MEMORANDUM OF UNDERSTANDING
Between
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
And
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT, NEVADA STATE OFFICE
Concerning
THE ANACONDA COPPER MINE SITE, LYON COUNTY, NEVADA

I. RECITALS

A. The purpose of this Memorandum of Understanding (MOU) is to provide a framework for the Nevada Division of Environmental Protection (NDEP) and the United States Department of the Interior (Interior), Bureau of Land Management (BLM) (collectively referred to as Agencies) to coordinate response actions at the Anaconda Copper Mine Site in Lyon County, Nevada (Site).

B. To expeditiously implement necessary response actions at the Site, the Agencies shall coordinate their authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.*, the Nevada Water Pollution Control Law (NWPCL), NRS §§ 445A.300 (1999) *et seq.*, and the Nevada Hazardous Waste Law (NHWL), NRS §§ 459.600 *et seq*. This MOU also provides a process for resolving disputes between NDEP and BLM that may arise during such response actions. This MOU is not intended to address coordination regarding natural resource damage issues.

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

D. 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), and entering into agreements with potentially responsible parties (PRPs) to perform work or recover costs (42 U.S.C. § 9622), to several executive departments and agencies, including the Environmental Protection Agency (EPA) and Interior.

E. BLM exercises jurisdiction over public land it manages pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701 *et seq.* The United States Secretary of the Interior has further re-delegated certain CERCLA response authorities, under Executive Order 12580 to BLM, when a release or threat of release of a hazardous substance is on or from land and facilities under BLM jurisdiction, custody or control (hereinafter referred to as BLM-managed lands). BLM's Nevada State Office and BLM's Carson City Nevada District Office are responsible for managing the BLM-managed lands at the Site.

F. Under Nevada state law, 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 NWPCL, NRS §§ 445A.300 (1999) *et seq.*, 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.

G. The Site is a mixed-ownership inactive hardrock mining site, located on both private land and BLM-managed lands. A map of the Site that identifies BLM-managed lands is attached to and incorporated into this MOU as Attachment A.

H. Since 2000, and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, EPA, in coordination with BLM and NDEP, has performed response actions to investigate and mitigate threats to the public health and welfare and the environment from hazardous substances related to historic mining activity at the Site. EPA, BLM and NDEP also have completed a Remedial Investigation/Feasibility Study, a Proposed Plan, and a Record of Decision for OU-8 at the Site, which includes a portion of BLM-managed lands and is comprised mostly of leach pads and ponds. NDEP similarly has completed a Focused Feasibility Study and Conceptual Closure Plan for OU-8.

I. In 2016, the Agencies and EPA signed a Memorandum of Understanding to coordinate the continuing investigation and response actions at the Site. After the effective date of this MOU, the Agencies will determine whether withdrawal from the 2016 Memorandum of Understanding is appropriate.

J. In September 2016, EPA proposed the Site for listing on the National Priorities List (NPL).

K. On July 31, 2017, NDEP formally requested EPA deferral of the Site on the NPL. Assuming the criteria set forth in Section 105(h) of CERCLA, 42 U.S.C. § 9605(h), and applicable EPA guidance, NDEP and BLM expect EPA to defer the final NPL listing while NDEP completes necessary investigations and response actions at the Site. This MOU is effective only if EPA defers the final NPL listing.

L. The Agencies have determined that response actions are needed to reduce or remove the threat to human health and the environment at the Site. NDEP and BLM plan to address these threats of releases of hazardous substances into the environment through the coordinated exercise of the Agencies' respective authorities.

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, NRS §§ 459.400 *et seq.*, may be liable for performance of Site investigations and other response actions, and for reimbursing response costs incurred by either or both 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.

II. COORDINATION AND COOPERATION

A. NDEP and BLM 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:

NDEP Project Manager (NDEP PM)
Jeryl Gardner, P.E., C.E.M.
Nevada Division of Environmental Protection
901 S. Stewart Street, Suite 4001
Carson City, NV 89701
Phone: 775-687-8335
jgardner@ndep.nv.gov

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

NDEP and BLM 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 Agencies recognize that, under a deferral, NDEP has primary responsibility for completion of necessary investigations and response actions at the Site. BLM will retain its delegated CERCLA response authorities at the Site. As set forth in this MOU, the Agencies shall coordinate their authorities to expeditiously and efficiently implement response actions at the Site.

