U.S. Environmental Protection Agency
and
Nevada Division of Environmental Protection
National Priorities List Deferral Agreement
Anaconda Mine Site, Lyon County, Nevada

I. PURPOSE

The U.S. Environmental Protection Agency (EPA), Region 9, conducted a preliminary assessment and site investigation of the Anaconda Mine Site (Site) located in Lyon County, Nevada, Comprehensive Environmental Response and Liability Information System (CERCLIS) ID #NVD083917252, and determined that it qualifies for placement on the National Priorities List (NPL).

On December 22, 2015, EPA sent a letter to the State of Nevada Governor's Office, which indicated its intent to list the Site on the NPL pursuant to the Comprehensive Environmental Response and Liability Act (CERCLA) and requested the State of Nevada's position on listing. (Attachment A). The Governor's Office sent a letter on March 29, 2016, which offered the State's conditional concurrence with EPA's proposal to list the Site. (Attachment B). In September 2016, EPA proposed the Site to the NPL.

After initial discussions in December 2016 and January 2017 between EPA, the Nevada Division of Environmental Protection (NDEP), the Bureau of Land Management, and Atlantic Richfield Company (ARC), and after meeting with governmental representatives, which included but was not limited to, the Yerington Paiute Tribe, the Walker River Paiute Tribe, Lyon County and City of Yerington, EPA made a decision in February 2017 to postpone listing of the Site on the NPL while all parties evaluated deferral options for a private funding solution. On April 19, 2017, EPA sent a letter to NDEP (Criteria Letter) specifying the criteria that would be considered by EPA in determining whether a deferral of Site cleanup to private funding under NDEP oversight is appropriate. (Attachment C). Between February and June, 2017, NDEP and ARC developed a proposal for deferral of the Site from NPL listing. NDEP conducted outreach with community stakeholders, including Lyon County, the City of Yerington, the Yerington Paiute Tribe, the Walker River Paiute Tribe, and interested community members. NDEP and ARC have entered agreements (the Consent Orders) that satisfy criteria for deferral of the Site as described in EPA's "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" (EPA Guidance) and the Criteria Letter. The Consent Orders are attached collectively as Attachment D. On July x, 2017, NDEP formally requested EPA deferral of the Site under CERCLA § 105(h).

Based on ARC and NDEP meeting required deferral criteria, EPA is deferring the final listing of the Site on the NPL while NDEP completes necessary investigations and response actions at the Site. This Deferral Agreement describes the steps NDEP will take to ensure that adequate response actions are completed at the Site so that it achieves a status of Site completion in the Superfund Enterprise Information Management System (SEMS) or its successor and will not be evaluated further for NPL listing or another response unless and until EPA receives new information of a release or potential release posing a substantial threat to human health or the environment or receives new information that the response actions completed pursuant to this Deferral Agreement are no longer CERCLA-protective (as defined herein).

II. IMPLEMENTATION

A. State Program – NDEP is authorized under state water pollution control law (NRS 445A) and hazardous substance control law (NRS 459) to implement a soil and groundwater cleanup and mine reclamation program which should ensure that the response actions at the Site are carried out and that these actions are protective of human health and the environment. Furthermore, NDEP has sufficient capabilities, resources, expertise and authorities to ensure that a CERCLA-protective cleanup, as defined in Section II(D) of this Deferral Agreement, is conducted, and to coordinate with EPA, BLM, the Yerington Paiute Tribe and Walker River Paiute Tribe (Tribes), other interested agencies, and the public on different phases of implementation.

B. Site Eligibility – The State has expressed interest in having the Site listing deferred and in NDEP overseeing the response at the Site under state law. NDEP agrees to pursue response actions at the Site in a timely manner. EPA and NDEP agree that a deferral should address the Site sooner than, and at least as quickly as, EPA would expect to respond.

The Site is included in the CERCLIS inventory and has been assessed and scored for listing on the NPL. The State will not request, nor utilize, Federal funding to implement any portion of the actions required by this Deferral Agreement.

