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MEMORANDUM OF UNDERSTANDING
ANACONDA MINE SITE, YERINGTON NEVADA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 9

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT

STATE OF NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

I. RECITALS

A. This Memorandum of Understanding ("MOU") is entered into by the United States Environmental Protection Agency, Region 9 ("EPA"), the United States Department of the Interior, Bureau of Land Management ("BLM"), and the Nevada Division of Environmental Protection ("NDEP") (collectively the "Regulating Agencies") to coordinate the continuing investigation and response actions to address the area where hazardous substances, pollutants, and contaminants at or from the Anaconda Copper Mine in Yerington, Nevada, have come to be located (the "Site").

B. The Site includes the former Anaconda Copper Mine (the "Mining Facility"), located at 102 Burch Drive, in Yerington, Nevada (T 18N, R 25E, Mount Diablo Baseline and Meridian) and any adjacent contaminated property. The Mining Facility includes 3,468.5 acres bordered by agricultural fields to the north, the Singatse Range to the west, southwest, and northwest, and State Highway 95 to the east. Approximately 50 percent of the Mining Facility is on public land that has been subject to mineral exploration, extraction, and processing activities by private parties.

C. There are past and present owners and operators of the Site, which, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), Nevada Water Pollution Control Law, NRS 445A *et seq.* and Nevada Hazardous Waste Law, NRS 459.400 *et seq.*, may be responsible for performing Site investigations and other response actions, and for reimbursing response costs incurred (past, present, and future) by the Regulating Agencies.

D. By this MOU, the Regulating Agencies establish a process, using their combined authorities, to implement remedial investigations and any necessary response actions at the Site. This process identifies the roles of each respective Regulating Agency, and provides an opportunity for stakeholder involvement in the selection of investigative and response actions at the Site.

E. To the maximum extent practicable, the Regulating Agencies will look first to the Potentially

Responsible Party(s) ("PRP") to fund or implement necessary investigative or response activities at the Site. The Regulating Agencies agree to promote and encourage an "enforcement lead response action," whereby the PRP(s) may be asked or ordered to finance and conduct investigations and other response activities at the Site.

II. AUTHORITY

Each Party has authority to enter into this MOU. By entering into this MOU, the Parties do not waive any of their respective authorities or concede authorities or jurisdiction asserted by other Parties. Nothing in this MOU shall be construed to restrict, enlarge, or otherwise determine the rights, interests and jurisdiction of the United States, the State of Nevada or any of their respective departments or agencies.

A. Pursuant to CERCLA, the President of the United States has the authority to respond to releases of hazardous substances, pollutants or contaminants when response is necessary to protect public health or welfare or the environment. By Executive Order 12580, as amended by Executive Order 13016, the President has delegated to EPA and BLM authority, pursuant to CERCLA, to investigate and respond to such releases of hazardous substances, pollutants, or contaminants under specified circumstances. *See*, Executive Order. No. 12580, 52 F.R. 2923 (1987) (as amended by Executive Order No. 13016, 61 F.R. 45871 (1996)).

B. NDEP is the state agency that has authority over identification, investigation, and cleanup of facilities where hazardous substances and contaminants have come to be located. The NDEP exercises this authority pursuant to the Nevada Water Pollution Control Law ("NWPCL"), N.R.S. § 445A.300 (1999), *et seq.*, Nevada Hazardous Waste Law ("NHWL"), N.R.S. §§ 459.600 to 459.800. NDEP maintains the authority to administer and enforce provisions of the NWPCL and NHWL and to settle and compromise all disputes relating to violations of the NWPCL and NHWL.

C. The National Contingency Plan ("NCP"), as set forth in 40 C.F.R. § 300 *et seq.*, states that federal and state agencies should plan and coordinate their response activities. *See*, 40 C.F.R. § 300.105(a).

III. AGREEMENT

1. To ensure a unified approach to response activities, the Regulating Agencies agree to coordinate their respective authorities and responsibilities in undertaking investigations and response actions at the Site. The Regulating Agencies will participate in all investigations and response action evaluations, selections, and implementation by working through the process established by this MOU. These activities may include the following: a Site investigation; selection and implementation of additional, targeted investigations to establish a comprehensive

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understanding of the risks to public health, welfare or the environment; and the selection and implementation of appropriate removal and remedial actions to abate, mitigate or remove risks to public health, welfare, or the environment associated with the release or threatened release of hazardous substances, pollutants, or contaminants.

