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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ATLANTIC RICHFIELD COMPANY, Defendant.	)))))))	Civil Action No. CV89-039-BU-SEH
STATE OF MONTANA, Plaintiff v. ATLANTIC RICHFIELD COMPANY, Defendant.	))))))	Civil Action No. CV-83-317-HLN-SEH

CONSENT DECREE
FOR THE CLARK FORK RIVER OPERABLE UNIT
AND FOR REMAINING STATE OF MONTANA CLARK FORK BASIN NATURAL RESOURCE DAMAGE CLAIMS

SDMS DocID 512973

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I. BACKGROUND

The United States' Complaint

A. In 1989, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter (the "Complaint") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9607, against the Atlantic Richfield Company ("AR").

B. In the Complaint, which was subsequently amended on October 14, 1992, October 31, 1994, August 2, 2003, and November 5, 2004, the United States sought the recovery of past response costs and a declaratory judgment of liability for future response costs paid at or in connection with the Original Portion of the Silver Bow Creek / Butte Area National Priorities List ("NPL") Site, the Milltown Reservoir Sediments NPL Site (now referred to as the "Milltown Reservoir/Clark Fork River NPL Site"), and the Anaconda Smelter NPL Site. The November 5, 2004, amendment added an area known as the Butte Priority Soils Operable Unit to the Complaint. The subject of this Consent Decree is the Clark Fork River Operable Unit ("the Clark Fork Site"), which is part of the Milltown Reservoir / Clark Fork River NPL Site. This Consent Decree also addresses natural resource damages under Section 107 of CERCLA, 42 U.S.C. § 9607, on certain tracts of land along the Clark Fork River that are owned and operated by the National Park Service (Grant-Kohrs Ranch) and the Bureau of Land Management.

C. In response to the United States' Complaint, AR asserted several defenses and filed counterclaims against the United States seeking cost recovery, contribution, contractual indemnity, equitable indemnification, recoupment, and declaratory relief. Among AR's defenses to the United States' claims is AR's assertion that the United States' CERCLA claims are in the nature of contribution under CERCLA § 113 rather than CERCLA § 107, and thus AR's

CERCLA liability is several rather than joint and several. This defense is addressed in a Report and Recommendation issued by the Magistrate in this case. AR has since waived its right to assert most of these affirmative defenses and certain of its counterclaims in consent decrees lodged with this Court on November 5, 2004 and on August 2, 2005.

The State of Montana's Complaint

D. The State Action commenced on December 12, 1983, when the State of Montana ("State") filed its complaint, seeking to recover from AR natural resource damages pursuant to Section 107 of CERCLA, and the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA"), Mont. Code Ann. § 75-10-715(2)(b), in State of Montana v. Atlantic Richfield Company, No. CV-83-317-HLN-SEH (D. Mont.) ("State Action"). In its complaint, the State alleged that Hazardous Substances have been released into the environment since the 1860s as a result of mining, milling, mineral processing, and related activities centered in Butte and Anaconda, Montana. The State alleged that AR remains legally responsible for these releases under CERCLA and CECRA by virtue, inter alia, of its own actions and its assumption of the liabilities of its predecessors-in-interest, including the Anaconda Copper Mining Company and the Amalgamated Copper Mining Company. The State further alleged that natural resources have been injured as a result of the release of Hazardous Substances. Natural resources the State alleged are injured include fish, wildlife, surface water, groundwater, soil, and vegetation. A trial in the State Action commenced on March 3, 1997, and ended in January of 1998, prior to its completion. A partial settlement in the State Action which was lodged with the Court on June 19, 1998, and entered on April 19, 1999, resolved all the State's claims for State Natural Resource Damages except for (1) the State's Assessment and Litigation Costs incurred on or after January 1, 1998, (2) the State's claims for restoration damages for the

Step 2 Sites (as defined below), and (3) certain reservations and certain of AR's counterclaims. The State/AR Consent Decree provided an avenue for negotiated settlement of these claims.

Settlement Framework

E. In November of 1998, the United States and AR reached a settlement regarding the claims of the United States at the Streamside Tailings Operable Unit which is part of the Silver Bow Creek / Butte Area NPL Site. The Streamside Tailings consent decree, together with a consent decree entered in the case of the State Action, both of which were entered on April 19, 1999, resolved the majority of the natural resource damages claims of the United States and the State. In addition, the Streamside Tailings consent decree established a framework for resolving the United States' remaining claims throughout the Clark Fork River Basin in Montana. Under Section VII of the Streamside Tailings decree, the parties agreed to resolve the remaining areas in six groups or "baskets" of operable units:

1. Rocker Site;
2. Butte Mine Flooding (Berkeley Pit) Site and the Butte Active Mining Area Site;
3. Anaconda Smelter NPL Site;
4. Clark Fork River Operable Unit, Warm Spring Ponds Operable Units, and the Milltown Reservoir Operable Units;
5. Butte Priority Soils (towns of Butte and Walkerville) Site; and
6. The Westside Soils Site, formerly referred to as the Non Priority Soils Operable Unit (rural Butte) in paragraph 31 (F) of the Streamside Tailings consent decree.

The United States, the State, and AR (collectively, the "Parties") have already successfully concluded their negotiations for the Rocker, Butte Mine Flooding, and Milltown Reservoir sites. This Court entered the Rocker Site consent decree in November of 2000, the Butte Mine Flooding Site consent decree in August of 2002, and the Milltown consent decree in February of 2006. In August of 2004, the United States and AR also completed the negotiation of a consent decree resolving most of the United States' past response cost claims relating to the Anaconda

Smelter NPL Site, the Butte Priority Soils Site, the Clark Fork River Operable Unit, and the Warm Springs Ponds Operable Units (Past Costs CD). The Past Costs CD was entered by the Court in January of 2005.

F. The Streamside Tailings consent decree describes the baskets of operable units to be negotiated in the order described above, but it also provides the parties with flexibility to change this order. Consistent with this flexible framework, the Parties commenced negotiations to next address the Clark Fork River Operable Unit (the "Clark Fork Site"), rather than the Anaconda Smelter NPL Site. EPA also determined that the Warm Springs Ponds Operable Units should be addressed separately from the Clark Fork Site.

G. The Parties agree to resolve in this Consent Decree:

1. the United States' claims against AR for past response costs paid by EPA after July 31, 2002, future response costs, and future response actions relating to the Clark Fork Site, including: (a) interim response costs incurred by EPA at the Clark Fork Site; (b) interim response costs paid by EPA that EPA has allocated to the Clark Fork Site from the Milltown Reservoir / Clark Fork River NPL Site-wide account and a general account covering all of the named sites within the Clark Fork River Basin; (c) future response costs, including allocated costs, to be paid by EPA at the Clark Fork Site; and (d) past costs incurred by the United States Department of Justice after October 7, 2002, in pursuing the claims filed in the Complaints in this action;

2. the United States' claims against AR for past and future response costs incurred by the US Department of the Interior ("DOI") relating to the

certain tracts along the Clark Fork River -- the National Park Service's Grant-Kohrs Ranch and certain parcels of land managed by the Bureau of Land Management;

3. the State's claims against AR for past, interim, and future response costs and for future response actions relating to the Clark Fork Site;

4. the United States' claims for natural resource damages relating to the Clark Fork Site, reserved in Paragraph 78(d) of the Streamside Tailings consent decree;

5. the State's claims for natural resource damages relating to the Butte Area One Groundwater and Surface Water Resources, Smelter Hill Area Upland Resources, and Clark Fork River Aquatic and Riparian Resources;

6. the State's claims for Assessment and Litigation Costs incurred on or after January 1, 1998;

7. defenses and counterclaims that have been asserted or could be asserted against the United States by AR relating to the Grant-Kohrs Ranch and certain parcels managed by the Bureau of Land Management, both of which are within the Clark Fork Site; and

8. defenses and counterclaims that have been asserted or could be asserted by AR against the United States and/or the State relating to the Clark Fork Site or in the State Action.

The Clark Fork Site

H. Butte, Montana was the site of mining, milling and smelting activities from the 1860s to the present. In response to the release and threatened release of hazardous substances from facilities in and around Butte into Silver Bow Creek, EPA placed the original Silver Bow

Creek Superfund Site on the NPL by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. The Silver Bow Creek Superfund Site was later extended to include the Clark Fork River to the Milltown Reservoir through administrative action taken by EPA. In February 1990, the Clark Fork River portion of the Silver Bow Creek / Butte Area Superfund Site was administratively transferred to the Milltown Reservoir Superfund Site. After the transfer, the entire site became known as the Milltown Reservoir/Clark Fork River Superfund Site. This Consent Decree addresses the Clark Fork River Operable Unit of the Milltown Reservoir / Clark Fork River Superfund Site, and as indicated earlier, is referred to herein as the "Clark Fork Site".

I. After conducting other data collection and liability searches, EPA, in consultation with the Montana Department of Environmental Quality ("DEQ"), initiated a Remedial Investigation and Feasibility Study ("RI/FS") for the Clark Fork Site pursuant to and in accordance with 40 C.F.R. § 300.430. These activities were performed primarily by AR in accordance with amendments to Administrative Order on Consent Docket No. CERCLA-VIII-90-07, and were completed in 2003. The RI/FS examined alternatives for a final remedial action at the Clark Fork Site. In August of 2002, EPA proposed a combination of the analyzed alternatives as the most appropriate remedy for the Clark Fork Site and, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the Clark Fork Site Proposed Plan in a major local newspaper of general circulation. DOI concurred in EPA's proposed plan. EPA provided an opportunity for written and oral comments from the public on the Clark Fork Site Proposed Plan for remedial action. A copy of the transcript of public meetings on the Clark Fork Site Proposed Plan is available to the public as part of the administrative record upon which the EPA Regional Administrator's delegate based the selection of the response actions for the Clark Fork

Site. In April of 2004, EPA, in consultation with the State, made its final decision regarding a remedy for the Clark Fork Site in accordance with CERCLA, and in a manner not inconsistent with CERCLA's governing regulations in the National Contingency Plan ("the NCP"), 40 C.F.R. Part 300. EPA issued a Record of Decision ("ROD") regarding its selection in April of 2004 and published notice of the Clark Fork Site ROD in a major local newspaper of general circulation on May 4, 2004.

J. The ROD embodies EPA's decision for the response actions to be implemented at the Clark Fork Site and is attached as Appendix A to this Consent Decree. DEQ had a reasonable opportunity to review and comment on the Clark Fork Site ROD and gave its concurrence thereto on behalf of the State of Montana. DOI also concurred in the Clark Fork Site ROD.

K. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected in the ROD and the response actions implemented by the State shall constitute response actions taken or ordered by the President.

Notice

L. In accordance with the National Contingency Plan and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified DEQ of negotiations with AR regarding the Clark Fork Site. EPA also provided DEQ, on behalf of the State, with an opportunity to participate in such negotiations and to be a Party to this Consent Decree. DEQ has since participated in these negotiations, and the State is a signatory to this Consent Decree.

M. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C: § 9622(j)(1), EPA notified DOI, the State, and the Confederated Salish and Kootenai Tribes of negotiations with a potentially responsible party regarding the release of Hazardous Substances relating to the Clark Fork Site that may have resulted in injury to natural resources under federal, State, and/or the

Tribes' trusteeship. DOI and the State have since participated in these negotiations and are signatories to this Consent Decree. The Tribes did not participate in these negotiations and are not signatories to this Consent Decree, due to having previously resolved all of their natural resource damages claims against AR, subject to the Tribes' reservation in Paragraph 86 of the Streamside Tailings consent decree.

N. For purposes of Section 122(j)(2) of CERCLA, 42 U.S.C. § 9622(j)(2), the restoration actions to be conducted by the United States and the State pursuant to this Consent Decree constitute appropriate actions necessary to protect and restore any natural resource injured by the alleged releases and threatened releases of Hazardous Substances relating to the Clark Fork Site.

No Admission of Liability

O. By entering into this Consent Decree, AR, the United States, and the State do not admit to any liability arising out of the transactions or occurrences either that were alleged, or could have been alleged, in the complaints, amended complaints, or counterclaims filed in these actions. In addition, AR does not admit or acknowledge that any alleged release or threatened release of Hazardous Substances at or from the Clark Fork Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

The Proposed Settlement

P. The proposed settlement contains the following general components, and will be implemented as provided herein in accordance with the terms and conditions more particularly described in this Consent Decree and, for the United States and the State, also as provided in the Superfund Memorandum of Agreement ("SMOA"):

1. AR shall make cash payments for implementation of the Clark Fork Site ROD.

2. AR shall make cash payments to the United States for Federal Clark Fork Site DOJ and EPA Interim Response Costs and for EPA Oversight Costs for the Clark Fork Site.

3. AR shall make a cash payment to the United States for Oversight Costs for EPA for the State Property Remedial Commitments.

4. The State, acting through DEQ as the Lead Agency, shall manage the Clark Fork Site Response Action Account.

5. The State, acting through DEQ as the Lead Agency, shall develop and implement the Remedial Design, the Remedial Action, and the Operation and Maintenance of the Remedy at the Clark Fork Site.

6. With deference to DEQ as the Lead Agency, and in a spirit of mutual respect and cooperation, EPA shall monitor and oversee the State's development and implementation of the Remedial Design, the Remedial Action, and the Operation and Maintenance of the Remedy at the Clark Fork Site, as well as the expenditure and transfer of funds out of the Clark Fork Response Action Account. EPA and the National Park Service (NPS) shall, with the State, also monitor and oversee all remedial activities at the Grant-Kohrs Ranch.

7. In the same manner, EPA and the State shall also monitor and oversee the State's development and implementation of the State Property Remedial Commitments at the Anaconda Smelter NPL Site.

8. AR shall make cash payments to the State for natural resource damage claims for Butte Area One Groundwater and Surface Water Resources,

Smelter Hill Area Upland Resources, and Clark Fork River Aquatic and Riparian Resources, and for payment of the State's Assessment and Litigation Costs.

9. The State shall implement the Butte Ground and Surface Water Resources Restoration Planning Process and Plan, the Smelter Hill Area Upland Resource Restoration Plan (including the State Property Remedial Commitments), and the Clark Fork River Aquatic and Riparian Resources Restoration Plan.

10. AR shall make cash payments to DOI for natural resource damage claims and response costs for the Grant-Kohrs Ranch and certain BLM lands.

11. DOI has developed the Federal Restoration Plan and the State shall implement the Federal Restoration Plan for the Grant-Kohrs Ranch. BLM shall implement the Federal Restoration Plan for the BLM Lands.

Q. The United States and the State acknowledge that the terms and conditions of this Consent Decree and the SMOA pertaining to respective federal and state roles are site-specific to the CFROU and do not constitute precedent for other settlements involving the United States and the State at other sites.

R. The State has prepared the Step 2 Site State Restoration Plans, attached to this Consent Decree as Appendices D, E, and G. DOI has prepared the Federal Restoration Plan attached as Appendix I. AR does not concur in, among other things: (i) the State's findings and conclusions regarding baseline and natural resource injury at the Step 2 sites; or (ii) DOI's findings and conclusions regarding baseline and natural resource injury at the BLM Lands and Grant-Kohrs Ranch. The incorporation by reference and attachment of these restoration plans to

this Consent Decree shall not be construed as concurrence by AR with the State's and DOI's proposed restoration actions.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will expedite the cleanup of the Clark Fork Site and the restoration of the Clark Fork Site and other sites and will avoid prolonged and complicated litigation between the Parties and that this Consent Decree is fair, reasonable, in the public interest, and consistent with the goals of CERCLA.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367, as to the State Action only. In addition, this Court has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying complaints, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. Each Party hereby agrees not to oppose entry of this Consent Decree by this Court unless the United States or the State has notified the other Parties in writing that it no longer supports entry of this Consent Decree after consideration of public comment, as provided in Section XXX (Lodging and Opportunity for Public Comment) below. It is understood that by filing this Consent Decree in the two cases, United States v. ARCO, No. CV-89-039-BU-SEH, and Montana v. ARCO, No. CV-83-317-HLN-SEH, there is no intention, nor should one be implied, that the two cases are consolidated for any purpose. Moreover, there is no intention, nor should one be implied, that

any Party to this Consent Decree shall, by virtue of this Consent Decree, become or be deemed a party to either case, without other pleadings or orders allowing such status, nor is any Party waiving its objections to requests of any other Party for intervention in either case.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State, and AR and its successors and assigns. Any change in ownership or corporate status of AR, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter AR's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, or in the appendices attached hereto and incorporated herein, the following definitions shall apply:

"Additional Response Costs" shall mean any costs in excess of $92.7 million, plus Earnings, that arise, individually or collectively, from: (a) implementation of the Remedy; (b) additional response actions or modifications to the Work necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedy, provided that the additional response actions or modifications are within the Scope of the Remedy selected in the ROD as that phrase is defined in Paragraph 14 of this Consent Decree; and (c) Emergency Response as provided for in Section XV (Emergency Response). Additional Response Costs shall not include Oversight Costs for EPA for the Clark Fork Site or oversight costs for NPS at the Clark Fork Site. Additional Response Costs do not include any response costs which are

recovered as a result of claims reserved pursuant to Paragraphs 110 (United States' Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), 111 (United States' Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), 115 (United States' General Reservations of Rights), 118 (State's Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), 119 (State's Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), or 125 (State's General Reservations of Rights).

"All Sites" shall mean the Upper Clark Fork River Basin above the confluence of the Little Blackfoot River near Garrison (i.e., the main stem of the Clark Fork River and all areas which naturally drain into the Clark Fork River or its tributaries above this confluence near Garrison) and the main stem of the Clark Fork River between the Idaho/Montana border and Garrison, including the Milltown Reservoir, and its riparian zone. "All Sites" includes the areas encompassed within Silver Bow Creek/Butte Area Site; Anaconda Smelter NPL Site; Milltown Reservoir/Clark Fork River Site; and Montana Pole and Treating Plant Site.

"Appropriate Vegetation" shall mean: (a) plant species selected, consistent with the provisions of the ROD, to meet current and future land uses; (b) native species or introduced desirable species specified during the Remedial Design process, with the particular vegetation to be established based on the location of the revegetated area and consultation with the landowner; (c) self-sustaining and self-producing plants, except where agricultural species are selected or where vegetation design requires an alternative species for short-term ground cover; and (d) sufficient vegetation such that the Performance Standards are met for canopy cover as described in the ROD. For wetlands,

"Appropriate Vegetation" shall mean vegetation found in appropriate nearby reference wetland areas in the Deer Lodge Valley that are similar in site characteristics (e.g., hydrology and soil type) to the areas being removed or treated.

"ARAR" shall mean an applicable or relevant and appropriate requirement, criterion, standard, or limitation of federal or state law within the meaning of Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), identified in the ROD.

"AR" shall mean the Defendant, Atlantic Richfield Company, its divisions and subsidiaries, including ARCO Environmental Remediation L.L.C. (AERL), and any predecessors in interest. It shall also mean any successors in interest to the extent that any such successor's liability at the Clark Fork Site derives from the liability of the Atlantic Richfield Company, its divisions and subsidiaries, including AERL, and any predecessors in interest.

"ARWW&S ROD" shall mean the Anaconda Regional Water and Waste operable unit Record of Decision dated September 1998 and any amendments and Explanations of Significant Differences issued thereafter.

"Assessment and Litigation Costs" shall mean all costs and expenses of whatever nature, including administrative and indirect costs, incurred by the State relating to (1) all phases of its assessment of State Natural Resource Damages at All Sites, and (2) the State Action, including attorneys fees and costs, expert witness fees and costs, and all other costs of litigation.

"Beck Ranch" is real property located in Powell County, Montana, and more specifically described in Appendix B.

"Biological Resources" shall mean those natural resources referred to in section 101(16) of CERCLA as fish and wildlife and other biota. Fish and wildlife include marine and freshwater aquatic and terrestrial species; game, nongame, and commercial species; and threatened, endangered, and State sensitive species. Other biota encompass shellfish, terrestrial and aquatic plants, and other living organisms not otherwise listed in this definition.

"BLM" shall mean the Bureau of Land Management of the United States Department of the Interior, and all successor agencies or bureaus.

"BLM Lands" shall mean those parcels of land managed by BLM located along the Upper Clark Fork River which are the subject of the claims reserved in Paragraph 78(d) of the Streamside Tailings consent decree. A map showing the approximate location of the BLM Lands is attached as Appendix C to this Consent Decree.

"Butte Ground and Surface Water Resources Restoration Planning Process and Plan" shall mean the document prepared by the State, and any amendments thereto adopted by the State, entitled the "Butte Ground and Surface Water Resources Restoration Planning Process and Draft Conceptual Restoration Plan," attached, excluding appendices, to this Consent Decree as Appendix D.

"Butte Area One State Restoration Account" shall mean the account created by the State pursuant to Subparagraph 25.a.(iv).

"Category of Injury" shall mean changes in the physical or chemical quality described for geologic resources at 43 C.F.R. § 11.62(e) (1998) and the biological responses described at 43 C.F.R. § 11.62(f) (1998) for Biological Resources.

"CECRA" shall mean the Montana Comprehensive Environmental Cleanup and Responsibility Act, as amended, §§ 75-10-701 et seq., MCA.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Certification of Completion of the Remedial Action" shall mean EPA's certification, in consultation with the State, pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that the Remedial Action and any modifications thereto have been completed at the Clark Fork Site in accordance with the requirements of CERCLA, the NCP, and the ROD and any modifications thereto, including certification that Performance Standards have been attained.

"Certification of Completion of the State Property Remedial Commitments Remedial Action" shall mean EPA's certification, in consultation with the State, pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that the remedial action and any modifications thereto have been completed for State-owned Property subject to the State Property Remedial Commitments in accordance with the requirements of CERCLA, the NCP, and the ARWW&S ROD and any modifications thereto, including certification that performance standards, including ARARs, for the ARWW&S ROD have been attained.

"CFRSSI QAPP" shall mean the Clark Fork River Superfund Site Investigations Quality Assurance Project Plan (AR/PTI and EPA, May 1992), as subsequently amended as of the Effective Date.

"Clark Fork River Aquatic and Riparian Resources Restoration Plan" shall mean the document prepared by the State, and any amendments thereto adopted by the State,

entitled the "Draft Conceptual Clark Fork River Aquatic and Riparian Resources Restoration Plan," attached, excluding appendices, to this Consent Decree as Appendix E.

"Clark Fork Site" or "Site" shall mean: the surface water, streambed sediments, tailings, soils, groundwater, aquatic resources, terrestrial resources, irrigation ditches and related sediment deposition and contaminated property, and air, all located within the 100-year historic floodplain of the Clark Fork River in Montana. The Clark Fork Site shall also include irrigation ditches that historically conveyed contaminated water from the Clark Fork River and related sediment deposition and contaminated property adjacent to the 100-year historic floodplain of the Clark Fork River, as described in the 2004 Record of Decision. The Clark Fork Site extends from the confluence of the old Silver Bow Creek channel with the reconstructed lower Mill-Willow bypass to the maximum Milltown Reservoir high pool reservoir level (elevation 3265.5, NAVD 88). A map showing the approximate boundaries of the Clark Fork Site is attached to this Consent Decree as Appendix F.

(1) The Parties recognize that the Clark Fork Site lies between other sites and operable units, both upstream and downstream, which collectively comprise portions of the Silver Bow Creek/Butte Area NPL Site, the Anaconda Smelter NPL Site and the Clark Fork River / Milltown Reservoir NPL Site. The continuing migration of contamination from the upstream Silver Bow Creek/Butte Area NPL Site will be considered by EPA, NPS, and the State in the design and implementation of the Remedy and any modifications thereof, Federal Restoration, and State Restoration for the Clark Fork Site; provided, however,

nothing in this definition of the "Clark Fork Site" shall be interpreted to grant AR or any other party a right to challenge the Remedy or any modification thereof or challenge the use of the Clark Fork Site Response Action Account.

(2) The "Clark Fork Site" shall not include, however, and this Consent Decree does not address or resolve AR's liability for, any future release of Waste Materials from upstream locations that recontaminate the Site from any of the following categories: (1) releases of Waste Materials resulting from AR's failure to comply fully and timely with lawful cleanup requirements of upstream Operable Units as required by the State or the United States; (2) releases of Waste Materials resulting from the failure of upstream retaining walls, settling ponds, dams, or other upstream control measures; or (3) any upstream releases of Waste Materials which come to be located at the Site other than the anticipated continuation of existing migration.

(3) Any exceedance of the water quality performance standards for the Milltown Site that AR demonstrates are the result of implementation of the Remedy, Federal Restoration, or State Restoration for the Clark Fork Site shall not be deemed a failure of a Milltown Site performance standard by the Settling Defendants to the Milltown Site Consent Decree.

"Clark Fork Site Response Action Account" shall mean the account created and managed by the State Board of Investments for DEQ pursuant to Subparagraph 25.a.(i), and used by DEQ for implementation of the Work as described in the Consent Decree and the SMOA.

"Clark Fork State Restoration Account" shall mean the account created by the State pursuant to Subparagraph 25.a.(ii).

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Cost Documentation" shall mean a cost package for EPA's costs which consists of applicable: (1) payroll information, consisting of the SCORPIO$ report or an equivalent cost summary, and any time sheets that exist, if requested by AR; (2) indirect cost information, consisting of an overall and an employee-by-employee SCORPIO$ report or equivalent cost summary; (3) travel information, consisting of a SCORPIO$ report or an equivalent cost summary, travel authorizations, and travel vouchers or their equivalent that exist; (4) EPA contractor (including Contract Laboratory Program contracts) information, consisting of site and / or Operable Unit specific vouchers, any existing progress reports, Treasury schedules, tasking documents for contractors not required to provide progress reports, Annual Allocation Reports and the SCORPIO$ report or an equivalent cost summary; (5) EPA Interagency Agreements ("IAGs") information, consisting of SCORPIO$ reports or an equivalent cost summary, IAGs and any amendments thereto, invoices or the equivalent, proof of payment documents, and any existing progress reports or their equivalent; (6) EPA Cooperative Agreements information, consisting of SCORPIO$ reports or an equivalent cost summary, cooperative agreements and any amendments thereto, drawdown documentation, State quarterly progress reports; (7) prejudgment interest information, consisting of an interest cost report showing methodologies and calculations; and (8) Operable Unit allocated cost

information, consisting of a narrative of allocation methodologies and spreadsheets implementing such methodologies. Because the State has incurred costs under cooperative agreements with EPA which relate to or are allocated to the Clark Fork Site, and because the State will be the lead agency for implementation of the Clark Fork Site response actions, Cost Documentation, if requested by the United States or AR, shall also include: (a) State contractor invoices; (b) any existing contractor progress reports; and (c) SABHRS Report 106 information (if not included in the State quarterly progress reports) or its equivalent. EPA may also provide the information described in the foregoing list of "Cost Documentation" in the form of printouts from electronic databases or systems that have been or may be developed by EPA in the future. "Cost Documentation" for response costs incurred by the Department of Justice shall consist of a cost summary of: (a) direct labor costs; (b) other direct costs (invoices, travel, etc.); and (c) indirect costs, and upon request by AR, shall also consist of the supporting reports for each of these three types of Department of Justice costs.

"Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or State of Montana or Federal holiday, the period shall run until the close of business of the next working day.

"DEQ" shall mean the Montana Department of Environmental Quality and any predecessor or successor departments or agencies of the State.

"DOI" shall mean the United States Department of the Interior and any successor departments or agencies.

"DOI Clark Fork Site Response Costs" shall mean all response costs, including, but not limited to, direct and indirect costs, that DOI, NPS, and BLM incurred or will incur at or in connection with the Clark Fork Site, including, without limitation, oversight costs.

"DOI Site Record" shall mean the files for the Grant-Kohrs Ranch, the BLM Lands and the Clark Fork River Operable Unit that are maintained at the Grant-Kohrs Ranch or any other National Park Service repository for the Grant-Kohrs Ranch, and, for the BLM, the files maintained at the BLM Montana Office where records are located for the Clark Fork River Operable Unit of the Milltown Reservoir / Clark Fork River NPL Site, that are neither privileged nor confidential and that are not contained within the administrative record for the Clark Fork River Operable Unit.

"DOJ" shall mean the United States Department of Justice and any successor departments or agencies.

"Earnings" shall mean the net earnings on the principal paid into the Clark Fork Site Response Action Account and compounded on the Clark Fork Site Response Action Account as managed by the State Board of Investments or any successor agency, and any State Interest paid by AR pursuant to Paragraph 6 (AR Payment to the Clark Fork Site Response Action Account), including any interest for late payment under Subparagraph 24.a. on the amounts due under Paragraph 6.

"Effective Date" shall mean 60 days from the date that this District Court enters the Consent Decree, unless an appeal of the entry and judgment is filed during the 60-day period; if an appeal is taken, the Effective Date shall mean the date on which the District Court's judgment is affirmed.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

"EPA Site Record" shall mean the files maintained in EPA's Montana Office records center for the Clark Fork River Operable Unit of the Milltown Reservoir / Clark Fork River NPL Site that are neither privileged nor confidential and that are not contained within the administrative record for the Clark Fork River Operable Unit.

"Federal Action" shall mean United States v. Atlantic Richfield Company, No. CV-89-039-SEH (D. Mont.).

"Federal Clark Fork Site DOJ and EPA Interim Response Costs" shall mean all costs of response, including, but not limited to, direct and indirect costs, as well as costs allocated from the Milltown Reservoir / Clark Fork River site-wide account and the Clark Fork General account, that are: (a) paid by EPA at or in connection with the Clark Fork Site after July 31, 2002 through the Effective Date; (b) incurred by EPA at or in connection with the Clark Fork Site prior to the Effective Date, but paid by EPA after that date; or (c) incurred or paid by DOJ relating to the Federal Action from October 7, 2002, through April 28, 2007, and any claim for interest accrued on such costs. Notwithstanding the foregoing, in no event shall the demand for reimbursement of "Federal Clark Fork Site DOJ and EPA Interim Response Costs" under Paragraph 10 of this Consent Decree exceed $ 6,200,000.

"Federal Interest" shall mean interest at the rate specified for interest on investments of the 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. That rate of interest is subject to change on October 1 of each year.

"Federal Natural Resource Damages" shall mean damages or other relief recoverable by the United States on behalf of the public for injury to, destruction of, or loss or impairment of natural resources from a release of Hazardous Substances, including but not limited to: (i) the cost of assessing such injury, destruction, loss, or impairment arising from or relating to such a release; (ii) the cost of restoration, rehabilitation, or replacement of injured, lost, or impaired natural resources or of acquisition of equivalent resources; (iii) the cost of planning, overseeing, and monitoring such restoration, rehabilitation, or replacement activities; (iv) compensation for diminution in value or lost use of natural resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15.

"Federal Restoration" shall mean natural resource damage restoration actions to be conducted by BLM for BLM Lands, and by the State, on behalf of NPS, for the Grant-Kohrs Ranch, pursuant to the Federal Restoration Plan.

"Federal Restoration Plan" shall mean the document prepared by DOI, and any amendments thereto describing natural resource damage restoration actions to be taken at the BLM Lands and the Grant-Kohrs Ranch. The Federal Restoration Plan is attached as Appendix I. The Federal Restoration Plan is divided into actions to be conducted on BLM Lands and actions to be conducted on Grant-Kohrs Ranch.

"Further Response Costs" shall mean up to $9.4 million in response costs incurred by EPA and/or the State in developing and implementing the Work, after EPA and/or the State have already incurred $83.3 million, plus Earnings, in such costs.

"Future Response Costs" shall mean all costs that the United States and the State incur after the Effective Date in implementing the Work and any modifications thereto at the Clark Fork Site. Future Response Costs include Further Response Costs and Additional Response Costs. Future Response Costs do not include Oversight Costs for EPA for the Clark Fork Site and DOI Clark Fork Site Response Costs, as those terms are defined in this Consent Decree, any response costs incurred as a result of claims reserved pursuant to Paragraphs 14 (Obligations for Additional Response Costs), 110 (United States' Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), 111 (United States' Post-Certification Reservations Relating to Response Actions at the Clark Fork site), 115 (United States' General Reservations of Rights), 118 (State's Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), 119 (State's Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), or 125 (State's General Reservations of Rights).

"Grant-Kohrs Ranch" means the Grant-Kohrs Ranch National Historic Site near Deer Lodge, Montana.

"Hazardous Substance" shall mean a hazardous substance within the meaning of Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14), or a hazardous or deleterious substance within the meaning of Section 75-10-701(8), MCA.

"Lead Agency" shall mean the agency that plans, develops, and implements the response actions set forth in the ROD. The State, acting through DEQ, shall be the Lead Agency for the response actions at the Clark Fork Site, unless the State or EPA request and is granted a change in that status in accordance with this Consent Decree. DEQ, acting as Lead Agency, shall consult with EPA (and NPS for matters affecting Grant-

Kohrs Ranch) and NRDP and shall submit certain documents to EPA (and NPS for matters affecting Grant-Kohrs Ranch) for review and approval throughout the response action process in accordance with the terms and conditions of this Consent Decree and the SMOA. DEQ shall also submit such documents to NRDP.

"Local Government Unit of the State of Montana" shall mean a county, city, town, unincorporated municipality or village, or special taxing unit or district and any commission, board, bureau or other office of the unit . Departments, agencies, or instrumentalities of the State of Montana are not individually or collectively a "Local Government Unit of the State of Montana."

"Milltown Site Consent Decree" shall mean the Consent Decree for the Milltown Site (as defined therein) and all appendices attached thereto entered in the Federal Action by Order of the Court dated February 8, 2006.

"NRDP" shall mean the Montana Department of Justice acting by and through its Natural Resource Damage Program and any successor agency.

"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.

"NPL" shall mean the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B.

"NPS" shall mean the National Park Service of the United States Department of the Interior and any successor departments or agencies.

"Operable Unit" shall mean an area, geographic or otherwise, for which there is a response action, whether removal or remedial, that is subject to a separate administrative record and response selection decision.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of Remedial Action as required under the Operation and Maintenance Plans to be developed for the Clark Fork Site as provided in this Consent Decree.

"Operation and Maintenance Plans" shall mean, for purposes of this Consent Decree, those documents described in Section X and the SMOA developed by the Lead Agency and approved as provided in this Consent Decree and the SMOA, and any amendments thereto.

"Oversight Costs for EPA for the Clark Fork Site" shall mean, for purposes of this Consent Decree only, those response costs incurred by EPA after the Effective Date in monitoring and/or overseeing the development and implementation of the Work pursuant to the requirements of this Consent Decree and the SMOA, including costs incurred by EPA in consulting with the State, in reviewing plans, reports, and other documents submitted by DEQ pursuant to this Consent Decree and the SMOA, allocable Clark Fork General and Milltown Reservoir/Clark Fork River Site-wide costs, and costs incurred by EPA for reviews of the Remedy and any modifications thereto required by Section XI (Remedy Review) in accordance with Section 121(c) of CERCLA after the Effective Date. However, Oversight Costs for EPA at the Clark Fork Site shall not include:

(1) the costs of direct action by EPA to respond to a release, threat of release, or danger at the Clark Fork Site;

(2) the costs of direct action by the State;

(3) the costs of litigation or other enforcement activities relating to the Clark Fork Site:

(4) the cost of enforcing the terms of this Consent Decree against AR, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution);

(5) costs of determining the need for, or taking, direct response actions by EPA and/or the State pursuant to Sections XI (Remedy Review), XV (Emergency Response), Sections XXII (Covenants and Reservations by the United States), and XXIII (Covenants and Reservations by the State) of this Consent Decree, except that the following costs shall be included in the definition of Oversight Costs for EPA for the Clark Fork Site:

(A) the costs incurred by EPA in overseeing additional response actions at the Clark Fork Site that may be required pursuant to the five-year reviews of the Work;

(B) the costs incurred by EPA in consulting with the State regarding any additional response actions to be undertaken at the Clark Fork Site pursuant to Paragraph 46 and in monitoring and/or overseeing such additional actions; and

(C) the costs incurred by EPA in consulting with the State regarding the integration of Restoration with Remedial Action and Operation and Maintenance at the Clark Fork Site, and in monitoring and/or overseeing such integration activities.

"Oversight Costs for EPA for the State Property Remedial Commitments" shall mean, solely for purposes of this Consent Decree, only those response costs incurred by EPA after the Effective Date in overseeing and/or monitoring the development and implementation of the State Property Remedial Commitments, including costs incurred by EPA in consulting with the State, reviewing plans, reports and other documents submitted by the State pursuant to this Consent Decree and the SMOA, allocable Clark Fork General and Anaconda site-wide costs, and costs incurred by EPA for reviews of the State Property Remedial Commitments and any modifications thereto required by Section 121 (c) of CERCLA, 42 U.S.C. § 9621(c), after the Effective Date. However, "Oversight Costs for EPA for the State Property Remedial Commitments" shall not include:

(1) the costs of direct action by EPA to respond to a release, threat of release, or danger at the Anaconda Smelter NPL Site;

(2) the costs of direct action by the State at the Anaconda Smelter NPL Site;

(3) the costs of litigation or other enforcement activities relating to the Anaconda Smelter NPL Site;

(4) the cost of enforcing the terms of this Consent Decree against AR, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution);

(5) the costs of determining the need for, or taking, direct response actions by EPA and/or the State at the Anaconda Smelter NPL Site in addition to the State Property Remedial Commitments, except that the following costs shall be included in the definition of Oversight Costs for EPA for the State Property Remedial Commitments:

(A) the costs incurred by EPA in conducting the five-year reviews relating to the State Property Remedial Commitments as required by section 121(c) of CERCLA, 42 U.S.C § 9621(c);

(B) the costs incurred by EPA in overseeing additional response actions that may be required for the State Property Remedial Commitments pursuant to the five-year reviews relating to the performance standards that will be addressed by the State Property Remedial Commitments;

(C) the costs incurred by EPA in overseeing any additional response actions required as part of the State Property Remedial Commitments; and

(D) the costs incurred by EPA in overseeing the integration of State restoration actions at the Anaconda Smelter NPL Site with the State Property Remedial Commitments.

"Oversight Costs for EPA for the State Property Remedial Commitments" include only those oversight costs pertaining to the work described in this Consent Decree for the State Property Remedial Commitments, and do not represent or include other oversight costs incurred or to be incurred by EPA at the Anaconda Smelter NPL Site.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

"Parties" shall mean the United States, the State, and AR.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action contained in the ROD, including ARARs, and Appropriate Vegetation.

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

"Record of Decision" or "ROD" shall mean the Clark Fork River Operable Unit Record of Decision signed on April 29, 2004, by the Assistant Regional Administrator for Ecosystems Protection and Remediation, EPA Region 8, and by the Assistant Director of the Montana Department of Environmental Quality (on behalf of the Director) and concurred on by DEQ on behalf of the State, and by DOI, all attachments, and all future modifications or amendments (including Explanations of Significant Differences ("ESDs") thereto. The 2004 Record of Decision is attached to this Consent Decree as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, undertaken or to be undertaken by the Lead Agency, to implement the Record of Decision as provided in this Consent Decree, and any amendments thereto.

"Remedial Action Work Plan" shall mean, for purposes of this Consent Decree, the documents described in Section X developed by DEQ, and any amendments thereto, as approved in accordance with this Consent Decree.

"Remedial Design" shall mean those activities undertaken or to be undertaken to develop the final plans and specifications for the Remedial Action specified in the ROD as provided in this Consent Decree and any amendments thereto.

"Remedial Design Work Plan" shall mean, for purposes of this Consent Decree, the document described in Section X developed by DEQ, and any amendments thereto, as approved in accordance with this Consent Decree.

"Remedy" shall mean the response actions at the Clark Fork Site set forth in the Record of Decision, including EPA, NPS, and State consultation, monitoring, and oversight, Remedial Design, Remedial Action, and Operation and Maintenance. Remedy shall not include State Restoration at the Clark Fork Site except where EPA approves the performance of such restoration in lieu of Remedy, as provided in the Consent Decree.

"Restoration" shall mean Federal Restoration and State Restoration. However, Restoration shall not include State Restoration at the Clark Fork Site that EPA approves for implementation in lieu of Remedy, as provided in this Consent Decree.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Smelter Hill Area Uplands Resources Restoration Plan" shall mean the document prepared by the State, and any amendments thereto adopted by the State, entitled the "Draft Conceptual Smelter Hill Area Uplands Resources Restoration Plan." The Smelter Hill Area Uplands Resources Restoration Plan and its Appendix G (Consent Decree Obligations of the State), excluding other appendices, is attached as Appendix G to this Consent Decree. The Smelter Hill Area Uplands Resources Restoration Plan describes performance standards applicable to the State Property Remedial Commitments and the scope of the State Property Remedial Commitments under this Consent Decree. Amendments revising the nature and extent of, or the performance standards for, the

State Property Remedial Commitments require the concurrence of EPA and, unless deemed unnecessary by EPA, adoption by EPA.

"Smelter Hill Area Uplands State Restoration Account" shall mean the account created by the State pursuant to Subparagraph 25.a.(iii).

"State" shall mean the State of Montana, including all of its departments, agencies, and instrumentalities.

"State Action" shall mean State of Montana v. Atlantic Richfield Company, No. CV-83-317-HLN-SEH (D. Mont.).

"State CD" shall mean the consent decree lodged in the State Action on June 19, 1998, and entered on April 19, 1999.

"State CD II" shall mean the consent decree by and between the State of Montana and Atlantic Richfield Company that is lodged in the State Action contemporaneously with this Consent Decree.

"State Clark Fork River Reserve Account" shall mean the account created by the State pursuant to Subparagraph 25.a.(vii).

"State Grant-Kohrs Restoration Account" shall mean the account created by the State pursuant to Subparagraph 25.a.(vi).

"State Interest" shall mean interest as specified in Paragraph 7 of the Consent Decree.

"State Natural Resource Damages" shall mean any damages or other relief recoverable by the State of Montana for injury to, destruction of, or loss of any and all natural resources, including restoration damages and compensable value damages, as those terms are defined in the State CD, resulting from releases of Hazardous Substances

within All Sites. Notwithstanding the above, "State Natural Resource Damages" does not include lawful response actions or response costs under CERCLA or CECRA.

"State NRD Settlement Amount" shall mean the $ 72.5 million to be paid by AR to the State pursuant to Paragraphs 16 and 17 of this Consent Decree.

"State-owned Property" shall mean the real property owned by the State as shown in the maps attached as Appendix J to this Consent Decree.

"State Property Remedial Commitments" shall mean the work, and any modifications thereto, including any additional response actions required to meet performance standards (including ARARs for the ARWW&S ROD), as described in this Consent Decree. The work for the State Property Remedial Commitments is described in: (1) the Remedial Action Work Plan/Final Design Report for ARWW&S OU Remedial Design Unit 1 – Stucky Ridge (June 15, 2005) concerning State-owned Property in Section 36; and (2) the Remedial Action Work Plan/Final Design Report for ARWW&S OU Remedial Design Unit 15 – Mt. Haggin Uplands (December 2007), each as provided for in the Smelter Hill Area Uplands Resources Restoration Plan (Appendix B to this Consent Decree). The Remedial Action Work Plan/Final Design Report for Remedial Design Unit 1 and the Remedial Action Work Plan/Final Design Report for Remedial Design Unit 15 have been approved by EPA in consultation with DEQ and are contained within the site record for the Anaconda Smelter NPL Site and are attachments to the Smelter Hill Area Uplands Resources Restoration Plan.

"State Restoration" shall mean those activities, undertaken or to be undertaken pursuant to the Butte Ground and Surface Water Resources Restoration Planning Process

and Plan, the Clark Fork River Aquatic and Riparian Resources Restoration Plan, and the Smelter Hill Area Uplands Resources Restoration Plan.

"State Site Record" shall mean the files for a site that are maintained in the records center of a Montana state agency and that are neither privileged nor confidential.

"Step 2 Sites" shall mean the following three geographic areas described in the State's Restoration Determination Plan, dated October 1995, and the natural resources within those areas: (1) Area One Groundwater and Surface Water Resources; (2) Smelter Hill Area Upland Resources; and (3) Clark Fork River Aquatic and Riparian Resources.

"Subparagraph" shall mean a portion of a Paragraph identified by an upper or lower case letter or by a lower case Roman numeral.

"Superfund Memorandum of Agreement" or "SMOA" shall mean the agreement among EPA, DOI, and the State which, in addition to the provisions of the Consent Decree, memorializes the manner in which the Remedy, Federal Restoration, and State Restoration will be implemented or coordinated at the Clark Fork Site and the manner in which the State Property Remedial Commitments will be implemented by the State. Only the State and the United States may enforce the terms of the SMOA. Nothing in this Consent Decree shall be deemed to create a right of any other party, including, but not limited to AR or any third party, against the State or the United States to enforce the terms of the SMOA.

"Tribes" shall mean the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

"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), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous or deleterious substance" under Section 75-10-701(8), MCA.

"Work" shall mean all activities required to implement the Clark Fork Site Remedy, including, without limitation, the Remedial Design, Remedial Action, Operation and Maintenance and emergency response actions undertaken pursuant to Section XV (Emergency Response). Work does not include those activities required under Section XXVII (Retention of Records). Work also does not include Restoration, unless the Restoration activity is being performed in lieu of Remedy, as approved by EPA in accordance with this Consent Decree and the SMOA.

V. GENERAL PROVISIONS

4. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are:

a. to protect public health and welfare and the environment at the Clark Fork Site through the design and implementation of response actions selected in the ROD at the Clark Fork Site;

b. to reimburse the United States and the State for their response costs incurred and to be incurred at the Clark Fork Site;

c. to resolve the damage claims of the United States against AR for natural resource injuries that were reserved in paragraph 78(d) of the Streamside Tailings consent decree for the Clark Fork Site, as provided in this Consent Decree;

d. to resolve the response claims of the United States and the State against AR with regard to the Clark Fork Site, as provided in this Consent Decree;

e. to resolve the remaining claims and defenses of AR which have been or could have been asserted against the United States and the State with regard to the Clark Fork Site, as provided in this Consent Decree;

f. to provide funding for, and the implementation of, certain restoration actions by the State, in consultation with EPA, the Tribes, and DOI, to restore the three Step 2 Sites;

g. to provide funding for, and the implementation of, certain restoration actions at the Grant-Kohrs Ranch and the BLM Lands through the implementation of the Federal Restoration Plan;

h. to maximize use of resources available for Remedy and Restoration at the Clark Fork Site and maximize the environmental benefit to the Clark Fork Site; and

i. to implement the response actions set forth in and required by the ARWW&S ROD for the State Property Remedial Commitments.

5. Commitments by AR. In accordance with the terms in this Consent Decree, AR shall:

a. reimburse the United States for Federal Clark Fork Site DOJ and EPA Interim Response Costs, DOI Clark Fork Site Response Costs, Oversight Costs for EPA at the Clark Fork Site, Oversight Costs for EPA for the State Property Remedial Commitments, Further Response Costs, and Additional Response Costs, as provided in this Consent Decree;

b. provide cash payments, as provided in this Consent Decree, to the Clark Fork Site Response Action Account established by the State pursuant to Subparagraph 25.a.(i);

c. provide the Beck Ranch and certain water rights to the State as provided in this Consent Decree;

d. compensate the United States for Federal Natural Resource Damages pertaining to the Grant-Kohrs Ranch, and the BLM Lands as provided in Paragraph 20;

e. compensate the State for State Natural Resource Damages for the Smelter Hill Area Uplands Resources; Butte Area One Groundwater and Surface Water Resources; and Clark Fork River Aquatic and Riparian Resources, as those terms are described in State CD II and as provided for in this Consent Decree, and

f. reimburse the State for Assessment and Litigation Costs as provided in this Consent Decree.

VI. PAYMENT OF RESPONSE COSTS BY AR

6. AR Payment to the Clark Fork Site Response Action Account.

a. Not more than 30 days after the Effective Date, AR shall pay $42.5 million, plus interest calculated in the manner set forth in Paragraph 7 ("State Interest"), in accordance with Subparagraph 23.a. (State Payment Procedure) to the Clark Fork Site Response Action Account as established and operated pursuant to Subparagraph 25.a.(i) and Paragraph 26 for development and implementation of the Work at the Clark Fork Site.

b. No later than one year after the Effective Date, AR shall also pay an additional $40.8 million, plus State Interest calculated in the manner set forth in Paragraph 7 ("State Interest"), in accordance with Subparagraph 23.a. (State Payment

Procedure), to the Clark Fork Site Response Action Account as established and operated pursuant to Subparagraphs 25.a.(i) and Paragraph 26 for development and implementation of the Work at the Clark Fork Site.

c. AR shall have the right to pre-pay these two payments. However, should AR make a decision to pre-pay, it shall provide the United States and the State with thirty (30) days advance notice of its intent to do so.

7. State Interest. The State Interest start date for payments made under Paragraph 6 shall be April 1, 2006. The interest start date for payments made under Paragraphs 16 and 17 shall be the 30th day following the Effective Date. State Interest upon AR's payments described in Paragraphs 6 and 16 and 17 shall be calculated from and including the interest start date through and including the date each payment is received by the State, at a rate equal to the interest yield on the State's Trust Funds Bond Pool ("TFBP") managed by the Montana Board of Investments or any successor agency. This interest shall be calculated and compounded on a monthly basis. The interest rate for each month shall be calculated by dividing the interest distribution per share on the TFBP (monthly dividend per share) by the share price (unit price) for the TFBP at the end of that month. Interest for periods of less than a full month shall be calculated based upon the ratio of the number of days during which interest is accruing over the number of calendar days in the particular month. Following the last day of the month during which this Consent Decree is lodged with the Court, the State shall provide AR, with a copy to EPA and NPS, its calculation of the interest rate and interest owed from April 1, 2006, through the month of lodging for AR's review and concurrence in the calculation's mathematical accuracy and consistency with the terms of this Consent Decree. Following the last day of the month for each month thereafter until the payments described in Paragraphs 6, 16, and 17 plus State Interest owed are paid in full

by AR, the State shall provide AR its calculation of the interest rate for the preceding month and accrued interest owed through such month for AR's review and concurrence in the calculation's mathematical accuracy and consistency with the terms of this Consent Decree. The payment of each installment described in Paragraphs 6, 16, and 17 shall include all interest then accrued on the payment amount, calculated as provided above, through the end of the month immediately preceding the date of payment plus the partial month's interest accrued through the date of payment, calculated using the interest rate used for the immediately preceding month. State Interest on the unpaid portion of the payments described in Paragraphs 6, 16, and 17 for the remainder of that month shall be at the regular monthly rate calculated as initially described above. In the event of any dispute between AR and the United States or the State over the amount of interest owed, such dispute shall not delay AR's payment of the amounts due under Paragraphs 6, 16, and 17 and any amount of interest owed on those amounts which AR does not dispute. Any dispute over interest owed by AR shall be subject to dispute resolution under Section XX (Dispute Resolution). In the event judicial approval and entry of this Consent Decree is not obtained, no interest shall be owing or paid by AR.

8. AR Contingent Payment of $9.4 Million in Further Response Costs.

a. EPA Payment of Further Response Costs. EPA shall pay for any Further Response Costs incurred by the Lead Agency. EPA shall make such payments using the money it recovered from AR and placed into the Federal Clark Fork River Basin Remaining Sites Special Account described in Paragraph 30.

b. AR Reimbursement of Further Response Costs. AR shall reimburse EPA for any Further Response Costs paid by EPA, including but not limited to response costs directly incurred by EPA and amounts paid by EPA to the State under Subparagraph 8.a.

AR shall have the ability to dispute its obligation to reimburse these Further Response Costs only as specified in Subparagraphs 8.d., e., and f.; provided, however, AR's reservation of rights against the State upon receipt of a demand from EPA or for recovery of any amounts paid to EPA by AR under this Subparagraph 8.b are set forth in the State CD II.

c. Payment Procedure for AR. EPA shall send AR a bill for Further Response Costs that AR is required to reimburse under this Paragraph. Each bill shall contain an accounting and the State quarterly reports for all response costs spent by EPA and DEQ to date. The bill shall be included in the publicly available Site Record for the Clark Fork Site maintained by the State and EPA. AR shall make all payments to the Clark Fork River Basin Special Account within sixty (60) days of AR's receipt of each bill requiring payment, in accordance with instructions provided in the bill. AR shall forward a record of the payment to the State and the United States as specified in Paragraph 139 (Notices and Submissions) and also to:

Director
Financial Management Programs
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Cost Recovery Coordinator
U.S. EPA, Region 8
Montana Field Office, Federal Building
10 West 15th Street
Helena, Montana 59624

d. Resolution of Disputes Concerning AR's Contingent Payment of $9.4 Million in Further Response Costs. AR may only dispute bills for the payment of Further Response Costs required under this Paragraph pursuant to the dispute resolution procedures in Paragraph 86 (Dispute Resolution Procedures for Disputes Concerning

AR's Contingent Payment of $9.4 Million in Further Response Costs) of this Consent Decree on the following grounds: (i) that the United States made an accounting error in determining the amount of the Further Response Costs; or (ii) that the United States is seeking reimbursement of Oversight Costs for EPA for the Clark Fork Site; or (iii) that the United States is seeking Restoration costs, except for that portion of the costs for State Restoration at the Clark Fork Site in lieu of Remedy approved by EPA and done pursuant to Subparagraph 26.c

e. AR may not challenge the Remedy or the ROD, and may not assert that any sum spent within the $83.3 Million plus Earnings or the Further Response Costs up to $9.4 million was incurred inconsistent with the NCP. Nothing in this Paragraph shall be deemed to create a right to pre-enforcement review of response actions taken by the State or EPA.

f. Except as otherwise expressly provided in Subparagraph 8.d. (Resolution of Disputes Concerning AR's Contingent Payment of $9.4 Million in Further Response Costs), AR waives all defenses to liability and defenses to the joint and several nature of its liability, and waives its counterclaims and any other claims against the United States and the State, for the response costs required to be paid by AR under this Paragraph.

