Atlantic Richfield Company

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VIA ELECTRONIC MAIL

February 21, 2014

Mr. Steven Way
US EPA Region 8
Emergency Response Program (8EPR-SA)
1595 Wynkoop Street
Denver, Colorado 80202-1129

Re: Unilateral Administrative Order for Removal Action
Rico-Argentine Site, Dolores County, Colorado
U.S. EPA Region 8, Docket No. CERCLA-08-2011-0005
Access for Construction of the Solids Repository

Dear Mr. Way:

Atlantic Richfield Company ("Atlantic Richfield") is submitting this letter to inform EPA of its efforts to obtain the necessary access for construction of the Solids Repository at the Rico-Argentine Site in accordance with Paragraph 37.b of the above-referenced Unilateral Administrative Order (the "UAO"). The requirements for design and construction of the Solids Repository are addressed in Task C of the Removal Action Work Plan (dated March 9, 2011). For reasons set forth in prior design submittals and discussions with EPA, Atlantic Richfield believes the proposed location for the Solids Repository (as described below) best satisfies the site selection criteria and objectives contained in the UAO and the Work Plan. According to the most recent UAO Schedule Modification, Solids Repository construction is to begin in June 2014.

Paragraph 37.b of the UAO requires that Atlantic Richfield use its best efforts to obtain all access agreements necessary to perform Work in areas at the Site owned by other persons. As stated in Atlantic Richfield's Notice of Intent to Comply, submitted to EPA on May 2, 2011, Atlantic Richfield had obtained the access agreements and arrangements necessary to perform all Work Plan tasks scheduled to occur as of that time. Atlantic Richfield further stated that it was taking steps to acquire or secure access to additional privately owned mining claims and lands owned by the U.S. Forest Service before construction of additional treatment-related facilities was required under the Work Plan's schedule.

As detailed below, Atlantic Richfield has been working diligently for some time to identify ownership interests and to acquire or otherwise obtain access to the land where the Solids Repository will be constructed. As with most mining districts, title is complicated and highly fractionated in this area. Several individuals and entities hold various ownership interests

in the multiple patented mining claims constituting the proposed Solids Repository footprint, and in some cases mining claims overlap one another, creating additional complications for access. Through the efforts described in this letter, Atlantic Richfield has succeeded in acquiring or obtaining access to some but not all of the property necessary for construction of Phase of the Solids Repository. As provide by Paragraph 37.b, Atlantic Richfield will likely need EPA's assistance to gain access to the remaining property.

Solids Repository Location and Current Land Ownership

The proposed location for the Solids Repository is shown in blue on attached Figure 1. The total Phase 1 area (including the Phase 1 cell and associated cuts and embankments) covers approximately 4.5 acres immediately upgradient of the existing ponds system. Additional details about the size and proposed location are contained in the Solids Repository Engineering Design and Operations Plan (the "EDOP") submitted to EPA on December 13, 2013, in accordance with Task C1 of the UAO Schedule Modification.

As currently designed, the Phase 1 portion of the Solids Repository overlays portions of the Martha Load, the Denver Load, the Big Strike Load, and the Homestake & Little Cora Placer claim. Ownership information for each parcel is summarized in the following table. Construction of Phase 1 will not require access to land owned by the U.S. Forest Service.

Parcel Number	Claim Name	Ownership (as of February 21, 2014)
504724300027	Martha Lode	North Rico Trust (access and land management responsibilities vested in Atlantic Richfield) – 100%
504725200016	Denver Lode	Atlantic Richfield – undivided ½ interest Estate of William F. Hurley, c/o Carol Gentry – undivided ⅙ interest Estate of Albert Stampfel, c/o Carol Gentry – undivided ⅙ interest US Privacy Act, Estate of Clyde D. Lay, US Privacy Act [redacted] – undivided ⅙ interest
504725200004	Big Strike Load	Atlantic Richfield – undivided ⅔ interest Estate of William F. Hurley, c/o Carol Gentry – undivided ⅙ interest US Privacy Act, Estate of Clyde D. Lay, US Privacy Act [redacted] – undivided ⅙ interest
504725200026	Homestake & Little Cora Placer ("HLCP")	Title to the portion of the HLCP lying east of the Dolores River is currently held in escrow by Alpine Title LLC, on behalf of Outlook Resources, Inc. and Atlantic Richfield, pending the outcome of negotiations between the parties regarding the use and disposition of this property.