2. The Regulating Agencies anticipate that the response process will include entering into an Administrative Order on Consent or other agreement with the PRP(s). Any order or agreement with a PRP shall not be inconsistent with CERCLA, the NCP, rules and regulations adopted thereunder and Nevada law. The Regulating Agencies will review and provide comment on the content and provisions of such order or agreement, including the scope of work ("SOW"), work plans and any other requirements for the Site.

3. The Regulating Agencies have formed a technical work group for, among other things, the purpose of reviewing and commenting on the documents identified in the SOW (which shall include all sampling and analysis plans, engineering evaluations, design documents, decision documents, work plans, and reports on investigation activities or results, and hereinafter are collectively referred to as "Deliverables"). For purposes of this review process, all days shall be calendar days. Any submission due date, calculated in compliance with the terms of this section, which falls on a weekend or state or federal holiday shall be due on the following business day.

4. The NDEP will direct the PRP(s) to provide the Regulating Agencies and stakeholders copies of all correspondence from the PRP(s) and all draft and final Deliverables.

5. Deliverable Review Process

   a. The NDEP shall accept written comments on Deliverables for 30 days from the date of receipt of the Deliverable by the Regulating Agencies.

   b. Within seven (7) days after conclusion of the comment period described in paragraph 5(a) of this Section, the Regulating Agencies shall meet, in person or by conference call, to discuss, consolidate and to the extent possible, resolve the written comments.

   c. If necessary, the Regulating Agencies may schedule an additional meeting and invite technical representatives of the PRP(s) to discuss the submission.

   d. Within seven (7) days of the comment resolution meeting(s) described in paragraphs 5(b) and (c) of this Section, the NDEP shall expeditiously provide to the EPA and BLM a draft comment letter. The NDEP shall provide the EPA and BLM seven (7) days to comment. If the EPA and the BLM do not submit any comments within seven (7) days, the draft becomes final and will be sent to the PRP(s). If informal resolution

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of the comments is unsuccessful, any Regulating Agency may, after identifying the issues, elevate it for formal dispute resolution, as specified by section 6 of this MOU.

e. Within 30 days of receipt of the Regulating Agencies' final comments, the NDEP will require the PRP(s) to respond to all comments contained therein and submit a revised deliverable, if necessary.

f. Within 14 days of receipt of the revised deliverable, the BLM and EPA shall provide additional comments to the NDEP, if they believe the PRP(s) did not adequately address the final comment letter, or provide their concurrence. In the event the NDEP does not agree with the additional comments submitted by EPA or BLM, the NDEP will attempt to resolve the disagreement among the Regulating Agencies. If informal resolution is unsuccessful, any Regulating Agency may, after identifying the issues, elevate it for formal dispute resolution, as specified by section 6 of this MOU.

g. NDEP shall not transmit an approval of a Deliverable if there are any issues pending dispute resolution as contemplated by paragraphs 5(d), (f) and 6. A final comment letter will be issued to the PRP(s), or a Deliverable shall be approved, only after the Regulating Agencies have reached consensus or otherwise resolved any dispute concerning such comment letter.

6. Dispute Resolution Procedures

a. Resolution of disputes through an informal process of consultation between the Regulating Agencies should resolve most, if not all, issues among the Regulating Agencies. In the event that informal consultation does not resolve a dispute concerning a Deliverable, any Regulating Agency may elevate the issue to the Dispute Resolution Committee ("DRC") described below, within 7 days after any Regulating Agency determines that an impasse exists.

b. When a dispute is elevated to the DRC, each Regulating Agency shall inform its DRC representative regarding the nature of the dispute, the Regulating Agency's position with respect to the dispute, and the technical, legal or factual information supporting the agency's position. The DRC members shall, as appropriate, confer, meet, and exert their best efforts to resolve unanimously the dispute. Following elevation, the DRC should resolve disputes or issue a decision within 14 days after elevation.

c. If the decision by the DRC fails to unanimously resolve a dispute, the signatories of this MOU shall resolve the dispute. Absent a resolution of any dispute elevated to the signatories of this MOU, each Regulating Agency retains all rights to pursue whatever recourse may be available to it.

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d. The DRC shall comprise the following representatives:

EPA: Director, Superfund Division, EPA Region 9, or authorized delegate.

BLM: Carson City Field Office Manager, or authorized delegate.

NDEP: Deputy Administrator for Corrective Action, Federal Facilities and Waste Management, or authorized delegate.

