating remedial investigation activities, monitoring, data collection and maintenance activities. ARC's obligations for previous response actions can be found in: (1) the 1985 NDEP Administrative Order to Anaconda Minerals Company; (2) the March 28, 2002 Memorandum of Understanding between NDEP, EPA and BLM and the associated Scope of Work; (3) the October 24, 2002 Administrative Order on Consent between NDEP and ARC; (4) the March 31, 2004 Unilateral Administrative Order from EPA; and (5) the January 12, 2007 Unilateral Administrative Order from EPA. However, none of these actions require ARC to maintain the integrity of the Arimetco fluid management system, and ARC has asserted that it is not liable for any contamination from Arimetco operations.

##### **2. EPA Actions**

EPA completed a remedial investigation of the Arimetco Heap Leach Pads. The results of this remedial investigation are currently stated in the "Draft Remedial

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Investigation Report, Arimetco Facilities Operable Unit 8," dated June 2008. As stated above, EPA has conducted several removal assessments and four previous removal actions, several of which have been focused on the Arimetco fluid management system.

#### **C. State and Local Authorities' Roles**

##### **1. State and local actions to date**

Arimetco, which operated heap leach facilities at the Site from 1989 to 2000, was issued a Finding of Alleged Violation and Order by NDEP on September 23, 2002, as a result of Arimetco seeking bankruptcy protection and abandoning the electro-winning fluids and related materials. On October 23, 2002, NDEP issued a notice of Arimetco's failure to comply with the Order and subsequently, through NDEP's contractor, SRK Consultants, took over response actions at the Site. NDEP's response actions began in January 2003 and concluded in July 2003, removing the abandoned materials and fluids associated with Arimetco's electro-winning operation. The project was funded by the state of Nevada, which was reimbursed by ARC.

In October 2002, NDEP took responsibility for the Arimetco heap leach fluid management activities to prevent the overflow of fluids from the heaps. EPA's March 31, 2005 Unilateral Administrative Order directed ARC to maintain those activities, but did not specifically require ARC to prevent discharges to ground water from the Arimetco system.

##### **2. Potential for continued state/local response**

Neither state nor local agencies have committed the resources to either continue the Arimetco heap leach water management activities and related costs, or to undertake the required response action at this time. In 2004, NDEP formally requested that EPA assume the lead role for the Site because the Site conditions became too complex.

Regardless, EPA may request that other state and local response organizations assist and coordinate within the response for necessary tasks within their respective domains, such as traffic planning, community relations, and logistical support. EPA recognizes, however, that their financial ability to contribute more to the response will be limited.

#### **III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

Conditions at the Site represent a release, and potential threat of release, of CERCLA hazardous substances threatening the public health, or welfare, or the environment based on the factors set forth in the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. § 300.415(b)(2). These factors include:

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A. Actual or potential exposure to nearby populations, animals or the food chain from hazardous substances or pollutants or contaminants

Although EPA has previously taken action to address releases of hazardous substances from the fluids management system, this system has continued to degrade, and ongoing releases may presently be occurring. The VLT pond liners and liners associated with the perimeter ditch system are approximately 20 years old and have been severely degraded from exposure to sun and wind. The VLT pond currently has a double liner with leak detection. In February 2012, the volume of fluid reporting to the leak detector increased dramatically, indicating that a leak exists in the top liner. There is no leak detection system associated with the bottom liner, so it is not possible to evaluate the integrity of the bottom liner. The fluid level in this pond was lowered in order to minimize this leakage. However, reducing the pond level also reduced the amount of available fluids storage. In addition, there are several areas of the perimeter ditches that are in need of repair. Due to the deteriorated condition of these liners, releases of hazardous substances may currently be ongoing. These releases will increase with continued degradation if no action is taken. Releases of acidic and metals-contaminated liquids from the VLT pond and perimeter ditches could potentially impact drinking water supplies and the irrigation of crops grown adjacent to the Site.

B. Actual or potential contamination of drinking water supplies

Although EPA has previously taken action to address releases of hazardous substances from the fluids management system, this system has continued to degrade and ongoing releases may presently be occurring. Liners at the VLT pond and at several locations within the heap leach perimeter ditch system are severely deteriorated and releases of hazardous substances may currently be ongoing. These releases will increase significantly with continued degradation of the liners and with increased precipitation during the winter months if no action is taken. Releases of acidic and metals-contaminated liquids from the ponds could potentially impact drinking water supplies and irrigation of crops grown adjacent to the Site.

C. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate

The threat of migration for hazardous substances from these ponds, as considered in this memorandum, is primarily a discharge to groundwater through the deteriorated liners. Threats from surface soils are not the subject of this memorandum

D. Weather conditions may cause hazardous substances or pollutants or contaminants to migrate or be released

The Site is located in an area of Nevada that receives significant precipitation in

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the winter. In addition, this area is characterized by extremely variable winds with high velocities throughout much of the year. Temperature extremes and high wind events have contributed to failure of the pond and ditch liners. During the winter months, increased precipitation causes the liquid level to rise within these ponds. Rising liquid levels will provide additional hydraulic head to facilitate migration of hazardous substances through the compromised liners. Further exposure of the liners to wind, sun and rain causes more deterioration, and thereby exacerbates the threat of release. As a result, a release of hazardous substances may currently be ongoing, and will get worse with additional time.