9. AR's Payment for DOI Clark Fork Site Response Costs. In compromise and settlement of the DOI Clark Fork Site Response Costs, within 30 days of the Effective Date, AR shall pay to DOI $ 1,400,000 in accordance with the payment procedures set forth in Paragraph 21.

10. Payment of Federal Clark Fork Site DOJ and EPA Interim Response Costs. AR shall reimburse the EPA Hazardous Substance Superfund for all Federal Clark Fork Site DOJ and EPA Interim Response Costs that are not inconsistent with the NCP up to the $ 6,200,000 cap

amount, as provided in this Consent Decree. In the year following the Effective Date, the United States will exercise best efforts to send AR a bill for Federal Clark Fork Site DOJ and EPA Interim Response Costs, including Cost Documentation, requiring payment of Federal Clark Fork Site DOJ and EPA Interim Response Costs. Any failure by the United States to provide such a billing and/or complete Cost Documentation, however, shall not relieve AR of any obligation under this Consent Decree. AR shall make payments within sixty (60) days of its receipt of the bill requiring payment, except as otherwise provided in Paragraph 11. AR shall make all payments required by this Paragraph in the form of a certified or cashier's check, or by wire transfer as described below, made payable to "EPA Clark Fork River Basin Special Account Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID # 8-23, the DOJ case number 90-11-2-430, and the name and address of the party making payment. AR shall send the check or the wire transfer to the address given in the periodic billing and shall send copies of the check or wire transfer to the United States as specified in Section XXVI (Notices and Submissions), to the Cost Recovery Coordinator, US EPA Montana Office, 10 West 15th Street, Suite 3200, Helena, Montana 59624, and to the Director of Financial Management Programs, US EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. The United States shall deposit this amount into the Clark Fork River Basin Special Account (also known as the Clark Fork River Basin Remaining Sites Special Account) within the EPA Hazardous Substance Superfund described in Paragraph 30.

11. Dispute of Interim Cost Billing. AR may contest payment of any Federal Clark Fork Site DOJ and EPA Interim Response Costs under Paragraph 10 solely on the basis that: (a) the United States has made an accounting error; (b) a cost item demanded for reimbursement represents costs that are inconsistent with the NCP; or (c) EPA has failed to provide complete Cost

Documentation as required by Paragraph 10. The failure of the United States to provide complete Cost Documentation shall not relieve AR of any obligation under this Consent Decree, but it may provide the basis for AR to seek, through the dispute resolution provisions of Section XX (Dispute Resolution), a reduction in AR's obligation to reimburse EPA for those costs which AR claims are not fully supported by Cost Documentation. Any objection made under this Paragraph shall be made in writing within sixty (60) days of receipt of the bill and must be sent to the United States. Any such objection shall specifically identify the contested Federal Clark Fork Site DOJ and EPA Interim Response Costs and the basis for the objection. In the event of an objection, AR shall, within the 60-day period, pay all uncontested Federal Clark Fork Site DOJ and EPA Interim Response Costs to the EPA in the manner described in Paragraph 10 and shall initiate the dispute resolution procedures in Section XX (Dispute Resolution). Any such payment made by AR shall be credited by the United States only to the payment of the uncontested costs. If the United States prevails in the dispute, within thirty (30) days of the resolution of the dispute, AR shall pay the sums due (with accrued Federal Interest) to the EPA, in the manner described in Paragraph 10. If AR prevails concerning any aspect of the contested costs, AR shall pay that portion of the costs (plus associated accrued Federal Interest), if any, for which it did not prevail to the EPA, in the manner described in Paragraph 10. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding AR's obligation to reimburse the United States for its Federal Clark Fork Site DOJ and EPA Interim Response Costs.

12. AR's Payment of Clark Fork Site Oversight Costs for EPA.

a. Within thirty (30) days of the Effective Date, AR shall pay $ 1,700,000 to the Clark Fork Site Operable Unit Special Account in full satisfaction and settlement of the obligation to pay Oversight Costs for EPA for the Clark Fork Site. Such payment shall be made by FedWire Electronic Funds Transfer ("EFT") to a DOJ account in accordance with the current electronic funds transfer procedures, referencing U.S.A.O. file number 89V0279, the EPA Region and Site/Spill ID # 08-23, and DOJ case number 90-11-2-430. Payment shall be made in accordance with instructions provided to AR by the Financial Litigation Unit of the United States Attorney's Office for the District of Montana following lodging of this Consent Decree. Any payments received by DOJ after 4:00 P.M. (Eastern Time) will be credited on the next business day. AR shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and the Cost Recovery Coordinator, US EPA Montana Office, 10 West 15th Street, Suite 3200, Helena, Montana 59624 and to the Director of Financial Management Programs, US EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202.

b. The United States may not recover from AR any Oversight Costs for EPA for the Clark Fork Site that the United States incurs at the Clark Fork Site, or for oversight costs by NPS at the Grant-Kohrs Ranch and BLM Lands, in excess of the amount paid by AR pursuant to this Paragraph, or Paragraphs 9, 20.a, or 20.b respectively, except for additional oversight costs the United States incurs based on its reserved rights to take additional actions pursuant to Section XXII (Covenants and Reservations by the United States).

13. AR's Payment of Oversight Costs for EPA for the State Property Remedial Commitments.

a. Within thirty (30) days of the Effective Date, AR shall pay $ 500,000 to the Anaconda Site Special Account in satisfaction and settlement of the obligation to pay for Oversight Costs for EPA for the State Property Remedial Commitments. Such payment shall be made by FedWire Electronic Funds Transfer ("EFT") to a DOJ account in accordance with the current electronic funds transfer procedures, referencing U.S.A.O. file number 89V0279, the EPA Region and Site/Spill ID # 08-23, and DOJ case number 90-11-2-430. Payment shall be made in accordance with instructions provided to AR by the Financial Litigation Unit of the United States Attorney's Office for the District of Montana following lodging of this Consent Decree. Any payments received by DOJ after 4:00 P.M. (Eastern Time) will be credited on the next business day. AR shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and Cost Recovery Coordinator, US EPA Montana Office, 10 West 15th Street, Suite 3200, Helena, Montana 59624 and to Director of Financial Management Programs, US EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202.

b. The United States may not recover from AR any Oversight Costs for EPA for the State Property Remedial Commitments that the United States incurs for oversight of the State Property Remedial Commitments in excess of the amount paid by AR pursuant to this Paragraph, except for additional oversight costs the United States incurs based on its reserved rights to take additional actions pursuant to Section XXII (Covenants and Reservations by the United States).

14. Obligations for Additional Response Costs.

a. If EPA or the State incurs Additional Response Costs, AR shall reimburse EPA and the State for the amount of the Additional Response Costs subject to the limitations in Subparagraphs 14.b and 14.c, and, subject to AR's ability to dispute the Additional Response Costs payment as specified in Subparagraph 14.e, AR, the State, and EPA shall make payment of Additional Response Costs in accordance with Subparagraph 14.d, below.

b. The parties to the Consent Decree shall pay any Additional Response Costs as follows:

(i). Round 1:

(1) EPA shall pay up to the first $5,000,000;

(2) The State shall pay up to the next $5,000,000;

(3) AR shall pay up to the next $5,000,000;

(ii). All Subsequent Rounds:

(1) EPA shall pay up to the first $10,000,000;

(2) The State shall pay up to the next $10,000,000;

(3) AR shall pay up to the next $10,000,000;

The dollar amounts specified in this Subparagraph represent actual amounts that may be incurred in the future, not discounted to present value.

c. No Party shall be obligated to pay any amount pursuant to this Paragraph 14 (Obligations for Additional Response Costs) until full payment is made by each Party whose payment obligations precede that Party's obligation as provided herein.

d. EPA or the State shall send AR a bill for Additional Response Costs that AR is required to reimburse under this Paragraph 14 (Obligations for Additional Response Costs). Each bill shall contain an accounting and Cost Documentation of all Additional Response Costs incurred prior to submittal of a bill to AR for Additional Response Costs. The bill shall be included in the publicly available Site Record for the Clark Fork Site maintained by EPA and the State. AR shall make all payments to the Clark Fork Site Response Action Account within ninety (90) days of AR's receipt of each bill requiring payment, in accordance with instructions provided in the bill. AR shall forward a record of the payment to the State and the United States as specified in Paragraph 139 and also to:

Director
Financial Management Programs
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Cost Recovery Coordinator
U.S. EPA, Region 8
Montana Field Office, Federal Building
10 West 15th Street
Helena, Montana 59624

e. Resolution of Disputes with AR Concerning Payment of .Additional Response Costs.

(i). AR may only dispute bills for payment of its share of Additional Response Costs pursuant to the dispute resolution procedures in the Consent Decree on the following grounds:

(A) that the United States or the State made an accounting error in determining the amount of Additional Response Costs, in determining the underlying amount expended to implement the Work or any

modifications thereof, or in determining the amount expended in any preceding rounds of payments pursuant to Subparagraph 14.b;

(B) that the United States or the State is seeking reimbursement of Oversight Costs for EPA for the Clark Fork Site where recovery of such costs is inconsistent with this Consent Decree;

(C) that the Additional Response Costs paid under Subparagraph 14.b by any Party in that Round were incurred for Federal Restoration or State Restoration for the Clark Fork Site, except for that portion of costs for State Restoration at the Clark Fork Site approved by EPA in lieu of Remedy, as provided in this Consent Decree;

(D) that the Additional Response Costs paid by the United States or the State in that Round or required to be paid by AR in such Round were incurred inconsistent with the NCP; or

(E) that the Additional Response Costs were based on the expenditure of funds for additional response actions or modifications to the Work that were outside of the Scope of the Remedy selected in the ROD. For the purposes of this Consent Decree, the "Scope of the Remedy selected in the ROD" ("Scope of the Remedy") is as follows:

(1) the removal of materials from certain areas within Reaches A and B that: are identified as exposed tailings; are within Class 1 streambank areas, are impacted areas (including but not limited to old river channels and ox bows, wetlands, ponds, marshes and irrigation and drainage ditches and canals) where the

depth of contamination prevents adequate and effective in-situ treatment; or are impacted areas where adequate and effective in-situ treatment is prevented due to saturation;

(2) the evaluation of certain impacted areas within Reaches A and B, and the subsequent removal of materials which have been or would be treated in-situ but which must be removed because the treated areas would still exceed human health based action levels for current or reasonably anticipated land uses;

(3) the evaluation of impacted areas within the Grant-Kohrs Ranch and the removal of contaminated material from those areas if Performance Standards are not or would not be met after no more than three attempts at in-situ treatment and revegetation;

(4) the placement of clean soil, where appropriate, and the establishment of Appropriate Vegetation in the areas within Reaches A and B where contaminated materials have been removed, as described above in Subparagraphs 14.e.(i)(E)(1) through (3) and (15);

(5) the reestablishment of Appropriate Vegetation for native riparian vegetative communities for the riparian zone of the Grant-Kohrs Ranch;

(6) the in-situ treatment of, and the establishment of Appropriate Vegetation in, certain areas within Reach A identified

as "impacted" in Section 12 of Part 2 of the ROD, but which are not identified for removal;

(7) the secure stabilization of streambanks classified as Class 1 or Class 2 within Reaches A and portions of Reach B, and the major and minor tributaries of Reaches A and B within the 100-year historic floodplain of the Clark Fork River, using soft engineering techniques whenever practicable, and hard engineering techniques when warranted, and the establishment of protective and Appropriate Vegetation in the riparian vegetative corridor throughout Reach A and portions of Reach B;

(8) Appropriate Vegetation for streambank stabilization and revegetation of streambanks within the Grant-Kohrs Ranch along a minimum of 9,450 feet of concave "cutbanks";

(9) all best management practices to control erosion and sedimentation in accordance with the U.S. Fish and Wildlife Service biological opinion;

(10) disposal of removed materials into Opportunity Ponds, as provided in Paragraph 51 of this Consent Decree;

(11) thorough and effective weed control for all areas within Reaches A and B that have received in-situ treatment, removal of materials, streambank stabilization, or are otherwise affected as part of the implementation of the Remedy;

(12) the creation of a riparian buffer zone of approximately fifty feet on both sides of the Clark Fork River within Reach A and portions of Reach B to establish and maintain adequate and Appropriate Vegetation along streambanks; and the creation of a similar buffer zone of approximately twenty-five feet in streams tributary to the Clark Fork River but within the boundary of the Clark Fork Site;

(13) land use and other institutional controls within Reaches A and B, including county zoning regulations, permanent deed restrictions and use funding for recreational use of Arrowstone Park near Deer Lodge to ensure that this area is maintained and dedicated for use as a recreational area, and ground water sampling and use controls;

(14) implementation of best management practices and other actions on land affected by implementation of the Remedy, landowner access, off-site livestock watering, and fencing;

(15) the removal of areas that exceed human health action levels within and near areas identified in the ROD for such removal including: the "trestle" area, in Deer Lodge, Montana; the Grant-Kohrs Ranch; historically irrigated lands such as the Eastside Time Critical Removal Action; and all properties within the Clark Fork River OU floodplain that are being use for residential purposes;

(16) all monitoring and maintenance associated with the Remedial Action;

(17) other activities necessary to comply with ARARs, including wetland evaluation, replacement, and creation, including all "no net loss" mitigation requirements (with an emphasis on establishing healthy wetlands in old oxbows, existing wetlands, and marshes); as well as the avoidance and mitigation of protected historical resources;

(18) infrastructure construction, maintenance and repair, including without limitation, roads, canals, ditches, bridges and culverts required to support the Remedy; and

(19) any Operation and Maintenance.

f. In the event that AR prevails in its defense that any costs sought by EPA or the State pursuant to this Paragraph are outside of the Scope of the Remedy, such costs may be sought by EPA or the State under Subparagraphs 115(f) (United States' General Reservations of Rights) or 125(f) (State's General Reservations of Rights). EPA's and the State's rights under this Subparagraph are in addition to any remedies EPA or the State may have for recovery of such costs under Paragraphs 110 (United States' Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), 111 (United States' Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), 118 (State's Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), and 119 (State's Post-Certification Reservations Relating to Response Actions at the Clark Fork Site).

g. AR may not challenge the Remedy or the ROD and may not assert that any sum spent within the $ 92,700,000, plus Earnings, plus any Additional Response Costs previously paid under Subparagraph 14.b were incurred inconsistent with the NCP, except as provided in Subparagraph 14.e.

h. Except as otherwise expressly provided in this Paragraph, AR waives all defenses to liability and defenses to the joint and several nature of its liability for Additional Response Costs and waives its counterclaims and any other claims against the United States and the State for Additional Response Costs.

i. AR may dispute a bill for Additional Response Costs only by sending to DEQ and EPA, in accordance with Paragraph 79, a written notice of dispute as required by Section XX (Dispute Resolution), which must be sent within 90 days of AR's receipt of the bill.

j. If AR disputes the payment of any portion of a bill for Additional Response Costs, AR shall, within 90 days of its receipt of the bill, pay all uncontested Additional Response Costs in the manner described in Subparagraph 14.d. If EPA or the State prevails in the dispute, AR, within 10 days of the resolution of the dispute, shall pay the sums due (with Federal Interest on those sums) in the manner described in Subparagraph 14.d. If AR prevails concerning any aspect of the contested costs, AR shall pay that portion of the costs, with Federal Interest, for which it did not prevail in the manner described in Subparagraph 14.d . The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanisms for resolving disputes regarding AR's obligations to reimburse EPA or the State for Additional Response Costs.

k. All disputes between AR and EPA or the State regarding the applicable standard of review shall be governed by the procedures in Paragraph 79 (Procedures for Dispute Resolution) and the standards set forth in Paragraphs 82 (Formal Disputes under Record Review) and 83 (Other Dispute Resolution). Nothing in the Consent Decree shall be construed as an agreement by the Parties or a present determination by the Court for purposes of Paragraph 79 (Procedures for Dispute Resolution) as to whether resolution of any particular dispute shall be conducted pursuant to the applicable standard under either Paragraph 82 (Formal Disputes under Record Review) or Paragraph 83 (Other Dispute Resolution).

15. No Warranty Regarding Performance Standards. AR acknowledges and agrees that nothing in this Consent Decree or the ROD or the plans to be developed under this Consent Decree, constitutes a warranty or representation of any kind by the United States or the State that the work requirements set forth in the ROD or in the design plans developed to implement the Remedy will achieve the Performance Standards.

VII. COMPENSATION FOR NATURAL RESOURCE DAMAGES

16. Compensation by AR to the State for State Natural Resource Damages. AR shall pay $72.5 million ("State NRD Settlement Amount"), plus State Interest, to the State in consideration for the State's Covenant set forth in Paragraph 124 ("Covenants by the State Relating to State Natural Resource Damages"), as set forth in Paragraph 17 below.

17. Not more than thirty (30) days after the Effective Date, AR shall pay $ 14.5 million of the State NRD Settlement Amount to the State, in accordance with Subparagraph 23.b. Each year thereafter, for four years, on the anniversary date of this first payment, AR shall pay $14.5 million of the State NRD Settlement Amount plus State Interest then owing to the State, in accordance with Subparagraph 23.b. AR shall have the right at any time to prepay (accelerate

payments of) the remaining State NRD Settlement Amount principal in whole or in part, along with any State Interest owed at the time of prepayment, so long as AR provides the State with at least 30 days advance notice of its intent to prepay. There shall be no premium or penalty for any prepayment.

18. Beck Ranch and Powell County Property.

a. Not more than thirty (30) days after the Effective Date, AR shall convey to the State, or its designee, fee simple title to the Beck Ranch as described in Appendix B, by warranty deed. AR shall not reserve any water rights or claims to ground water beneath the Beck Ranch in such conveyance to the State or its designee. Nor shall AR reserve the right to use the surface or subsurface to excavate or remove any minerals, including common or uncommon varieties of dirt, sand, stone, gravel or other borrow or fill materials. AR has provided the State with a copy of Commitment No. PWL-10866 (and Endorsements) issued by First American Title Company to effectuate this conveyance. The conveyance of the Beck Ranch and the title conveyed shall be subject to Schedule B Exceptions 1 through 8, as set forth in the commitment, but shall be free and clear of all other exceptions or encumbrances that have not been approved in writing by the State.

b. Prior to lodging, AR provided the State with title information available to AR related to certain property owned by AERL in Powell County, said property consisting of about 48 acres in the Clark Fork River floodplain located south of the Town of Deer Lodge, MT (the "AERL Property"). No later than nine (9) months following the Effective Date and at the option of the State, AERL shall transfer the AERL Property to the State or its designee if AR and the State reach agreement upon a form of deed that is

mutually acceptable. Should the State elect not to exercise its option and accept a deed for transfer of the AERL Property within nine (9) months following the Effective Date, the option is void and AR shall have no further obligation to transfer the AERL Property under this Consent Decree.

c. AR releases all claims and causes of action against the State and the United States and their respective agencies, instrumentalities, officials, employees, and agents, and any State assignee and its successors in interest that may arise from ownership of said lands and the existence of Hazardous Substances, if any, which are present upon, about or beneath said lands as of the date of the conveyance by AR, or the migration of said Hazardous Substances or Hazardous Substances on upstream or adjacent lands as of the date of conveyance, to, on, or from said lands after the date of conveyance.

19. Water Rights. AR shall convey to the State all of its interests in the water rights described in Appendix H of this Consent Decree, which include water rights in the Warm Springs Creek, Mill Creek, Willow Creek, Lost Creek, and Dutchman Creek drainages, subject to and upon the conditions set forth in Paragraph 72 and Appendix H. A portion of the water supply from these water rights shall be made available for Remedy as provided in Paragraph 72 and Appendix H.

20. Compensation by AR to DOI for Natural Resource Damages.

a. Not more than 30 days after the Effective Date, AR shall pay $3 million, to NPS, in accordance with payment instructions in Paragraph 22, in compromise and settlement of Federal Natural Resource Damages claims for the Grant-Kohrs Ranch. This money will be placed in an interest bearing account by DOI, and may be used by

DOI for any lawful purpose, including the oversight and implementation of Federal Restoration, the oversight of Work at or affecting Grant-Kohrs Ranch, and the oversight of Work that is integrated with Federal Restoration.

b. Not more than 30 days after the Effective Date, AR shall pay $350,000 to BLM, in accordance with payment instructions in Paragraph 22, in compromise and settlement of Federal Natural Resource Damages claims at the BLM Lands. This money will be used by BLM for the implementation of the Federal Restoration Plan at the BLM Lands, as provided in Paragraph 70.

VIII. PAYMENT PROCEDURES AND INTEREST

21. DOI Response Costs Payment Procedure. All payments made to DOI pursuant to Paragraph 9 shall be made by AR to DOI in accordance with the following instructions.

a. AR shall notify the NPS Project Manager upon payment.

b. Payment shall be made to the CHF by automated clearing-house known as Treasury's Automated Clearing House (ACH)/Remittance Express program.

Preferred method of electronic transfer:	Automated Clearing House (ACH)
Receiver name:	Central Hazardous Materials Fund ALC 14010001
Receiver Tax ID Number:	53-0196949
Receiver address:	7401 West Mansfield Ave. Mailstop D-2777 Lakewood, Colorado 80235
Receiver bank:	Federal Reserve Bank New York, New York ABA # 051036706
Receiver ACH Account No.:	312024

If needed, additional Information for Remitter's Banking Institution may be obtained from the NPS Project Manager, following lodging of the CD.

22. DOI NRD Payment Procedure. All payments made to DOI pursuant to Subparagraphs 20.a. and 20.b. shall be made by AR to DOI in accordance with the following instructions:

a. AR shall notify the NPS Project Manager upon payment:

b. Preferred method of electronic transfer: Automated Clearing House (ACH)

Receiver name:	DOI Restoration Fund ALC 14010001
Receiver Tax ID Number:	53-0196949
Receiver address:	7401 West Mansfield Ave. Mailstop D-2777 Lakewood, Colorado 80235
Receiver bank:	Federal Reserve Bank New York, New York ABA # 051036706
Receiver ACH Account No.:	312024

If needed, additional Information for Remitter's Banking Institution may be obtained from the NPS Project Manager, following lodging of the CD.

23. State Payment Procedure.

a. Remedy Payments. All payments made to the State pursuant to Paragraphs 6 and 14, including State Interest, shall be made by AR to DEQ by electronic funds transfer in accordance with instructions to be provided by DEQ. AR shall contact the DEQ Project Officer at least 48 hours prior to initiating a transfer to provide notice of the date, time, and amount of the expected transfer and to confirm the wiring instructions, bank routing, and account numbers. If the DEQ Project Officer is unavailable, AR shall contact DEQ Legal Counsel identified in Section XXVI.

(Notices and Submissions). The State shall deposit all payments received under Paragraphs 6 and 14, and any subsequent interest and earnings into the Clark Fork Site Response Action Account. Upon lodging of this Consent Decree, DEQ will establish the Clark Fork Site Response Action Account. AR shall wire transfer payments into the Clark Fork Site Response Action Account as required by Paragraphs 6 and 14 of this Consent Decree, and the State shall notify the Parties of the deposit within five days of receipt of each AR payment. The Clark Fork Site Response Action Account shall be invested and maintained by the State Board of Investments for DEQ as set forth in this Consent Decree and the SMOA, and shall be used by DEQ to implement the Work as set forth in this Consent Decree and the SMOA.

b. State Natural Resource Damage Payments. All payments made to the State pursuant to Paragraphs 16 and 17, including State Interest, shall be made by AR to the State by electronic funds transfer in accordance with instructions to be provided by the State. AR shall contact the Fiscal Bureau Chief of the Central Services Division of the Montana Department of Justice at least 48 hours prior to initiating a transfer to provide notice of the date, time, and amount of the expected transfer and to confirm the wiring instructions, bank routing, and account numbers. If the Fiscal Bureau Chief of the Montana Department of Justice is unavailable, AR shall contact NRDP representatives identified in Section XXVI (Notice and Submissions). The State shall deposit all payments received under Paragraphs 16 and 17, and any subsequent State Interest and earnings, into the accounts described in Subparagraph 23.c. below. Those accounts shall be operated and maintained by the State as set forth in this Consent Decree.

c. Allocation of Installments. Out of the first $14.5 million payment made by AR to the State pursuant to Paragraph 16 and described more fully in Paragraph 17,

the State shall deposit $4.5 million into the Upper Clark Fork River Basin Assessment and Litigation Cost Recovery account. The State shall also deposit the remaining $10.0 million from that $14.5 million payment and each subsequent $14.5 million payment made by AR as described in Paragraph 17, plus State Interest, into the following accounts:

39.30 percent (39.30%) into the Clark Fork State Restoration Account;

19.45 percent (19.45%) into the Smelter Hill Area Uplands State Restoration Account; and

41.25 percent (41.25%) into the Butte Area One State Restoration Account.

