To: Minor, Dustin[Minor.Dustin@epa.gov]
Cc: Cohen, Adam[Adam.Cohen@dgslaw.com]
From: Cohen, Adam
Sent: Tue 1/30/2018 1:04:17 AM
Subject: RE: Anaconda AOC
Jackpile AOC.PDF

Dusty – The Jackpile site AOC is attached. Respondent's covenant not to sue and reservations of rights are in Section XXI (paragraphs 88-91).

Adam S. Cohen ▪ Partner
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1550 17th Street, Suite 500 ▪ Denver, CO 80202

From: Cohen, Adam
Sent: Monday, January 29, 2018 1:50 PM
To: Minor, Dustin <Minor.Dustin@epa.gov>
Cc: Cohen, Adam <Adam.Cohen@dgslaw.com>
Subject: RE: Anaconda AOC

Dusty – I have reviewed the proposed changes to the draft AOC. No issues with the deletion of ¶ 27. The sentence added at the end of what is now ¶ 28 is also ok. I have further revised the other proposed changes to ¶ 28, as shown in the attached redline, for the reasons stated below.

- As to the first change, because ARC's covenant-not-to-sue in this AOC covers claims relating to past Work performed under Unilateral Administrative Orders, and not just past costs paid under administrative settlements (i.e., past AOCs), ARC needs to preserve its ability to bring a future cost recovery claim under CERCLA Section 107, not just 113(f). Also, ARC's covenant not to sue in Paragraph 26.b of the AOC includes Section 107 claims. The reservation of rights needs to have the same scope. Prior AOCs entered with EPA in 2008 and 2009 included Section 107 claims in the reservation of rights. This AOC should be consistent with the prior agreements.

- As to the second change, ARC's reservation of rights should not be limited to claims

asserted only against BLM. We assume EPA and DOJ included that limitation because ARC has not resolved BLM's past costs claims. But ARC's potential causes of action relating to response costs incurred at the Yerington site are not limited to just those relating to BLM's past costs claims. Again, prior AOC's entered into with EPA at Yerington did not limit the reservation of rights to claims just against BLM, and ARC does not intend any broader limitations here.

Are you available at 4:00 PST today to discuss these comments?

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From: Minor, Dustin [mailto:Minor.Dustin@epa.gov]
Sent: Friday, January 26, 2018 2:49 PM
To: Cohen, Adam <Adam.Cohen@dgslaw.com>
Subject: Anaconda AOC

Adam,

I appreciate your patience. I have discussed the AOC with DOJ and DOJ is OK with all of the provisions of the AOC that we discussed except for one Paragraph. Attached is DOJ's change to Paragraph 29. DOJ also deleted a redundant paragraph, Paragraph 27, that EPA inserted for EPA's benefit because DOJ preferred to rely upon the model. I attached a clean version as well as a redline.

Although the agreement will require high level approval at the DOJ, DOJ management at the Assistant Section Chief level has reviewed the attached AOC.

Please give me a call if you have any questions.

Thank you.

Dusty

Dustin Minor

Assistant Regional Counsel

(415) 972-3888

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