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PRIVILEGED SETTLEMENT COMMUNICATION

Re: Union Pacific Railroad's Good Faith Offer - Wallace-Mullan Branch Rail Line

Gentlemen:

We believe that the discussions at the October 26 and 27 meeting were productive and assisted in moving the negotiations toward a final settlement. The intent of this letter is to formalize UPRR's response and position with respect to several key issues that were discussed at the meeting. We believe that resolution of these key issues

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should result in an agreement in principle on all essential elements required for the settlement. It is understood that an agreement in principle is a non-binding commitment that will become an enforceable obligation of the parties only when the following are accomplished: final approval and issuance of the Wallace Branch EE/CA; entry of a Consent Decree incorporating the terms of the agreement in principle and an Operation and Maintenance Plan; a decision by the Surface Transportation Board (STB) approving the abandonment of the Plummer-Mullan line and satisfaction of the conditions previously established for salvage of the rail line, and issuance of a Certificate of Interim Trail Use to the State/Tribe Trust (STT).

This proposal represents modifications and/or clarifications to UPRR's August 14, 1998, letter and the Amended Good Faith Offer of October 24, 1997.

Key Components of the Agreement in Principle

The key components of the agreement in principle include: (1) UPRR's response action obligations; (2) designation of a disposal facility that is acceptable to UPRR; (3) resolution of short and long-term operations and maintenance (O&M) responsibilities; (4) resolution of natural resource damage (NRD) claims; (5) resolution of UPRR's responsibilities for trail amenities; (6) resolution of past costs associated with the United States government's participation in the settlement negotiations; and (7) the scope of release from environmental liabilities. UPRR's position and/or understanding relative to each of these key components of the agreement in principle is presented below.

1. **Response Action Obligations:** Consistent with the provisions of the EE/CA, UPRR will implement the appropriate response actions to address environmental and human health concerns associated with the Wallace-Mullan Branch right-of-way (ROW). The response actions will be implemented in accordance with the design documents currently being developed by all settlement parties* (the Parties) and is contingent upon reaching an agreement on a design that has public acceptance and does not result in a material increase in cost to UPRR. The response actions will result in the construction of a recreational trail that will provide a valuable resource for the region.

*The settlement parties are the State of Idaho, Coeur d'Alene Tribe, U.S. EPA and all federal agencies represented by the Department of Justice.

2. **Disposal Site:** It is UPRR's understanding that use of the Central Impoundment Area (CIA) and slag pile areas of the Bunker Hill Superfund Site (BHSS) are supported by the State and EPA as final disposal locations for materials removed from the right-of-way (ROW) during the response actions and the salvage of the rail line. It is also our understanding that the Parties are in agreement on the following details regarding the use of these disposal locations.

- Use of the CIA will be made available to UPRR at least until September 1, 1999.

  - UPRR's obligations for use of the CIA will be limited to:

    - Coordination with the US Army Corp of Engineers (USACE), the operators of the CIA;

    - Placement of the disposal material in a manner consistent with the CIA closure design and requirements of the USACE; and

    - Arranging for and/or appropriately compensating EPA for any non-routine efforts (e.g., extended operating hours, etc.) associated with disposal of materials within the CIA.

  - EPA and/or the State will promptly complete any administrative procedures that may be necessary for use of the slag pile area.

  - The slag pile will be made available to UPRR for disposal of right-of-way (ROW) materials through at least the year 2000. UPRR will make a reasonable effort to complete those components of the response action that require disposal within the 1999 and 2000 construction seasons. It is understood that if the completion of the regulatory pre-requisites (including necessary approvals from the STB) for the start of construction significantly extend into the 1999 season, disposal of ROW materials within the slag pile area may extend into the 2001 construction season.

  - It is our understanding that a closure design has not been developed for the slag pile area. UPRR will provide the necessary information on disposal volumes, material types and

anticipated disposal schedules to the appropriate State and EPA representatives. Once a closure design has been developed for the slag pile area, the obligations regarding placement of the disposal material in a manner consistent with the final closure design will be the same as those for the CIA.