24. Interest.

a. In the event that the payments required by Paragraph 6 (AR Payment to Clark Fork Site Response Action Account) and Paragraphs 16 and 17 are not made within the time period specified in those Paragraphs, AR shall pay State Interest on the unpaid balance. The State Interest to be paid on the amounts due under Paragraph 6 (AR Payment to Clark Fork Site Response Action Account) shall accrue as stated in Paragraph 7. The State Interest to be paid on the amounts due under Paragraphs 16 and 17 shall begin to accrue thirty (30) days after the Effective Date. State Interest shall continue to accrue through the date of AR's final payment.

b. In the event that the payments required by: (i) Paragraph 9 (AR's Payment for DOI Clark Fork Site Response Costs); (ii) Paragraph 10 (Payment of Federal Clark Fork Site DOJ and EPA Interim Response Costs); (iii) Paragraph 12 (AR's Payment of Clark Fork Site Oversight Costs for EPA); (iv) Paragraph 13 (AR's Payment of Oversight Costs for EPA for the State Property Remedial Commitments); (v) Paragraphs 8 and 14

(AR Contingent Payment of $9.4 Million in Further Response Costs) and (Obligations for Additional Response Costs); (vi) Paragraph 20 (Compensation by AR to DOI for Natural Resource Damages); and (vi) Section XXI (Stipulated Penalties) are not made within the time period specified in these Paragraphs and Section XXI (Stipulated Penalties), AR shall pay Federal Interest on the unpaid balance.

c. The Federal Interest to be paid on the amounts due under: (i) Paragraph 12 (AR's Payment of Clark Fork Site Oversight Costs for EPA); and (ii) Paragraph 13 (AR's Payment of Oversight Costs for EPA for the State Property Remedial Commitments) shall begin to accrue thirty (30) days after the Effective Date.

d. The Federal Interest to be paid on the amounts due under: (i) Paragraph 9 (AR's Payment for DOI Clark Fork Site Response Costs); and (ii) Paragraph 20 (Compensation by AR to DOI for Natural Resource Damages) shall begin to accrue 30 days after the Effective Date.

e. The Federal Interest to be paid on the amounts due under (i) Paragraph 10 (AR's Payment of Federal Clark Fork Site DOJ and EPA Interim Response Costs) and (ii) Paragraph 14 (Obligations for Additional Response Costs) shall begin to accrue sixty (60) days after the date of receipt by AR of the bill submitted by EPA or the State for such costs.

f. The Federal Interest to be paid on the amounts due under Section XXI (Stipulated Penalties) shall begin to accrue on the date of receipt of the stipulated penalty demand.

g. Federal Interest shall continue to accrue through the date of AR's payment.

h. Payments of Federal Interest or State Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States or the State by virtue of AR's failure to make timely payments under this Consent Decree.

i. AR shall make all payments required by this Paragraph in the manner described in Paragraphs 8, 9, 10, 12, 13, 14, and 20, respectively, and Paragraph 23 (State Payment Procedure).

IX. ESTABLISHMENT, MAINTENANCE, AND OPERATION OF ACCOUNTS

25. Accounts to be Established.

a. State Accounts. As provided in Paragraph 23.b, the State established the Clark Fork Site Response Action Account upon lodging of this Consent Decree. The State shall also establish no later than 30 days after the Effective Date, the following six separate State accounts – the Clark Fork State Restoration Account, the Smelter Hill Area Uplands State Restoration Account, the Butte Area One State Restoration Account, the Upper Clark Fork River Basin Assessment and Litigation Cost Recovery Fund, the State Grant-Kohrs Restoration Account, and the State Clark Fork River Reserve Account. The State shall operate and maintain the seven separate State accounts so established in accordance with the conditions and procedures set forth in this Consent Decree. As set forth more fully in this Paragraph and in Paragraphs 26 and 27, below:

(i) DEQ shall use the Clark Fork Site Response Action Account solely to finance the Work, including State oversight of the Remedial Design, Remedial Action, and Operation and Maintenance, at or in connection with the Clark Fork Site.

(ii) the State shall use the Clark Fork State Restoration Account solely to restore, rehabilitate, replace or acquire the equivalent of the injured natural

resources as provided in the Clark Fork River Aquatic and Riparian Resources Restoration Plan.

(iii) the State shall use the Smelter Hill Area Uplands State Restoration Account solely to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources as provided in the Smelter Hill Area Uplands Resources Restoration Plan, including the State Property Remedial Commitments, and the State's other obligations under State CD II.

(iv) the State shall use the Butte Area One State Restoration Account solely to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources as provided in Butte Ground and Surface Water Resources Restoration Planning Process and Plan.

(v) the State shall use the Upper Clark Fork River Basin Assessment and Litigation Cost Recovery Fund to reimburse various entities and accounts of the State that loaned money to the NRDP for purposes of financing the costs of the State Action and related natural resource damage assessments.

(vi) DEQ shall use the State Grant-Kohrs Restoration Account solely to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources at the Grant-Kohrs Ranch pursuant to the Grant-Kohrs Ranch portion of the Federal Restoration Plan developed by DOI.

(vii) the State Clark Fork River Reserve Account shall be maintained by the State to ensure payment of Further and Additional Response Costs and for additional costs for restoration of the Clark Fork Site and tributaries to the Clark Fork River upstream of the historic location of the Milltown Dam, and for other

remedial or restoration obligations related to the Clark Fork Site, such tributaries, the State Property Remedial Commitments, and the State's other obligations under State CD II.

Each of these seven State Accounts established pursuant to this Paragraph 25 shall be a State special revenue fund, as provided for in Mont. Code Ann. § 17-2-102(1)(b)(i), which shall be held and maintained by the State in accordance with the requirements of this Consent Decree. Except to the extent that funds in the Upper Clark Fork River Basin Assessment and Litigation Cost Recovery Fund will be used to reimburse the State General Fund for prior loans and interest, no portion of the amounts deposited in these accounts, or any interest or earnings thereon, is to be treated as State General Fund money, nor is any portion to be converted or transferred to the State General Fund. The monies paid to each of these State special revenue fund accounts, and the interest and earnings thereon, shall be available only for the respective purposes described for which each account is established under this Paragraph 25 and for no other purpose. Administrative costs incurred by the State related to these accounts shall be borne by the State. These administrative costs are to be charged against the account that they are related to, except that the State, in its discretion, may pay administrative costs related to the three State Restoration accounts from other State restoration funds.

b. Federal Accounts. No later than 60 days after the Effective Date, EPA shall establish two special accounts within the EPA Hazardous Substance Superfund called: (i) the Clark Fork Site Operable Unit Special Account; and (ii) the Anaconda

Smelter NPL Site Special Account. EPA has already established another special account within the EPA Hazardous Substance Superfund called the Clark Fork River Basin Special Account. The purpose of these accounts is described in Paragraphs 8, 12, 13, 28, 29, and 30.

26. Use and Restrictions on the Clark Fork Site Response Action Account. The State shall deposit into the Clark Fork Site Response Action Account all monies paid by AR pursuant to Paragraphs 6, 14, 24 (for State Interest due to late payments for Paragraphs 6 and 14), and Earnings thereon. The Clark Fork Site Response Action Account shall be a State special revenue fund, as provided for in Mont. Code Ann. § 17-2-102(1)(b)(i), and shall be maintained in accordance with Subparagraph 25.a. The account shall be held, invested, and maintained by the State Board of Investments for DEQ in accordance with all requirements of this Consent Decree and the SMOA. All Earnings on the Clark Fork Site Response Action Account shall be paid into the Clark Fork Site Response Action Account.

a. Use of Funds. The monies paid into the Clark Fork Site Response Action Account plus Earnings shall be used by DEQ solely to implement the Work, as set forth in this Consent Decree. Nothing herein allows AR or any third party to challenge the use of the Clark Fork Site Response Action Account, except as authorized by Paragraph 14 (Obligations for Additional Costs).

b. The use of the Clark Fork Site Response Action Account shall be governed by the terms of this Consent Decree and the SMOA. Funds may be disbursed from the Clark Fork Site Response Action Account by DEQ to pay for the costs of the Work for the Clark Fork Site in accordance with an annual budget estimate developed by DEQ, in consultation with EPA, as described in the SMOA. Oversight Costs for EPA for

the Clark Fork Site will not be paid from the Clark Fork Site Response Action Account. As required by this Paragraph and the SMOA, DEQ shall provide quarterly statements to EPA, NPS, and AR reporting on the funds received into and disbursed from the Clark Fork Site Response Action Account, and, to AR only, the State shall provide a semi-annual statement on the funds received into and disbursed from the Clark Fork State Restoration Account.

c. Integration of State Restoration with Remedy Monies. If the State, in consultation with EPA, decides, as part of Remedial Design or a particular Remedial Action to integrate certain State Restoration with the Remedy, monies from the Clark Fork Site Response Account may be spent on the combined Remedy-State Restoration action up to the estimated cost of the remedy component, as determined in Remedial Design. For example, if the Remedial Action contemplates in-situ treatment of an area of impacted soils and vegetation, and the applicable State Restoration plan calls for this same area of impacted materials to be removed, the State in consultation with EPA, may apply the estimated costs of in-situ treatment of this area out of the Clark Fork Site Response Action Account to the cost of removal, with any balance of monies necessary for removal and backfill to be paid from the Clark Fork State Restoration Account.

d. Remaining Monies. The State shall transfer any remaining monies, including Earnings, in the Clark Fork Site Response Action Account which the State and EPA determine are not required for the cost of implementing the Work (including reasonable estimates for O&M) to the Clark Fork Site Restoration Account to be used by the State in accordance with Subparagraphs 25.a.(ii) and 27.a., and Section XVII (Performance of Restoration by the State and DOI). After submitting a Certification of

Completion of Remedial Action as described in Section XIV (Certification of Completion), DEQ shall notify EPA when it determines that there are funds remaining in the Clark Fork Site Response Action Account that are not required to complete the implementation of the Work (including reasonable estimates for O&M) and shall request that EPA approve the transfer of these funds. DEQ shall include with such notice an accounting of all past and estimated future response cost expenditures. EPA shall act on this request within a reasonable amount of time, but in any event within one year from the date of the notice. Upon approval, DEQ shall transfer the excess funds to the Clark Fork State Restoration Account. Additionally, when EPA and DEQ jointly agree in writing that O&M is no longer necessary, the State shall then also transfer any funds remaining in the Clark Fork Site Response Action Account to the Clark Fork State Restoration Account.

27. Use and Restrictions on the Other State Special Revenue Fund Accounts.

a. Clark Fork State Restoration Account. The State shall deposit into the Clark Fork State Restoration Account all monies paid by AR to the State pursuant to Paragraphs 16 and 17, and State Interest thereon, that are to be allocated to the Clark Fork State Restoration Account in accordance with the allocations and requirements of Subparagraphs 23.b. and c. The State shall also deposit into that account all interest and earnings on the account. The use of the Clark Fork State Restoration Account shall be governed by applicable law and the terms of this Consent Decree and the SMOA. The State shall use all funds in the Clark Fork State Restoration Account to implement the Clark Fork River Aquatic and Riparian Resources Restoration Plan.

b. Smelter Hill Area Uplands State Restoration Account. The State shall deposit into the Smelter Hill Area Uplands Restoration Account all monies paid by AR to the State pursuant to Paragraphs 16 and 17, and State Interest thereon, that are to be allocated to the Smelter Hill Area Uplands State Restoration Account in accordance with the allocations and requirements of Subparagraphs 23.b. and c. The State shall also deposit into that account all interest and earnings on the account. Using money from this account, the State shall implement the Smelter Hill Area Uplands Resources Restoration Plan, including the State Property Remedial Commitments, which the State shall implement in accordance with this Consent Decree and the SMOA. The State's allocation of funds under Subparagraphs 23.c and the availability of funds in the Smelter Hill Area Uplands Restoration account, as described in this Subparagraph 27.b, shall not limit the State's obligations under Section XVI (Performance of State Property Remedial Commitment by State) of this Consent Decree. The use of the Smelter Hill Area Uplands State Restoration Account will be governed by applicable law and the terms of this Consent Decree and State CD II.

c. Butte Area One State Restoration Account. The State shall deposit into the Butte Area One Restoration Account all monies paid by AR to the State pursuant to Paragraphs 16 and 17, and State Interest thereon, that are to be allocated to the Butte Area One State Restoration Account in accordance with the allocations and requirements of Subparagraphs 23.b. and 23.c. The State shall also deposit into that account all interest and earnings on the account. The use of the Butte Area One State Restoration Account shall be governed by applicable law and the terms of this Consent Decree. The State

shall use the Butte Area One State Restoration Account to implement the Butte Ground and Surface Water Resources Restoration Planning Process and Plan.

d. Upper Clark Fork Basin Assessment and Litigation Cost Recovery Fund. The State shall deposit into the Upper Clark Fork Basin Assessment and Litigation Cost Recovery Fund all monies paid by AR to the State pursuant to Paragraphs 16 and 17, that are to be allocated to the Upper Clark Fork River Basin Assessment and Litigation Cost Recovery Fund in accordance with the allocations and requirements of Subparagraphs 23.b. and c. The State shall also deposit into this account all interest and earnings on the account. The use of the account shall be governed by applicable law and the terms of this Consent Decree. Any remaining monies, including interest and earnings, in the account which the State determines are not required after reimbursing the various entities and accounts of the State which financed the costs of the State Action and related natural resource damage assessments shall be divided by the State into three equal shares and transferred to the Smelter Hill Area Uplands State Restoration Account, Butte Area One State Restoration Account, and the Clark Fork State Restoration Account, respectively.

e. State Grant-Kohrs Restoration Account. DEQ shall deposit into the State Grant-Kohrs Restoration Account any monies transferred by NPS to DEQ for implementing Federal Restoration activities on Grant-Kohrs Ranch. The use of the State Grant-Kohrs Restoration Account shall be governed by applicable law and the terms of this Consent Decree and the SMOA. DEQ will use any monies transferred or paid into the State Grant-Kohrs Restoration Account, plus all interest and earnings on the account, to design and implement the Federal Restoration Plan for the Grant-Kohrs Ranch.

f. State Clark Fork River Reserve Account. No more than 30 days after the Effective Date of this Consent Decree, the State shall transfer $12.5 million from the Silver Bow Creek ("SBC") Reserve Account, established under the Streamside Tailings and State/AR Consent Decrees, to the State Clark Fork River ("CFR") Reserve Account, established hereby, to ensure the payments as provided for in Subparagraph 25.a.(vii). All interest and earnings on money in the State CFR Reserve Account are to be paid into the State CFR Reserve Account. The State has determined that the funds currently in the SBC Reserve Account will not be required for any State share of cost overruns in the Streamside Tailings Operable Unit; provided, however, the State's determination and transfer of funds under this Subparagraph shall not modify any obligations of the State set forth in the Streamside Tailings consent decree. Immediately after transferring the $12.5 million into the State CFR Reserve Account, the State shall transfer any remaining money in the SBC Reserve Account into Upper Clark Fork River Basin Restoration Fund ("UCFRB Restoration Fund") established in the State CD. Within 30 days after issuance of the Certification of Completion of Remedial Action pursuant to Paragraph 60, the State shall transfer directly to the UCFRB Restoration Fund any money remaining in the State CFR Reserve Account, except for any amount that the State deems necessary for future Operation and Maintenance of the Remedy and future operation and maintenance of the State Restoration at the Clark Fork River and its tributaries.

g. Financial Reporting. DEQ shall submit quarterly reports to EPA, NPS, NRDP, and AR on the funds disbursed from the Clark Fork Site Response Action Account in accordance with the SMOA. DEQ shall include in the quarterly reports: descriptions for planned or funded work; a description of completed tasks and work in

progress; administrative fees and expenses; the balance in the account as of the date of the statement; and the current and total interest and earnings and the time period in which interest was earned. DEQ shall submit such reports on a quarterly basis with expenses detailed by month.

h. Recordkeeping. The State shall maintain records for the Clark Fork Site Response Action Account and expenditures therefrom in accordance with the requirements of Paragraph 3 (Cost Documentation Definition), Paragraph 26 (Use and Restrictions on the Clark Fork Site Response Action Account), and Paragraph 14 (Obligations for Additional Response Costs) of the Consent Decree and in a manner similar to that required for cooperative agreements as specified in 40 C.F.R. § 35.6705. Such records shall be subject to inspection and/or audit by the United States at any time. DEQ may require that portions of these records be maintained by the contractors performing activities at the Clark Fork Site. Similarly, EPA and NPS shall maintain all necessary records of their respective expenditures in accordance with the requirements of Paragraph 3 (Cost Documentation Definition) and Paragraph 14 (Obligations for Additional Response Costs) of the Consent Decree.

28. Operation and Use of the Federal Clark Fork Site Operable Unit Special Account. EPA shall deposit into the Clark Fork River Operable Unit Special Account within the EPA Hazardous Substance Superfund amounts paid by AR to the United States under Paragraph 12 (AR's Payment of Clark Fork Site Oversight Costs for EPA), which EPA shall retain and use to conduct or finance response actions at or in connection with the Clark Fork Site. EPA may, however, transfer funds from the Clark Fork River Operable Unit Special Account to either the EPA Hazardous Substance Superfund or the Clark Fork River Basin Remaining Sites Special

Account. EPA's determination under this Paragraph shall not be subject to challenge by AR or the State, to the Dispute Resolution procedures in Section XX (Dispute Resolution) of this Consent Decree, or to the dispute resolution procedures of the SMOA.

29. Operation and Use of the Anaconda Site Special Account. EPA shall deposit into the Anaconda Site Special Account within the EPA Hazardous Substance Superfund amounts paid by AR to the United States under Paragraph 13 (AR's Payment of Oversight Costs for EPA for the State Property Remedial Commitments), which EPA shall retain and use to conduct or finance response actions at or in connection with the Anaconda Smelter NPL Site. EPA may, however, transfer funds from the Anaconda Site Special Account to either the EPA Hazardous Substance Superfund or the Clark Fork River Basin Remaining Sites Special Account. EPA's determination under this Paragraph shall not be subject to challenge by AR or the State, to the Dispute Resolution procedures in Section XX (Dispute Resolution) of this Consent Decree, or to dispute resolution procedures of the SMOA.

30. The Federal Clark Fork River Basin Remaining Sites Special Account. EPA has established a special account within the EPA Hazardous Substance Superfund called the Clark Fork River Basin Remaining Sites Special Account (also known as the Clark Fork River Basin Special Account). EPA shall deposit into the Clark Fork River Basin Remaining Sites Special Account within the EPA Hazardous Substance Superfund amounts paid by AR to the United States under Paragraphs 10 (Payment of Federal Clark Fork Site DOJ and EPA Interim Response Costs), which EPA shall retain and use to conduct or finance response actions at or in connection with any of the sites within the Clark Fork River Basin or transfer to the EPA Hazardous Substance Superfund. EPA's determination under this Paragraph shall not be subject to

challenge by AR or the State, to the Dispute Resolution procedures in Section XX (Dispute Resolution) of this Consent Decree, or to the dispute resolution procedures of the SMOA.

X. PERFORMANCE OF THE WORK BY THE STATE

31. This Section describes how DEQ, with additional oversight from EPA (and NPS for the Grant-Kohrs Ranch), will oversee, manage, coordinate, and implement the Remedial Design, Remedial Action, and Operation and Maintenance, using the funds provided through this Consent Decree. The duties and requirements described in this Section are enforceable only by the State and the United States, and nothing in this Section shall be deemed to create a right of any other party, including, but not limited to AR or any third party, against the State or the United States to enforce the terms of this Section.

32. DEQ shall be the Lead Agency for completing Remedial Design, implementing the Remedial Action, and performing Operation and Maintenance of the Remedial Action as set forth in the ROD, this Consent Decree, and the SMOA. DEQ agrees to perform the Work, including any additional response actions or modifications to the Work necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedy, so long as any additional response actions or modifications to the Work are within the Scope of the Remedy as defined in Paragraph 14. Additionally, DEQ will also coordinate with the NRDP in the implementation of the Clark Fork River Aquatic and Riparian Resources Restoration Plan and in the integration of Clark Fork River Aquatic and Riparian Resources Restoration Plan components into the Work. As provided in Paragraph 70 and the SMOA, DEQ will coordinate with NPS to implement the Federal Restoration Plan at the Grant-Kohrs Ranch and, where appropriate, integrate the Federal Restoration Plan components into the Work. EPA (and NPS for Grant-Kohrs Ranch) and the State will oversee the implementation of the Work, as set forth in this Consent Decree and the SMOA.

33. Lead Agency Changes

a. If for any reason, the State determines that it is unable to continue as Lead Agency, it shall submit a written request that it no longer continue in this capacity to EPA and NPS. EPA shall promptly consult with NPS and consider the State's request, and any such transfer of lead responsibility must be jointly agreed upon by DEQ and EPA. If EPA declines the State's request, then EPA's declination shall be subject to the State/EPA dispute resolution provisions of the SMOA. If EPA accepts the State's request, or the State prevails on any State request disputed by EPA, then DEQ shall (i) cooperate with EPA in any necessary transition of Lead Agency status to EPA, (ii) transfer any remaining monies from the Clark Fork Site Response Account to the EPA Clark Fork Site Operable Unit Special Account described in Paragraph 28, and (iii) cooperate with EPA's efforts to complete the implementation of the Remedy.

b. EPA may also request a change in Lead Agency status from DEQ to EPA in the following circumstances:

1. A finding by EPA of substantial non-compliance by DEQ with the requirements of the ROD, including but not limited to Performance Standards;

2. A finding by EPA of substantial non-compliance by DEQ with the requirements of this Consent Decree; or

3. A finding by EPA of imminent and substantial endangerment to human health or the environment caused by DEQ.

DEQ shall promptly consider EPA's request, and any such transfer must be jointly agreed upon by DEQ and EPA. Any disagreements regarding this decision are subject to the State/EPA dispute resolution provisions of the SMOA. If the State declines EPA's

request, its decision shall be subject to the State/EPA dispute resolution provisions of the SMOA. If the State accepts EPA's request, or if the EPA prevails on any EPA request disputed by the State, then DEQ shall (i) cooperate with EPA in any necessary transition of Lead Agency status to EPA, (ii) transfer any remaining monies from the Clark Fork Site Response Account to the EPA Clark Fork Site Special Account described in Paragraph 28, and (iii) cooperate with EPA's efforts to complete the implementation of the Remedy.

34. General Coordination. The United States and the State shall cooperate to the fullest extent possible to maximize the use of the resources available for and the environmental benefits to the Clark Fork Site in the successful and cost effective completion of the Remedial Design, Remedial Action, Operation and Maintenance, and any modifications thereto. The State shall provide AR's Project Coordinator designated under Section XXVI (Notices and Submissions) with a copy of all submittals that are neither privileged nor confidential, that the State provides to EPA regarding the Work, Federal Restoration and State Restoration for the Clark Fork Site.

35. Compliance With Applicable Law. All response actions undertaken pursuant to the ROD and this Consent Decree, including but not limited to the Work and the State Property Remedial Commitments, shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The Work shall also comply with all performance standards, including ARARs and best management practices, as set forth in the ROD. The State Property Remedial Commitments shall also comply with all applicable performance standards, including ARARs and best management practices, as set forth in the ARWW&S ROD. The activities conducted pursuant to this Consent Decree, if performed in accordance with this Consent Decree and the SMOA, shall be considered to be consistent with the NCP.

36. Permits. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), Section 300.400(e) of the NCP, and 75-10-721(6) MCA, no permit shall be required for any portion of the Remedy, including without limitation Remedial Action and Operation and Maintenance, or for the State Property Remedial Commitments, if such activities are conducted entirely on-site (i.e., within the Clark Fork Basin Superfund Sites). Where any portion of the Remedy, including without limitation Remedial Action and Operation and Maintenance, or any portion of the State Property Remedial Commitments, is not on-site and a federal or state permit or approval is required, then the State, as the Lead Agency, shall take all actions necessary to obtain all such permits or approvals.

37. DEQ shall undertake all procurement actions in implementing the Work in a manner consistent with the standards of 40 CFR Part 35, Subpart O.

38. Remedial Design. DEQ shall develop and implement a Remedial Design Work Plan subject to review, comment, and approval by EPA and NPS in accordance with the terms of this Paragraph.

a. DEQ shall begin preparation of a draft Remedial Design Work Plan and may conduct other related Remedial Design activities for the Clark Fork Site, prior to entry of this Consent Decree, through cooperative agreement funding from EPA. The amounts drawn by DEQ for these activities under Cooperative Agreement No. V-97856801 shall be reimbursed to EPA from the Clark Fork Site Response Action Account as provided in the cooperative agreement. Within thirty days after receipt of AR's first payment into the Clark Fork Site Response Action Account, in accordance with Paragraph 6 of this Consent Decree, DEQ shall refund to EPA all costs that have been drawn by DEQ from this Cooperative Agreement. Within six months after DEQ's

receipt of cooperative agreement funding for these purposes, DEQ shall provide a draft Remedial Design Work Plan to EPA (and NPS for the matters pertaining to the Grant-Kohrs Ranch) and NRDP for review and comment in accordance with this Consent Decree and the SMOA. DEQ and EPA may extend this six month period by mutual agreement. EPA and NPS shall endeavor to coordinate their respective comments to DEQ. EPA, NPS, NRDP and DEQ agree to work cooperatively to attempt to resolve any disputes pertaining to the comments submitted.

b. Within 120 days of DEQ's receipt of such comments, and following DEQ's incorporation of such comments or the resolution of any comments disputed by DEQ, DEQ shall produce and submit a final Remedial Design Work Plan to EPA and to NPS for review and approval.

c. The draft and final Remedial Design Work Plans developed by DEQ shall describe the general schedule for the completion of Remedial Design and the implementation of Remedial Action and Operation and Maintenance, as well as the various plans, activities, and requirements that must be submitted, performed, or met to complete the Remedial Design and to implement the Remedial Action and Operation and Maintenance, in accordance with the requirements of the ROD, the SMOA, and this Consent Decree. The draft and final Remedial Design Work Plans shall also contain or describe the schedule for the development by DEQ, and the approval by DEQ and EPA (and NPS for the Grant-Kohrs Ranch), of the following documents:

i. A quality assurance/quality control plan consistent with the CFRSSI QAPP;

ii. A health and safety plan consistent with the applicable Occupational Safety and Health Administration and EPA requirements, including but not limited to 29 CFR § 1910.120 and section 300.150 of the NCP;

iii. Monitoring plans for Remedial Action and Operation and Maintenance;

iv. Plans for implementing institutional controls and landowner-specific best management plans, consistent with the ROD and the NCP;

v. Plans for implementing community relations activities, consistent with the ROD and the NCP, at the Clark Fork Site;

vi. Plans for site investigations, including sampling and analysis plans;

vii. Plans for incorporating RipES into the design investigation;

viii. A summary of the design approach and the key elements of the design approach;

ix. A description of a process for preparing final Remedial Action Work Plans for the various properties comprising the Clark Fork River Site;

x. A preliminary schedule for implementing the Work on the various properties comprising the Clark Fork River Site;

xi. A general description of how Performance Standards will be met;

xii. A general description of the interaction between Remedial and Clark Fork Site Restoration components, including any proposed performance of State Restoration in lieu of Remedy at the Clark Fork Site; and

xiii. Performance Standards/Compliance Plans, Operation and Maintenance Plans, and contractor quality assurance plans.

d. Upon approval of the final Remedial Design Work Plan, DEQ shall implement the final Remedial Design Work Plan in accordance with the provisions contained therein.

e. In accordance with the approved final Remedial Design Work Plan, DEQ shall provide to EPA (and to NPS for Grant-Kohrs Ranch) and NRDP for review and comment property-specific preliminary design plans which shall outline the scope of the Agencies' intended activities for performing Remedy and State or Federal Restoration at the Clark Fork Site on a particular property or properties and identify any specific design information likely to be necessary in evaluating and designing these activities. These plans shall also describe any proposed State Restoration in lieu of Remedy at the Clark Fork Site and the potential impacts of Remedy and the proposed addition of State Restoration at the Clark Fork Site on the property or properties.

f. During Agency consultation in developing the design for Remedy and State or Federal Restoration at the Clark Fork Site to be incorporated into the draft Remedial Action Work Plan for a particular property or properties, at least thirty days prior to the submittal of a property-specific draft Remedial Action Work Plan described below, NRDP shall provide DEQ and EPA with a technical memorandum in accordance with Paragraph 32 of Part 1 of the SMOA that identifies the specific elements of State Restoration in lieu of Remedy and the Remedy component(s) for which these elements are substituted. The technical memorandum shall also contain the supporting cost analysis described in Subparagraph 26.c. (Integration of State Restoration with Remedy

Monies) based upon CFR RipES and other available design-level investigation data. The substitution of elements of State Restoration in lieu of Remedy at the Clark Fork Site described in the technical memorandum shall be subject to EPA review, comment, and approval. EPA's approval or disapproval shall consider the design information that is available at the time of EPA's decision, developed in support of the draft Remedial Action Work Plan(s). Each technical memorandum submitted under Paragraph 32 of Part 1 of the SMOA and all supporting documentation that describe design objectives, criteria, fluvial geomorphic information, landowner information and other information considered by EPA in approval of State Restoration in lieu of Remedy at the Clark Fork Site will be placed in the EPA Site Record, upon such approval.