<u>Atlantic Richfield's Efforts to Obtain Ownership and Access</u>

Martha Lode

Approximately 32% of the Phase I Solids Repository footprint sits on the unencumbered Martha Lode. This is the area depicted as Area 2 on Figure 1, which is outside the overlapping boundaries of the Homestake & Little Cora ("HLCP") claim and the Denver Lode Claim. Atlantic Richfield has obtained all necessary access for this portion of the Solids Repository. On February 2, 2012, NorthRico Inc. acquired the Martha Lode (subject to certain exceptions not relevant here) from Rico Properties LLC. On September 20, 2012, NorthRico Inc. deeded the Martha Lode to the NorthRico Trust, which is managed by NorthRico Inc. Atlantic Richfield is

a member of North Rico Inc. and funds all costs, expenses, and liability related to NorthRico Trust's ownership of the Martha Lode.

Denver Lode and Big Strike Lode

A significant portion of the Solids Repository – approximately 36% – will be located on the Denver Lode (Area 3 and Area 4 on Figure 1), with a smaller portion – approximately 9% – located on the Big Strike Lode (Area 5). There is also a small section of the Phase 1 Solids Repository footprint – approximately 14% – that will be located on the portion of the Denver Lode that overlies the Martha Lode (Area 3). The owners of the Denver Lode have superior title for that area of overlap.

Atlantic Richfield has acquired partial ownership in the Denver Lode and Big Strike Lode. On August 5, 2012, Atlantic Richfield acquired the ½ undivided interest in the Denver Lode previously held by Rico High Altitude Investments LLC, and the ½ undivided interest in the Big Strike Load previously held by Rico Mountain Life LLC. On September 26, 2013, Atlantic Richfield also acquired the ⅙ undivided interest in the Big Strike Lode previously held by Casey and Richard McClellan.

For more than a year, Atlantic Richfield has been working with Western Land Group, Inc., a firm that specializes in complex public land transactions and title research, to assist with the identification and acquisition of the remaining ownership interests in the Denver Lode and Big Strike Lode, among other parcels at the Site. Western Land Group has been performing this work in connection with Atlantic Richfield's application to the U.S. Forest Service to acquire certain adjacent federal parcels north and east of the proposed Solids Repository site under the Small Tracts Act, 96 Stat. 2535, 16 U.S.C. § 521C. Evidence of title or concurrence with the Small Tracts Act application is required under the Small Tracts Act from all owners of land adjacent to and contiguous with the federal parcels that are the subject of the application. Although access to the federal parcels is not required for construction of the Solids Repository, Atlantic Richfield is pursuing the Small Tracts Act application to facilitate other work performed or to be performed as part of the Removal Action.

Western Land Group and Atlantic Richfield have made repeated efforts to contact and negotiate purchases from the other fractional owners of the Denver Lode and Big Strike Lode. In early 2013, Western Land Group contacted the Dolores County Assessor's office to determine the identities of the other fractional owners. Assessor's Office records listed US Privacy Act [redacted] owning certain undivided interests in these lode claims at that time.