- UPRR's obligations for use of the slag pile area will be limited to:

  - Coordination with State and/or EPA contractors that may be working within the slag pile area;

  - Placement of the disposal material in a manner consistent with the slag pile closure design; and

  - Arranging for or appropriately compensating the State and/or EPA for incremental costs that are directly related to the placement of material within the slag pile area by UPRR. In general, these direct costs are expected to be limited to the placement and compaction of the disposal material.

- UPRR's responsibility for disposal within either the slag pile area or the CIA will be limited to the items discussed above. UPRR will have no responsibility for the closure activities for either of these areas, nor will UPRR assume any liability related to the effectiveness of the EPA and State closure activities nor any future CERCLA or RCRA liability or O&M responsibility for these facilities.

3. **Response Action/Trail O&M:** UPRR will assume the obligations for response action (remedy) and trail O&M that are outlined below:

   a) Response Action O&M: UPRR will take direct responsibility for providing the following O&M activities for a fixed period of 30 years.

      i) UPRR will take direct responsibility for the performance of those routine O&M activities (specified below) that are necessary to ensure the ongoing integrity of the asphalt, gravel and/or vegetated soil barriers that are associated with the response action.

UPRR's obligations for the remedy O&M will be specified in a mutually agreeable Operation and Maintenance Plan (O&M Plan). The O&M plan will provide a general description and definition of those specific O&M activities that are the responsibility of UPRR. In addition to inspections performed by UPRR, it is our understanding that the STT (as trail operators) will have personnel periodically reviewing the condition of the trail and barriers in conjunction with their other responsibilities.

UPRR will not be responsible for repair of damage to the response action barriers that is caused by the actions of the Parties or its representatives/agents. In addition, UPRR will not have any responsibility for maintenance activities and/or damage repair of those barriers implemented under this settlement that arise from any future response actions or restoration activities not conducted by UPRR within or adjacent to the ROW.

The O&M plan will generally describe preventative maintenance activities; the frequency and need for preventive maintenance activities will be determined by an endpoint definition (i.e. barriers will be maintained such that there is no substantive deterioration or loss of the barrier relative to the barriers original design at the end of the performance period).

The routine response action O&M activities that will be the responsibility of UPRR are as follows:

- Inspections of the barrier components
    - Routine 1 per month
    - Major 2 per year
    - Extraordinary (after defined storm event or notice of need by Trustee oversight representatives that arises from an agreed to oversight protocol)
- Preventive Maintenance
    - Ditches and culverts

- Weed control as it may relate to the integrity of the barriers.
- Parking areas that are part of a barrier

- Repair
  - Asphalt trail including shoulder grading and erosion
  - Embankment erosion
  - Other barrier erosion
- Five year review of response action

ii) One time replacement of the asphalt trail surface within the first 20 years of trail operation.

iii) Repair to any catastrophic failures of the response action barriers that are caused by flooding, vandalism, earthquakes, etc. As with the routine O&M, UPRR would not have responsibility for damage that is caused by actions of the Parties or implementation by others of any future response action or restoration activities within or adjacent to the ROW.

b) Trail O&M: UPRR will provide a payment of $2,000,000 ($1,000,000 of which is a reimbursement for ISTEA funds that are applied to construction) to the STT to be used for trail O&M activities. One million dollars will be made available at the time that the Consent Decree is entered. The reimbursement for the ISTEA funds will be made at the time that those funds become available for construction. The payment of these funds will represent complete fulfillment of all of UPRR's obligations relative to the O&M of the recreational aspects of the trail.

In general, trail O&M activities will include the activities that are described in the October 16, 1998 Memorandum from Ridolfi Engineers. UPRR believes that the bridge inspections and preventive maintenance of the Chatcolet Bridge (described in the Ridolfi Memorandum as response action O&M activities) are more appropriately part of the trail O&M. Specifically the trail O&M activities will include all O&M activities that are not explicitly identified

as being part of the response action O&M obligation of UPRR. The trail O&M activities include but are not necessarily limited to:

- Service activities including:
  - Litter control
  - Toilet cleaning and supply
  - Miscellaneous cleaning
  - Trail sweeping
- Bridge Inspections (Classified as response action O&M by Ridolfi Engineers)
- Preventive maintenance of the Chatcolet Bridge (Classified as response action O&M by Ridolfi Engineers)
- The following repair activities:
  - Bridge deck and guard rails
  - Painting of buildings and amenities
  - Repair of amenities
- Other activities including:
  - Trail surface regrading within the Reservation
  - Relocation of access barriers
  - Washing of steel bridges
  - Bridge deck replacement
- Trail use management, including periodic patrols

c) Perpetual responsibility for response action O&M: UPRR's proposal provides for: retention of remedy O&M responsibility and catastrophic flood damage for a period of 30 years; repaving the surface of the trail once during the first 20 years of operation; and funding of trail

O&M for the first 10 years of operation. Given the State's resources, the ability to generate revenue from trail use, the economic benefit the trail will represent, and the uncertainty of future response actions in the Basin that could affect the trail, the STT should assume some responsibility for long term remedy O&M. In order to resolve this issue, UPRR proposes that lease/license revenue generated from uses within the right of way for the first ten years of trail operation be set aside and used as an initial contribution toward a long term O&M remedy fund. After the first ten years of trail operation (or such longer period as may be agreed), UPRR and STT shall establish a long term funding mechanism based on actual remedy O&M and catastrophic flood damage costs. Any difference between the value of the lease/license revenue fund and the present value of the long term remedy O&M cost estimated from actual cost data shall be funded in equal parts by UPRR and STT as they may then agree. Any disagreements related to the funding of long term remedy O&M shall be submitted to binding arbitration.

4. **NRD Settlement:** UPRR will pay an amount of $2,000,000 for a release of any and all current and future NRD claims against UPRR for any historical operations, activities or ownership within the Coeur d'Alene Basin that have been or could be brought by the Federal Government, Coeur d'Alene Tribe and/or the State of Idaho.

5. **Trail Amenities:** UPRR shall provide for trail amenities as described in its August 14, 1998, correspondence. These trail amenities will include the basic amenities defined in Tables 1 and 2 (attached), along with the prior offer of $100,000 cash for upgrade of existing community facilities or any other use desired by the Tribe/State. The $100,000 would be paid on the entry of the Consent Decree. Table 1 identifies the locations of oases, trail heads and stop and view areas, as well as the amenities associated with each of these areas. Table 2 specifies the signage, fencing and other control features that are being offered.

6. **Past Costs:** UPRR will provide a single payment of $350,000 as reimbursement for all federal government costs through entry of a Consent Decree. UPRR will continue to pay reasonable and documented Tribal and State costs until finalization of the Consent Decree, per our prior agreement. It is understood that a protocol for oversight will be developed and UPRR payment of future oversight costs will be based on that protocol.

7. **Scope of environmental release:** The settlement incorporated in the Consent Decree will:

- provide UPRR with a full and complete release of all NRD liabilities within the Coeur d'Alene Basin.

- except for those areas explicitly excluded, fully release UPRR from past, present, and future liability within the Coeur d'Alene basin under all other State, Federal Government, or Tribal environmental laws or regulations. It is understood that the release will apply to all historical ownership, operations and activities (including any releases of hazardous substances, wastes or materials) between milepost 16.5 at Plummer and milepost 7.6 at Mullan and all current or historical branch lines, spur or industrial tracks or sidings at any time connected thereto (to be reflected on an appropriate exhibit), excluding only non-siding areas of the Wallace Yard and UPRR's historical right of way between Wallace and Burke.

- UPRR will not assume any funding obligations for future response activities or liabilities that UPRR may retain for the excluded areas.

We recognize that clarification and additional detail will come from the response action design process and public participation. We also recognize that there are significant details in implementing a settlement of this matter. UPRR is prepared to assist in the public participation process as soon as an agreement in principle can be reached. It is understood that all parties participating in these negotiations will cooperate in good faith to advance the administrative and technical aspects of this settlement (including the EE/CA process) forward in a timely manner. It is also understood that the parties will support the necessary filings with the STB and that the STT will petition the STB for a Certificate of Interim Trail Use.

These clarifications and amendments to our prior good faith offers represent a significant commitment by UPRR and, we trust, will be recognized as such. It is our hope and intention that this offer will serve as the basis for an agreement in principle. We would

appreciate receiving your response as soon as possible so that we can maintain our proposed schedule. Please contact me with any questions you may have regarding this correspondence.

Very truly yours,

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