39. Remedial Action.

a. After DEQ's completion of each property-specific preliminary design plan, and its incorporation or consideration of comments from EPA (and from NPS for the Grant-Kohrs Ranch) on such plans, DEQ, as Lead Agency, shall prepare and provide to EPA (and NPS for the Grant-Kohrs Ranch) and NRDP for review and comment, a draft Remedial Action Work Plan in the form described in Subparagraph 39.c below for each property (or group of properties) within the Clark Fork Site. EPA and NPS shall endeavor to coordinate their respective comments to DEQ. EPA, NPS, and DEQ agree to work cooperatively to attempt to resolve any disputes pertaining to the comments submitted on the draft Remedial Action Work Plans.

b. Within 120 days of the submittal of EPA and NPS comments on the draft Remedial Action Work Plans, and following DEQ's incorporation of such comments, or the resolution of any dispute over comments submitted by EPA and NPS, DEQ shall

produce and submit to EPA for review and approval a final Remedial Action Work Plan for each property or group of properties within the Clark Fork Site. Each Remedial Action Work Plan shall include a description of any EPA-approved performance of State Restoration in lieu of Remedy for that property or group of properties. DEQ shall simultaneously submit such plans to NPS for review and approval for each property or group of properties that include or directly affect the Grant-Kohrs Ranch.

c. DEQ shall submit the draft and final Remedial Action Work Plans in the form of construction bid packages to conduct the combined Remedy and Restoration work on a particular property or properties to EPA and to NPS (for the Grant-Kohrs Ranch). DEQ shall include in the draft and final Remedial Action Work Plans (construction bid packages) all drawings pertaining to the Work to be performed on that property, a summary of the actions necessary to implement the Work in the drawings, technical specifications, an estimated timeframe for completing the Work, and any other relevant special provisions.

d. Upon approval of the Remedial Action Work Plan(s), DEQ shall implement the Remedial Action Work Plans in accordance with the provisions contained therein.

e. Unless EPA agrees otherwise, DEQ shall not commence physical Remedial Action construction activities on the Site unless the Remedial Action Work Plan(s) have been approved by EPA (and, in the case of Work conducted on the Grant-Kohrs Ranch, approved by NPS).

40. Schedule. DEQ commits to using best efforts to implement Remedial Design and Remedial Action within a twelve-year time frame (two years for ramp up and ten years for construction).

41. DEQ as Lead Agency shall be responsible for procuring contractors throughout the remedial design and remedial action process, securing ancillary agreements with landowners, and all other matters related to implementing and directly overseeing the project in accordance with the approved Remedial Action Work Plan. During consultation over the Remedial Design for a particular property, and once a Remedial Action Work Plan is commenced, EPA and the State (and NPS for activities on the Grant-Kohrs Ranch) will oversee the performance of the Work, but neither EPA nor NPS shall supervise or direct DEQ's contractors or modify the work that the contractors have been directed by the State to perform. All EPA and NPS communications concerning the performance of the details of the Work, proposed changes, or other matters related to implementation of an approved Remedial Action Work Plan shall be directed to DEQ. Upon agreement by DEQ and by EPA (and by NPS for matters pertaining to the Grant-Kohrs Ranch) that a modification to a particular construction contract is warranted (except for the contract changes that pertain only to State Restoration which require DEQ approval only), DEQ shall make the necessary changes through work directive, change order or contract amendment.

42. DEQ as Lead Agency shall develop and directly oversee, in cooperation with landowners and in accordance with the ROD, property-specific best management practice plans for all properties. DEQ shall submit the best management plans to EPA for review and approval for each particular property or group of properties within the Clark Fork Site. DEQ shall also submit to NPS for review and approval the best management plans for the Grant-Kohrs Ranch.

When review and approval of such plans is included in EPA and/or NPS approval of a Remedial Action Work Plan, no separate review and approval is necessary. Where appropriate, DEQ shall include mechanisms for overseeing and monitoring the third party implementation of the best management plans in coordination with the Natural Resources Conservation Service. EPA, and not the State, shall be responsible for funding the Natural Resources Conservation Service for its coordination activities as part of its Oversight Costs for EPA for the Clark Fork Site.

43. In cooperation with property landowners within the Clark Fork Site, DEQ, as Lead Agency, shall also prepare and implement, or directly oversee the implementation of, Operation and Maintenance Plans for the Clark Fork Site. DEQ shall submit to EPA (and to NPS for the Grant-Kohrs Ranch) for review, comment, and approval a draft Operation and Maintenance Plan for each portion of the Remedial Action or each aspect of the ROD. Upon approval, DEQ shall implement or oversee the implementation of the Operation and Maintenance Plan in accordance with the terms set forth therein.

44. EPA and NPS Review, Comment, and Approval.

a. Review and Comment - Upon submission of any plan, report, other document by the State or DEQ to EPA (and to NPS for activities affecting Grant-Kohrs Ranch) for review and comment as required by this Consent Decree or the SMOA, EPA (and NPS for activities affecting the Grant-Kohrs Ranch) shall conduct its review and submit comments, if any, based only on technical adequacy and on consistency with CERCLA, the NCP, the ROD, the SMOA, and this Consent Decree. DEQ shall incorporate or attempt to resolve all comments submitted by EPA (and by NPS for the Grant-Kohrs Ranch), and DEQ shall notify EPA (and NPS for the Grant-Kohrs Ranch) of the disposition of comments prior to completing or revising the document.

b. Review, Comment, and Approval - Upon submission of any plan, report, other document by the State or DEQ to EPA (and to NPS for activities directly affecting Grant-Kohrs Ranch) for review, comment, and approval (or simply review and approval) as required by this Consent Decree or the SMOA, EPA (and NPS for activities at or directly affecting the Grant-Kohrs Ranch) shall conduct its review and submit its comments, if any, and shall disapprove any submittal, based only on technical adequacy and consistency with CERCLA, the NCP, the ROD, the SMOA, and this Consent Decree. EPA (and NPS for the Grant-Kohrs Ranch) shall not disapprove a submittal from the State or DEQ as inconsistent with CERCLA, the NCP, the ROD, the SMOA, or this Consent Decree, based on a deficiency in the submittal that is immaterial or insignificant. EPA (and NPS for the Grant-Kohrs Ranch) shall not disapprove a submittal from the State or DEQ as inconsistent with the ROD if EPA (and NPS for the Grant-Kohrs Ranch) approves of Restoration activities to be performed in lieu of the Work. State Restoration activities that are in addition to Remedy rather than in lieu of Remedy do not require approval by EPA or NPS.

c. Any disputes concerning EPA or NPS review, comment, or disapproval, shall be subject to the dispute resolution procedures as provided for in the SMOA.

45. Modification of the ROD. DEQ as Lead Agency may develop any proposed modifications or amendments to the ROD for EPA review and approval. EPA may adopt and concur on such proposed modifications or amendments if it determines that the proposed change or expansion is necessary and appropriate to the ROD and is in accordance with the NCP. EPA may choose not to approve the proposed modification or amendment by providing its comments and the basis for its reasoning in writing to DEQ. EPA may also propose and make

modifications or amendments to the ROD and shall make good faith efforts to seek State and NPS concurrence on any EPA-proposed modification or amendment prior to adoption by EPA. Any disputes between the agencies regarding modifications or amendments to the ROD shall be subject to the dispute resolution provisions in the SMOA.

46. Modification of the Work.

a. If DEQ as Lead Agency determines that additional response actions or modifications to the Work are necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedy set forth in the ROD, DEQ shall provide to EPA (and NPS for Remedy activities at Grant-Kohrs Ranch) for review and comment the proposed additional response actions or modification to the Work. Upon consideration of these comments, and the resolution of any dispute in accordance with Subparagraph 46.d., below, DEQ shall develop appropriate amendments to existing Remedial Action Work Plans or new Remedial Action Work Plans to implement the approved additional response actions or modifications to the Work. DEQ shall submit these amended or new plans to EPA (and NPS for remedial activities at Grant-Kohrs Ranch) for review and approval. Upon approval, DEQ shall implement the plans, as amended, in accordance with the terms set forth therein.

b. EPA may also propose and adopt, subject to DEQ review and concurrence, additional response actions or modifications to the Work that EPA considers to be necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedy set forth in the ROD. If DEQ concurs with the additional response actions or modifications to the Work proposed by EPA, or upon the resolution of disputes as provided in Subparagraph 46.d. below, DEQ shall develop

appropriate amendments to existing Remedial Action Work Plans or new Remedial Action Work Plans to implement the approved additional response actions or modifications to the Work, and shall submit these amended or new plans to EPA (and NPS for remedial activities at Grant-Kohrs Ranch) for review and approval. Upon approval, DEQ shall implement the plans, as amended, in accordance with the terms set forth therein.

c. To the extent any such additional action or modification is consistent with the Scope of the Remedy as that phrase is defined in Paragraph 14 of this Consent Decree, the costs of such actions or modifications are Future Response Costs and subject to provisions of the Consent Decree governing Further Response Costs and Additional Response Costs. To the extent any such additional action or modification is outside the Scope of the Remedy as that phrase is defined in Paragraph 14 of the Consent Decree, such additional action or modification is subject to the United States' and the State's reserved claims pursuant to Paragraphs 115(f) (United States' General Reservations of Rights) or 125(f) (State's General Reservations of Rights). EPA's and the State's rights under this Subparagraph are in addition to any remedies EPA or the State may have for recovery of such costs under Paragraphs 110 (United States' Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), 111 (United States' Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), 118 (State's Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), and 119 (State's Post-Certification Reservations Relating to Response Actions at the Clark Fork Site).

d. If DEQ and EPA, in consultation with NPS, do not agree upon any additional response action or modification to the Work pursuant to this Paragraph, either party may seek dispute resolution pursuant to the SMOA. The Work shall be modified in accordance with final resolution of the dispute.

e. Nothing in this Paragraph shall be construed to limit EPA's or the State's authority to require performance of further response actions as otherwise provided in this Consent Decree.

47. Nothing in this Section shall be construed to create a right of any other party, including, but not limited to, AR or any third party, against the State or the United States to enforce the terms of this Section.

XI. REMEDY REVIEW

48. Periodic Review. EPA shall conduct reviews to determine whether the Remedial Action is protective of human health and the environment at least every five years in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations. DEQ and NPS shall cooperate with EPA in its efforts to conduct the review described in this Paragraph through the provision of data, records, and similar materials.

49. Selection of Additional Response Actions. If EPA or DEQ determines that the Remedy is not protective of human health or the environment, EPA or DEQ, in consultation with NPS, may select additional response actions for the Clark Fork Site in accordance with the requirements of CERCLA, the NCP, and Paragraphs 45 and 46 of this Consent Decree. To the extent that EPA or DEQ seeks to recover the costs of, or require AR to perform, such additional response actions, such recovery or requirement must be consistent with the provisions of the Consent Decree.

50. Opportunity To Comment. AR and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, the public, shall be provided with an opportunity to comment on any further response actions proposed by EPA and DEQ as a result of the review conducted pursuant to Section 121 (c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written comments for the record during the comment period.

XII. ACCESS AND INSTITUTIONAL CONTROLS

51. If AR owns, or has the legal ability to control access on, any part of the Clark Fork Site, the B2.12 cell at the Opportunity Ponds, property required for access to the B2.12 cell, or the Step 2 Sites, AR shall, with respect to those properties:

a. commencing on the date of lodging of this Consent Decree, provide access to the United States and the State and their representatives and contractors, at all reasonable times, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(i). Monitoring and overseeing the Work and the Federal Restoration and State Restoration for the Clark Fork site, or implementation of the Smelter Hill Area Uplands Resources Restoration Plan (including State Property Remedial Commitments);

(ii). Implementing the Work;

(iii). Disposing of materials from Remedy, Federal Restoration and State Restoration for the Clark Fork site, or implementation of the Smelter Hill Area Uplands Resources Restoration Plan (including State Property Remedial Commitments) at the Opportunity Ponds;

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

(v). Conducting investigations relating to contamination at or near the Clark Fork Site;

(vi). Obtaining samples;

(vii). Assessing the need for, planning, or implementing additional response actions at or near the Clark Fork Site;

(viii). Assessing the need for, planning, or implementing Federal Restoration and State Restoration for the Clark Fork site, or the Smelter Hill Area Uplands Resources Restoration Plan (including State Property Remedial Commitments), and assessing the need for and planning State Restoration pertaining to Area One Groundwater and Surface Water Resources; provided, however, that

(1) for State Restoration pertaining to the Smelter Hill Area Uplands Resources Restoration Plan, construction of new roads, other improvements or earth-moving activities are prohibited on AR property without AR's express written permission, except this prohibition shall not preclude the State from improving and maintaining, through earth-moving or otherwise, the existing roads at Smelter Hill and Stucky Ridge; and

(2) for State Restoration pertaining to Area One Groundwater and Surface Water Resources, the State must also separately obtain permission from the City and County of Butte-Silver Bow for access, or use State regulatory authorities to gain access;

(ix). Assessing compliance with this Consent Decree; and

(x). Determining whether the Clark Fork Site property or the B2.12 cell at Opportunity Ponds is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted in accordance with the ROD or this Consent Decree.

Prior to obtaining access to the Clark Fork Site, the B2.12 cell at Opportunity Ponds or the Step 2 Sites, the United States and the State shall consider any health and safety limitations previously identified by AR for those areas.

b. commencing on the date of lodging of this Consent Decree, refrain from using such property or preventing access in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the Work or, consistent with Subparagraph 51.a. above, Federal Restoration and State Restoration for the Clark Fork Site or implementation of the Smelter Hill Area Uplands Resources Restoration Plan to be performed pursuant to this Consent Decree. In addition, specific use restrictions on the Clark Fork Site property owned or controlled by AR prohibit or shall prohibit the use or development of ground water wells on the property for purposes of human consumption until such time as related Performance Standards are met and the use of floodplain property that exceeds human health action levels for residential purposes of any kind. Specific to the Clark Fork Site property, livestock management is permitted, if approved by DEQ and EPA.

c. for the Clark Fork Site property, the B2.12 cell at Opportunity Ponds, and property needed for access to the B2.12 cell at Opportunity Ponds which is owned or controlled by AR, transfer, execute, and record in the Recorder's Office of the appropriate county in the State of Montana, an easement, running with the land, which

grants a right of access for the purpose of implementing the Remedy, Federal Restoration and State Restoration for the Clark Fork Site, and any modifications thereto, and which contains the applicable restrictions that are listed in Paragraph 51.b. and any other restrictions that EPA and DEQ determine are necessary to implement, ensure non-interference with, or ensure the protectiveness of, the Remedy and Restoration for the Clark Fork Site; provided however, such restrictions shall not interfere with AR's ability to satisfy any response action required by EPA or DEQ. AR shall grant the access rights and the rights to enforce the land and water use restrictions and easements to the United States, the State, and their representatives. Where appropriate to meet the objectives of this Consent Decree, the United States and the State, or their designees, may agree to be the beneficiary of deed restrictions or accept a conservation easement and may enforce such restrictions or covenants which will run with the land. The State agrees to prepare a map that shows the State's preferred route(s) for access from the public right-of-way to the B2.12 cell across property owned or controlled by AR. At least sixty (60) days prior to initiating transport of Clark Fork Site material to the B2.12 cell, the State shall provide the map to AR for AR's concurrence upon the route(s) of access across AR property to the B2.12 cell, which concurrence shall not be unreasonably withheld. AR shall execute and record the easement required by this Subparagraph 51.c within 45 days following AR and State agreement upon the route for access to the B2.12 cell.

d. AR has provided DEQ and EPA with relevant ownership or prior access information in the possession of AR, as of the date of lodging, for properties within the Clark Fork Site which it does not own.

e. cooperate with the State and the United States by allowing access and placement of contaminated materials from the Remedy, Federal Restoration and State Restoration at the Clark Fork Site, and implementation of the Smelter Hill Area Uplands Resources Restoration Plan (including State Property Remedial Commitments) on or in the Opportunity Ponds. These contaminated materials will be placed at the B2.12 cell. The costs of excavating, transporting, placing, and those activities described below in Paragraphs 54 and 55 for the contaminated materials from the Clark Fork Site Remedy and that portion of the same costs attributable to Remedy under Paragraph 26.c of this Consent Decree that result from Restoration in lieu of Remedy, are costs of the Work under this Consent Decree. All other costs of excavating, transporting, placing, and those activities described below in Paragraphs 54 and 55 associated with the contaminated materials from State Restoration at the Clark Fork Site (including Restoration in lieu of Remedy costs that are not attributable to Remedy under Subparagraph 26.c.) and State Restoration under the Smelter Hill Area Uplands Resources Restoration Plan (including the State Property Remedial Commitments) are State Restoration costs. The costs of excavating, transporting, placing, and those activities described below in Paragraphs 54 and 55 associated with the contaminated materials from Federal Restoration are Federal Restoration costs.

52. AR agrees that neither the arranging for disposal, transportation, nor the disposal of contaminated materials described in Subparagraph 51.e. shall constitute a basis for transferring or imposing upon the United States or the State any liability.

53. The State, through DEQ, is currently placing contaminated materials from the SST OU in the B2.12 cell at Opportunity Ponds. AR remains responsible for closure and reclamation of the

B.2.12 cell at Opportunity Ponds, subject to the terms of this Section and Paragraph 40.f. of the Streamside Tailings consent decree. Under the Streamside Tailings consent decree (Section IX, Paragraph 40.f.), the United States and the State are responsible for paying to AR those additional costs of closure and reclamation (as part of Future Response Costs as defined under the Streamside Tailings consent decree) that result from the disposal of SST OU wastes and that are over and above those costs which AR would otherwise incur for the B2.12 cell disposal area at Opportunity Ponds. Pursuant to this Consent Decree, the Parties agree to cooperate to minimize the long-term maintenance associated with the B2.12 cell by completing the design and placement of materials in the B2.12 cell to avoid excessive repository side slopes on final cell surfaces. In furtherance of this goal, the State further agrees to excavate, transport and deliver a minimum of 350,000 cubic yards of excavated material (pursuant to the SST excavation requirements) from Subarea 4 of the SST OU, as part of the Streamside Tailings Remedial Action, subject to and upon the condition that AR makes its own determination whether this material will satisfy its requirements for closure and reclamation of Opportunity Ponds. To make this determination, the State will make available to AR any reports or analyses of the material as such information becomes available. The State shall deliver this material from Subarea 4 at the B.1 cell at Opportunity Ponds (or another cell location that is mutually agreed upon between AR and the State). In addition, within four months following the Effective Date, the State shall notify AR whether additional Subarea 4 material is available for delivery by the State to the B.1 cell (or another cell location that is mutually agreed upon). If Subarea 4 material is available for delivery to a cell other than the B2.12 cell, the State shall also inform AR when said material is scheduled for excavation. Within 60 days following receipt of this information from the State, AR shall inform DEQ whether AR elects to accept some or all of the additional Subarea 4

material that the State determines is available. If accepted by AR, the State agrees to deliver the additional Subarea 4 materials to the B.1 cell (or another cell location that is mutually agreed upon) before June 30, 2010 or other mutually agreed upon date. If the State elects to reserve any amount of Subarea 4 materials for the State's use, the State will be solely obligated for the transportation, storage, interim management and final placement of such material in the B2.12 cell. AR retains all other obligations for closure of the cells to which said Subarea 4 materials are delivered to AR under this Paragraph 53, including but not limited to the obligation to spread, seed, vegetate and meet performance standards in the ARWW&S ROD for closure of the B.1 cell or any other cell location (other than the B2.12 cell) where SST OU materials are delivered by mutual agreement of AR and the State under this Consent Decree.

54. AR may incur closure and reclamation costs over and above the costs that it would incur at the B2.12 cell upon placement of contaminated materials from the Remedy, Federal Restoration or State Restoration from the Clark Fork Site, and implementation of the Smelter Hill Area Uplands Resources Restoration Plan (including State Property Remedial Commitments). The United States and the State agree that the Lead Agency shall, upon approval of all plans relevant to these activities by EPA, be responsible for:

a. design of an appropriate configuration of the B2.12 cell to accommodate the additional Waste Materials to be placed there as described in Subparagraph 51.e.;

b. implementation of the design described above in Subparagraph 54.a. after consideration of AR's comments,

c. configuration of the waste disposal area across the entire surface of the B2.12 cell,

d. improvement of stormwater infrastructure to effectively manage and integrate B2.12 cell stormwater run-on and run-off with the Opportunity Ponds stormwater controls, and

e. placement of the final 18-inch lift of cap-suitable material (material meeting the RDU 8 criteria for use as cover) across the entire surface of the B2.12 cell in a manner that is consistent with the requirements of the EPA-approved RDU 8 Final Design Report for cover and the ARWW&S ROD.

When review and approval of such plans is included in EPA approval of a Remedial Action Work Plan, no separate review and approval is necessary. Costs for these activities will be allocated between Remedy, Federal Restoration, and State Restoration as set forth in Subparagraph 51.e. above. The State will use best efforts in the implementation of this design (e.g., minimize surface mounding) to minimize AR's long-term operation and maintenance costs. If the final design includes sloped surfaces greater than 4:1, the State agrees to amend such soils, if necessary, to contain a minimum of 1.5% organic matter in the upper 6 inches or import soils that contain a minimum of 1.5% organic matter in the upper 6 inches, to be consistent with the RDU 8 criteria for final cover material for the B2.12 cell. AR may at its option, and subject to EPA approval, designate an area of twenty acres (or less) in the B2.12 cell for continued use as a repository for disposal of contaminated soils from the Anaconda Smelter NPL Site (except soils from implementation of the Smelter Hill Upland Resources Restoration Plan, including the State Property Remedial Commitments). If a repository is so designated, the State shall not place contaminated materials from the Clark Fork Site, the Streamside Tailings Remedial Action or any State Restoration in the Anaconda Smelter NPL Site repository, and the State shall have no

obligation to place a final 18-inch lift of cap-suitable material over the surface of the B2.12 cell where the repository is located.

55. The State also shall, as Lead Agency, perform interim management activities, including dewatering, dust control, site access and associated road maintenance and construction, monitoring, weed control and appropriate BMPs, during construction, placement, spreading and seeding of the contaminated materials described in Subparagraph 51.e. In the event the seed does not successfully germinate in the latter part of the second growing season following seeding, the State agrees to prepare the surface and reseed the B2.12 cell surface at the appropriate time during the subsequent construction season. The costs of interim management are also costs that will be allocated between Remedy, Federal Restoration, and State Restoration as set forth above in Subparagraph 51.e.

56. Except as provided in Paragraphs 54 and 55, AR retains all other obligations for closure and reclamation of the B2.12 cell, to meet performance standards in the ARWW&S ROD for closure and to perform short-term monitoring and reporting (following the conclusion of State activities under Paragraph 54 and 55), and long-term operation and maintenance of the B.2.12 cell at Opportunity Ponds.

57. Certain land or water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls ("Institutional Controls") are described in the Record of Decision. If DEQ and EPA determine that additional Institutional Controls are needed to implement the Remedy, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, then AR shall cooperate with DEQ's or EPA's efforts to secure such Institutional Controls. If DOI, in consultation with EPA and the State, determines that additional Institutional Controls are needed to implement the Federal Restoration Plan, ensure the integrity

and protectiveness thereof, or ensure non-interference therewith, then AR shall cooperate with the State, EPA, and DOI's efforts to secure such Institutional Controls. If the State, in consultation with EPA and NPS, determines that additional Institutional Controls are needed to implement the State Restoration for the Clark Fork Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, then AR shall cooperate with the State, EPA, and DOI's efforts to secure such Institutional Controls. However, AR's obligation to cooperate with the State, EPA, and DOI's efforts to secure such Institutional Controls for Restoration shall not obligate AR to make any payments or to incur unreasonable additional costs.

58. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their respective access authorities and rights, as well as all of their respective rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, CECRA, RCRA, and any other applicable federal or state statute or regulation.