7. Each Regulating Agency will designate a primary contact. The primary contacts shall coordinate with each other during the planning, performance or enforcement of any response activity. To accomplish this coordination, the primary contacts will communicate as often as needed, by phone, correspondence, or meetings, to review the status of work at the Site and to identify or resolve any existing or anticipated technical issues.

8. Within 120 days after this MOU becomes effective, each Regulating Agency shall make available all existing non-privileged technical information regarding the Site in its possession. In addition, each Regulating Agency shall provide to each other Regulating Agency an index of existing, non-privileged documents regarding the Site in its possession, and shall provide all significant information related to the contamination within or from the Site, including sampling and analysis plans, sampling data, analyses of proposed response activities, and engineering, design or other technical documents. Each Regulating Agency shall provide to the other Regulating Agencies reasonable prior notice and opportunity to participate in any and all meetings with the PRPs or their contractors, and shall provide reasonable prior notice of all response activities to take place at the Site. The Regulating Agencies shall coordinate all response actions through their primary contacts.

9. The Regulating Agencies will also ensure Lyon County Officials and representatives of the Yerington and Walker River Paiute Tribes, the U.S. Fish and Wildlife Service and all other stakeholders have an appropriate opportunity to comment during the development of Deliverables and other documents generally prepared for response actions. This paragraph is not intended to limit or otherwise alter the public's right to comment upon any documents.

10. The Regulating Agencies each reserve all rights and authorities available to them. No provision of this MOU shall be construed to limit those rights or authorities, including any respective rights or interests concerning natural resource damage claims arising from injuries to natural resources at, adjacent to, or otherwise affected by a release on or from, the Site.

11. The Regulating Agencies recognize that, to effectively and efficiently exercise their authorities, their counsel, employees and consultants may need to exchange documents and information subject to attorney-client privilege, attorney work product privilege, and other privileges of

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confidentiality, such as work prepared for interagency deliberation and/or in anticipation of litigation. The Regulating Agencies therefore agree not to disclose any such privileged information to any person disclosure to which could defeat the privilege, and to otherwise protect these privileges to the full extent provided by law. To assist any other Regulating Agency to comply with this provision, each Regulating Agency shall clearly mark those documents for which it claims such confidentiality or privilege. This provision shall remain in effect after the termination of this MOU.

12. BLM authorizes EPA, NDEP, any PRP conducting work pursuant to an order or agreement with BLM, and their authorized employees, agents, contractors and consultants to access those portions of the Site under BLM jurisdiction. Such access is authorized for purposes of conducting or overseeing response action or other activities subject to this Agreement and approved by BLM. Any party seeking access shall give BLM reasonable prior notice of not less than five days and shall allow BLM representatives to accompany and observe all activities undertaken on public land.

13. Nothing in this MOU shall be construed as obligating any Regulating Agency to expend funds, or as involving the United States in any contract or other obligation for the future payment of money.

14. Unless otherwise expressly defined in this MOU, any term used in this MOU that is defined in Section 101 of CERCLA, 42 U.S.C. § 9601, or in Section 300.5 of the NCP, 40 C.F.R. § 300.5, shall have the meaning provided by CERCLA or the NCP.

15. The provisions of this MOU shall be effective on the date by which at least two Regulating Agencies have set forth a signature below, and effective only as to and between such Regulating Agencies that have accepted this MOU by signing below.

16. This MOU may be terminated by any of the Regulating Agencies by providing written notice of the grounds for such termination to the other Regulating Agencies. Prior to such termination, this MOU may be modified so as to prevent termination.

17. This MOU may be modified only with the mutual and written agreement of each Regulating Agency.

18. This MOU does not create any right, benefit, or trust obligation, either substantive or procedural, enforceable by any person in any court against the United States or the State of Nevada, their agencies, officers or any other person. Nothing in this MOU shall restrict any Regulating Agency from participating in similar activities or consultation with or in coordination with other public or private agencies, organization or individuals.

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19. Before any unilateral action is taken by a Regulating Agency, notice shall be given to the other Regulating Agencies.

(Signatures on following page)

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ENVIRONMENTAL PROTECTION AGENCY

DATE: 3-28-02

REGIONAL ADMINISTRATOR, REGION 9

BUREAU OF LAND MANAGEMENT

DATE: 3-28-02

NEVADA STATE DIRECTOR

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

DATE: 3/28/02

ADMINISTRATOR

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