MEMORANDUM OF UNDERSTANDING
Between
ENVIRONMENTAL PROTECTION AGENCY, REGION IX
STATE OF NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
and
YERINGTON PAIUTE TRIBE
Concerning
THE ANACONDA MINE SITE, YERINGTON, NEVADA

I. RECITALS

A. The purpose of this Memorandum of Understanding (MOU) is to facilitate and enhance government-to-government consultation, coordination and communication between the U.S. Environmental Protection Agency, Region IX (EPA), the Nevada Division of Environmental Protection (NDEP) and the Yerington Paiute Tribe (collectively the "Parties") and to provide the framework for the meaningful participation of the Yerington Paiute Tribe in response actions pursuant to the Comprehensive Environmental Response, Compensation and liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.* and Nevada water pollution control law and hazardous substance control law at the Anaconda Mine Site in Yerington, Lyon County, Nevada (Site) after deferral of Site cleanup from listing on the National Priorities List (NPL) by EPA to private funding under NDEP oversight. This MOU also provides a process for resolving disputes between EPA, NDEP and the Yerington Paiute Tribe (Tribe) that may arise during such response actions.

B. Pursuant to CERCLA, the President of the United States (President) has authority to respond to releases of hazardous substances, pollutants, and contaminants to protect the public health or welfare or the environment.

C. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated authority to conduct various activities under CERCLA to several executive departments and agencies, including EPA.

D. NDEP has authority over identification, investigation and cleanup of facilities where hazardous substances and contaminants have come to be located. NDEP exercises this authority pursuant to the Nevada Water Pollution Control Law (NWPCL), NRS §§ 445A.300 *et seq.*, and Nevada Hazardous Waste Law (NHWL), NRS §§ 459.600 *et seq.* 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 NWPCL and NHWL.

E. The Tribe is a federally recognized Indian tribe, with management and decision-making structures, which exercises inherent sovereign authority and a responsibility to provide for and protect the health, safety and welfare of all its tribal members. The Yerington Paiute Reservation and Trust Lands (Reservation) is approximately 1,638 acres located within approximately two miles of the Anaconda mine. Contamination from the Anaconda mine may have migrated to the Reservation, although this determination has not been made by EPA. The Reservation is Indian Country as that term is defined in 18 U.S.C. § 1151. The Tribe maintains an Environmental Office to address environmental issues, including impacts to its land and people from outside sources, and to develop environmental awareness within its own structure.

F. The Site is a mixed-ownership inactive hardrock mining site and adjacent areas where mine wastes have come to be located. The Site is located partly on private land and partly on land managed by the U.S. Department of the Interior's Bureau of Land Management (BLM). Nothing in this MOU is intended to limit or affect in any way the primary jurisdiction and oversight role of BLM on land within the Site managed by BLM. EPA has not made a determination that contamination from the Anaconda Mine has come to be located on the Reservation.

G. Since 2000, EPA has completed a preliminary assessment of the Site and has coordinated with BLM and NDEP to investigate and mitigate possible threats to public health and welfare and the environment from hazardous substances related to historic mining activity at the Site. EPA has issued orders to Atlantic Richfield Company (ARC), a potentially responsible party pursuant to section 107(a) of CERCLA, for the purpose of facilitating response at the Site, including an Order to conduct a Remedial Investigation/Feasibility Study (RI/FS) for portions of the Site designated Operable Units 1-7.

H. EPA conducted an RI/FS for that portion of the Site designated Operable Unit 8 (OU-8), which includes a portion of BLM-managed lands and is comprised of leach pads and ponds operated by an insolvent party after mine closure. NDEP also conducted a Focused Feasibility Study and Conceptual Closure Plan for OU-8. After completion of the RI/FS for OU-8, EPA proposed the Site for listing on the National Priorities List in September 2016 with the concurrence of the Nevada Governor's office. On July 24, 2017, EPA, NDEP and BLM issued the Record of Decision for OU-8.