C. Community and Tribal Government Acceptance

1. Community Acceptance – NDEP provided outreach to the community [Placeholder]. (Attachment).

2. Tribal Government Acceptance – NDEP provided outreach to the Tribal Governments [Placeholder].

D. CERCLA-Equivalent RI/FS and CERCLA-Protective Cleanup

1. NDEP will implement a CERCLA-equivalent RI/FS for the entire Site. The RI/FS should define the severity and areal extent of contamination both on the mine property and in soils and groundwater off the mine property. The boundaries of the Site will be determined with consideration of contaminant migration from the mine property as well as on-property contamination.

A CERCLA-equivalent RI/FS should determine applicable or relevant and appropriate requirements, assess associated human health risks, and ecological risks, and evaluate remedial alternatives, including consideration of remedial technologies that when implemented are (1) protective of human health and the environment; (2) meet ARARs under federal and NDEP's state authorities; (3) treat/remove sources or otherwise contain sources; and (4) are reliable over the long term. See, CERCLA sections 121(b) and (d), 42 U.S.C §§ 9621(b) and(d); NCP at 40 C.F.R. §300.430(f); 1995 Guidance, p.7.

2. NDEP will implement a CERCLA-protective cleanup of the Site. The response action will be protective of human health and the environment, as generally defined for individual human exposure by an acceptable risk level for

carcinogens between 10^{-4} and 10^{-6} (using 10^{-6} risk level as the point of departure for determining remediation goals for alternatives) and for non-carcinogens a Hazard Index of 1 or less, and no significant adverse impacts to ecological receptors. NDEP will give preference to solutions that will be reliable over the long term. In addition, NDEP will ensure that any remedy selected at the Site will comply with all applicable or relevant and appropriate federal requirements, as defined in CERCLA, the NCP, and EPA Guidance, and more stringent applicable or relevant and appropriate State requirements to the maximum extent practicable under NDEP's state authorities or as otherwise allowed under CERCLA, the NCP, and Nevada state law.

An evaluation of environmental media, exposure pathways, and human and ecological receptors will be investigated and assessed as part of the comprehensive risk assessment conducted at the Site. As assurance that the remedy selected for implementation at the site will be a CERCLA-protective cleanup, EPA expects that:

- NDEP will select a response action protective of human health and the environment, as generally defined by a 10-4 to a 10-6 risk range (using 10^{-6} risk level as the point of departure for determining remediation goals for alternatives) for carcinogens and a hazard index of 1 or less for non-carcinogens consistent with the NCP at 40 C.F.R. § 300.430(e)(2)(i)(A); See, 1995 Guidance, p.7.

- NDEP will ensure that the remedy selected at the Site (1) complies with federal ARARs and more stringent state ARARs under NDEP's state authorities, unless an ARARs waiver is justified consistent with CERCLA's requirements and Nevada law, (2) controls or eliminates sources, and (3) is effective and reliable, consistent with CERCLA sections 121(b) and (d), 42 U.S.C. §§ 9621 (b) and (d).

- NDEP will ensure that groundwater is restored to its beneficial use, consistent with the NCP, 40 C.F.R. § 300.430(a)(1)(iii)(F), unless an ARARs waiver is justified consistent with the requirements of CERCLA section 121(d)(4)(c), 42 U.S.C. § 9621(d)(4), 40 C.F.R. § 300.430(f)(1)(ii)(C), or NAC 445A.22725. NDEP acknowledges that portions of the impacted aquifer have been and are used for drinking water. The extent to which MCLGs or MCLs for groundwater established under the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., are considered legally applicable or relevant and appropriate requirements under section 121(d)(2)(A)(i) of CERCLA for any portion of the affected groundwater aquifer that is a current or potential source of drinking water will be determined based on the factors in 40 C.F.R. § 300.400(g)(2) during the selection of remedial action goals in the feasibility study and at remedy selection. 40 C.F.R. §§ 300.430(e)(2)(i)(B),(C).

E. Natural Resources Trustees – NDEP will promptly notify the appropriate state and federal trustees for natural resources of discharges and releases at the Site that are injuring or may injure natural resources, and include the trustees, as appropriate, in activities at the Site. NDEP shall, consistent with CERCLA and the NCP, coordinate necessary assessments, evaluations, investigations, and planning with the State, Tribes, and Federal trustees.