XIII. PROJECT COORDINATORS

59. Officers and Project Coordinators

a. State Project Officer. DEQ has already designated its Project Officer for Work at the Clark Fork Site. The name and address of the Project Officer is listed in Section XXVI (Notices and Submissions). As long as DEQ is the Lead Agency, DEQ's Project Officer shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300, subject to the terms and conditions of this Consent Decree and the SMOA. In addition, DEQ's Project Officer shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Clark Fork Site constitute an emergency situation or may present an immediate threat to public health or

welfare or the environment due to release or threatened release of Waste Material. If the Project Officer initially designated is changed by DEQ, the identity of the successor shall be given to EPA and NPS at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

b. EPA and NPS Project Coordinators. EPA and NPS have designated their respective Project Coordinators. The names and addresses of the respective EPA and NPS Project Coordinators are listed in Section XXVI (Notice and Submissions). EPA's Alternate Project Coordinator is John Wardell, Montana Office Director, 10 West 15th Street Suite 3200, Helena, Montana 59626. EPA and NPS may designate other representatives, including, but not limited to, EPA and NPS employees and federal contractors and consultants, to oversee, observe, and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Support Agency Coordinator by the National Contingency Plan, 40 C.F.R. Part 300 in addition to the rights and duties described in this Consent Decree and the SMOA. If the Project Coordinator initially designated is changed, the identity of the successor shall be given to DEQ at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made.

XIV. CERTIFICATION OF COMPLETION

60. Certification of Completion of Remedial Action. DEQ as Lead Agency shall complete a draft Certification of Completion of Remedial Action, pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), in accordance with EPA regulations and guidance, upon completion of all construction and upon attaining all Performance Standards for a period of at

least 2 years. The draft certification shall be subject to review and comment by EPA (and NPS for Remedy activities on Grant-Kohrs Ranch).

a. DEQ shall attempt to incorporate or resolve all EPA (and NPS for Grant-Kohrs Ranch activities) comments and shall notify EPA and NPS of the disposition of their comments prior to completing the final document. As part of the EPA or NPS comments on the draft certification, EPA or NPS may request that DEQ perform additional Work if EPA (or NPS for Remedial Action done on the Grant-Kohr's Ranch) determines that Remedial Action or any portion thereof has not been completed in accordance with the Consent Decree or SMOA, or that Performance Standards have not been achieved for a period of at least two years. DEQ shall perform the additional Work to the extent that such additional Work is consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14. Any disputes concerning EPA or NPS comments, requests for additional Work, or approvals are subject to the dispute resolution procedures as provided for in the SMOA.

b. If EPA (and NPS for the activities at the Grant-Kohrs Ranch) and DEQ jointly determine that the Remedial Action has been completed, then EPA (and NPS for Grant-Kohrs Ranch activities) and DEQ shall jointly issue the final Certification of Completion of the Remedial Action. This certification shall constitute the Certificate of Completion of the Remedial Action for purposes of this Consent Decree, including but not limited to, Section XXII (Covenants and Reservations by the United States) and Section XXIII (Covenants and Reservations by the State). The Certification of Completion of Remedial Action shall not affect AR's remaining obligations under this Consent Decree.

61. Following completion of construction of the Remedial Action components, DEQ shall implement the Operation and Maintenance activities in accordance with the ROD and the Operation and Maintenance Plans developed and approved for the Clark Fork Site.

62. Certification of Completion of Work. DEQ as Lead Agency shall complete a draft Certification of Completion of the Work, after concluding that all Operation and Maintenance activities have been performed in accordance with the ROD, this Consent Decree, and the SMOA, and that O&M is no longer necessary. The draft certification shall be subject to review and comment by EPA (and NPS for Remedy activities on Grant-Kohrs Ranch). DEQ shall attempt to incorporate or resolve all EPA (and NPS for Grant-Kohrs Ranch activities) comments and shall notify EPA and NPS of the disposition of their comments prior to completing the final document. As part of the EPA or NPS comments on the draft certification, EPA or NPS may request that DEQ perform additional Work if EPA (or NPS for Work done on the Grant-Kohrs Ranch) determines that Operation and Maintenance or any portion thereof has not been completed in accordance with the ROD, this Consent Decree, the SMOA, and Operation and Maintenance Plans. DEQ shall perform the additional activities to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14. Any disputes concerning EPA or NPS comments, requests for additional Work, or approvals are subject to the dispute resolution procedures as provided for in the SMOA. If EPA (and NPS for the activities at the Grant-Kohrs Ranch) and DEQ jointly determine that the Work has been completed, then EPA (and NPS for Grant-Kohrs Ranch Work) and DEQ shall jointly issue the final Certificate of Completion of the Work. The Certification of Completion of Work shall not affect AR's remaining obligations under this Consent Decree.

XV. EMERGENCY RESPONSE

63. Emergency Response. In the event of any action or occurrence during the performance of the Work or the State Restoration or the State Property Remedial Commitments or State performance of the Federal Restoration Plan pertaining to Grant-Kohrs Ranch, which causes or threatens a release of Waste Material at or from the Clark Fork Site or at the State-owned Property subject to the State Property Remedial Commitments and that constitutes an emergency situation or may present an immediate threat to public health or the environment, or which causes a pollution source or combination of pollution sources to present an imminent and substantial endangerment to the health or welfare of persons, the State shall (a) immediately take all appropriate action to prevent, abate, or minimize such pollution and/or the release or threat of release of Waste Materials, (b) immediately take such action as may be necessary to stop the discharge of pollutants causing or contributing to such pollution, and (c) immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator, and NPS (for matters affecting Grant-Kohrs Ranch). If neither of the EPA persons is available, the State shall notify the EPA Emergency Response Unit, Region 8. The State shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the health and safety plans, the emergency consultation procedures of the Endangered Species Act, 50 C.F.R. § 402.05, and any other applicable plans or documents under this Consent Decree.

64. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Clark Fork Site or the Anaconda Smelter NPL Site, or (b) subject to Section XXII (Covenants and Reservations by the United States) or Section

XXIII (Covenants and Reservations by the State), to direct or order AR to undertake such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Clark Fork Site or the Anaconda Smelter NPL Site.

XVI. PERFORMANCE OF STATE PROPERTY REMEDIAL COMMITMENTS BY THE STATE

65. The State shall use the funds described in Paragraphs 25 and 27 regarding the Smelter Hill Area Uplands State Restoration Account to implement the Smelter Hill Area Uplands Resources Restoration Plan, including the State Property Remedial Commitments, in accordance with this Consent Decree and the SMOA. The State's implementation of the State Property Remedial Commitments shall include the attainment of performance standards (including ARARs identified in the ARWW&S ROD), as set forth in: (a) the Remedial Action Work Plan/Final Design Report for ARWW&S OU Remedial Design Unit 1 – Stucky Ridge (June 15, 2005) concerning State-owned Property in Section 36 (finalized and approved); and (2) the Remedial Action Work Plan/Final Design Report for ARWW&S OU Remedial Design Unit 15 – Mt. Haggin Uplands (December 2007) (finalized and approved), each as provided for in the Smelter Hill Area Uplands Resources Restoration Plan.

66. a. Implementation of State Property Remedial Commitments. EPA, in consultation with DEQ, shall oversee the State's implementation of the State Property Remedial Commitments. The State shall submit to EPA for review and approval all required plans and reports pertaining to the design and implementation of the State Property Remedial Commitments. Any disputes regarding the State's implementation of the State Property Remedial Commitments, including EPA's review and approval of relevant plans, shall be governed by the dispute resolution provisions of the SMOA.

b. Additional Work. If EPA, in consultation with the State, determines, prior to Certification of Completion of the State Property Remedial Commitments, that additional response actions or modifications to the State Property Remedial Commitments are necessary to achieve and maintain the performance standards set forth in the Smelter Hill Area Uplands Resources Restoration Plan or to carry out and maintain the effectiveness of that portion of the remedy set forth in the ARWW&S ROD to be implemented by the State via the State Property Remedial Commitments, EPA may require that the State modify the Smelter Hill Area Uplands Resources Restoration Plan and/or related work plans to reflect such additional response actions or modifications. Provided, however, that such additional response actions may only be required pursuant to this Paragraph to the extent that they are consistent with the scope of the remedy selected in the ARWW&S ROD to be implemented by the State Property Remedial Commitments. For the purposes of this Paragraph, the "scope of the remedy selected in the ARWW&S OU ROD to be implemented by the State Property Remedial Commitments" means the stabilization and revegetation of soils, in accordance with reclamation ARARs, and stormwater best management practices and controls on State-owned Property, and monitoring, and operation and maintenance for stabilization and revegetation activities, and stormwater best management practices and controls.

c. If the State objects to any additional response actions or modifications determined by EPA to be necessary pursuant to this Paragraph, the State may seek dispute resolution pursuant to Section IV of Part 2 of the SMOA. The Smelter Hill Area Uplands Resources Restoration Plan and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Certification of Completion for the State Property Remedial Commitments Remedial Action. The State shall complete a draft Certification of Completion for the State Property Remedial Commitments remedial action, pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), in accordance with EPA regulations and guidance, upon completion of all construction and upon attaining all applicable ARWW&S ROD performance standards for a period of at least 2 years. The draft certification shall be subject to review and comment by EPA.

(i) The State shall attempt to incorporate or resolve all EPA comments and shall notify EPA of the disposition of their comments prior to completing the final document. As part of the EPA comments on the draft certification, EPA may request that the State perform additional response actions if EPA determines that the remedial action or any portion thereof has not been completed in accordance with the Consent Decree or SMOA, or that applicable ARWW&S performance standards have not been achieved for a period of at least two years. The State shall perform the additional work to the extent that such additional work is consistent with the "scope of the remedy selected in the ARWW&S ROD to be implemented by the State Property Remedial Commitments," as that term is defined in Paragraph 66.b. Any disputes concerning EPA comments, requests for additional response actions, or approvals are subject to the dispute resolution procedures as provided for in the SMOA and this Paragraph 66 of the Consent Decree.

(ii) If EPA and the State jointly determine that the State Property Remedial Commitments have been completed in conformity with this Consent

Decree and the SMOA, then EPA and the State shall jointly issue the final Certification of Completion of the State Property Remedial Commitments.

e. Certification of Completion for the State Property Remedial Commitments Work. The State shall complete a draft Certification of Completion for the State Property Remedial Commitments work, after concluding that all operation and maintenance activities have been performed in accordance with the ARWW&S ROD, this Consent Decree, and the SMOA, and that operation and maintenance is no longer necessary. The draft certification shall be subject to review and comment by EPA. The State shall attempt to incorporate or resolve all EPA comments and shall notify EPA of the disposition of its comments prior to completing the final document. As part of the EPA comments on the draft certification, EPA may request that the State perform additional response actions if EPA determines that operation and maintenance or any portion thereof has not been completed in accordance with the ARWW&S ROD, this Consent Decree, the SMOA, and operation and maintenance plans. The State shall perform the additional activities to the extent that such activities are consistent with the "scope of the remedy selected in the ARWW&S ROD to be implemented by the State Property Remedial Commitments," as that term is defined in Subparagraph 66.b. Any disputes concerning EPA comments, requests for additional response, or approvals are subject to the dispute resolution procedures as provided for in the SMOA and this Paragraph 61 of the Consent Decree. If EPA and the State jointly determine that the work to implement the State Property Remedial Commitments has been completed, then EPA and the State shall jointly issue the final Certificate of Completion of the work for the State Property Remedial Commitments work.

f. The duties and requirements described in this Section are enforceable only by the State and the United States, and nothing in this Section shall be deemed to create a right of any other party, including, but not limited to AR or any third party, against the State or the United States to enforce the terms of this Section; provided, however, in the event that the United States seeks to require AR to perform any response actions for State-owned Property, or to recover the costs of such response actions, AR's right to enforce its reserved rights to require the performance of such response actions by the State or require the payment of such costs by the State is set forth in the State CD II.

XVII. PERFORMANCE OF RESTORATION BY THE STATE AND DOI

67. The State shall use payments or transfers made to the Clark Fork State Restoration Account and the earnings thereon solely to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources as described in the Clark Fork River Aquatic and Riparian Resources Restoration Plan.

68. The State shall perform State Restoration activities at the Clark Fork Site in accordance with the 1998 Memorandum of Agreement Among the State of Montana, Confederated Salish and Kootenai Tribes, and United States Department of Interior Regarding Restoration, Replacement, or Acquisition of Natural Resources in the Clark Fork Basin.

69. The State has selected State Restoration actions applicable to the Clark Fork River Site in the Clark Fork River Aquatic and Riparian Resources Restoration Plan and may make amendments to the plan, including amendments that select additional Restoration. The State intends to use best management practices in implementation of State Restoration for the Clark Fork site, and State Restoration at the Anaconda Smelter NPL Site (including State Property Remedial Commitments). The United States and the State will cooperate to maximize the use of the resources available for the successful completion of this restoration plan, and will coordinate

implementation of the Remedy with these actions to avoid duplication of effort and unnecessary costs and to maximize environmental benefits to the area to the extent practicable. The State shall ensure that its contractors and subcontractors perform the Federal Restoration (through DEQ) at the Clark Fork Site, as well as implementation of the Clark Fork River Aquatic and Riparian Resources Restoration Plan and the Smelter Hill Area Uplands Resources Plan, in accordance with the Consent Decree.

70. Federal Restoration

a. DEQ shall perform the Federal Restoration Plan for the Grant-Kohrs Ranch, subject to the terms of the SMOA, using a portion of the funds provided by AR to NPS, and any interest earned thereon, as described in Subparagraph 20.a. Upon payment or transfer of such funds by NPS to the State Grant-Kohrs Restoration Account described in Subparagraph 25.a.(vi), the State shall implement as much of the Federal Restoration Plan for the Grant-Kohrs Ranch as it can accomplish with that funding. The State intends to use best management practices in its implementation of Federal Restoration.

b. BLM shall perform the Federal Restoration Plan for the BLM Lands using the funds provided by AR to BLM, and any interest earned thereon, as provided in Subparagraph 20.b.

71. Nothing in this Section shall be construed to create a right of any other party, including, but not limited to, AR or any third party, against the State or the United States to enforce the terms of this Section.

XVIII. WATER RIGHTS

72. AR shall convey to the State all of its interest in the water rights described in Appendix H of this Consent Decree, subject to and upon the conditions set forth in this Paragraph.

a. Prior to the Effective Date, AR has provided evidence of its ownership interests in the water rights described in Appendix H to EPA and the State; EPA and the State acknowledge that the water rights described in Appendix H are sufficient, subject to obtaining any required State administrative approval, to provide for at least 510 acre feet per year for 14 years (described more fully in Appendix H), which is the current estimate of the necessary amount and duration for Remedy water usage. Appendix H contains a designation of water rights which will be used for Remedy water usage as needed. Appendix H also describes the planned change of use process to be followed by AR and the State.

b. Within thirty (30) days of the Effective Date, AR shall place a deed or deeds in escrow to transfer all of its interests in the water rights described in Appendix H, subject to the reservations set forth in Appendix H. Prior to the date of lodging of this Consent Decree, AR and the State have executed an escrow agreement. Together, the escrow agreement and Appendix H include the following terms:

i. No later than 3 years after the Effective Date, all of AR's interests in the Mill Creek and Willow Creek drainages water rights shall be transferred to the State, subject to the conditions and AR's water rights reservations, as set forth in Appendix H and the deed in escrow;

ii. No later than 3 years after the Effective Date, and upon the satisfaction of conditions described in this Subparagraph and Appendix H, all of AR's interests in the Warm Springs Creek, Dutchman Creek and Lost Creek drainages water rights shall be transferred to the State: (A) upon finalization of one or more agreements between AR and Montana Fish, Wildlife and Parks that

together implement the May 2005 Warm Springs Creek Term Sheet between AR and the Montana Department of Fish, Wildlife, and Parks and third parties; and (B) subject only to AR's water rights reservations, as set forth in Appendix H and the deed or deeds in escrow;

iii. Certain of said water rights (which are identified in Appendix H) shall be available for implementation of the Remedy as determined in any required state administrative proceeding, at appropriate times of the year for the duration of the Remedial Action plus two additional years, unless EPA and the State agree that a shorter period of time is acceptable; and

iv. Any interest in the water rights not used for Remedy as set forth in Subparagraph 72.b.(iii) and as determined in any required state administrative proceeding shall be available to the State for State Restoration and any other public purposes deemed appropriate by the State, subject only to AR's water rights reservations as set forth in Appendix H and the deed or deeds in escrow.

c. AR agrees to cooperate with the State as a co-applicant before the DNRC in any administrative proceeding to secure any change or authorization in those water rights that are designated in Appendix H for implementation of the Remedy, as further described in Appendix H. AR and the State shall bear their own costs in any administrative proceeding.

d. If EPA and DEQ determine that the specific water rights for Remedy water usage as determined in any required state administrative process does not sufficiently provide an adequate water supply for the Remedy, the State shall provide EPA and DEQ with additional water rights from its water rights described in Appendix

H. If EPA and DEQ determine that the Appendix H water rights available to the State do not sufficiently provide an adequate water supply for the Remedy, AR shall provide DEQ with additional water supplies adequate for Remedy, as determined by EPA and DEQ. Costs, such as capital, purchase and operation and maintenance costs (but not including attorney or legal costs or fees) incurred by the State and AR, respectively, in satisfaction of any obligation to provide water rights or a water supply under this Subparagraph 72.d are costs of response that shall be reimbursed to the State or AR, as appropriate, by DEQ from the Clark Fork Site Response Action Account. Notwithstanding EPA's participation under this Subparagraph 72.d, any disputes arising under this Subparagraph 72.d shall be subject to the dispute resolution procedures set forth in Paragraph 91.

XIX. INDEMNIFICATION

73. Indemnification by AR. AR shall indemnify, save and hold harmless the United States and the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of AR, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to the Consent Decree. Further, AR agrees to pay the United States and the State all costs they incur including, but not limited to, reasonable attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of AR, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to the Consent

Decree. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of AR in carrying out activities pursuant to the Consent Decree. Neither AR nor any such contractor shall be considered an agent of the United States or the State.

74. Notice of Claims for Indemnification. The United States and the State shall give AR notice of any claim for which the United States or the State plan to seek indemnification pursuant to Paragraph 73 (Indemnification by AR) and shall consult with AR prior to settling such claim.

75. Waiver of Claims by AR. AR waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between AR and any person for performance of activities required under the Consent Decree. In addition, AR shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between AR and any person not a Party for performance of the activities required under the Consent Decree.

XX. DISPUTE RESOLUTION

Dispute Resolution Between EPA and AR, or Between EPA, DEQ, and AR.

76. Exclusivity of Remedy. Unless expressly provided in this Consent Decree, the dispute resolution procedures of Paragraphs 76 through 86 of this Section shall be the exclusive mechanisms to resolve disputes between AR and EPA (or between AR, and EPA and DEQ together), arising under or with respect to this Consent Decree. The procedures set forth in these Paragraphs shall not apply to actions by the United States or the State to enforce obligations of AR that have not been disputed in accordance with this Section. If AR disputes a matter that impacts both EPA and DEQ, EPA and DEQ shall consult with each other to ensure coordination

in this Dispute Resolution Section. Disputes between EPA and DEQ shall be governed by the SMOA, and the result of the SMOA dispute resolution process shall be the position advanced by EPA and DEQ ("the Agencies"), for purposes of this Section of the Consent Decree.

77. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of AR under this Consent Decree that is not directly in dispute, unless the United States and the State agree or the Court orders otherwise. Stipulated penalties or Liquidated Damages with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 98. Notwithstanding the stay of payment, Stipulated Penalties or Liquidated Damages shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that AR does not prevail on the disputed issue, Stipulated Penalties or Liquidated Damages shall be assessed and paid by AR as provided in Section XXI (Stipulated Penalties). Stipulated penalties or Liquidated Damages shall not be assessed by the United States or the State nor paid by AR to the extent that AR prevails on the disputed issue.

78. Informal Negotiations. Any dispute between AR and EPA, or AR and the Agencies, which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations among the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party to the dispute sends the other party to the dispute a written Notice of Dispute.

79. Procedures for Dispute Resolution. In the event that the parties to the dispute cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, or, where both EPA and DEQ are involved in the dispute, the Agencies, shall

be considered binding unless, not more than thirty (30) days after the conclusion of the informal negotiation period, AR invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by AR. The Statement of Position shall specify the position of AR as to whether formal dispute resolution should proceed under Paragraph 82 (Formal Disputes Under Record Review) or Paragraph 83 (Other Dispute Resolution).

80. Within thirty (30) days after receipt of AR's Statement of Position, EPA, or, where both EPA and DEQ are involved in the dispute, the Agencies, will serve on AR a Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position, and all supporting documentation relied upon by the Agencies or EPA. This Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 82 (Formal Disputes Under Record Review) or Paragraph 83 (Other Dispute Resolution). Not more than thirty (30) days after receipt of the Agencies' or EPA's, as appropriate, Statement of Position, AR may submit a further statement of position in reply.

81. If there is disagreement between AR and EPA or, where EPA and DEQ are involved in the dispute, the Agencies, as to whether dispute resolution should proceed under Paragraph 82 (Formal Disputes Under Record Review) or Paragraph 83 (Other Dispute Resolution), the Parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA, or, where EPA and DEQ are involved in the dispute, the Agencies, to be applicable. If AR ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph

is applicable in accordance with the standards of applicability set forth in Paragraph 82 (Formal Disputes Under Record Review) or Paragraph 83 (Other Dispute Resolution).

82. Formal Disputes under Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and any other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. Nothing in this Consent Decree shall be construed to allow any dispute by AR regarding the validity of the ROD's provisions.

a. EPA shall maintain an administrative record of the dispute, which shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Agencies or EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. EPA or, where both EPA and DEQ are involved in the dispute, the Agencies, will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph 82.a. Regardless of whether EPA alone, or EPA and DEQ, is involved in the dispute, the decision will be issued by the Assistant Regional Administrator for Enforcement Compliance and Environmental Justice, EPA Region 8, and shall be binding upon AR, subject only to the right to seek judicial review pursuant to Subparagraph 82.c.

c. Any administrative decision made by EPA, or, where both EPA and DEQ are involved in the dispute, the Agencies, pursuant to Paragraph 82 shall be reviewable by this Court, provided a motion for judicial review of the decision is filed by AR with the Court and served on the Parties not more than thirty (30) days after receipt of the decision.

d. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. EPA, or, where both EPA and DEQ are involved in the dispute, the Agencies, may file a response to such motion not more than 30 days after receipt of that motion.

e. In proceedings on any dispute governed by this Paragraph, AR shall have the burden of demonstrating that the decision of EPA or the Agencies is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's or the Agencies' decision shall be on the administrative record compiled pursuant to Paragraph 82.

83. Other Dispute Resolution. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by Paragraph 84.

84. Following receipt of EPA's, or, where both EPA and DEQ are involved in the dispute, the Agencies', Statement of Position submitted pursuant to Paragraph 80 and any reply submitted by AR pursuant to Paragraph 80, the Assistant Regional Administrator for Enforcement Compliance and Environmental Justice, EPA Region 8, or the Agencies, as appropriate, will issue a final decision resolving the dispute. The EPA's or, where both EPA and DEQ are involved in the dispute, the Agencies' decision shall be binding on AR, unless, within twenty (20) days of receipt of the decision, AR files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must

be resolved to ensure orderly implementation of this Consent Decree. EPA, or, where both EPA and DEQ are involved in the dispute, the Agencies, may file a response to such motion within 30 days of receipt of the motion. Judicial review of any dispute governed by Paragraphs 83 through 84 shall be governed by applicable principles of law.

85. Payment of Stipulated Penalties Regarding the Disputed Matter. Payment of Stipulated Penalties with respect to the disputed matter shall be governed by Paragraph 105 (Effect of Dispute Resolution).

86. Dispute Resolution Procedures for Disputes Concerning AR's Contingent Payment of $9.4 Million in Further Response Costs. Disputes concerning any payment under Paragraph 8 (AR Contingent Payment of $9.4 Million in Further Response Costs) shall be governed by this Paragraph. Following receipt of the Statement of Position submitted pursuant to Paragraphs 8 and 80, the Assistant Regional Administrator for Enforcement Compliance and Environmental Justice, EPA Region 8, after consultation with DOJ, the State, and NPS (as to disputes regarding Grant-Kohrs Ranch only) will issue a final decision resolving the dispute. The final decision of the Assistant Regional Administrator under this Paragraph is not subject to judicial review.

Dispute Resolution Between AR and DOI

87. Exclusivity of Remedy. Unless otherwise expressly provided for in the Consent Decree, the dispute resolution procedures of Paragraphs 87 through 89 shall be the exclusive mechanism to resolve disputes between AR and DOI arising under or with respect to the Consent Decree. However, the procedures set forth in these Paragraphs shall not apply to actions by the United States to enforce obligations of AR that have not been disputed in accordance with this Section.

88. Informal Negotiations with DOI. Any dispute between AR and DOI which arises under or with respect to the Consent Decree shall in the first instance be the subject of informal negotiations between AR and DOI. The period for informal negotiations shall not exceed 20

days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party to the dispute sends the other party to the dispute a written Notice of Dispute.

89. Procedures for Formal Dispute Resolution between DOI and AR.

a. In the event that the parties to a dispute cannot resolve the dispute by informal negotiations under Paragraph 88 (Informal Negotiations with DOI), then the position advanced by DOI shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, AR invokes the formal dispute resolution procedures of this Paragraph by serving on DOI a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and all other supporting documentation relied upon by AR.

b. Within 21 days after receipt of AR's Statement of Position, DOI will serve on AR a Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all other supporting documentation relied upon by DOI. Within 14 days after receipt of DOI's Statement of Position, AR may submit a further Statement of Position in reply.

c. DOI shall maintain a record of the dispute, which shall include all statements of position, including supporting documentation, submitted pursuant to this Paragraph.

d. DOI will issue its final decision resolving the dispute based on the record described in Subparagraph 89.c. This decision shall be binding upon AR unless AR files a motion for judicial review with the Court and serves it on all Parties within 30 days of receipt of DOI's final decision. The motion shall include a description of the matter in

dispute, the efforts made by the parties to the dispute to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The DOI may file a response to AR's motion.

e. In any judicial review of a dispute, AR shall have the burden of establishing by the preponderance of the evidence that the final decision of DOI is arbitrary and capricious or otherwise not in accordance with law. Judicial review shall be based upon the record developed by AR and DOI pursuant to Subparagraph 89.c., unless the Court finds, upon motion of either party, that additional evidence is necessary.

90. Payment of Liquidated Damages Regarding the Disputed Matter. Payment of Liquidated Damages with respect to the disputed matter shall be governed by Paragraph 105 (Effect of Dispute Resolution).