I. Throughout the Site response activities described above, EPA has coordinated and consulted with the Tribe on a government-to-government basis when EPA actions and decisions related to response actions at the Site could impact the Tribe's lands or resources, consistent with *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (1984) as supplemented by *EPA Policy on Consultation and Coordination with Indian Tribes* (2011). Coordination activities have included monthly telephone meetings between the EPA project managers and the Tribal environmental manager and outside consultants, ensuring that the designated Tribal persons receive information and documents including, but not limited to, work plans, data reports, letters, emails, and other important communications pertinent to response activities and agency decision making at the Site. The Tribe has been afforded opportunity to review and comment on project documents such as project planning, data deliverables, technical evaluations, plans and designs and construction reports. Consultation has included engagement on remedy selection for OU8. EPA has provided financial support to the Tribe through Superfund Support Agency Cooperative Agreements to allow for substantial Tribal involvement in response activities, including retention of an environmental director and outside professionals. EPA also provides separate, segregated financial support to the Tribe to implement general environmental statutes, programs and projects that are not part of the Superfund response actions at the Site.

J. In 2005, NDEP and the Tribe entered into the *Consultation Protocol Between the Yerington Paiute Tribe and the State of Nevada*, a written framework for their government-to-

government relationship. The Consultation Protocol provides, among other things, for face-to-face meetings between the Tribal Chairman or his designee and the NDEP Administrator or his designee whenever actions may cause impacts to the parties, and assurance that the Tribe's rights and concerns are taken into account and the Tribe's inputs and comments are properly obtained and addressed. The Consultation Protocol does not specifically mention the Site, but encompasses all matters of regulatory oversight that impact the safety and welfare of the Tribe's lands and membership. In the Consultation Protocol, NDEP recognizes the sovereignty of the Yerington Paiute Tribal government and its jurisdiction over lands within Indian country as defined by federal law and agrees not to assert authority over Indian Country. In the Consultation Protocol, the Tribe also recognizes NDEP jurisdiction on environmental regulatory matters on lands outside Indian Country.

K. EPA has postponed final listing of the Site on the NPL while the federal and state agencies with jurisdiction at the Site evaluate an option for deferral of Site cleanup to NDEP oversight. After public meetings between the agencies and the affected community, including the Tribe, to discuss possible deferral of the Site and after exchange of drafts of a proposed deferral agreement between EPA and NDEP based on EPA's 1995 *Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions*, NDEP formally requested EPA deferral of the Site on July 31, 2017.

L. This MOU sets out the protocols for the Tribe's participation in post-deferral response actions under the oversight of NDEP as lead agency on those portions of the Site outside the Reservation and for the Tribe's participation in post-deferral response actions under the oversight of EPA as lead agency on those portions of the Site within the Reservation.

II. POST-DEFERRALCOORDINATION AND CONSULTATION OUTSIDE THE YERINGTON PAIUTE RESERVATION

A. Coordination

1. NDEP and the Tribe have designated the following positions or persons who will be involved with day-to-day coordination and communication on post-deferral matters outside the Reservation:

NDEP Project Manager
Jeryl R. Gardner
NDEP Bureau of Corrective Actions
901 S. Stewart Street, Ste. 4001
Carson City, NV 89701
Phone: 775-687-9484
jgardner@ndep.nv.gov

Yerington Paiute Tribe Environmental Director
Ginny Hatch, Environmental Director
Yerington Paiute Tribe
171 Campbell Lane

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Yerington, NV 89447
Phone: 775-463-2416
ghatch@ypt-nsn.gov

NDEP and the Tribe may each add individuals as points-of-contact (POCs) or substitute another individual to serve as POC by providing written notice to the other party at least five (5) business days before the change becomes effective.

2. NDEP and Tribal POCs intend to communicate after deferral by phone, correspondence and meetings regularly at mutually agreed times and by mutually agreed methods of communication to review the status of response activities at the Site and to discuss response activities planned or scheduled in the near term future. NDEP intends to ensure that the Tribe receives invitations to technical meetings and copies of all documents relating to response activities at the Site required to fulfill the purposes of this MOU, including, but not limited to, documents prepared or submitted by any federal or state agency or the private party conducting the cleanup at the Site under NDEP oversight. NDEP intends to ensure that the Tribe receives a project schedule that sets forth due dates for draft project documents and for delivery of these documents to the Tribe. NDEP also intends to ensure that the Tribe has the opportunity to review and comment on draft project documents including, but not limited to, project planning documents, work plans and designs, data deliverables, technical evaluations and construction reports. The Tribe shall have at least 30 days from receipt of such draft project documents, with the exception of major deliverables described in paragraph II(A)(3) below, to provide comments to NDEP. NDEP intends to consider comments timely submitted by the Tribe and respond to the Tribe on such comments.