F. Tribal Government Participation – NDEP has existing consultation protocols with the Walker River Paiute Tribe and the Yerington Paiute Tribe. NDEP will enter into and follow the terms of a Memorandum of Understanding with all Tribal governments that have elected to participate in the response actions within 90 days after execution of this Deferral Agreement. *[Suggested Language from EPA – The MOU will include the terms under which the Tribal Government will agree to response actions on tribal lands under NDEP oversight.]* Furthermore, NDEP will support efforts to fund Tribal governments at levels that allow substantive participation in response actions performed under this Deferral Agreement.

III. PROCEDURAL REQUIREMENTS

A. Roles and Responsibilities (EPA) – NDEP has responsibility, with minimal EPA involvement, to provide for a timely CERCLA-protective cleanup under state authority and to support the public's right of participation in the decision–making process. EPA's role will generally be limited to review of NDEP's semi–annual and annual reports and consultation on the proposed remedy. However, EPA may request reports, data, or other documentation related to the remedial activities at the Site, as it deems appropriate, or arrange for NDEP to provide certain draft documents for EPA's review as they are prepared.

In the event that community members or the Tribal Governments identify significant and valid concerns to the protectiveness or timeliness of the response actions implemented by NDEP, they may request that EPA reconsider deferral of the Site or request EPA's intervention in response actions. EPA will meet with NDEP to discuss whether deferral is still warranted considering the community or Tribal concerns.

B. Schedule for Performance – A proposed schedule of events for the Site cleanup is set forth in the following table. The dates in the table are subject to change. EPA shall be notified of a change in Target Completion Date as soon as NDEP becomes aware that such a change is necessary or unavoidable.

Task	Target Completion Date[1]
Initiate Combined RI including Risk Assessment (OU-2, 4b, 5, and 6)	Q2 2018
Complete ROD1 Remedial Design	Q4 2019
Initiate ROD1 Remedial Construction [(2)]	Q4 2019
Complete All RI activities including Risk Assessment	H2 2020
Complete Feasibility Study for Groundwater and Northern OUs (OU-1, 3, 4, 6, 7, and a portion of OU-5)	2021
Complete Feasibility Study for Pit Lake and Southern OUs (OU-2 and portions of OU-5)	2022
Issuance of ROD (ROD2)for Groundwater and Northern OUs (OU-1, 3, 4, 6, 7, and portion of OU-5)	2023
Issuance of ROD (ROD3) for Pit Lake and Southern OUs (OU-2 and portion of OU-5)	2024
Complete ROD1 Remedial Action	2024

Complete ROD2 RD/RA (3)	2028
Complete ROD3 RD/RA (3)	2029
Site Completion (3)	2029

Table Notes:

(1) Target Date notes:
   a. Target dates are subject to change for tasks that include work involving interaction with site property owners.
   b. H – Half ; Q – Quarter

(2) Initiation of ROD1 Remedial Action Construction is contingent upon receipt of BLM borrow permit. "ROD1" refers to the "Interim Record of Decision, Anaconda Mine Site, Arimetco Facilities Operable Unit 8," signed by U.S. EPA, BLM, and NDEP in 2017, and which includes all of OU-8 and portions of OUs 3, 4a, 5 and 6, as necessary, to implement a constructable remedy.

(3) Target Dates for ROD2 RD/RA, ROD3 RD/RA, and Site Completion are estimated and are dependent upon the outcome of the respective FS and ROD development processes.

C. Documentation Submissions to EPA – NDEP will make available all Site data, reports, and other documents to EPA upon request.

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D. Reporting to EPA – NDEP will provide management briefings to EPA at least annually on whether the conditions in the Agreement are being met and the progress in the investigation, assessment, and response actions. In addition, NDEP will report to EPA at least semi–annually on any difficulties that it is having meeting the conditions of the Agreement. Following the submission of a report required or requested, EPA may request a briefing or meeting with NDEP to discuss the report(s).