91. Dispute Resolution Solely Between the State and AR. In the event a dispute should arise solely between AR and the State regarding the interpretation or implementation of Paragraphs 16, 17, 18, 19, and 72, AR and the State shall make a good faith effort to resolve the dispute prior to invoking the continuing jurisdiction of the Court. Prior to invoking the Court's jurisdiction to resolve a dispute, the State or AR shall deliver to the other a written statement detailing the matters in dispute and proposing terms to resolve the dispute. Except where the party seeking to invoke the Court's jurisdiction can demonstrate a significant need for a more prompt resolution, such statement of the dispute must be delivered to the other party at least fifteen (15) days prior to filing any motion or application for relief from the Court.

XXI. STIPULATED PENALTIES

92. AR shall be liable for Stipulated Penalties and Liquidated Damages in the amounts set forth in Paragraphs 94 (Stipulated Penalty Amounts) and 96 (Liquidated Damages Amounts) for failure to comply with the requirements of the Consent Decree specified in Paragraphs 95

(Obligations Subject to Stipulated Penalties) and 97 (Obligations Subject to Liquidated Damages).

93. "Compliance" by AR for purposes of this Section shall mean payment of the sums specified in Paragraphs 95 (Obligations Subject to Stipulated Penalties) and 97 (Obligations Subject to Liquidated Damages) and adherence to the requirements of the Consent Decree within the specified time schedules established by and approved under the Consent Decree.

94. Stipulated Penalty Amounts. The following Stipulated Penalties shall accrue per violation per day for any noncompliance identified in Paragraph 90 (Obligations Subject to Stipulated Penalties):

Penalty Per Violation Per Day	Period of Noncompliance
$750	1st through 14th day
$1,500	15th through 30th day
$ 3,000	31st day and beyond

95. Obligations Subject to Stipulated Penalties. The following obligations of AR are subject to the Stipulated Penalties provided by this Section for AR's failure to comply with any of the following provisions of this Consent Decree:

a. Paragraph 6 (AR Payment to the Clark Fork Site Response Action Account) and Paragraph 8 (AR's Contingent Payment of $9.4 Million in Further Response Costs);

b. Paragraph 9 (AR's Payment for DOI Clark Fork Site Response Costs);

c. Paragraph 10 (AR's Payment of Federal Clark Fork Site DOJ and EPA Interim Costs);

d. Paragraph 12 (AR's Payment of Clark Fork Site Oversight Costs for EPA).

e. Paragraph 14 (Obligations for Additional Response Costs);

f. Paragraph 18 (as to Beck Ranch);

g. Paragraph 51, Subparagraphs a.-c. and Subparagraph e., as to allowing access and placement of contaminated materials (Access and Institutional Controls); and

h. Paragraph 72, Subparagraphs b. and c. (Water Rights).

96. Liquidated Damages Amounts. Liquidated Damages of $1,000 per violation per day shall accrue for any noncompliance identified in Paragraph 92 (Obligations Subject to Liquidated Damages).

97. Obligations Subject to Liquidated Damages. The following obligation of AR is subject to the Liquidated Damages provided by this Section for AR's failure to comply with any of the following provisions of this Consent Decree:

a. Paragraph 20 (Compensation by AR to the DOI for Natural Resource Damages).

98. All Stipulated Penalties and Liquidated Damages 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; provided, however, that Stipulated Penalties and Liquidated Damages shall not accrue:

a. with respect to a decision under Paragraphs 82 through 84 of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that AR's reply to the Agencies' or EPA's Statement of Position is received until five

days after the date that the Agencies or EPA issues a final decision regarding such dispute;

b. with respect to a decision by DOI under Paragraph 87 through 89 of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that AR's reply to DOI's Statement of Position is received until five days after the date that DOI issues a final decision regarding such dispute; or

c. with respect to judicial review by this Court or the Court of Appeals of any dispute under Section XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until five days after the date that the Court issues a final decision regarding such dispute.

99. Nothing herein shall prevent the simultaneous accrual of separate Stipulated Penalties and/or Liquidated Damages for separate violations of this Consent Decree, and any application of Stipulated Penalties or Liquidated Damages shall be in addition to any interest that accrues on the obligation under this Consent Decree.

100. Following a determination by EPA, DOI, or the State, in consultation with the other government parties, that AR has failed to comply with a requirement of this Consent Decree, EPA, DOI, or the State may give AR written notification of the same and describe the noncompliance. EPA, DOI, or the State may send AR a written demand for the payment of the Stipulated Penalties and/or Liquidated Damages. Stipulated Penalties and Liquidated Damages shall accrue as provided in Paragraph 98 regardless of whether EPA, DOI, or the State has notified AR of a violation.

101. All Stipulated Penalties and Liquidated Damages, as to the United States, and Stipulated Penalties, as to the State, accruing under this Section shall be due and payable to the United

States, or to the State, within thirty (30) days of AR's receipt from EPA, the State, or DOI of a demand for payment of the Stipulated Penalties and/or Liquidated Damages, unless AR invokes the Dispute Resolution procedures under Section XX (Dispute Resolution).

102. All payments to the United States pursuant to this Section (Stipulated Penalties) for violations of the requirements listed in Paragraph 95 (except for Subparagraph 95.g.) and Subparagraph 97.a. shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," and shall be mailed to the following addresses:

Regular Mail:
Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, Pennsylvania 15251-6859; or

Federal Express, Airborne, Etc.:
Mellon Bank
3 Mellon Bank Center
Room #153-2713
Pittsburgh, Pennsylvania 15259
REF: Lockbox 360859

103. Each such payment shall indicate that the payment is for Stipulated Penalties and shall reference the EPA Region and Site/Spill ID #08-23, address of the party making payment, DOJ Case Number 90-11-2-430, and the name and copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to Cost Recovery Coordinator, US EPA Montana Office, 10 West 15th Street, Suite 3200, Helena, Montana 59624 and to Director of Financial Management Programs, US EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. EPA shall forward to DOI as soon as practicable, however, any Stipulated Penalties assessed for AR's violations of Paragraph 9 (AR's Payment for DOI Clark Fork Site Response Costs) and/or Paragraph 20 (Compensation by AR to the DOI for Natural Resource Damages).

104. The payment of Stipulated Penalties or Liquidated Damages shall not alter in any way AR's obligation to complete the performance of the requirements required under this Consent Decree.

105. Effect of Dispute Resolution. Stipulated Penalties or Liquidated Damages shall continue to accrue as provided in Paragraph 98 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or the State that is not appealed to this Court, AR shall pay accrued Stipulated Penalties or Liquidated Damages determined to be owing to the United States or to the State as provided in Paragraph 103 of this Consent Decree, within fifteen (15) days of the agreement or the receipt of EPA's or the State's decision or order;

b. If the dispute is appealed to this Court and the United States or the State prevails in whole or in part, AR shall pay all accrued Stipulated Penalties determined by the Court to be owed to the United States or the State within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c, below; and

c. If the District Court's decision is appealed by any Party, Federal Interest shall accrue on the Stipulated Penalties or Liquidated Damages determined by the District Court to be owing to the United States, and State Interest shall accrue on the Stipulated Penalties determined by the District Court to be owed to the State. Within fifteen (15) days of receipt of the final appellate court decision, AR shall pay all accrued Stipulated Penalties and interest determined to be owed by AR to the United States or the State.

106. Failure to Pay Stipulated Penalties or Liquidated Damages. If AR fails to pay Stipulated Penalties when due, the United States or the State may institute proceedings to collect the

penalties, as well as interest and the cost of enforcing the requirements of this Consent Decree, including attorney's fees. AR shall pay Federal Interest on the unpaid balance of any Stipulated Penalty. If AR fails to pay Liquidated Damages when due, the United States may institute proceedings to collect the damages, as well as interest and the cost of enforcing the requirements of this Consent Decree, including attorney's fees. AR shall pay Federal Interest on the unpaid balance of any Liquidated Damages.

107. No Waiver of Other Remedies. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of AR's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(l); provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(l), for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Consent Decree.

108. Discretion to Waive Stipulated Penalties or Liquidated Damages. Notwithstanding any other provision of this Section, the United States, as to Stipulated Penalties or Liquidated Damages, or the State, as to Stipulated Penalties, may, in their unreviewable discretion, waive any portion of stipulated penalties or liquidated damages that have accrued pursuant to this Consent Decree.

XXII. COVENANTS AND RESERVATIONS BY THE UNITED STATES

109. United States' Covenants Relating to Response Actions at the Clark Fork Site and the State Property Remedial Commitments. Except as specifically provided in Paragraph 14 (Obligations for Additional Response Costs), Paragraphs 110 (United States' Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), 111 (United States' Post-

Certification Reservations Relating to Response Actions at the Clark Fork Site), 115 (General Reservations of Rights of the United States), and Section XII (Access and Institutional Controls), the United States covenants not to sue or to take administrative action against AR, its officers, directors and employees to the extent such officers', directors', and employees' liability arises solely from their status as officers, directors, or employees, pursuant to Sections 106, 107(a), and 113(f) (to the extent that the United States has any claims against AR under Section 113(f) of CERCLA), 42 U.S.C. §§ 9606, 9607(a), and 9613(f), Sections 3004(u) and (v), 3008 and 7003 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928 and 6973, and Sections 309(b), 311, and 504 of the Clean Water Act, 33 U.S.C. §§1319(b), 1321, and 1364, for recovery of Federal Clark Fork Site DOJ and EPA Interim Response Costs, DOI Clark Fork Site Response Costs, Oversight Costs for EPA for the Clark Fork Site, and all other Future Response Costs (which includes Further Response Costs and Additional Response Costs), or injunctive relief at the Clark Fork Site. The covenant for Further Response Costs shall take effect upon AR's payment of such costs, to the extent that EPA and/or the DEQ incur such costs. The covenant for Additional Response Costs shall take effect upon AR's payment of such costs, and shall be effective only for the amount of such Additional Response Costs paid by any Party. The remaining covenants shall take effect upon the receipt of all payments required by: Paragraph 6 (AR Payment to the Clark Fork Site Response Action Account); Paragraph 9 (AR's Payment for DOI Clark Fork Site Response Costs); Paragraph 10 (Payment of Federal Clark Fork Site DOJ and EPA Interim Response Costs); and Paragraph 12 (AR's Payment of Clark Fork Site Oversight Costs for EPA); and the receipt by the United States from the State of the notice regarding the Clark Fork Site Response Account as provided in Subparagraph 23.a. These covenants are conditioned upon the satisfactory performance by AR of its obligations under this Consent Decree. These covenants

extend only to AR and its respective officers, directors, and employees and do not extend to any other person. Upon satisfaction of the requirements of Paragraphs 16 and 17, AR shall have also resolved its liability to the United States for the activities that the State performs as part of its implementation of the State Property Remedial Commitments and other response actions, if any, performed by the State pursuant to the State's obligations under State CD II, except as provided in Subparagraph 115.g. (Claims for Response Actions and Costs at the Anaconda Smelter NPL Site). Upon satisfaction of the requirement of Paragraph 13, AR shall have resolved its liability to the United States for EPA Oversight of the State Property Remedial Commitments, except as specifically provided in Paragraph 115.g. (Claims for Response Actions and Costs at the Anaconda Smelter NPL Site).

110. United States' Pre-certification Reservations Relating to Response Actions at the Clark Fork Site. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

a. to perform further response actions relating to the Clark Fork Site; or

b. to reimburse the United States for additional costs of response relating to the Clark Fork Site

if, prior to Certification of Completion of the Remedial Action:

(i). conditions at the Clark Fork Site, previously unknown to EPA, are discovered, or

(ii). information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action is not protective of human health or the environment.

111. United States' Post-certification Reservations Relating to Response Actions at the Clark Fork Site. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

a. to perform further response actions relating to the Clark Fork Site; or

b. to reimburse the United States for additional costs of response relating to the Clark Fork Site

if, subsequent to Certification of Completion of the Remedial Action:

(i). conditions at the Clark Fork Site, previously unknown to EPA, are discovered, or

(ii). information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

112. Information and Conditions Known to the United States for the Clark Fork Site. For purposes of Paragraph 110 (United States' Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Consent Decree that are described or contained in: (a) the ROD; (b) the administrative record

supporting the ROD; (c) the EPA Records of Decision for the Warm Springs Ponds Active Area and Inactive Area OUs, the Milltown Site, and the ARWW&S OU; (d) the EPA Site Record for the Clark Fork River OU and the EPA site record for the Warm Springs Ponds Active Area OU; (e) any other information received or discovered by the United States pursuant to the requirements of this Consent Decree; and (f) any other non-privileged and non-confidential records relating to the Clark Fork Site or the Clark Fork River OU maintained by EPA and its employees. For purposes of Paragraph 111 (United States' Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of EPA's Certification of Completion of the Remedial Action and described or contained in: (a) the ROD; (b) the administrative record supporting the ROD; (c) the EPA Records of Decision for the Warm Springs Ponds Active Area and Inactive Area OUs, the Milltown Site, and the ARWW&S OU; (d) the EPA Site Record for the Clark Fork River OU and the EPA site record for Warm Springs Ponds Active Area OU; (e) any other information received or discovered by the United States pursuant to the requirements of this Consent Decree; and (f) any other non-privileged and non-confidential records relating to the Clark Fork Site or the Clark Fork River OU maintained by EPA and its employees. For purposes of Paragraphs 110 (United States' Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site) and 111 (United States' Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), the fact that the Remedial Action has failed shall not constitute, in and of itself, an unknown condition or new information, unless the failure of the Remedial Action results from an unknown condition or new information.

113. Covenants By The United States Relating to Federal Natural Resource Damages. Except as specifically provided in Paragraphs 114 (Federal Natural Resources Damages Reservation) and 115 (United States 'General Reservations of Rights) of this Section, the United States covenants not to sue or to take administrative action against AR, its officers, directors and employees to the extent such officers', directors', and employees' liability arises solely from their status as officers, directors, or employees, for recovery of Federal Natural Resource Damages within the Grant-Kohrs Ranch and the BLM Lands, for those claims reserved by the United States in Paragraph 78.d of the Streamside Tailings consent decree. This covenant not to sue shall take effect upon the receipt by the United States of the payment required by Paragraph 9 (AR's Payment for DOI Clark Fork Site Response Costs) and Paragraph 20 (Compensation by AR to DOI for Federal Natural Resource Damages). This covenant not to sue extends only to AR, its officers, directors and employees and does not extend to any other person.

114. Federal Natural Resources Damages Reservation.

a. Notwithstanding any other provision of the Consent Decree, the United States reserves the right to institute proceedings against AR seeking recovery of Federal Natural Resource Damages arising from:

(i). injury to, destruction of, or loss of natural resources within the Grant-Kohrs Ranch or BLM Lands which results from a release of any kind of hazardous or deleterious substance not identified in any EPA Site Record or administrative record maintained by the United States for the Clark Fork Site, or any DOI Site Record for the Grant-Kohrs Ranch and BLM Lands as of the date of lodging of the Consent Decree, including the report titled "Natural Resources

Injury Report on Riparian and Upland Areas of the United States Department of the Interior within the Clark Fork River Basin, Montana"; or

(ii). injury to, destruction of, or loss of natural resources within the Grant-Kohrs Ranch or BLM Lands which results from unanticipated, extraordinary events, such as the failure of the Warm Springs Ponds dams, and which results in the release of substantial additional quantities of hazardous or deleterious substances; or

(iii). injury to, destruction of, or loss of natural resources within the Grant-Kohrs Ranch or BLM Lands to Biological Resources within a taxonomic family not addressed by the natural resource damage assessments conducted by NPS, BLM, the State or the Tribes, or the expert reports submitted in the Federal or State Action that is of a Category of Injury not identified in the natural resource damage assessments conducted by NPS, BLM, the State or the Tribes or the expert reports submitted in the Federal or State Action. Any claim reserved by the United States pursuant to this Subparagraph (a)(iii) shall not be brought sooner than April 19, 2019 and only after diligent attempts to persuade the State to address any previously unknown injury with funds the State has recovered from AR for Natural Resource Damages within All Sites.

b. The United States has asserted as part of its claims in the Federal Action that there are continuing releases and re-releases within the Clark Fork River Basin not resulting from unanticipated, extraordinary events, and the United States agrees that such continuing releases, and their alleged effects, are not separately or combined unanticipated or extraordinary events or conditions for purposes of this Paragraph.

115. United States' General Reservations of Rights. The covenants set forth in Paragraph 109 (United States' Covenants Relating to Response Actions at the Clark Fork Site and the State Property Remedial Commitments) and Paragraph 114 (Covenants By the United States Relating to Federal Natural Resource Damages) do not pertain to any matters other than those expressly specified in those Paragraphs. With respect to all other matters, the United States reserves, and this Consent Decree is without prejudice to, all rights against AR, including, but not limited to, the following:

a. Non-compliance with Consent Decree: claims to enforce this Consent Decree based on a failure by AR to meet a requirement of this Consent Decree;

b. Failure to Comply with Upstream Cleanup Requirements: claims against AR based on releases of Waste Materials resulting from AR's failure to fully and timely comply with the cleanup requirements of upstream operable units as required by the State or the United States;

c. Release or Disposal Outside of the Clark Fork Site: claims against AR for response costs and injunctive relief under CERCLA Sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, RCRA Sections 3004(u), 3004(v), 3008, and 7003, 42 U.S.C. §§ 6924(u), 6924(v), 6928, and 6973, or Sections 309(b), 311, and 504 of the Clean Water Act, 42 U.S.C. §§ 1319(b), 1321, and 1364, arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Clark Fork Site, including claims for (i) any releases of Waste Material that come to be located at the Clark Fork Site from a failure of upstream retaining walls, settling ponds, dams, or other upstream control measures (including Warm Springs Ponds); or (ii) any upstream releases of Waste

Material which come to be located at the Clark Fork Site, other than anticipated continuation of existing migration.

d. Conduct Causing Future Release or Disposal: claims for response costs and injunctive relief under CERCLA Sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, or RCRA Sections 3004(u), 3004(v), 3008, and 7003, 42 U.S.C. §§ 6924(u), 6924(v), 6928, and 6973, or Sections 309(b), 311, and 504 of the Clean Water Act, 42 U.S.C. §§ 1319(b), 1321, and 1364, against AR, arising from future conduct by AR after the Effective Date that causes a release or disposal of Waste Materials at or from the Clark Fork Site, other than as provided in the ROD;

e. Criminal liability: claims for criminal liability;

f. Claims for Additional Response Actions and Costs at the Clark Fork Site: claims for liability, prior to Certification of Completion of the Remedial Action, for additional response actions (other than claims for additional response actions that AR establishes are necessitated by a failure of Restoration), that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Obligations for Additional Response Costs) because they are outside the Scope of the Remedy selected in the ROD;

g. Claims for Response Actions and Costs at the Anaconda Smelter NPL Site. Claims for liability for response actions and costs at the Anaconda Smelter NPL Site which are subject to AR's defenses and counterclaim reservations and AR's waivers set forth in the Past Costs CD, except for: (1) those portions of the State Property Remedial Commitments or other response actions, if any, performed pursuant to the State's obligations under State CD II that the State certifies and EPA accepts as complete

and in attainment with all applicable performance standards; and (2) Oversight Costs for EPA for the State Property Remedial Commitments;

h. Release from Catastrophic Events: claims for response costs and injunctive relief under CERCLA Sections 106 and 107, 42 U.S.C. §§ 9606 and 9607; RCRA Sections 3004(u), 3004(v), 3008, and 7002, 42 U.S.C. §§ 6924(u), 6924(v), 6928, and 6972, and Sections 309(a), 311, 504, and 505 of the Clean Water Act, 42 U.S.C. §§ 1319(a), 1321, 1364, and 1365, from catastrophic events, including a failure or collapse of the Warm Springs Ponds, that result in the release of substantial additional quantities of Waste Material; and

i. Violations of Federal or State Law: liability for violations of federal or state law by AR which occur during or after implementation of the Remedial Action.

116. Reservation of Response Authority. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law. However, the United States may recover the costs of response actions taken at the Clark Fork Site from AR or order AR to perform response actions at the Clark Fork Site only to the extent provided in this Consent Decree.

XXIII. COVENANTS AND RESERVATIONS BY THE STATE

117. State's Covenants Relating to Response Actions at the Clark Fork Site and the State Property Remedial Commitments. Except as specifically provided in Paragraph 14 (Obligations for Additional Response Costs), Paragraphs 118 (State's Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), 119 (State's Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), 125 (State's General Reservations of Rights as to AR) and Section XII (Access and Institutional Controls), the State covenants not to sue or to take administrative action against AR and its respective officers, directors and

employees, to the extent that the liability of such officers, directors, and employees arises solely from their status as officers, directors, and employees, pursuant to Sections 106, 107(a)(4)(A), (B), and (D), and 113(f) of CERCLA, Sections 3004(u) and (v), 3008 and 7002 of RCRA, Sections 309(a), 311,504, and 505 of the Clean Water Act, Sections 601, 602, 611, 613, 614 (except with respect to enforcement of an emergency order under 75-5-621), 615, 617, 631, and 635 of the Montana Water Quality Act, and Sections 711, 715(2)(A), and 722 of CECRA, for recovery of Future Response Costs, including Additional Response Costs, or injunctive relief at the Clark Fork Site. The covenant for Additional Response Costs shall take effect upon AR's payment of such costs, and shall be effective only for the amount of such Additional Response Costs paid by any Party. The remaining covenants shall take effect upon the receipt of all payments required by Paragraph 6 (AR Payment to the Clark Fork Site Response Action Account). These covenants are conditioned upon the satisfactory performance by AR of its obligations under this Consent Decree. These covenants, as set forth in the preceding Paragraph, extend only to AR and their respective officers, directors, and employees and do not extend to any other person. Except as expressly provided in Paragraphs 121 (State's Pre-Certification Reservations Relating to the State Property Remedial Commitments), 122 (State's Post-Certification Reservations Relating to the State Property Remedial Commitments), 125 (State's General Reservation of Rights), and Section XII (Access and Institutional Controls), AR shall have also resolved its liability relating to the State Property Remedial Commitments upon satisfaction of the requirements of Paragraphs 16 and 17 (Compensation by AR to the State for State Natural Resource Damages) of this Consent Decree.

118. State's Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site. Notwithstanding any other provision of this Consent Decree, the State reserves, and this

Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

a. to perform further response actions relating to the Clark Fork Site; or

b. to reimburse the State for additional costs of response relating to the Clark Fork Site

if, prior to Certification of Completion of the Remedial Action:

(i). conditions at the Clark Fork Site, previously unknown to the State, are discovered, or

(ii). information, previously unknown to the State, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action is not protective of human health or the environment.

119. State's Post-Certification Reservations Relating to Response Actions at the Clark Fork Site. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

a. to perform further response actions relating to the Clark Fork Site; or

b. to reimburse the State for additional costs of response relating to the Clark Fork Site

if, subsequent to Certification of Completion of the Remedial Action:

(i). conditions at the Clark Fork Site, previously unknown to the State, are discovered, or

(ii). information, previously unknown to the State, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

120. Information and Conditions Known to the State Relating to Response Actions at the Clark Fork Site. For purposes of Paragraph 118 (State's Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site), the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of lodging of this Consent Decree that are described or contained in: (a) the ROD; (b) the administrative record supporting the ROD; (c) the EPA Records of Decision for the Warm Springs Ponds Active Area and Inactive Area OUs, the Milltown Site, and the ARWW&S OU; (d) DEQ and the Montana Department of Fish, Wildlife and Parks ("FWP") State Site Records for the Clark Fork River OU and the Warm Springs Ponds Active Area OU; (e) any other non-privileged and non-confidential records relating to the Clark Fork Site or the Clark Fork River OU maintained by DEQ, FWP or their employees; (f) any other information received or discovered by the State pursuant to the requirements of this Consent Decree; and (g) the non-privileged and non-confidential records in the NRDP State Site Record relating to the Clark Fork Site. For purposes of Paragraph 119 (State's Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), the information and the conditions known to the State shall include only that information and those conditions known to the State as of EPA's Certification of Completion of the Remedial Action and described or contained in: (a) the ROD; (b) the administrative record supporting the ROD; (c) the EPA Records of Decision for the Warm Springs Ponds Active Area and Inactive Area, the Milltown Site, and the ARWW&S OU;

(d) the DEQ or FWP State Site Records for the Clark Fork River OU and the Warm Springs Ponds Active Area OU; (e) any other non-privileged and non-confidential records relating to the Clark Fork Site or the Clark Fork River OU maintained by DEQ, FWP or their employees; (f) any other information received or discovered by the State pursuant to the requirements of this Consent Decree; and (g) the non-privileged and non-confidential records in the NRDP State Site Record relating to the Clark Fork Site. For purposes of Paragraphs 118 (State's Pre-Certification Reservations Relating to Response Actions at the Clark Fork Site) and 119 (State's Post-Certification Reservations Relating to Response Actions at the Clark Fork Site), the fact that the Remedial Action has failed shall not constitute, in and of itself, an unknown condition or new information, unless the failure of the Remedial Action results from an unknown condition or new information.

121. State's Pre-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

a. to perform further response actions relating to State Property Remedial Commitments; or

b. to reimburse the State for additional costs of response relating to the State Property Remedial Commitments

if, prior to certification of completion of the remedial action for the State Property Remedial Commitments:

(i). Conditions relating to the State Property Remedial Commitments, previously unknown to the State, are discovered, or

(ii). information, previously unknown to the State, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicate that the remedial action for the State Property Remedial Commitments is not protective of human health or the environment.

122. State's Post-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments. Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel AR:

a. to perform further response actions relating to the State Property Remedial Commitments; or

b. to reimburse the State for additional costs of response relating to the State Property Remedial Commitments

if, subsequent to certification of completion of the remedial action for the State Property Remedial Commitments:

(i). conditions relating to the State Property Remedial Commitments, previously unknown to the State, are discovered, or

(ii). information, previously unknown to the State, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the remedial action for the State

Property Remedial Commitments is not protective of human health or the environment.