On May 16, 2013, Western Land Group wrote to US Privacy Act with an offer to purchase the undivided ⅙ interests jointly owned by US Privacy Act [redacted] in the Denver Lode, the Big Strike Lode, and the nearby Independent Lode (which is not relevant to the construction of the Solids Repository) for $10,000. Atlantic Richfield offered to pay all closing costs and brokerage firm compensation. On September 12, 2013, after several unsuccessful attempts to follow-up verbally with US Privacy Act, and after speaking with US Privacy Act [redacted] on September 11, 2013, Western Land Group wrote to US Privacy Act

again, restating Atlantic Richfield's interest in acquiring these interests. On December 23, 2013, Rufus Wilderson, as counsel for the US Privacy Act [redacted], contacted Western Land Group. Mr. Wilderson stated that US Privacy Act [redacted] were considering selling, but they could not convey clear title to the group's entire undivided ⅙ interest because Clyde Lay is now deceased, and his estate has not been probated. On February 12, 2014, Western Land Group wrote to US Privacy Act, stating that Atlantic Richfield would agree to purchase the undivided $^{3}/_{24}$ interest owned by US Privacy Act [redacted] for $7,500, and also stating that Atlantic Richfield would attempt to acquire the remaining undivided $^{1}/_{24}$ interest from the Lay Estate in a separate transaction. We have not yet received a response from US Privacy Act, but we are hopeful that Atlantic Richfield's offer will be accepted. Atlantic Richfield has not been able to identify the executor for the Lay estate or determine the current ownership status of Mr. Lay's undivided $^{1}/_{24}$ interest.

Western Land Group confirmed that Mr. Hurley, who separately owns an undivided ⅙ interest in the Denver Lode and the Big Strike Load, passed away more than 10 years ago in California. Mr. Stampfel, who separately owns an undivided ⅙ interest in the Denver Lode, also passed away in the 1970s. Neither estate was ever probated. Western Land Group identified Carol Gentry, who lives in Rifle, Colorado, as the sole living relative of both Hurley and Stempfel based on Dolores County Assessor's records. On May 16, 2013, Western Land Group wrote to Ms. Gentry offering to purchase the Hurley and Stempfel interests for $10,000. On May 31, 2013, Western Land Group spoke to Ms. Gentry by telephone and sent a second letter providing additional information about the location of the Denver Lode and Big Strike Lode. On September 11, 2013, Western Land Group spoke with Ms. Gentry again. Ms. Gentry stated that, until the Hurley and Stempfel estates are probated by a court, neither she nor anyone else would be authorized to convey the Hurley and Stempfel property interests. She added that she had engaged a California probate attorney. We have not heard back from Ms. Gentry about the status of the probate actions since last September.

Homestake & Little Cora Placer

As shown on Figure 1, the northeast corner of the HLCP claim overlies a portion of the Martha Lode claim along its southern property line (Area 1). A portion of the Solids Repository – approximately 12% of the Phase 1 footprint – will be constructed in this area. The HLCP owner has more senior title to the area of overlap under the HLCP patent date. Several of the settling ponds downstream of the St. Louis Tunnel are also located or partially located on the HLCP claim.

Ownership of the HLCP claim is highly complicated. The portion of the HLCP claim lying west of the Dolores River is owned by Rico High Altitude Investments LLC, an affiliate of Rico Properties, LLC. Access to this portion of the HLCP claim is not needed for performance of Work under the UAO. As to the portion of the HLCP claim lying east of the Dolores River ("HLCP-E"), where removal action Work is occurring, title is currently being held in escrow by Alpine Title LLC pursuant to an Escrow Agreement entered December 19, 2009 between Outlook Resources, Inc. ("Outlook," which is controlled by Mark Levin as its president), Atlantic Richfield, and the Estate of Wayne Webster. Outlook had previously executed a

purchase agreement with the Webster Estate to acquire the HLCP-E claim. Under the 2009 Escrow Agreement, title may pass out of escrow either to North Rico, Inc. (and thus to Atlantic Richfield as its designee) or to an entity controlled by Outlook, subject to the outcome of negotiations between Outlook and Atlantic Richfield regarding the acquisition of some or all of the ownership rights for the HLCP-E claim. Those negotiations have not been resolved. The parties disagree on terms related to the future use and development of the surface and subsurface minerals on the HLCP-E claim (and on other nearby properties) and allocation of future liabilities associated with such development.