#### E. Threat of fire or explosion

The threat of migration for hazardous substances from these ponds and ditches, as considered in this memorandum, is primarily a discharge to groundwater through the deteriorated liners. Threats at the Site from fire or explosion are not the subject of this memorandum.

#### F. Availability of other appropriate federal or state response mechanisms to respond to the release

No other appropriate federal, local or state public funding source has been identified. The proposed action exceeds the financial capability of the State Emergency Reserve Account.

### IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present a release or substantial threat of release of hazardous substances into the environment that are appropriate for response actions as authorized by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a).

### V. PROPOSED ACTIONS AND ESTIMATED COSTS

#### A. Proposed Actions

##### 1. Proposed action description

EPA will conduct the following activities, as part of this removal action:

Vat Leach Tailings (VLT) POND - Re-lining the VLT Pond with a new double liner system will require that it be emptied prior to performing the work. The fluids will either be transferred to the Fluid Management System (FMS) Evaporation Pond and/or VLT Sediment Pond or pumped to the top of the VLT HLP, depending on storage capacity available. The existing primary liner will then be removed and the leak detection and

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secondary liner system will be inspected to determine their condition. Three alternatives for the liner replacement are envisioned subject to further confirmation of the liner condition upon demolition of primary liner and geonet:

- Secondary Liner to Remain as Secondary Containment Liner System - Inspect, repair liner to remain as the secondary containment system. Install new geonet then primary liner on top of repaired secondary liner. The largest concern with this alternative is existing condition, construction approach and QA/QC protocol to confirm the secondary liner integrity.
- Secondary Liner to Remain as Subgrade Protection Liner: Secondary liner to be salvaged as a non-containment protection layer to existing compacted subgrade and bed for new liner materials. Install new secondary liner directly on remaining existing secondary liner, install new geonet and primary liner. New leak detection sump would be side slope riser, existing leak detection could remain in diminished capacity for remaining existing liner or abandoned entirely.
- Demolish Secondary liner: Demolish secondary liner in entirety, scarify and recompact subgrade, install new secondary liner, geonet and primary liner.

These alternatives would be consistent with Nevada Administrative Code (NAC) 445A.435 minimum design criteria for ponds and 445A.438 minimum design criteria for liner and would incorporate a 60-mil HDPE double liner system with leak detection.

PERIMETER DITCH REPAIRS - The discrete sections of the HLP perimeter ditches in need of repair are summarized below, and are shown as Areas 1 through 4 on Figure 1:

- North Slot Pond Ditch (Area 1)
- Phase III South Mega Sump Perimeter Ditch (Area 2)
- Phase III North Mega Sump Perimeter Ditch (Area 3)
- Phase IV Drainage Weir (Area 4)

The scope of work for the perimeter ditch repairs at Areas 1-4 are described below. In all cases excavation work in the vicinity of the toe of the HLPs should be limited so as to not affect the stability of the HLP sides.

#### Phase IV Slot HLP North Ditch (Area 1)

This area consists of two components. The first component would be to repair tears and holes to the existing HDPE liner at the western boundary of Area 1. These repairs would eliminate the potential for loss of fluid containment and reduce the possibility for ongoing damage from wind catching holes in the perimeter ditch HDPE.

The second component of Area 1 repairs includes repairs to a length of perimeter ditch beginning approximately 500 feet west of the northeast pad corner extending

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downstream for approximately 700 feet toward the Slot Sediment Pond. The repairs would include removal of precipitates, inspection and repair of visibly damaged liner areas and installation of perforated HDPE pipe, non-woven geotextile, and 6-inch rock/gravel cover over perimeter ditch liner.

#### Phase III South HLP – Ditch Section South of Former Mega Pond (Area 2)

Repair approximately 150 to 200 foot section of visibly damaged perimeter collection liner. The repair approach would be a labor intensive manual effort to best re-establish the flow within the ditch on a liner patch shingled under the existing liner towards the existing heap leach pad side. The liner would be anchored to perimeter ditch side as determined by field conditions (anchor trench versus welding to remaining portion of anchored existing liner). The repair would include installation of perforated HDPE collection pipe, non-woven geotextile and gravel/rock cover over repaired liner section.

#### Phase III South HLP – Ditch Section North of Former Mega Pond (Area 3)

Inspect and patch visibly damaged liner areas. Provide perforated HDPE drain pipe, non-woven geotextile and 6-inch gravel/rock cover to preserve exposed perimeter drain liner. If the Phase III 4X repiping is completed the extent of this repair could be limited to extend from North Mega sump and terminate at visible active Phase III collection points of copper sulfate emanating from Phase III HLP.

