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

I. RECITALS

A. The purpose of this Memorandum of Understanding (MOU) is to provide a framework for the U.S. Environmental Protection Agency Region IX (EPA), the United States Department of the Interior (Interior), Bureau of Land Management (BLM) and Nevada Division of Environmental Protection (NDEP) (hereinafter collectively referred to as "Agencies") to coordinate response actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, at the Anaconda Mine Site in Yerington, Lyon County, Nevada (Site). This MOU also provides a process for resolving disputes between the EPA, BLM and NDEP that may arise during such response actions. This MOU is not intended to address coordination regarding natural resource damage issues.

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B. Pursuant to CERCLA, the President of the United States (President) has authority to respond to releases of pollutants, contaminants, and hazardous substances 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, including investigations and response activities (42 U.S.C. § 9604), abatement actions (42 U.S.C. § 9606), cost recovery (42 U.S.C. § 9607) and entering into agreements with potentially responsible parties (PRPs) to perform work (42 U.S.C. § 9622), to several executive departments and agencies, including the EPA and Interior.

D. The United States Secretary of the Interior has re-delegated certain of these authorities under Executive Order 12580 to the Director of the BLM with respect to land and facilities under BLM jurisdiction, custody or control (hereinafter referred to as "BLM-managed lands"). The Director of the BLM has re-delegated most of these authorities to BLM State Directors.

E. The BLM administers certain lands on behalf of the public. BLM is, with certain limitations, delegated the President's CERCLA authority where a release of a hazardous substance is on or the sole source of the release is from a facility on BLM-managed lands. Executive Order 12580, §§ 2(e)(1), and 4(b)(1).

F. The NDEP has authority over identification, investigation and clean-up 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), and NRS §§ 459.600 *et seq*. The 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.

G. The Site is a mixed-ownership inactive hardrock mining site, located partially on private land and partially on BLM-managed lands within the established boundaries of the Carson City BLM Management Unit. The BLM-managed portion of the Site is administered by the BLM, District Office in Carson City, Nevada. A map of the Site is attached to and incorporated into this MOU as Attachment A.

H. Since 2000, and consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, the EPA has completed an expanded preliminary assessment at the Site, and has been coordinating with the BLM and the NDEP to advance response actions to investigate and mitigate possible threats to the public health and welfare and the environment from hazardous substances related to historic mining activity at the Site. The EPA has issued orders for the purpose of facilitating enforcement response for Operable Units (OU) 1-7 at the Site.

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I. The EPA also has completed a draft Remedial Investigation/Feasibility Study for OU 8 at the Site, which includes a portion of BLM-managed lands and is comprised of leach pads and ponds. The NDEP similarly has completed a Focused Feasibility Study and Conceptual Closure Plan for OU 8.

J. In 2002, the Agencies signed a Memorandum of Understanding (2002 MOU) to coordinate the continuing investigation and response actions at the Site. This MOU is intended to supersede and replace the 2002 MOU.

K. The Agencies have determined that additional response action may be needed to reduce or remove the threat to human health and the environment at the Site. The EPA, BLM and NDEP plan to address these threats of releases of hazardous substances into the environment through the coordinated exercise of the Agencies' respective authorities.

L. All response actions covered by this MOU shall not be inconsistent with the NCP, including assurances of state consultation by EPA for Parts II, III, and IV herein, pursuant to 40 C.F.R. 300.435 and Subpart F, for remedial actions and potential future state responsibility for operation and maintenance.

M. There are past and present owners and operators of the Site, which, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the NWPCL, N.R.S. §§ 445A *et seq.* and the NHWL, N.R.S. §§ 459.400 *et seq.*, may be liable for performance of Site investigations and other response actions, and for reimbursing response costs incurred by any or one of

the Agencies. To the maximum extent practicable, the Agencies will look first to such PRPs to fund or implement necessary investigative or response activities at the Site.

N. The NDEP and BLM understand that the EPA expects to propose the Site for listing on the National Priorities List in September 2016. This MOU remains in full force and effect if EPA lists the Site on the National Priorities List.

II. COORDINATION AND COOPERATION

A. The EPA, BLM and NDEP have designated the following positions or persons who will be involved with the day-to-day coordination, communication and decision-making regarding the exercise of the Agencies' respective authorities at and near the Site:

EPA Remedial Project Manager (RPM)
David Seter
EPA Superfund Division
75 Hawthorne Street
San Francisco, CA 94105
Phone: 415-972-3250
seter.david@epa.gov

BLM Project Manager (Project Manager)
Dave Davis
BLM Nevada State Office
1340 Financial Boulevard
Reno, NV 89502
Phone: 775-861-6575
drdavis@blm.gov

NDEP Project Manager (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

The EPA, BLM and NDEP may each designate another individual to serve as their point-of-contact by providing written notice to the other Agency at least five (5) business days before the change becomes effective.

B. The EPA will be the lead agency, as defined in the NCP, for response actions involving a parcel, project, or operable unit for contamination located on the private portion of the Site, or when conducted by a PRP. The BLM will be the lead agency, as defined in the NCP, for response actions involving a parcel, project or operable unit located on BLM-

managed lands, except, in view of the circumstances at this Site, when response actions are conducted by a PRP. To facilitate an effective and efficient response at the Site, the Agencies may designate different lead roles for specific projects by separate agreement consistent with their respective authorities, including assignment to the NDEP of a lead role pursuant to a State Superfund Contract or Cooperative Agreement pursuant to 40 C.F.R. Part 35, Subpart O.

C. The Agencies each intend, subject to Section IV of this MOU, to seek funding, as appropriate, for their respective responsibilities at the Site.