E. Proposed Remedial Action – NDEP will brief EPA on proposed remedial actions (Draft Record of Decision Staff Report) before and after soliciting public comment.

F. Deliverable Review and Approval – Deliverables that have been submitted to EPA by ARC and are pending EPA action at the time this Agreement is executed will be transferred to NDEP for further action. Deliverables submitted to EPA by ARC that have been reviewed, commented on, and transmitted to ARC but have not been incorporated into a response action or order or directive at the time that this Agreement is executed will be reviewed and considered by NDEP in future decisions and actions at the Site. Deliverables scheduled to be submitted to EPA after this Agreement is executed will be submitted to NDEP for further action on the same scheduled dates the deliverables were due to be submitted to EPA.

G. Roles and Responsibilities (BLM) – Within 90 days after the execution of this Deferral Agreement, NDEP and BLM will enter into an agreement defining roles and responsibilities at the Site and how the agencies will coordinate the continuing investigation and response actions under a deferral. The terms of the agreement between NDEP and BLM shall not be inconsistent with NDEP's roles and responsibilities as defined in this Deferral Agreement.

IV. COMMUNITY PARTICIPATION

NDEP will ensure public involvement that is substantially similar to the intent of the NCP, in accordance with the Community Involvement and Participation Plan (Plan) finalized for the Site. NDEP will prepare a draft Plan within 90–days after this Deferral Agreement is executed. The public will have 30–days to review the Plan and provide comments. NDEP will prepare a final Plan 45–days after the public review and comment period closes. The Plan will be designed to satisfy the requirements of the NPL Deferral Guidance, NDEP's regulations, and the unique needs of the Site and surrounding community. NDEP will also ensure the following actions are undertaken:

A. The Administrative Records and Site files will be maintained at NDEP offices located at 901 South Stewart Street, Carson City, Nevada 89701.

B. Site related documents will be available at one or more locations near the Site and through a project website or internet based document repository.

C. Site related information will be provided to community groups.

D. Through the Plan, the affected community will be able to acquire independent technical assistance in interpreting information with regard to the nature of the hazard, investigations, and studies conducted, and implementation decisions at the Site.

V. CERTIFICATION AND CONFIRMATION OF STATE RESPONSE ACTION

Once NDEP considers response actions for the Site or a portion of the Site to be complete, it will certify to EPA, BLM, the Tribal Governments, and the affected community that the remedy has been successfully completed and intended clean-up levels and performance standards included in the applicable Record of Decision have been achieved (Certification). As part of this Certification, NDEP will submit for EPA's review response action completion documentation for the Site or a portion of the Site. The response action completion documentation must be consistent with that described in the May 2011 OSWER Directive "Close Out Procedures for National Priorities List Sites (OSWER Directive 9320-2-22) or the appropriate subsequent / later published EPA guidance (Completion Report). Consistent with this Directive, actual construction or implementation of a remedial action project on a portion of the Site that is designed to achieve progress toward specific remedial action objectives (RAOs) identified in a remedy decision document can be documented in a Remedial Action Report to support the determination of Remedial Action Project Completion for that portion of the Site. Based on the results of EPA's review below, EPA will update the Site status in SEMS or its successor to reflect achievement of Site completion or remedial action completion for that portion of the Site addressed in NDEP's Certification and Completion Report.

Upon receiving NDEP's Certification and Completion Report, EPA will either (1) confirm in writing that the Site response has been completed or (2) within 90–days of receipt of NDEP's Certification and Completion Report, initiate a completion inquiry to review the Completion Report and determine whether to confirm the Certification from

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NDEP for the Site or the portion of the Site addressed in these documents. *If EPA does not confirm that the Site response has been completed within 90 days, EPA will do one of the following; a) work with NDEP to agree upon a schedule for EPA to complete its review, b) request additional information from NDEP, or c) identify deficiency(s) in NDEP's Certification and Completion Report. If a CERCLA-protective deficiency is identified by EPA, EPA will consult with NDEP to address such deficiency(ies) hindering the confirmation and agree to a time frame for completion of the inquiry.* Once the required response at the Site is recorded as complete, the Site or the portion of the Site addressed by NDEP's Certification and Completion Report will not be evaluated further for NPL listing or another response unless and until EPA receives new information of a release or potential release posing a substantial threat to human health or the environment or receives new information that the response actions completed pursuant to this Deferral Agreement are no longer CERCLA-protective.