#### Phase III 4X HLP – Ditch Sections, Sump and Weir (Area 4)

The work in this area would repair tears and holes in the perimeter ditch above the weir and restore positive drainage above and below the weir that result in ponded fluids and the localized precipitation of mineral salts between two leak detectors. This would include reconstruction of the weir and area immediately in front of weir (approximately 10' by 10' area) to improve drainage into 4-inch drain line penetrating weir. A bypass would be established, the liner and sump above the weir and the liner below the weir would be removed, the ditch alignment would be re-graded and the sub-grade re-established where required, and the repaired sections would be re-lined. These repairs are anticipated to improve flow conditions during high precipitation periods and reduce the volume of fluids that currently report to the leak detector system.

A potential alternative that will be evaluated includes making these weir improvements and rerouting the existing drain line at the weir to the FMS system directly below the weir. The potential improvement is to provide better pipe drainage capacity and potentially decommission the existing interconnecting Phase III 4X connector ditch and limiting the Phase III North Mega Sump repair to the remaining active perimeter collection ditch only.

## 2. Contribution to remedial performance

Long term remedial action at this Site is anticipated. The response actions considered in this memorandum are expected to be consistent with future actions typical

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at large scale mine sites, although no final remedial action is yet determined for this Site.

#### The long-term cleanup plan for the Site:

The work performed under this removal action is intended to be consistent with long-term clean-up plans for the Site. Final reporting of this removal action will be provided for consideration in any further cleanup activities.

#### Threats that will require attention prior to the start of a long-term cleanup:

The removal action proposed in this memorandum addresses threats requiring attention prior to the start of a long-term cleanup because it addresses immediate threats from specific or acute sources of contamination, and clear the way to address potential pervasive surface and subsurface contamination.

#### The extent to which the removal will ensure that threats are adequately abated:

By conducting the actions described above, this removal action will reduce the ongoing release of hazardous substances.

#### Consistency with the long-term remedy:

This removal action should be consistent with the long-term remedy for the Site. Although a long-term remedy has not yet been determined, any likely remediation of the Site will benefit from improvements to the leach heap fluid management system as anticipated in this memorandum.

EPA has begun planning for the provision of post-removal Site control, consistent with the provisions of § 300.415(k) of the NCP. Any future owner likely will have obligations to protect the integrity of completed removal actions and thereby provide post-removal Site controls. The nature of the removal proposed in this memorandum is, however, expected to minimize the need for post-removal Site activities until a final response strategy may be determined.

### **3. Description of alternative technologies**

Alternative technologies are not appropriate for this removal action.

### **4. Applicable or relevant and appropriate requirements (ARARs)**

Section 300.415(j) of the NCP provides that removal actions must attain ARARs to the extent practicable, considering the exigencies of the situation.

Section 300.5 of the NCP defines applicable requirements as cleanup standards, standards of control, and other substantive environmental protection requirements,

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criteria or limitations promulgated under federal environmental or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location or other circumstances at a CERCLA site.

Section 300.5 of the NCP defines relevant and appropriate requirements as cleanup standards, standards of control and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not "applicable" to a hazardous substance, pollutant, or contaminant, remedial action, location, or other circumstances at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site and are well-suited to the particular Site.

Because CERCLA on-site response actions do not require permitting, only substantive requirements are considered as possible ARARs. Administrative requirements such as approval of, or consultation with administrative bodies, issuance of permits, documentation, reporting, record keeping and enforcement are not ARARs for the CERCLA response actions confined to the Site.

The following ARARs have been identified for the proposed response action. All can be attained.

Federal ARARs: Potential federal ARARs may include the RCRA Land Disposal Restrictions, 40 C.F.R. § 268.40 Subpart D; the CERCLA Off-Site Disposal Restrictions, 40 C.F.R. § 300.440; the Clean Water Act Pre-treatment Standards for New Sources, 40 C.F.R. Part 433.17, TSCA

State ARARs: Nevada Administrative Code, Chapter 444 applies to Class III industrial landfills, such as proposed for on-Site disposal of construction debris. EPA would consider any relevant requirements in the actual design and construction of any construction debris landfill. NAC 445A.435 and 445A.438 specific minimum design criteria for ponds and liners.

#### **5. Project schedule**

The removal action is anticipated to start after the approval of the action as indicated by the signature on this memorandum. The removal activities will require approximately two months to complete.

#### **B. Estimated Costs**

Cost estimates are based on existing Emergency and Rapid Remedial Response Services (ERRS) rates for the EPA Region 9 contracts.

