DRAFT

March 29, 2016

Mr. Jared Blumenfeld
Regional Administrator
EPA Region IX
75 Hawthorne St.
San Francisco, CA 94105-3901

Dear Mr. Blumenfeld:

This letter is in response to your correspondence of December 22, 2015 seeking the position of the State of Nevada on the listing of the Anaconda Copper Mine (Site) in Lyon County on the Superfund National Priority List (NPL). You will recall extending the deadline for my response to March 29 so that the State could work with local stakeholders.

The Environmental Protection Agency's (EPA) stated reason for proposing to list the Site now is to provide federal funding to address future management of residual draindown fluids from the former Arimetco operations at the Site. It is my understanding that the Atlantic Richfield Company (ARC) denies responsibility for the Arimetco portion of the Site and remains responsible for all other portions of the Site. However, my concurrence, albeit reluctantly, with your proposal to proceed with listing the Site on the NPL is based upon our understanding that EPA will work with Nevada to address the conditions expressed below.

In discussions with local elected officials, community leaders, stakeholders and State agency leaders, I have consistently heard that everyone involved wants timely and responsible remedies at this Site. I have also heard a number of frustrations related to EPA's management of the Site and its proposal for listing the Site on the NPL.

First, there has long been frustration by community leaders and agricultural producers over perceived distortions by EPA in the media related to the relative risks posed by the Site. As you know, ARC is responsible for the vast majority of Site issues, including groundwater contamination and I have been assured that the public is not being exposed to Site contaminants. That fact needs to be more clearly articulated by EPA. Affected domestic well owners have been provided with alternate water supplies and the City of Yerington public water system, which has never been impacted by the Site, is being extended to serve these residents. The Arimetco fluid management system is being actively managed to prevent any releases, but it requires a long-term remedy to prevent future degradation of groundwater resources. Since ARC denies responsibility for the abandoned Arimetco heap leach pads, the issue is one of funding for long-term closure of the heaps and reclamation work. I have been assured by the Nevada Division of

Environmental Protection (NDEP) that there is no imminent catastrophe looming on the horizon, nor any evidence of impacts by Site contaminants to area agricultural products. EPA needs to make this point very clear in any future announcements regarding this Site.

Second, there is profound skepticism that federal funds will actually be made available even if the Site is listed on the NPL. Community leaders are generally aware that EPA's Superfund budget is dependent on the federal appropriations process and that funding for any specific site is a competitive process, with far more demands than available resources. In recent years, EPA has only funded a relatively few new Superfund construction starts. My concurrence is based on the understanding that EPA anticipates it will be able to properly fund the Arimetco remedy.

Third, there seems to be universal frustration with the pace of work at the Site and the lack of a meaningful schedule. I am told the real priorities at the Site relate to three of the seven "operable units" which are all the responsibility of ARC: Groundwater; the Evaporation Ponds/Sulfide Tailings; and the Wabuska Drain. The most glaring example of EPA's failure to adequately prioritize and schedule work relates to its oversight at the former Anaconda evaporation ponds at the north end of the Site. As described to me, it appears that these former pond areas are a significant historical and potentially continuing source of contamination to groundwater. All parties involved with the Site agree that addressing these ponds is a top environmental priority in the context of the overall Site cleanup and yet EPA has not established any overall project schedule and has not required ARC to provide a specific project schedule. You cite in your December 22, 2015 letter concern for the groundwater resource, yet fail to address a known source of contamination with a viable responsible party in ARC to conduct the work and ample enforcement authority to compel the work.

DRAFT

I believe your recent visit to the Site brought these frustrations to the fore and I appreciate the conversations you have had with my staff about a path forward. I also recognize that the Arimetco fluid management system is a long-term issue at the Site that needs to be addressed with a permanent remedy. Despite our best efforts, the State and local stakeholders have been unable at this time to secure an agreement for a public-privately funded solution that meets the permanent remedy requirement. Therefore, the State will reluctantly concur with initiating the NPL listing process, based upon the following understandings:

1. Communications strategy and public messaging. There have been real impacts to agricultural producers due to exaggeration of the Site risks and misstatement of material facts. Coordination and agreement on public statements is essential to convey accurate information. Mason and Smith Valleys account for a substantial portion of the agricultural product sales in Nevada, registering over $150 million annually. Incomplete or incorrect media information has resulted in rumors and negative effects on this important industry. In collaboration with the State and local community, EPA needs to modify the Community Involvement Plan and develop a coherent communications strategy prior to the proposed listing to address these concerns and put Site risks in the proper context, as noted above. Consistent with past EPA statements, it is critical that the EPA website and all general correspondence and media communications provided by EPA include a statement that there is no evidence that contamination from the Site has

affected any agricultural products in the area. In addition, press releases and public communications must be jointly issued by the local community and EPA.

2. Assurances and contingency plan if federal funds are not available for a permanent remedy. EPA must assure that federal funding will be made available if the Site is listed on the NPL. If EPA is unsuccessful in securing sufficient federal funds to permanently close the Arimetco portion of the site, EPA must develop and implement a contingency plan of necessary interim actions to prevent a release of Arimetco draindown fluids to the environment.

3. EPA commitment to Site priorities and schedule. Community leaders do not want to see the Site languishing on the NPL for decades, as we have seen at the Carson River Mercury Site. In consultation with the NDEP, EPA must develop and commit to a prioritized five year schedule for Site work and adhere to that schedule to get critical path work done more quickly. This schedule should be developed by June 2016, posted on the EPA project website, and be updated on a quarterly basis and reviewed at public meetings. EPA must also commit to holding ARC accountable for completing its work in a timely manner. Furthermore, assurances need to be provided that EPA, in consultation with the State and community, will take immediate steps to remove the Site from the NPL when cleanup goals have been met.

4. State-lead for the Arimetco portion (OU-8). NDEP has demonstrated recent success in serving in a lead role at the Rio Tinto site. I believe similar success is possible in managing the work related to the Arimetco heap closure and fluid management system remedies and request NDEP serve as the lead agency.

5. Flexibility on State Cost Share. Nevada is a very lean State government and has limited resources. If federal funds are used for a final remedy, the State may not be able to fund 10% of capital costs up front and may need to work out an appropriate funding arrangement with EPA. We also assume that any O&M costs the State may be liable for would occur after a final remedy for the Arimetco portion of the Site is implemented and that the State would not be responsible for operating the fluid management system in the interim. Assurances in this regard are needed.

6. Preserve option for a State-lead public-private funding solution. Agreement on an alternative funding mechanism for the Site has not yet emerged from our ongoing discussions with private parties. However, deferral to this option, including deferral to a re-mining proposal, should remain available as a future possibility.

I believe these are reasonable conditions that respond to environmental and economic concerns responsibly and respect the concerns of community leaders and area residents. If you have any questions regarding this letter, please contact Leo Drozdoff, DCNR Director, at 775-684-2710.

Sincere regards,

BRIAN SANDOVAL
Governor

cc: Joe Mortensen, Chairman, Lyon County Board of County Commissioners
George Dini, Mayor, City of Yerington
Jeffrey Page, County Manager, Lyon County
Dan Newell, City Manager, City of Yerington
Enrique Manzanilla, Director, US EPA Region 9 Superfund Division
Leo Drozdoff, Director, Department of Conservation and Natural Resources
David Emme, Administrator, Division of Environmental Protection
John Ruhs, Nevada State Director, Bureau of Land Management
Laurie Thom, Chairman, Yerington Paiute Tribe
Bobby D. Sanchez, Chairman, Walker River Paiute Tribe
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