3. NDEP and the Tribe intend the coordination and communication activities described in paragraph II(A)(2) to apply as well to the major decision points and documents related to post-deferral Site cleanup outside the Reservation. Major decision points include, but are not limited to, selection of response actions, feasibility studies, risk assessments, proposed plans and records of decision, including determination of Applicable or Relevant and Appropriate Requirements and selection of post-response action Site control requirements. The Tribe shall have 45 days from receipt of such draft major decision points or documents to provide comments to NDEP. NDEP intends to consider comments timely submitted by the Tribe and respond to the Tribe on such comments. The Tribe may, with respect to major decision points and documents, invoke the procedures set out in the Consultation Protocol for discussion and resolution of any issues or disagreements relating to such major decision points that cannot be resolved by the NDEP and Tribal POCs.

4. NDEP and the Tribe intend the provisions of paragraphs II(A)(2) and II(A)(3) to provide the framework for dispute resolution for disputes related to post-deferral Site response actions outside the Reservation. In the event that any such dispute cannot be resolved pursuant to said provisions, deference will be given to NDEP's decision.

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5. NDEP acknowledges that the Tribe's meaningful participation in post-deferral Site response activities outside the Reservation is dependent on the Tribe receiving sufficient funding for its involvement as described in this MOU, including the Tribe's retention of professional advisers. NDEP intends to make its best good faith efforts to ensure that the Tribe receives such funding. As part of its request for funding, the Tribe will prepare a detailed budget estimate for its proposed participation activities for NDEP review and approval, including retention of professional advisers.

III. POST-DEFERRAL COORDINATION AND CONSULTATION WITHIN THE YERINGTON PAIUTE RESERVATION

A. Fundamental Principles – EPA recognizes and works directly with the Tribe, a federally recognized Indian tribe, as a sovereign entity with primary authority and responsibility for the Tribe's land and membership, in connection with response actions on the Reservation.

EPA shall retain its primary jurisdiction and oversight for Site response actions on the Reservation.

For Site response actions on the Reservation, EPA will afford the Tribe substantially the same treatment as a state. CERCLA section 126 and the NCP at 40 C.F.R. § 300.515 address Tribal roles regarding response actions. The Tribe may elect to participate in response actions within the Reservation consistent with these authorities.

No later than 30 days after the Effective Date of the Deferral Agreement, the Tribe will provide to EPA and NDEP all data and data validation information for data collected on the Reservation that has been funded by the EPA and that is in relation to Wabuska Drain Operable Unit 7 (OU-7) site assessment or remedial investigation. Within 45 days of receiving this information from the Tribe, EPA will:

- provide a written determination of whether any hazardous substances from the Anaconda Mine have reached the Reservation, including a summary of the evidence, basis, and rationale for such determination; or
- provide a written determination of whether additional investigation and data analysis is required to make this determination along with an explanation and rationale of why that additional information is also necessary to complete the Remedial Investigation for OU-7, and
    - propose the scope, schedule, and data quality objectives for such additional investigation, and
    - propose a date by which EPA will submit a written determination of whether hazardous substances from the Anaconda Mine have reached the Reservation.

EPA's written determination and any EPA proposal for additional investigation will be reviewed by NDEP and the Tribe. Any disputes shall be resolved using the Dispute Resolution procedures provided in Section IV.

B. Coordination

1. EPA and the Tribe have designated the following positions or persons who

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will be involved with day-to-day coordination and communication on post-deferral matters within the Reservation:

EPA Project Manager(s)

_____
USEPA, Region 9
SFD_____
75 Hawthorne Street
San Francisco, CA 94105
Phone:_____
_____

Yerington Paiute Tribe Environmental Director
Ginny Hatch, Environmental Director
Yerington Paiute Tribe
171 Campbell Lane
Yerington, NV 89447
Phone: 775-463-2416
ghatch@ypt-nsn.gov

EPA and the Tribe may each add individuals as POCs or substitute another individual; to serve as POC by providing written notice to the other party at least five (5) business days before the change becomes effective.

2. For post-deferral matters within the Reservation, the EPA and Tribal POCs intend to maintain the communication and coordination procedures in effect between these parties prior to deferral of Site response actions to NDEP oversight. These procedures include, but are not limited to, monthly phone calls to review the response activities undertaken in the prior month and proposed or scheduled for the succeeding month, provision for receipt by the Tribe of invitations to technical meetings and copies of all documents relating to response activities within the Reservation including, but not limited to, documents prepared or submitted by any federal or state agency or the party or entity conducting the cleanup of the portion of the Site within the Reservation. EPA intends to ensure that the Tribe has the opportunity to review and comment on draft project documents including, but not limited to, project planning documents, work plans and designs, data deliverables, technical evaluations and construction reports. The Tribe shall have at least ___ days from receipt of such draft project documents to provide comments to EPA. EPA intends to consider comments provided by the Tribe prior to approval of such draft documents and to respond in writing to the Tribe respecting such documents.