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#### Extramural Costs

#### Regional Removal Allowance Costs

Cleanup Contractor (ERRS)	\$660,000
<b>TOTAL, Removal Action Project Ceiling</b>	<b>\$660,000</b>
START Contract Costs	\$ 40,000
Extramural Cost Contingency (20%)	\$140,000
<b>TOTAL, Extramural Costs</b>	<b>\$840,000</b>

#### VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Given the Site conditions, the nature of the hazardous substances documented on-Site and the potential exposure pathways to nearby populations described in Sections III and IV above, actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response actions selected in this memorandum, present a release or substantial threat of release of hazardous substances into the environment. If no action is taken, the liners in the VLT pond and perimeter ditches will continue to deteriorate, thereby allowing low pH and metal-bearing fluids in the VLT pond and in the perimeter ditches to be released to the subsurface. Release of these fluids to the subsurface will likely contribute to groundwater contamination.

#### VII. OUTSTANDING POLICY ISSUES

Much of the land subject to the proposed removal action is on federal land within the jurisdiction, custody and control of the BLM. Pursuant to Executive Order 12580(g), EPA maintains delegated authority to conduct response actions in accordance with Section 104(a) of CERCLA, including for emergency actions on federal land within the jurisdiction, custody and control of another federal agency. BLM also is delegated authority to conduct non-emergency response actions on federal land within its jurisdiction, custody and control, where the site is not on the NPL. Because this time-critical removal action is intended to address emergency conditions, EPA is within its delegated authority to conduct the action. Nonetheless, EPA is coordinating the anticipated response action with BLM.

#### VIII. ENFORCEMENT

Please see the attached Confidential Enforcement Addendum for a discussion regarding potentially responsible parties and enforcement. In addition to any extramural

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costs estimated for the proposed action, a cost recovery enforcement action also may recover the following intramural costs:

Intramural Costs<sup>1</sup>

<b>U.S. EPA Direct Costs</b>	
Intramural	\$ 25,000
Extramural (from above)	\$ 840,000
<b>U.S. EPA Indirect Costs</b>	
(36.19% of Direct Costs(\$865,000))	\$ 313,043
<b>TOTAL Costs</b>	<b>\$1,178,043</b>

The total EPA extramural and intramural costs for this removal action, based on full-cost accounting practices, that will be eligible for cost recovery, are estimated to be \$1,178,043.

(Recommendation and signature on following page.)

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1. Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery.

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#### IX. RECOMMENDATION

This memorandum proposes a removal action for addressing certain fluids management issues at the Anaconda Yerington Mine Site, Yerington, Lyon County, Nevada, as developed in accordance with CERCLA and not inconsistent with the NCP. This decision is based on the Administrative Record for the Site. Because conditions at the Site meet the NCP criteria for a time-critical removal, I recommend that you concur on the determination of imminent and substantial endangerment, the proposed removal action and the anticipated intramural and extramural direct costs of \$1,178,043, of which EPA anticipates full recovery of its direct extramural costs, anticipated to be up to \$840,000. Your approval below will establish as agency action the determination of the imminent and substantial endangerment and the selection of the response action.

Approve:  \_\_\_\_\_ 8 June 2012  
Daniel A. Meer, Assistant Director  
Superfund Division  
Date

Disapprove: \_\_\_\_\_  
Daniel A. Meer, Assistant Director  
Superfund Division  
Date

#### Attachments

Index to the Administrative Record  
Confidential Enforcement Addendum

#### Appendices

1. Site Plan
2. Heap Leach Pad Perimeter Ditch Locations

cc: Colleen Cripps, Administrator, Nevada Division of Environmental Protection  
Bob Kelso, Department of the Interior, Bureau of Land Management  
Jack Oman, ARC  
S. Fielding, USEPA

bcc: Site File  
A. Helmlinger, ORC-3  
T. Dunkelman, SFD-9-2  
D. Seter, SFD-8-2  
N. Hollan Burke, SFD-8-2  
B. Lee, SFD-9-4  
Steffanie Wood, PMD-8  
C. Temple, SFD-9-4

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#### ADMINISTRATIVE RECORD INDEX

Doc_date	Author	Addressee	Title_subject	DocId
3/31/2005	Environmental Protection Agency - Region 9	-	Unilateral administrative order #9-2005-0011 for initial response activities	2077062
12/2/2005	Tom Dunkelman / Environmental Protection Agency - Region 9	Kathleen Johnson / Environmental Protection Agency - Region 9	(Privileged, FOIA exs 5 & 7) Action Memo: Request for time-critical removal action at site (enforcement confidential addendum only) (Privileged document target only)	2085758
12/2/2005	James Sickles / Environmental Protection Agency - Region 9 Tom Dunkelman / Environmental Protection Agency - Region 9	Kathleen Johnson / Environmental Protection Agency - Region 9	Action Memo: Request for a time-critical removal action at site, w/o enforcement confidential addendum	2133414
8/10/2006	Tom Dunkelman / Environmental Protection Agency - Region 9	Keith Takata / Environmental Protection Agency - Region 9	(Privileged, FOIA ex 7) Memo: Request for an exemption from \$2,000,000 statutory limit & request for time-critical removal action (enforcement addendum only) (Privileged document target only)	2133434
8/10/2006	Tom Dunkelman / Environmental Protection Agency - Region 9	Keith Takata / Environmental Protection Agency - Region 9	Action Memo: Request for exemption fr \$2,000,000 statutory limit & request for time-critical removal action w/o enforcement addendum	2133432
1/12/2007	Environmental Protection Agency - Region 9	-	Administrative order #2007- 05 for RI/FS, w/attchs 1 & 2	2116773
9/28/2007	Tom Dunkelman / Environmental Protection Agency - Region 9	Keith Takata / Environmental Protection Agency - Region 9	(Privileged, FOIA ex 7) Action Memo: Request for time-critical removal action at site (enforcement confidential addendum only) (Privileged document target only)	2138931
9/28/2007	Tom Dunkelman / Environmental Protection Agency - Region 9	Keith Takata / Environmental Protection Agency - Region 9	Action Memo: Request for time-critical removal action at site, w/o enforcement confidential addendum	2133411