D. The RPM and the Project Managers shall communicate by phone, correspondence, and meetings, regularly, about response activities at the Site, to review the work status and to resolve any existing or anticipated technical issues. The RPM and the Project Managers shall coordinate with each other to implement response actions at the Site. This coordination shall include reasonable prior notice of, and an opportunity to participate in, any scheduled meetings related to activities at the Site, including any meetings with third parties (i.e., contractor(s), federal and state regulatory agencies, and PRPs). In most cases, reasonable prior notice shall be at least seven (7) calendar days. In the event that a meeting needs to be scheduled on shorter notice, the RPM or Project Managers shall contact his/her counterpart and shall determine the counterpart's availability prior to scheduling the meeting. This coordination shall also include reasonable prior notice of significant activities to take place at the Site.

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E. The EPA, BLM and NDEP will provide each other with copies of documents needed to fulfill the purposes of this MOU, including documents submitted to one of the Agencies by a respondent or signatory to an order or agreement. The RPM and the Project Managers will cooperatively determine which documents related to the Site are to be copied and provided to the other agency either directly from one agency to the other as opposed to being provided by third-parties. Where the EPA or BLM or NDEP need to obtain comments of another Agency on a document, the RPM and the Project Managers will cooperatively determine how and when those comments will be provided.

F. A schedule of activities for the Site shall be established by the EPA, BLM and NDEP, and be used for planning purposes. The schedule should be updated periodically (by a designated party), but not less than quarterly, to reflect actual progress on work at the Site and current projections.

G. Consistent with Section II. B., the Agencies shall coordinate on major decision points and documents respectively in accordance with their lead authority, as set forth below.

(i) The scope of work to be performed and estimated costs;

(ii) Project management procedures and contracts;

(iii) Enforcement activities against identified PRPs, including issuing information requests or unilateral orders, negotiating AOCs or consent decrees, and oversight of PRP conducted work;

(iv) The scope and extent of Site characterization and sampling;

(v) The manner and content of community relations activities such as the community relations plan, press releases, public notices and public meetings;

(vi) CERCLA response action documents including, but not limited to:

- Engineering evaluations/cost analyses and remedial investigation/feasibility studies;
- Draft and final risk assessments; and
- Design and construction plans and documents;

(vii) The selection of any response actions via action memoranda, proposed plans, and records of decision, including, but not limited to any determination of Applicable or Relevant and Appropriate Requirements, and the selection of post-response action Site control requirements for completed response actions;

(viii) If necessary, the establishment of a joint mine waste repository;

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(ix) Certifications of completion issued for response actions at the Site;

(x) Long term operations and maintenance/post removal Site control; and

(xi) Future response actions in the event of a remedy failure.

H. The BLM consents to the EPA and NDEP, and their authorized representatives, entering and having access to BLM managed lands within the Site for the purposes of conducting response actions. To the extent practicable, the EPA and NDEP shall provide advance notice to the BLM of at least seven (7) days prior to entering BLM-managed lands.

I. Resolution of and communication regarding legal issues will be coordinated among EPA counsel, BLM solicitors and the Nevada Office of the Attorney General. As appropriate, the EPA and BLM may include representative(s) from the United States Department of Justice attorney.

K. When the EPA, BLM or NDEP propose to use equipment, improvements or facilities that are within the responsibility of the other agency, including roads for access, the RPM and the Project Managers shall consult to determine which Agency will be responsible for maintaining the respective equipment, improvements or facilities to be used.

III. DISPUTE RESOLUTION

A. Consultation between the RPM and the Project Managers should resolve the vast majority, if not all, technical issues between the EPA, BLM and NDEP.

B. If the RPM and the Project Managers do not reach agreement on a disputed item arising from activities at the Site, the issue should be elevated to the appropriate senior management at the BLM, EPA and the NDEP for further discussion and resolution.

IV. LIMITATIONS AND DURATION OF AGREEMENT

A. The Agencies each reserve all rights and authorities available to them. No provision of this MOU in any way limits those rights and authorities or shall be construed as a waiver of any right or authority the Agencies are entitled to assert.

B. Nothing in this MOU shall be considered as obligating the EPA, BLM or NDEP to expend, or as involving the United States or State of Nevada, in any contract or other obligation for the future payment of money. No provision of this MOU shall be construed to require the EPA or BLM to obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §1341.

C. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the Agencies to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Agencies and shall be independently authorized by appropriate statutory authority.

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

E. Nothing in this MOU shall restrict the BLM, EPA or NDEP from participating in similar activities with other public or private agencies, organizations, and individuals.

F. After giving sixty (60) days written notice, any Agency may withdraw from this MOU for good cause. This MOU may be amended at any time by agreement of the Agencies in writing.

G. This MOU may be executed in counterparts by each of the signatories. Each of the counterpart documents shall be deemed an original, but together shall constitute one and the same instrument.

H. The paragraph headings contained herein are only for the convenience only; the substance and provisions hereof control without regard to the headings.

I. The Agencies acknowledge that this MOU has been negotiated and prepared in an arms-length transaction and that all Agencies are deemed to have drafted this Agreement and this Agreement shall not be interpreted against any Agency as the draftsperson.

J. This MOU is effective upon the date signed by the last of the Agencies.

In WITNESS WHEREOF, the Agencies hereto have executed this MOU and it shall be effective as of the last date written below.

ENVIRONMENTAL PROTECTION AGENCY, REGION IX

By:_____

Enrique Manzanilla
US EPA, Region IX
Superfund Division Director
75 Hawthorne Street
San Francisco, CA 94105

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

By:_____

David Emme, Administrator
Nevada Department of Conservation and Natural Resources
Nevada Division of Environmental Protection
901 S. Stewart Street, Ste. 4001
Carson City, NV 89701-5249

UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT

By:_____

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