3. EPA and the Tribe intend the coordination and communication activities described in paragraph III(B)(2) to apply as well to the major decision points and documents related to post-deferral Site cleanup on the Reservation. Major decision points include, but are not limited to, selection of response actions, feasibility studies, risk assessments, proposed plans and records of decision, including determination of ARARs

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and selection of post-response action Site control requirements.

4. The Tribe may, with respect to major decision points, request additional government to government consultation with EPA in accordance with EPA's consultation policies, for discussion of any issues or disagreements relating to such major decision points that cannot be resolved by the EPA and Tribal POCs.

5. EPA and the Tribe intend the provisions of paragraphs III(B)(2) and III(B)(4) to provide the framework for discussion of disputes related to post-deferral Site response activities on the Reservation. In the event that any such dispute cannot be resolved pursuant to such provisions, the Tribe may request the involvement of EPA's Regional Administrator.

IV. DISPUTE RESOLUTION

A. The procedures in this section shall be the exclusive mechanism for resolving disputes related to EPA's determination of whether hazardous substances from the Site are within the Reservation or whether additional data analysis and investigation is required. NDEP and EPA shall attempt to resolve any disagreements concerning this matter expeditiously and informally.

B. Informal Dispute Resolution – If NDEP disputes EPA's written notification that hazardous substances from the Site are within the Reservation or proposal for additional investigation, NDEP shall send EPA a written Notice of Dispute describing its objection(s) within 20 days after receiving EPA's written notification. NDEP and EPA shall have 30 days from EPA's receipt of the Notice of Dispute to resolve the dispute through informal negotiations (Negotiation Period). The Negotiation Period may be extended by written agreement between NDEP and EPA. Any agreement reached by NDEP and EPA pursuant to this section shall be in writing.

C. Formal Dispute Resolution – If NDEP and EPA are unable to reach an agreement within the Negotiation Period, NDEP shall, within 30 days after the end of the Negotiation Period, submit a statement of position to EPA's Project Manager and Regional Administrator. The statement of position shall set forth the specific points of the dispute, the position NDEP claims should be adopted, the basis for NDEP's position, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by NDEP, and any matters which it considers necessary for the Regional Administrator's decision. EPA may, within 30 days after receipt of NDEP's statement of position, submit its own written statement of position to NDEP Project Manager and Administrator. Within 30 days after the due date for EPA's statement of position or by any such longer time as may be mutually agreed to by NDEP and EPA, the Regional Administrator shall issue a written decision on the dispute. The decision shall be enforceable and shall be considered the Regional Administrator's final decision with respect to the information that is currently available at the time the decision is made. The response action shall be considered either outside or within the Reservation in accordance with the agreement reached between NDEP and EPA or with the Regional Administrator's decision, whichever occurs. NDEP or EPA may seek reconsideration of the Regional Administrator's

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decision if new information is obtained which makes the Regional Administrator's prior decision erroneous.

V. GENERAL PROVISIONS

A. This MOU in no way supersedes, modifies, or replaces other policies, authorities, treaties or jurisdictions of any of the Parties.

B. Nothing in this MOU shall be considered as obligating any of the Parties to expend money or to enter into any contract or other obligation for the future expenditure of money. All commitments made by EPA in this MOU are subject to the availability of appropriated funds. NDEP and the Tribe agree not to submit a claim for compensation for services rendered to EPA in connection with any activities it carries out in furtherance of this MOU. This MOU does not exempt NDEP and the Tribe from applicable EPA policies regarding competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations and procedures under separate written agreements.

C. This MOU is not intended to, and does not, create any right, benefit or trust obligation, substantive or procedural, enforceable at law or equity, by any party against the United States, the State of Nevada or the Yerington Paiute Tribe, their departments, agencies, instrumentalities or entities, their officers, employees or agents, or any other person.

D. This MOU may be amended at any time by written agreement of the Parties.

E. This MOU may be executed in counterparts.

F. This MOU is effective upon the date signed by the last of the Parties.

ENVIRONMENTAL PROTECTION AGENCY, REGION IX

By:_____
Date:_____

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

By:_____
Date:_____

YERINGTON PAIUTE TRIBE

By:_____
Date_____

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