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11/20/2007	Environmental Protection Agency - Region 9	-	List of US EPA guidance documents consulted during development & selection of response action for site	2139497
	Environmental Protection Agency - Region 9	Atlantic Richfield Co	Fluids management system standard operating procedures	2133415
5/28/2008	Mike Schwennesen, START Team 9	Tom Dunkelman / Environmental Protection Agency	Anaconda Ponds Assessment Report	2163309
8/5/2008	Tom Dunkelman / Environmental Protection Agency - Region 9	Keith Takata / Environmental Protection Agency - Region 9	(Privileged, FOIA ex 7) Action Memo: Request for time-critical removal action at site (enforcement confidential addendum only) (Privileged document target only)	
8/5/2008	Tom Dunkelman / Environmental Protection Agency - Region 9	Keith Takata / Environmental Protection Agency - Region 9	Action Memo: Request for time-critical removal action at site, w/o enforcement confidential addendum Administrative Order On Consent	

## APPENDIX C

### Action Memorandum

#### **Enforcement Confidential Addendum**

The work anticipated in this memorandum primarily addresses contamination abandoned by Arimetco. SPS acquired Arimetco's interests in property at the Site in 2011, and continues to take steps in support of its assertion that it is a "bona fide prospective purchaser," as defined at Section 101(40) of CERCLA, which would make it exempt from the liabilities normally incurred by "owners and operators" pursuant to Section 107(a) of CERCLA. SPS intends to reimburse fifty percent of EPA's direct extramural costs in this action through a negotiated agreement for bona fide prospective purchasers.

ARC also may be liable for the generation of the hazardous substances addressed in this memorandum. In the preparation of the Remedial Investigation for the Arimetco heaps and fluid system, EPA confirmed that some materials in the Arimetco heaps originated as tailings from Anaconda. However, EPA's data is limited regarding the presence and mobility of hazardous substances in those tailings prior to Arimetco mobilizing heavy metals in the tailings with the addition of millions of gallons of acidic solution. This lack of data makes uncertain any enforcement against ARC for liability regarding the Arimetco heaps and fluid system. Accordingly, EPA has been exploring the potential to add the Site to the National Priorities List ("NPL") to secure funding for remedial actions to address the heaps and fluid system. ARC and SPS generally object to NPL addition, and continue negotiations to fund the response actions anticipated in this memorandum as a means to avoid or delay the need for NPL addition.

