U.S. Environmental Protection Agency
and
Nevada Division of Environmental Protection
National Priorities List Deferral Agreement
Anaconda Copper 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 Copper 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 (BLM), 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 into an Interim Administrative Settlement Agreement and Order on Consent (IAOC) that satisfies the criteria for deferral of the site as described in EPA's Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" (NPL Deferral Guidance) and the Criteria Letter. The IAOC is attached as Attachment D. On July 31, 2017, NDEP formally requested EPA deferral of the Site under CERCLA § 105(h).

Based on ARC and NDEP satisfying the 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 information system. The Site 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.

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 deferral documents to interested stakeholders in the community and held three roundtable meetings to receive questions and concerns. A summary of community concerns and how NDEP plans to address those concerns during deferral was included in the NDEP July 31, 2017, deferral request.

2. Tribal Government Acceptance – In addition to the community outreach discussed in paragraph II(C)(1), NDEP held individual meetings with the Walker River Paiute Tribal Chair and environmental staff, as well as with the Yerington Paiute Tribal Chair and environmental staff, and briefed the Walker River Tribal Council and the Yerington Paiute Tribal Council on deferral. NDEP has considered and responded to concerns and questions from both the Yerington Paiute Tribe and the Walker River Paiute Tribe, including requests for tribal financial support, preservation of Natural Resource Damages claims, and tribal participation in review of Site investigation and cleanup.

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. The CERCLA-equivalent RI/FS and remedial selection process will comply with sections 121(b) and (d) of CERCLA and the NCP at 40 C.F.R. §§ 300.430(d-f).

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2. NDEP will implement a CERCLA-protective cleanup of the Site, which for the purposes of the Deferral Agreement is defined herein as follows. 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 or 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 Maximum Contaminant Level Goals or Maximum Contaminant Levels 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 and EPA have existing non-Site specific consultation protocols with the Walker River Paiute Tribe and the Yerington Paiute Tribe. NDEP and EPA will enter a Memorandum of Understanding (MOU) with each Tribal Government to provide a framework for the coordination with each Tribe in response actions and inter-government consultation after deferral of the Site. EPA, NDEP, and the Tribes will use their best efforts to finalize MOUs prior to execution of this Deferral Agreement. In the event EPA, NDEP, and the Tribes are unable to finalize the MOUs prior to execution of this Deferral Agreement, then EPA and NDEP will agree on a path forward with respect to further negotiation with the Tribes on the MOUs prior to EPA and NDEP executing this Deferral Agreement. Response actions on Tribal land are not subject to this Deferral Agreement. NDEP will support efforts to fund Tribal governments at levels that allow the Tribes to acquire assistance to interpret information relating to response actions and related decisions performed and implemented under this Deferral Agreement.

III. PROCEDURAL REQUIREMENTS

A. Roles and Responsibilities – 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. For purposes of this Deferral Agreement, "significant and valid concerns" are ones that identify an actual or threatened endangerment to public health or welfare or the environment. 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, 2]
Initiate Combined RI including Risk Assessment	Q2 2018

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(OU-2, 4b, 5, and 6)	
Complete ROD1 Remedial Design	Q4 2019
Initiate ROD1 Remedial Construction (3)	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 (4)	2028
Complete ROD3 RD/RA (4)	2029
Site Completion (4)	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) In addition to any interim measures that may be required by NDEP pursuant to the IAOC Section VIII. D., "Groundwater Interim Measures" (Attachment D), if the data indicate prior to NDEP's selection of a groundwater remedy that groundwater conditions warrant the implementation of active interim measures, including, but not limited to, extraction and treatment to contain or address the plume, then NDEP will have discretion to implement such measures. Alternatively, if the data indicate that groundwater conditions warrant the acceleration of the groundwater RI/FS and remedy selection, NDEP will have discretion to separate the groundwater from the other OUs and expedite the selection of a groundwater remedy. The data to be considered include groundwater contaminant plume stability and trend analysis, rate of groundwater contaminant migration, and actual or potential contamination of drinking water wells, drinking water supplies or sensitive environments.

(3) The proposed schedule to initiate ROD1 construction may be re-evaluated, if adequate cover material from public and private sources is not available on site or at reasonable distances from the Site. If ROD1 construction is delayed, the State will develop and implement a contingency plan of necessary interim actions to prevent a release of Arimetco draindown fluids to the environment. "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 OU-8 and portions of OUs 3, 4a, 5 and 6, as necessary, to implement a constructible remedy.

(4) 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.

D. Reporting to EPA – NDEP will provide management briefings to EPA at least annually on whether the conditions in this Deferral 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 this Deferral 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 Deferral Agreement is executed will be transferred to NDEP for further action. Deliverables submitted to EPA by ARC that have been reviewed and commented on but have not been incorporated into a response action or order or directive at the time that this Deferral 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 Deferral 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) – NDEP and BLM signed an MOU defining each agency's roles and responsibilities at the Site and how the agencies will coordinate the continuing investigation and response actions under a deferral.

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 consistent with 40 CFR Part 35, Subpart M 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 ROD have been achieved (Certification). As part of this Certification, NDEP will submit for EPA's and BLM's (for the public lands portion of the Site) 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. If EPA agrees the response action is complete, 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 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 NDEP for the Site or the portion of the Site addressed in these documents. If EPA initiates a completion inquiry, EPA will do one of the following; a) request additional information from NDEP, or b) identify a deficiency in NDEP's Certification and Completion Report. If EPA requests additional information from NDEP, EPA and NDEP will agree on a time frame for EPA to complete its review and either confirm or identify a CERCLA-protective deficiency 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 that review. If EPA does not meet an actual or agreed upon deadline in this section, NDEP may elevate a decision on a pending action to the Regional Administrator. 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 – EPA may terminate this Deferral Agreement if: (1) the response actions are unreasonably delayed; (2) the response is not CERCLA-protective; (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 – NDEP may terminate this Deferral Agreement if: (1) adequate funding provided by ARC for completion of the remedy has become unavailable prior to completion; (2) there has been a material change in conditions or circumstances such that NDEP's programs are no longer sufficient to manage the Site; (3) the response action is unreasonably delayed; (4) the response is inconsistent with this Deferral Agreement; or (5) ARC materially fails to perform Site activities as agreed to in the IAOC or future consent orders, 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.

This Deferral Agreement is consistent with the NPL Deferral Guidance. This Deferral Agreement may be modified at any time upon agreement of both parties. EPA and NDEP retain their respective authorities and reserve all rights to take any and all response actions authorized by law, 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. Notwithstanding these reservations, unless and until this Deferral Agreement is terminated in accordance with Section VI.A or VI.B, EPA shall not take any administrative or civil action under Section 106 of CERCLA, 42 U.S.C. 9206(a), ordering or requiring performance of any response action at the Site that is in addition to or inconsistent with those being implemented by NDEP under this Deferral Agreement.

VII. AGREEMENT APPROVALS

DATED this _ day of _____ __, 2017. DATED this __day of _____ __, 2017.

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

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. Interim Administrative Settlement Agreement and Order on Consent between the Nevada Division of Environmental Protection and ARC.

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