123. Information and Conditions Known to the State Relating to Response Actions for the State Property Remedial Commitments. For purposes of Paragraph 121 (State's Pre-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments), the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of lodging of this Consent Decree that are described or contained in: (a) the ARWW&S ROD; (b) the administrative record supporting the ARWW&S ROD; (c) the DEQ or FWP State Site Records for the ARWW&S OU; (d) any other non-privileged and non-confidential records relating to the ARWW&S OU maintained by DEQ, FWP or their employees; (e) the NRDP non-privileged and non-confidential records relating to the Smelter Hill Area Uplands Resources and its Restoration Plan; (f) any other information received or discovered by the State pursuant to the requirements of this Consent Decree; and (g) any other non-privileged and non-confidential records relating to State Property Remedial Commitments maintained by the managing land agency or its employees. For purposes of Paragraph 122 (State's Post-Certification Reservations Relating to the State Property Remedial Commitments), the information and the conditions known to the State shall include only that information and those conditions known to the State as of EPA's certification of completion of the remedial action for the State Property Remedial Commitments and described or contained in: (a) the ARWW&S ROD; (b) the administrative record supporting the ARWW&S ROD; (c) the DEQ or FWP State Site Records for the ARWW&S OU; (d) any other non-privileged and non-confidential records relating to the ARWW&S OU maintained by DEQ, FWP or their employees; and (e) the NRDP non-privileged and non-confidential records relating

to the Smelter Hill Area Uplands Resources and its Restoration Plan; (f) any other information received or discovered by the State pursuant to the requirements of this Consent Decree; and (g) any other non-privileged and non-confidential records relating to State Property Remedial Commitments maintained by the managing land agency or its employees.

124. Covenants by the State Relating to State Natural Resource Damages.

a. Except as provided in Paragraph 127 (State Natural Resources Damages Reservations of Rights), and effective upon the State's receipt of State NRD Settlement Amount, plus State Interest, pursuant to Paragraphs 16 and 17, and conveyance of the Beck Ranch pursuant to Paragraph 18, the State hereby releases all of its claims and causes of action against AR, its divisions, subsidiaries, and any predecessors and successors in interest, and their officers, attorneys, directors, shareholders and employees for State Natural Resource Damages and Assessment and Litigation Costs arising from past, present or future releases or discharges of Hazardous Substances as a result of the following activities and operations conducted within All Sites: mining, milling, mineral processing and wood treating and related activities and operations, including but not limited to power generation, logging, railroads and other transportation operations. This release does not apply to any such activities or operations conducted by AR, its parent corporation, or any of its affiliates, divisions, subsidiaries or agents, after the date of lodging of this Consent Decree. Effective upon the State's receipt of State NRD Settlement Amount, plus State Interest, pursuant to Paragraphs 16 and 17, and conveyance of the Beck Ranch pursuant to Paragraph 18, the State shall file a satisfaction of judgment in the State Action. The State hereby releases the claims reserved by the

State in Subparagraphs 22(c) and (d) of the State CD. The claims reserved by the State in Subparagraphs 22(e) and (f) of the State CD are hereby released as to the Clark Fork Site.

125. State's General Reservations of Rights as to AR. The covenants set forth in Paragraphs 117 (State's Covenants Relating to Response Actions at the Clark Fork Site and the State Property Remedial Commitments) and 124 (Covenants by the State Relating to Natural Resource Damages) do not pertain to any matters other than those expressly specified in those Paragraphs. The State reserves, and this Consent Decree is without prejudice to, all rights against AR with respect to all other matters, including but not limited to, the following:

a. Non-compliance with Consent Decree: claims to enforce this Consent Decree based on a failure by AR to meet a requirement of this Consent Decree;

b. Failure to Comply with Upstream Cleanup Requirements: claims against AR based on releases of Waste Material resulting from AR's failure to fully and timely comply with the cleanup requirements of upstream operable units as required by the State or the United States;

c. Release or Disposal Outside of the Clark Fork Site: claims against AR for response costs and injunctive relief under CERCLA Sections 106 and 107, RCRA Sections 3004(u), 3004(v), 3008, and 7002, or Sections 309(a), 311, 504, and 505 of the Clean Water Act, or corresponding provisions of state law, arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Clark Fork Site, including claims for (i) any releases of Waste Material that come to be located at the Clark Fork Site from a failure of upstream retaining walls, settling ponds, dams, or other upstream control measures (including the Warm Springs Ponds); or (ii) any

upstream releases of Waste Material which come to be located at the Clark Fork Site, other than anticipated continuation of existing migration.

d. Conduct Causing Future Release or Disposal: claims for response costs and injunctive relief under CERCLA Sections 106 and 107, or RCRA Sections 3004(u), 3004(v), 3008, and 7002, Sections 309(a), 311, 504, and 505 of the Clean Water Act, or corresponding provisions of state law, arising from future conduct by AR after the Effective Date that causes a release or disposal of Waste Material at or from the Clark Fork Site, other than as provided in the ROD;

e. Criminal liability: claims for criminal liability;

f. Claims for Additional Response Actions and Costs: claims for liability, prior to Certification of Completion of the Remedial Action, for additional response actions (other than claims for additional response actions that AR establishes are necessitated by a failure of Restoration), that the State determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Obligations for Additional Response Costs) because they are outside the Scope of the Remedy selected in the ROD;

g. Claims for Response Actions and Costs at the Anaconda Smelter NPL Site. Claims for liability for response actions and costs at the Anaconda Smelter NPL Site, except for claims for response actions and costs within the scope of the State's obligations as described in State CD II;

h. Release from Catastrophic Events: claims for response costs and injunctive relief under CERCLA Sections 106 and 107; RCRA Sections 3004(u), 3004(v), 3008, and 7002, Sections 309(a), 311, 504, and 505 of the Clean Water Act, or

corresponding provisions of state law from catastrophic events, including a failure or collapse of the Warm Springs Ponds, that result in the release of substantial additional quantities of Waste Material;

i. Violations of Federal or State Law: liability for violations of federal or state law by AR which occur during or after implementation of the Remedial Action; and

j. Defenses and Counterclaims: the State's counterclaims and defenses to any claim asserted by AR against the State under Paragraph 131 (AR's Reservations of Rights), but only for counterclaims and defenses arising from the same matters, transactions, and occurrences that are raised in or directly related to AR's claims against the State.

126. Reservation of Response Authority. Notwithstanding any other provision of this Consent Decree, the State retains all authority and reserves all rights to take any and all response actions authorized by law. However, the State may recover the costs of response actions taken at the Clark Fork Site from AR or order AR to perform response actions at the Clark Fork Site only to the extent provided in this Consent Decree.

127. State Natural Resource Damages Reservations of Rights. The covenants and releases set forth in Paragraphs 117 and 124 do not apply to any matters other than those specified therein. Except for those State CD claims released by the State in Paragraph 124, the State specifically reserves, and this Consent Decree is without prejudice to, the State CD's reservation of rights against AR with respect to all such other matters, as set forth in Paragraph 22 of the State CD.

XXIV. COVENANTS AND RESERVATIONS BY AR

128. AR's Covenant Not to Sue the United States Regarding the Clark Fork Site and the State Property Remedial Commitments. Subject to the reservations in Paragraph 131 (AR's Reservation of Rights), AR hereby covenants not to sue and agrees not to assert any past,

present, or future claims or causes of action against the United States, its agencies, instrumentalities, officials, employees, agents, and contractors relating to the Clark Fork Site, of which the Grant-Kohrs Ranch and the BLM Lands are part, or for the activities the State performs as part of its implementation of the State Property Remedial Commitments, including:

a. any direct or indirect claim related to the Clark Fork Site for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, and 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, and 9613, or any other provision of law;

b. any claims under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613; RCRA Sections 3004(u) and (v), 3008, and 7002, 42 U.S.C. §§ 6924(u) and (v), 6928, and 6972; Sections 311, 504, and 505 of the Clean Water Act, 42 U.S.C. §§ 1321, 1364, and 1365; or CECRA, including Sections 711, 715, 719, 722, 724, and 726, MCA 75-10-711, 75-10-715, 75-10-719, 75-10-722, 75-10-724, 75-10-726, and any other theory of recovery or provision of law related to the Clark Fork Site or the State Property Remedial Commitments; or

c. any claims arising out of response or Restoration actions at the Clark Fork Site or the activities the State performs as part of its implementation of the State Property Remedial Commitments, including claims based on the selection or implementation of response or Restoration actions, oversight of response or Restoration actions, or approval of plans for such activities.

129. <u>AR's Covenant Not to Sue the State Regarding the Clark Fork Site and the State Property Remedial Commitments</u>. Subject to the reservations in Paragraph 131 (AR's Reservation of

Rights), AR hereby covenants not to sue and agrees not to assert any past, present, or future claims or causes of action against the State, its agencies, instrumentalities, officials, employees, agents, and contractors relating to the Clark Fork Site and the State Property Remedial Commitments, as defined herein, including:

a. any direct or indirect claim related to the Clark Fork Site and State Property Remedial Commitments for reimbursement from the Environmental Quality Protection Fund (established pursuant to MCA 75-10-704), the Orphan Share Account (established pursuant to MCA 75-10-743), or any other provision of law;

b. any claims under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 and 9613; RCRA Sections 3004(u) and (v), 3008, and 7002, 42 U.S.C. §§ 6924(u) and (v), 6928, and 6972; Sections 311, 504, and 505 of the Clean Water Act, 42 U.S.C. §§ 1321, 1364, and 1365; and under CECRA Sections 711, 715, 719, 722, 724, and 726, MCA 75-10-711, 75-10-715, 75-10-719, 75-10-722, 75-10-724, 75-10-726, and any other theory of recovery or provision of law related to the Clark Fork Site and the State Property Remedial Commitments; or

c. any claims arising out of response or Restoration actions at the Clark Fork Site, including claims based on selection or implementation of response or Restoration actions, oversight of response or restoration actions, or approval of plans for such actions.

d. any claims arising out of response or State Restoration actions for the State Property Remedial Commitments, including claims based on selection or implementation of response or State Restoration actions, oversight of response or restoration actions, or approval of plans for such actions. Provided, however, in the event any administrative or judicial claim is asserted against AR for response costs or response

actions related to State-owned Property or to the State's obligations as described in State CD II, AR's right to enforce its reserved rights against the State is set forth in State CD II.

130. AR's Natural Resource Damages Covenant to the State. Except as specifically provided in Paragraph 132, upon the Effective Date, AR releases all of its counterclaims, defenses, and other claims against the State, its agencies and instrumentalities, officials, employees and attorneys relating to All Sites, or any portion thereof, which have been asserted in the State Action, and any other counterclaims, defenses, or other claims arising from CERCLA or any other law, including common law, pertaining to State Natural Resource Damages (including State Restoration), response costs or any damages or relief under CERCLA or CECRA which could have been asserted in the State Action. The claims described above being released by AR include any such claims that AR has a right to recover over against the State through an action for contribution, indemnity, or under any other legal theory as a result of a recovery by any other entity of natural resource damages, response costs or any other damages or relief under CERCLA or CECRA against AR. AR hereby releases the claims reserved by AR in Paragraph 24(a), (b), (c), and (d) of the State CD. AR represents that the Consent Decree for the Mine Flooding Site entered by the Court in the Federal Action on August 22, 2002 is not a "New Regulatory Action" within the meaning of Paragraph 24(e) of the State CD. AR further represents that the complaint filed in 2002 by the State and the United States in United State District Court for the District of Montana in conjunction with the lodging of the Consent Decree for the Mine Flooding Site, Case No. CV 02-35-BU, did not: (i) initiate a suit by the State against AR for purposes of Paragraph 24(e)(2) of the State CD; nor (ii) assert a claim of the

United State for recovery of damages or other relief under CERCLA for purposes of Paragraph 24(e)(3) of the State CD.

131. AR's Reservation of Rights. AR reserves, and this Consent Decree is without prejudice to:

a. claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and claims against the State under Chapter 9 of Title 2 of Montana Code Annotated 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 or the State while acting within the scope of his office or employment under circumstances where the United States or the State, 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, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671, or an employee, as that term is defined in 2-9-101, MCA; nor shall any such claim include a claim based on EPA's selection or implementation of response actions, the State's selection or implementation of response or Restoration actions, or the oversight or approval of AR's plans or activities. The foregoing applies only to claims which are brought pursuant to any Federal or State statute other than CERCLA or CECRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or CECRA;

b. AR's defenses, contribution and other claims and counterclaims reserved in Paragraph 20 of the Past Costs CD to any claim asserted by the United States against

AR under Paragraphs 110 (United States' Pre-Certification Reservations for Response Actions for the Clark Fork Site), 111 (United States' Post-Certification Reservations for Response Actions for the Clark Fork Site), 114 (United States' Natural Resources Damages Reservation), 115 (United States' General Reservation of Rights), or Paragraphs 116 (United States' Reservation of Response Authority), but only for contribution and other claims and counterclaims arising from the same matters, transactions, and occurrences that are raised in or directly related to the United States' claims against AR.

c. defenses to any claim asserted by the State against AR under Paragraphs 118 (State's Pre-Certification Reservations for Response Actions for the Clark Fork Site), 119 (State's Post-Certification Reservations for Response Actions for the Clark Fork Site), 121 (State's Pre-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments), 122 (State's Post-Certification Reservations Relating to Response Actions for the State Property Remedial Commitments), 125 (State's General Reservation of Rights), or Paragraph 126 (State's Reservation of Response Authority), but only for defenses arising from the same matters, transactions, and occurrences that are raised in or directly related to the State's claims against AR.

d. claims against the State under CERCLA, CECRA and any other federal or state law, including the common law, in the event that any administrative or judicial claim is asserted against AR by any person, including the State or the United States, for response costs, response actions, damages, costs, or injunctive relief relating to the Milltown Site (as defined in the Milltown Site Consent Decree) that arises from or out of any significant increase in erosion of floodplain soils, river banks, river beds or

sediments, or in releases of Hazardous Substances, and any redistribution of those materials or surface water that results from the implementation of State Restoration for the Clark Fork Site, and from the implementation by the State of any Federal Restoration at Grant-Kohrs Ranch that has not been previously approved by NPS, or which is materially inconsistent with the Federal Restoration previously approved by NPS. It is recognized that prior to implementation of Restoration for the Clark Fork Site there is continuing erosion of floodplain soils, river banks, river beds and sediments (including Hazardous Substances) in and along the Clark Fork River within the Clark Fork Site; erosion of the same magnitude following implementation of Restoration for the Clark Fork Site shall not be considered a significant increase in erosion of floodplain soils, river banks, river beds or sediments or in release of Hazardous Substances that results from Restoration or any other State activity.

e. claims against the State under the provisions of State CD II.

132. AR Natural Resource Damages Reservations of Rights. The covenants and releases set forth in Paragraphs 128, 129 and 130 do not apply to any matters other than those specified therein. Except for those State CD claims released by AR in Paragraph 130, AR specifically reserves, and this Consent Decree is without prejudice to, AR's reservation of rights against the State with respect to all such other matters, as set forth in Paragraph 24(e) of the State CD.

133. No Preauthorization of Claims. Nothing in this Consent Decree shall be deemed to constitute 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).

134. AR's Waiver of Certain Third-Party Claims.

a. AR agrees not to assert contribution, cost recovery, or other claims relating to the Clark Fork Site against any current owners or operators, including any Local Government Unit of the State of Montana, of Clark Fork Site property utilized for residential, agricultural, recreational, or non-industrial business purposes or other government purposes, regardless of whether these property owners or operators might also be potentially responsible parties; provided however, that this waiver does not apply to claims that might arise from the conduct of such persons after the Effective Date of this Consent Decree. For purposes of this paragraph, businesses such as railroads, mining (including without limitation gravel and sand mining), and manufacturing of any type are examples of industrial businesses.

b. AR also agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters related to the Clark Fork Site, including for contribution, against any person where the person's liability to AR with respect to the Clark Fork Site is based solely on having arranged for disposal or treatment, of hazardous substances at the Clark Fork Site, or having accepted for transport for disposal or treatment of hazardous substances at the Clark Fork Site, if the material contributed by such persons to the Clark Fork Site contained hazardous substances that did not exceed the greater of (i) 0.002% of the total volume of waste at the Clark Fork Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

c. The waiver of claims set forth in Subparagraphs a and b above shall not apply to any other persons, and shall also not apply with respect to any claim or cause of action that AR may have against any person other than the United States and the State, if any

claim or cause of action is asserted by any third party against AR relating to the Clark Fork Site. AR's waiver of claims against certain third parties as described in this Paragraph shall also be void to the extent that the United States or the State demand additional payment from AR (other than payment of Further Response Costs or Additional Response Costs) or institute additional proceedings in this action or in a new action against AR related to the Clark Fork Site, or issue a new administrative order to AR related to the Clark Fork Site pursuant to the terms of this Consent Decree.

XXV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

135. Effect on Nonparties. Except as provided in Paragraph 134 (AR's Waiver of Claims), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 134 (AR's Waiver of Claims), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the matters addressed in this Consent Decree against any person not a Party hereto.

136. Contribution Protection. The Parties agree, and by entering this Consent Decree this Court finds, that the United States, the State, and AR are entitled, as of the Effective Date, to protection from contribution actions or claims by third parties as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or other applicable law for matters addressed in this Consent Decree. The Parties also agree, and by entering this Consent Decree this Court finds, that the United States, the State, and AR are entitled, as of the Effective Date, to protection from contribution actions or claims by third parties as provided by CECRA Section 719(1), 75-10-

719(1), MCA, for matters addressed in this Consent Decree. For purposes of this Paragraph, the "matters addressed" in this Consent Decree include: Federal Clark Fork Site DOJ and EPA Interim Response Costs, DOI Clark Fork Site Response Costs, State Natural Resource Damages, Federal Natural Resource Damages, State Property Remedial Commitments, Future Response Costs, Oversight Costs for EPA for the Clark Fork Site, Work, Oversight Costs for EPA for the State Property Remedial Commitments, State Restoration within All Sites, Federal Restoration, natural resource damages assessment and litigation costs within All Sites, as well as all response and restoration actions at the Clark Fork Site taken and to be taken by any party to this Consent Decree. The contribution protection set forth in this Paragraph is intended to provide the broadest protection afforded by CERCLA and CECRA for matters addressed in this Consent Decree.

137. AR agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim. AR agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify in writing the United States and the State within ten (10) days of service of the complaint on AR. In addition, AR shall notify the United States and the State within ten (10) days of service or receipt of any motion for summary judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

138. Waiver of Claim-Splitting Defenses.

a. In any subsequent administrative or judicial proceeding initiated by (i) the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Clark Fork Site or any of the remaining Clark Fork Basin

sites, or (ii) the United States or the State for other claims reserved in Paragraphs 110 and 118 (United States' and State's Pre-Certification Reservations for Response Actions for the Clark Fork Site), 111 and 119, (United States' and State's Post-Certification Reservations for Response Actions for the Clark Fork Site), 115 and 125 (United States' and State's General Reservation of Rights), AR shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding by the United States or the State were or should have been brought in the Federal Action or in the State Action; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants and Reservations by the United States) and Section XXIII (Covenants and Reservations by the State)

b. In any subsequent administrative or judicial proceeding initiated by the United States or the State, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Clark Fork Site, neither the United States nor the State, shall use any provision of this Consent Decree to assert and maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by AR in the subsequent proceeding were or should have been brought in the Federal Action or in the State Action; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIV (Covenants and Reservations by AR).

XXVI. NOTICES AND SUBMISSIONS

139. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to or upon another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing, and copies of such notice, submission or report shall be provided at the same time and in the same manner to all other Parties. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise specifically provided, written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, DOI, NPS, BLM, the State, and AR, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ #90-11-2-430

and

Director, Montana Office
U.S. Environmental Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

As to EPA:

Kristine Knutson
EPA Project Coordinator
U.S. Environmental Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

D. Henry Elsen, Attorney
U.S. Environmental Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

As to NPS/BLM/DOI

Shawn Mulligan and Greg Nottingham
U. S. Department of the Interior
National Park Service
1050 Walnut, Suite 220
Boulder, Colorado 80302

As to the State:
As to NRDP:

Robert Collins
Doug Martin and Greg Mullen
State of Montana
Office of the Attorney General
Natural Resource Damage Program
1301 East Lockey Avenue
P.O. Box 201425
Helena, Montana 59620-1425

As to DEQ:

Joel Chavez
State Project Officer
Clark Fork River CERCLA Site
Department of Environmental Quality
Remediation Division
P.O. Box 200901
Helena, Montana 59620-0901

C. Bradley Smith
DEQ Legal Counsel

Montana Department of Environmental Quality
P.O. Box 200901
Helena, Montana 59620-0901

As to AR:

Robin Bullock
Marci Sheehan
Project Coordinator
Atlantic Richfield Company
317 Anaconda Road
Butte, Montana 59701

Jean A. Martin
Atlantic Richfield Company
4101 Winfield Road
Canterra 3 MC412E
Warrenville, Illinois 60555

XXVII. RETENTION OF JURISDICTION

140. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXVIII. APPENDICES

141. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A – The Record of Decision
Appendix B – Beck Ranch Description
Appendix C – BLM Land Description
Appendix D – Butte Ground and Surface Water Resources Restoration Planning Process and Plan
Appendix E – Clark Fork River Aquatic and Riparian Resources Restoration Plan
Appendix F – Clark Fork Site map
Appendix G – Smelter Hill Area Uplands Resources Restoration Plan
Appendix H – Clark Fork Water Rights Description
Appendix I – Federal Restoration Plan

Appendix J – Map of State-owned Property

XXIX. MODIFICATION

142. Modifications. Except as expressly set forth in this Consent Decree, there shall be no modification of this Consent Decree, other than the appendices, either before or after its entry by the Court without written agreement of all the Parties to this Consent Decree and approval by the Court.

143. Retention of Court's Authority Over Modifications. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

144. Lodging and Entry of the Decree. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. In addition and concurrently, the State shall submit for public comment its restoration plans for the three Step 2 Sites. The United States and the State reserve their rights to withdraw from or withhold their consent to this Consent Decree if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. AR consents to the entry of this Consent Decree without further notice. In addition, the State reserves its right to withdraw from or withhold its consent to this Consent Decree if the comments regarding its restoration plans for the three Step 2 Sites disclose facts or considerations which indicate that the plans are inappropriate, improper, or inadequate. Each Party hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States or the State has notified AR in writing that it no longer supports entry of this Consent Decree.

145. Effect of Court's Decision to Not Approve Decree. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party, and the terms of this Consent Decree may not be used as evidence in any litigation between the Parties

XXXI. SIGNATORIES/SERVICE

146. The undersigned representatives of AR, the Environment and Natural Resources Division of the United States Department of Justice, the United States Environmental Protection Agency, the United States Department of the Interior, the State of Montana, the Montana Department of Environmental Quality, and the Montana Natural Resource Damage Program each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

147. AR shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of AR with respect to all matters arising under or relating to this Consent Decree. AR hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXII. ENTRY OF FINAL JUDGMENT

148. Upon the Court's approval of this Consent Decree, the Decree shall be entered as a final judgment under Fed. R. Civ. P. 54(b), and shall serve to satisfy the settlement negotiation requirements contained in Subparagraph 31.d. of the Streamside Tailings Consent Decree with

respect to the Clark Fork Site. The Court expressly determines that there is no just reason for delay in entering this judgment.

SO ORDERED THIS 21st DAY OF August, 2008.

Sam E Haddon
UNITED STATES DISTRICT COURT JUDGE

FOR THE UNITED STATES OF AMERICA:

Date:

RONALD J. TENPAS

Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

MATTHEW W. MORRISON
Senior Attorney
ROBERT R. HOMIAK
Senior Attorney
JOHN W. SITHER
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
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Washington, D.C. 20044-7611

Date:

for KRIS MCLEAN
Assistant United States Attorney
District of Montana
105 East Pine, 2nd Floor
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Date:

MICHAEL J. ZEVENBERGEN
Senior Counsel
Environmental Defense Section
c/o NOAA Damage Assessment
7600 Sand Point Way, NE
Seattle, Washington 98115

Date: 1/11/08

John F. Wardell

JOHN F. WARDELL
Region 8 Montana Office Director
U.S. Environmental Protection Agency
10 West 15th Street, Suite 3200
Helena, Montana 59626-0096

Date: 1/10/08

Michael T. Bitner

for ANDREW M. GAYDOSH
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Date: 1/4/08

D. Henry Elsen

D. HENRY ELSEN, Attorney
Legal Enforcement Program
U.S. Environmental Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

Date:

MICHAEL J. ZEVENBERGEN
Senior Counsel
Environmental Defense Section
c/o NOAA Damage Assessment
7600 Sand Point Way, NE
Seattle, Washington 98115

Date:

JOHN F. WARDELL
Region 8 Montana Office Director
U.S. Environmental Protection Agency
10 West 15th Street, Suite 3200
Helena, Montana 59626-0096

Date:

ANDREW M. GAYDOSH
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Date:

D. HENRY ELSEN, Attorney
Legal Enforcement Program
U.S. Environmental Protection Agency
Region 8 Montana Office
10 West 15th Street, Suite 3200
Helena, Montana 59624

Date: 1/9/2008

DANIEL N. WENK
Deputy Director Operations
National Park Service
U.S. Department of the Interior
1849 C Street, NW Room 3113
Washington, D.C. 20240-0001

Date: 1/09/2008

SHAWN P. MULLIGAN
Environmental Program Advisor
National Park Service
U.S. Department of the Interior
1050 Walnut, Suite 220
Boulder, Colorado 80302

FOR THE STATE OF MONTANA:

Date: 12/21/07

The Honorable BRIAN SCHWEITZER
Governor of Montana
State Capitol
Helena, Montana 59620-0801

Date: 12/21/07

MIKE McGRATH
Attorney General

Date: 12/21/07

ROBERT G. COLLINS
Supervising Assistant Attorney General
MARY CAPDEVILLE
Assistant Attorney General
Montana Department of Justice
Natural Resource Damage Program
1301 Lockey Avenue
P.O. Box 201425
Helena, Montana 59620-1425

Date: 12/21/07

RICHARD H. OPPER
Director
Montana Department of Environmental Quality

Date: 12/21/07

C. BRADLEY SMITH
DEQ Legal Counsel
Montana Department of Environmental Quality
1100 North Last Chance Gulch
P.O. Box 200901
Helena, Montana 59620-0901

FOR THE ATLANTIC RICHFIELD COMPANY:

Date: DECEMBER 21, 2007

LUKE KELLER
President
28100 Torch Parkway
MC 27
Warrenville, Illinois 60555

Date:

WILLIAM J. DUFFY
(authorized to accept service of process by mail on behalf of AR as noted in Paragraph 142)
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202

Date:

RICHARD O. CURLEY, JR.
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, Colorado 80202

Approved as to Form and Content:

Date:

JEAN A. MARTIN
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FOR THE ATLANTIC RICHFIELD COMPANY:

Date:

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Date: 1/03/08

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(authorized to accept service of process by mail on behalf of AR as noted in Paragraph 142)
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Date: 1/2/08

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