**APPENDIX C**

Action Memorandum

**Figure 1**

**Appendix 1**

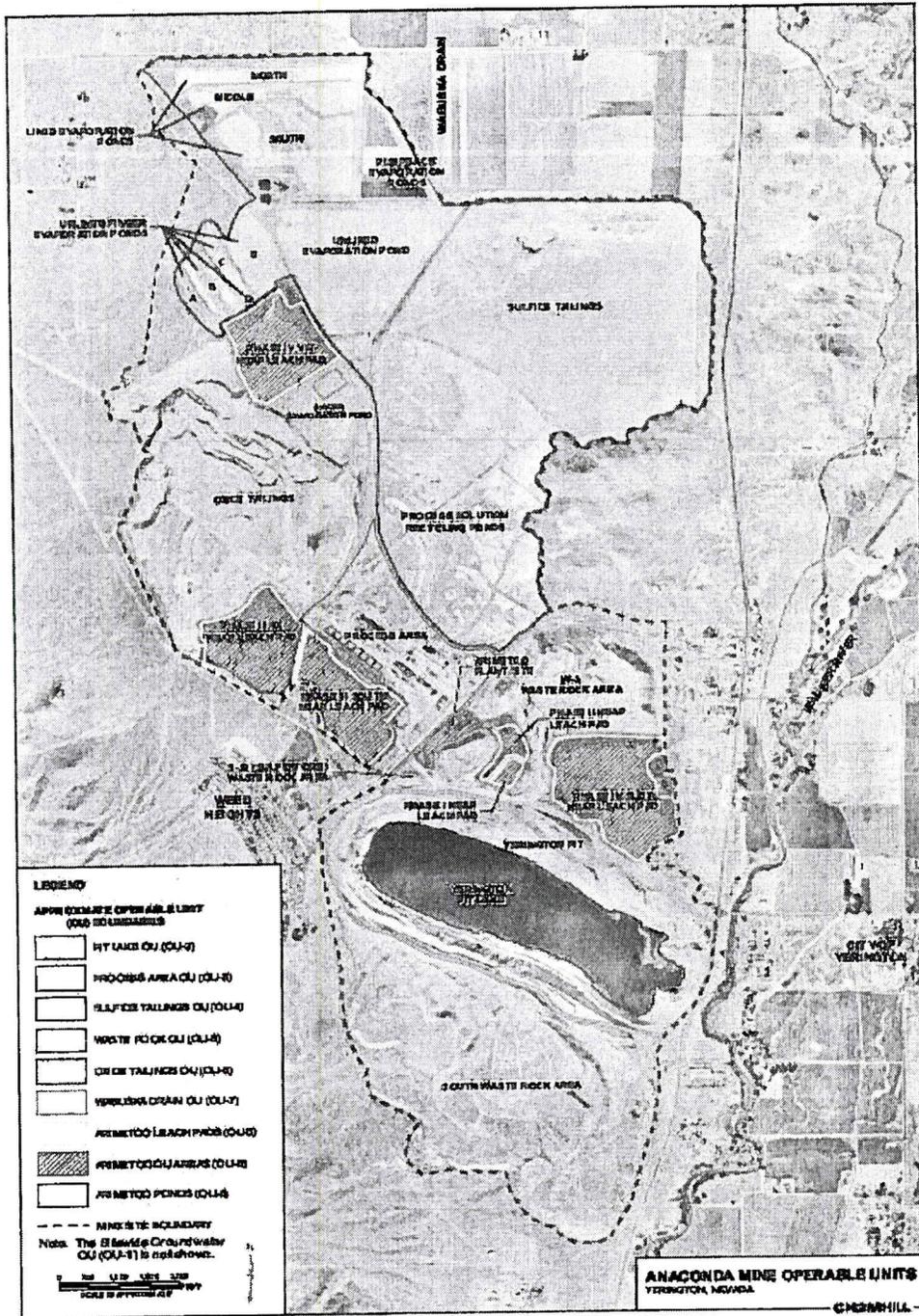
**Site Plan**

**Anaconda Yerington Mine Site**

**August 2006**

# APPENDIX C

## Action Memorandum





**APPENDIX C**

Action Memorandum

## APPENDIX D

### Consent to Access

#### **Consent for Access to Property for the United States Environmental Protection Agency**

Site Name and Address: Singatse Peak Services Copper Mine  
(former Anaconda Copper Mine)  
102 Burch Drive  
Yerington, Nevada

Name of Property Owner: Singatse Peak Services, LLC ("SPS")

I hereby consent to and grant the United States Environmental Protection Agency, its officers, employees and contractors ("EPA") access to the property at the address listed above (the "Property"), for the following purposes (the "Work"):

- 1) The collection and taking of soil, water, air and waste samples on the Property;
- 2) The collection and taking of paper documents, electronic documents and files, and photographs related to the investigation of hazardous substances on the Property from materials left at the Property by any previous owner or operator, including Arimetco, Inc. or Atlantic Richfield Company;
- 3) The drilling of holes on the Property in order to collect subsurface soil and groundwater samples;
- 4) The taking of response actions, including:
  - The removal of hazardous substances from the Property;
  - The storage or use of equipment required for response actions on the Property;
  - The installation and operation of pumps, tanks or other containment equipment or systems on the Property;
  - The demolition of structures predating this Consent to Access necessary for investigation of or response to hazardous substances; and,
  - The construction of ponds, landfills, disposal areas and such for management of hazardous substances on the Property.

I understand that these actions taken by EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), and the Section 311 of the Clean Water Act, 33 U.S.C. § 1321.

The consent to access made in this grant shall not be construed in any manner, substance or form as a grant of a permanent or temporary interest in the Property (i.e., freehold, leasehold, or prescription) other than the revocable license subject to the limitations and conditions stated herein.

## APPENDIX D

### Consent to Access

The following conditions apply to this consent to access:

- 1) The consent to access made in this grant shall not create any agency or employment relationship between EPA and SPS. As such, it is understood that SPS or its successors and assigns shall not be responsible or liable for injuries to or death of persons or damage to property when such injuries, death or damage are caused by or the result of EPA's use of the Property and not due to the negligent or intentional actions of the SPS or its successors or assigns. Additionally, SPS shall not be responsible for any other obligation of EPA that arises in the course of EPA use of the Property for the above stated purposes, including, but not limited to, contractual obligations between EPA and its employees or contractors.
- 2) On the expiration of this consent to access, EPA's completion of the Work or within 30 days after notice from SPS that EPA has damaged the property or acted contrary to the scope of access authorized herein, whichever may occur first, EPA will reasonably restore impacts to the Property made in the course of EPA's use of the Property for the purposes stated above, or to damage as noticed by SPS. Reasonable restoration may include returning the Property to its original ground contour and restoring serviceable and appropriate groundcover or improvements where removed in the course of EPA's use of the Property.
- 3) EPA shall properly dispose of all wastes created in the implementation of the Work and will coordinate with SPS as to the location of any on-Site disposals so as to minimize disruption of SPS's use of the Site.
- 4) SPS may, at its discretion, have representatives attend investigation or sampling events contemplated herein. EPA must provide or make available to SPS upon EPA's receipt of same, final sampling results and reports regarding the Work or any other activities directed by EPA at the Site, subject to the exemption categories stated at 40 C.F.R. § 2.105. EPA must provide to SPS a minimum of 72 hours advance notice of any planned inspection or sampling event.
- 5) This consent to and grant of access is limited to those personnel and that equipment necessary to the accomplishment of the Work.
- 6) EPA will not unreasonably interfere with the business conducted at the Property.
- 7) EPA shall require its contractors used at the Property to name SPS as an additional insured under its comprehensive general liability policy of insurance maintained as a result of such contractors relationship with EPA, and to provide SPS with a certificate of such additional insured status.

SPS maintains that it is a non-labile "Bona Fide Prospective Purchaser" as that term is defined at Section 101(40) of CERLCA, 42 U.S.C. § 9601(40), and that this consent to access is consistent with any obligations of SSP to cooperate, assist and provide access as anticipated at Section 101(40)(E) of CERCLA. SPS's consent to

## APPENDIX D

### Consent to Access

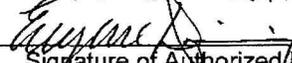
access is not an admission of liability or consent to anything other than the rights conferred herein.

By this consent to access, SPS expressly revokes all previous grants of access from any Property owner to EPA, including, but not limited to, any rights of access provided or sought to be provided in the 1982 Grant Deed recorded in Lyon County Nevada at Document No. 72103. SPS may revoke this consent to access by providing EPA its revocation in writing.

This consent to access and any rights created hereunder expressly does NOT extend to any responsible party or potentially responsible party, and any entity other than EPA will be responsible to obtain access to the Property directly from SPS.

I understand that questions regarding sampling or cleanup actions can be addressed by calling EPA, and questions may be directed to Jere Johnson, in EPA's Superfund Division, at (415) 972-3094, or calling EPA's emergency number at (800) 231-3075.

8 / APRIL / 2011  
Date

EUGENE D. SPIERING  
V.P. EXPLORATION  
  
\_\_\_\_\_  
Signature of Authorized Representative  
Singatse Peak Services, LLP  
SUITE 1100-1199 W. HASTINGS ST.  
VANCOUVER BC V6E 3T5  
CANADA  
\_\_\_\_\_  
Address of Signatory

## APPENDIX E

### Reasonable Steps



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

November 6, 2009

Carla Consoli, esq.  
Lewis & Roca  
40 North Central, Suite 1900  
Phoenix, Arizona 85004

Re: Reasonable Steps, Anaconda Copper Superfund Site  
102 Birch Drive, Yerington, Nevada  
Bona Fide Prospective Purchaser: Singatse Peak Services, LLC

Dear Ms. Consoli:

I am writing in response to your client's inquiry concerning the bona fide prospective purchaser provision ("BFPP"), as defined in Section 101(40) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9601(40), in regard to the property referenced above. As you know, the United States Environmental Protection Agency ("EPA") has designated the property the Anaconda Copper Superfund Site (the "Site"), which is the subject of ongoing investigations and response actions to address hazardous substances remaining from former mining activity.

The BFPP provision within CERCLA states that a person that acquires property after January 11, 2002, and that otherwise meets the criteria of 42 U.S.C. § 9601(40) is protected from CERCLA liability. See 42 U.S.C. § 9607(r)(1). To qualify as a BFPP, an entity such as your client (the "Purchaser") must, among other requirements, take "reasonable steps" with respect to stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental or natural resources exposure to earlier releases. You have inquired as to what actions should be taken by the Purchaser to satisfy the "reasonable steps" criterion.

EPA has identified a number of environmental concerns at the Site. Based on the information that EPA has evaluated to date, EPA believes that implementation of the activities stated below would be appropriate reasonable steps for the Purchaser with respect to the existing conditions of hazardous substance contamination. EPA also understands that the Purchaser anticipates acquiring only the private fee lands and certain patented and unpatented mining claims within the Site, and a substantial portion of the Site would remain owned by the United States, within the jurisdiction, custody and control of the Bureau of Land Management. To the extent that the Purchaser does not own or operate on lands within the Site, the management activities identified below may not be applicable.