Since acquiring property interests at the Site, including the HLCP-E claim, Outlook has consistently taken the position that it qualifies as a bonafide prospective purchaser ("BFPP") under CERCLA Section 101(40), 42 U.S.C. § 9601(40), and that it is entitled BFPP defenses to CERCLA liability under CERCLA Section 107(r), 42 U.S.C. § 9607(r). To qualify for and maintain this defense, among other requirements, a BFPP must "provide[] full cooperation, assistance, and access to persons that are authorized to conduct response actions … at a facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions … at the facility)." Accordingly, Atlantic Richfield has obtained verbal confirmation of access to the HLCP-E claim (as well as other Outlook-owned property at the Rico Argentine Site) to the extent necessary to implement the Work required under the UAO. Outlook and Atlantic Richfield have not entered into a formal written access agreement for the HLCP-E claim.

Additional Access Needed

Based on the prior summary, Atlantic Richfield holds full or partial ownership to the majority of the land underlying the proposed Solids Repository construction footprint.

There are no restrictions with respect to the portion of the Solids Repository footprint lying only on the Martha Lode claim (Area 2 on Figure 1).

Atlantic Richfield believes that it would be within its legal rights to proceed with construction of the portion of the Solids Repository lying on the Denver Lode and the Big Strike Lode (Areas 3, 4, and 5 on Figure 1), since it currently owns an undivided ½ or ⅔ interest in those claims. In addition, Outlook Resources has not, to date, objected to Atlantic Richfield's access to the HLCP-E claim to the extent necessary for the implementation, operation, and maintenance of CERCLA response actions at the Site.

Notwithstanding its existing rights, Atlantic Richfield requests that EPA assist it in gaining additional access to the Denver Lode, Big Strike Lode, and HLCP-E claim to ensure complete compliance with Paragraph 37.b of the UAO and to protect against potential claims of unauthorized use. To that end, Atlantic Richfield requests that EPA exercise its authority under CERCLA Section 104(e), 42 U.S.C. § 9604(e), to either: (1) obtain a Grant of Access from the other fractional owners of the Denver Lode and Big Strike Lode and from Outlook Resources, or (2) if a Grant of Access cannot be obtained within a reasonable amount of time, issue an order directing that access be provided. In either case, the owners should provide access to Atlantic Richfield, its contractors, and EPA to construct, monitor, and maintain a permanent Solids

Repository on the properties, and to implement and oversee any other activities relating to the investigation, cleanup, and monitoring of actual or threatened releases of hazardous substances, including any activities required by the UAO, future activities relating to cleanup at the Rico-Argentine Site, and other tasks necessary to implement, operate, monitor, and maintain the Work required under the UAO and future cleanup activities. The owners also should agree or be ordered not to interfere with the construction and long term operation and maintenance of the Solids Repository or do anything to adversely affect its integrity once it is constructed. Obtaining such access will not only help to facilitate the timely construction of the Solids Repository in accordance with the UAO, but also the permitting process applicable to solid waste disposal facilities under Colorado law (Color. Rev. Stat. § 30-20-100.5 et seq.) and Dolores County regulations.

Conclusion

Atlantic Richfield appreciates EPA's consideration of the information provided in this letter and the request for EPA assistance in gaining additional access to the properties underlying the proposed Solids Repository location. We can provide other details about property ownership, including contact information for the other property owners and legal descriptions for the different mining claims, upon request. Please contact me at (951) 265-4277, or have EPA counsel contact Adam Cohen at (303) 892-7321, with questions or to discuss this matter further.