VI. AGREEMENT TERMINATION AND MODIFICATION

A. EPA Termination – Subject to the conditions set-forth in this section, EPA may terminate this Deferral Agreement at any time. The criteria that EPA will evaluate before making a determination to terminate this Deferral Agreement are: (1) that the remedial actions are unreasonably delayed; (2) the response is not CERCLA-protective as defined herein; (3) NDEP has not adequately addressed the significant and valid concerns of the affected community or Tribal governments or (4) ARC breaches its agreement(s) with NDEP and NDEP is unable to enforce compliance or provide other sources of funding to complete the response action. Prior to termination, EPA will provide written notice of the basis for which EPA seeks to terminate this Deferral Agreement and allow NDEP at least 45 days and up to 90 days to meet and discuss EPA's concerns and to propose a formal plan to resolve EPA concerns in lieu of termination.

If EPA' s concerns cannot be resolved and this Deferral Agreement is terminated, EPA will consider taking any necessary response actions including resuming a rulemaking process to formally list the Site on the NPL. At that time, EPA and NDEP will coordinate efforts to notify the community of the termination of the deferral. These actions will assure the public that EPA will continue to respond at the Site. At EPA's request, NDEP will provide to EPA copies of all information in its possession regarding the Site, to the extent permitted by Nevada law. In the event of a termination, EPA agrees that it will not use the existence of this Deferral Agreement, any other agreement entered into between NDEP and ARC to satisfy the criteria for deferral, or any response actions performed by NDEP or ARC pursuant to this Deferral Agreement and those other agreements as the basis for asserting NDEP's or ARC's liability or responsibility for CERCLA response costs or response actions at the Site.

B. NDEP Termination – Subject to the conditions set-forth in this section, NDEP may terminate this Deferral Agreement at any time. The criteria that NDEP will evaluate before making a determination to terminate this Deferral Agreement are: (1) adequate funding provided by ARC for completion of the remedy has become unavailable prior to completion; (2) ARC materially fails to perform site activities as agreed to in the Administrative Order on Consent, in a CERCLA-protective manner, or

otherwise in compliance with applicable federal and state law, and NDEP and ARC cannot reach resolution on a dispute or ARC is not responsive to the State's enforcement action; (3) there has been a material change in conditions or circumstances such that NDEP's programs are no longer sufficient to manage the Site; (4) the remedial action is unreasonably delayed; or (5) the response is inconsistent with this Deferral Agreement.

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This Deferral Agreement is consistent with the EPA Guidance. This Deferral Agreement may be modified at any time upon agreement of both parties. Notwithstanding any provision of this Deferral Agreement, EPA and NDEP retain their respective authorities and reserve all rights to take any and all response actions authorized by law and not inconsistent with this Deferral Agreement, including without limitation, emergency or time-critical response action if EPA determines that such action is necessary to prevent a significant risk to human health or the environment.

VII. AGREEMENT APPROVALS

DATED this _ day of _____ __, 2017.

BY: _ _____ _____ _____ _____
GREGORY LOVATO
Administrator
State of Nevada
Division of Environmental Protection

DATED this __day of _____ __, 2017.

BY: _____ _____ _____ _____ ___
[INSERT NAME]
[INSERT TITLE]
U.S. Environmental Protection Agency
Region 9

ATTACHMENTS

A. Letter, dated December 22, 2015, from the U.S. Environmental Protection Agency to the Honorable Brian Sandoval, Governor of Nevada.

B. Letter, dated March 29, 2016, from the Honorable Brian Sandoval, Governor of the State of Nevada to the U.S. Environmental Protection Agency.

C. Letter dated April 19, 2017, from the U.S. Environmental Protection Agency to the Nevada Division of Environmental Protection.

D. Consent Orders between the Nevada Division of Environmental Protection and ARC.