- Provide twenty-four hour security for the Site to limit access only to authorized personnel, which may include EPA, its contractors, or other parties conducting or assisting in

## APPENDIX E

### Reasonable Steps

response activities. At present, an existing perimeter fence provides reasonable security, and the Purchaser may need only to maintain this fence as an initial matter. Reasonable security requirements may change in accordance with changed circumstances, such as the Purchaser's anticipated expansion of operations at the Site;

- Provide full cooperation, assistance and access for response activities throughout the Site. Response activities are generally planned in advance and can usually be coordinated to limit interference with the Purchaser's operations, as feasible. Some operations may require the cooperation and access necessary for the installation, integrity, operation and maintenance of any complete or partial response actions or natural resource restoration (for example, to accommodate locations of ground water wells);

- Provide for mitigation of dust emissions at the Site to prevent releases or migration of hazardous dusts and provide adequate worker and public safety. EPA, its contractors or other parties conducting or assisting in response activities at the Site will be responsible for mitigating dust emissions created by their respective response activities and for providing adequate safety for their own workers and safety for the public regarding their own activities;

- Provide for proper management, collection, storage and treatment or disposal of produced water containing hazardous substances resulting from Singatse's activities at the Site. EPA, its contractors or other parties conducting or assisting in response activities at the Site will be responsible for the proper collection, storage and treatment or disposal of produced water containing hazardous substances that is generated in the course of their respective response activities;

- Maintain all completed response actions, including maintenance of all covers, caps, sealers or vegetation intended to prevent soil migration or exposure to *in situ* hazardous substances, as identified in the enclosed map (Attachment A, previously provided as an independent electronic file), except to the extent that covers, caps, sealers or vegetation intended to prevent soil migration or exposure are disturbed by the activities of EPA, its contractors or other parties conducting or assisting in response activities at the Site; and

- Maintain heap fluid collection systems to prevent further discharges to groundwater (i.e., critical liner repairs) or overflow (i.e., standard operation and maintenance of fluid management system), or as reasonably necessary to mitigate avian access to hazardous fluids. EPA has conducted and is planning to conduct response actions to improve the present conditions of the collection ponds, with the intent of ensuring that existing liners are in good current repair and the fluid management system is more efficient. Singatse may not need to maintain the heap fluid collection systems so long as another party is performing the heap fluid collection system maintenance.

This letter does not provide a release from CERCLA liability, but only provides information with respect to reasonable steps based on the information that EPA has available to it. This letter is based on the nature and extent of contamination known to EPA at this time. If additional information regarding the nature and extent of hazardous substance contamination at the Site becomes available, additional actions may be necessary to satisfy the reasonable steps criterion. An owner must be aware of the condition of its property so that the owner is able to

## APPENDIX E

### Reasonable Steps

take reasonable steps with respect to any hazardous substance contamination at or on the Site. In particular, if new areas of contamination are identified or there is an increase in potential exposure to identified contamination, a BFPP must ensure that further reasonable steps are undertaken to prevent or limit exposure.

Please note that the BFPP provision has a number of conditions in addition to the "reasonable steps." Taking reasonable steps and many of the other conditions are continuing obligations of the bona fide prospective purchaser. You may need to assess whether the Purchaser satisfies each of the statutory conditions for the BFPP provision, including the conduct of "all appropriate inquiry" into the Site conditions prior to any purchase, and whether it continues to meet the applicable conditions. EPA has provided definition for "all appropriate inquiry" by promulgating 40 C.F.R. Part 312 (Standards and Practices for All Appropriate Inquiries). Other requirements that a BFPP must meet are described in the definition of a BFPP at Section 101(40)(C)-(H), 42 U.S.C. § 9601(40)(C)-(H).

As we have discussed, despite the BFPP protection, EPA may have a "windfall lien" on the property pursuant to Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), to the extent that EPA's response action increases the fair market value of the property. The windfall lien is limited to the increase in fair market value attributable to EPA's response action, up to the sum of EPA's unrecovered response costs. As we also have discussed, once your client has purchased the Site and has determined its ultimate use and interests at the Site, EPA is open to negotiating with the Purchaser an administrative order on consent in which the Purchaser would commit to perform additional response activities that may be beyond its obligation for reasonable steps, but in exchange for covenants against further liability, release of a windfall lien, and contribution protection as authorized by CERCLA.

As a final note, when we met on October 1, 2009, you asked whether there was more that Singatse Peak Services could do to promote EPA's response actions at the Site. We discussed potential assistance in community awareness activities and considering an agreement with covenants in exchange for performing work above and beyond what may be required as "reasonable steps." An additional effort to consider would be incorporating EPA's Green Remediation Program into Singatse Peak Service's operations as applicable, thereby reducing carbon emissions and waste. Information regarding EPA's Green Remediation Program may be found at: <http://www.epa.gov/superfund/greenremediation/>.

EPA hopes that this letter is useful to you. If you have any questions or wish to discuss this matter further, please feel free to contact me. You also may wish to contact J. Andrew Helmlinger, of EPA's Office of Regional Counsel, at (415) 972-3904.

Michael M. Montgomery



Assistant Director, Superfund Division  
Environmental Protection Agency, Region 9

cc: J. Andrew Helmlinger, EPA ORC  
David Seter, EPA OSC

APPENDIX E

Reasonable Steps

# APPENDIX E

## Reasonable Steps