Sincerely,

Anthony R. Brown
Project Manager
Atlantic Richfield Company

cc: A. Piggott, Esq., EPA Region 8
R. Halsey, Atlantic Richfield
C. Harris, Atlantic Richfield
S. D'Cruz, Esq., Atlantic Richfield
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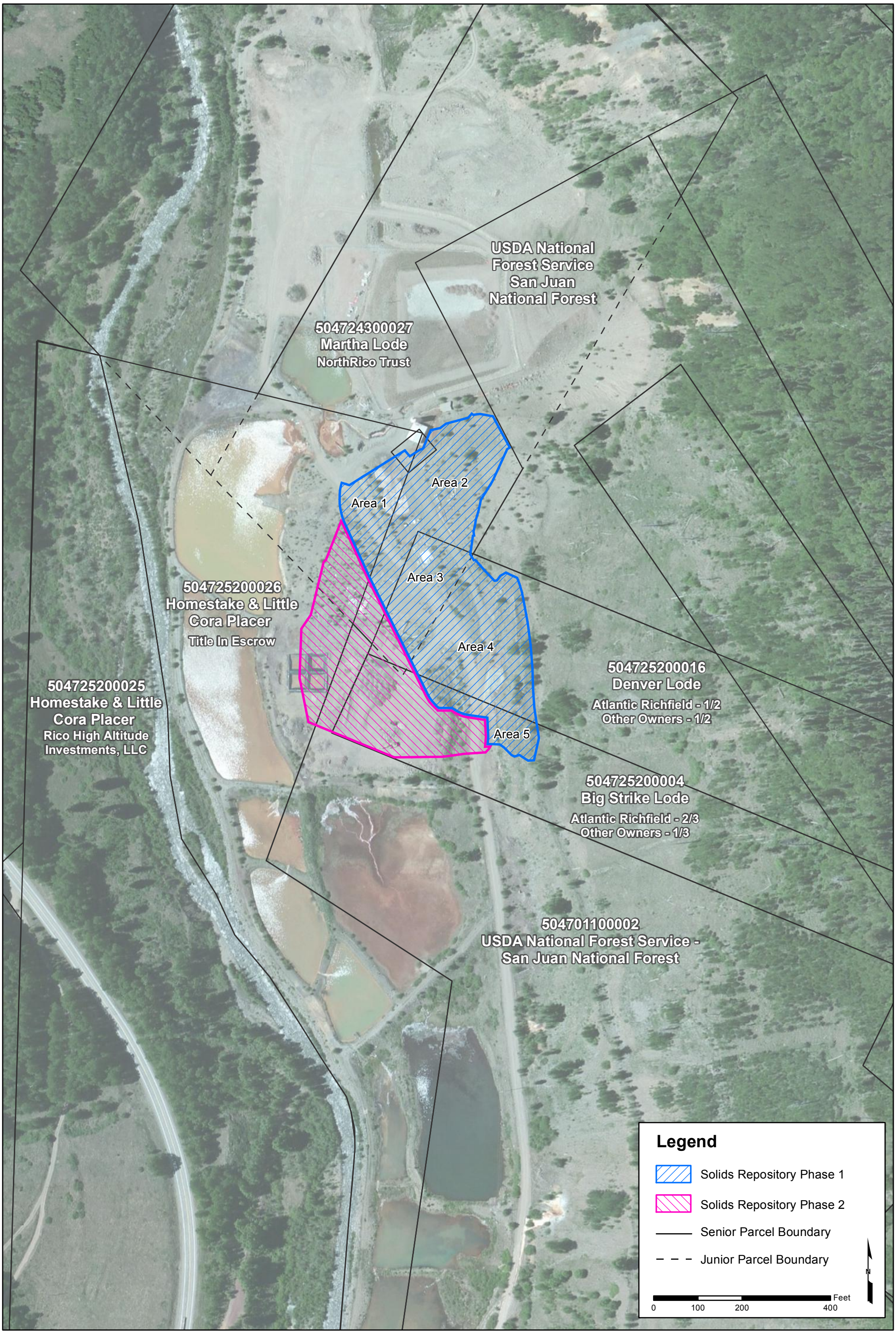
Enclosure: Figure 1 – Property Ownership Within Solids Repository



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Rico, Colorado (60314374)			Figure 1 Property Ownership Within Solids Repository
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