C. Under a deferral, BLM will not be responsible for the costs associated with response actions on or waste removed from both private lands and BLM-managed lands.

D. NDEP's PM and BLM's PM shall communicate regularly about response activities at the Site, to review the work status and to resolve any existing or anticipated technical issues. NDEP's PM and BLM's PM 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, NDEP's PM and BLM's PM 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.

E. The Agencies will provide each other with copies of documents needed to fulfill the purposes of this MOU. NDEP's PM and BLM's PM 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 or those provided by third-parties. Where NDEP or BLM need to obtain comments of the other agency on a document, NDEP's PM and BLM's PM will cooperatively determine how and when those comments will be provided. For response actions at the Site on or affecting BLM-managed lands, BLM shall review and comment on all documents, and submit comments to NDEP, if appropriate, in a timely manner.

F. A schedule of activities for the Site should be established by NDEP, reviewed and concurred by BLM, and be used for planning purposes. The schedule should be updated periodically by NDEP's PM but not less than quarterly, to reflect actual progress on work at the Site and current projections.

G. For response actions at the Site on or affecting BLM-managed lands, NDEP and BLM shall coordinate on major decision points and documents, as set forth below.

1. The scope of work to be performed and estimated costs;

2. Project management procedures and contracts;

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

4. The scope and extent of Site characterization and sampling;

5. The manner and content of community relations activities such as the community relations plan, press releases, public notices and public meetings;

6. CERCLA response action documents including, but not limited to:

a. Engineering evaluations/cost analyses and remedial investigation/feasibility studies;

b. Draft and final risk assessments; and

c. Design and construction plans and documents;

7. 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;

8. If necessary, the establishment of a joint mine waste repository;

9. Certifications of completion issued for response actions at the Site;

10. Long term operations and maintenance/post removal Site control; and

11. Future response actions in the event of a remedy failure.

H. Unless otherwise agreed to by the Agencies, NDEP and BLM shall jointly approve any final decision documents prepared or issued for response actions at the Site on or affecting BLM-managed lands, including action memoranda and records of decision.

I. BLM's PM should advise NDEP's PM regarding any issues and concerns of special interest to BLM. BLM's PM should assist NDEP's PM in identifying and communicating with BLM personnel who can provide the most accurate and complete information concerning the Site, as needed.

J. BLM consents to NDEP and its contractors having access to BLM-managed lands within the Site for the purposes of conducting response actions. To the extent practicable, NDEP shall provide advance notice to BLM, through BLM's PM, at least seven (7) days prior to entering BLM-managed lands.

K. NDEP and BLM will cooperate and coordinate to the extent practicable regarding enforcement against PRPs. Resolution of and communication regarding legal issues will be coordinated among the Nevada Office of the Attorney General and the Interior, Office of the Solicitor.

L. When NDEP or BLM propose to use equipment, improvements or facilities that are within the responsibility of the other agency, including roads for access, NDEP's PM and BLM's PM shall consult to determine which agency will be responsible for maintaining the respective equipment, improvements or facilities to be used.

M. No joint waste repository for the purpose of receiving RCRA hazardous wastes or CERCLA hazardous substances may be taken from or placed upon BLM-managed lands at the Site in the absence of a separate joint repository agreement between the Agencies.

III. DISPUTE RESOLUTION

A. Consultation between NDEP's PM and BLM's PM should resolve the vast majority, if not all, technical issues between NDEP and BLM.

B. If NDEP's PM and BLM's PM 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 BLM and NDEP for further discussion and resolution.

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IV. LIMITATIONS AND DURATION OF AGREEMENT

A. The Agencies reserve their rights and authorities under CERCLA, State laws and statutes, the NCP, and applicable Executive Orders. 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 NDEP or BLM to expend, or as involving the State of Nevada or the United States, in any contract or other obligation for the future payment of money. The Agencies recognize that each must operate within the requirements of their respective budget process and legal restrictions concerning obligations of funds. No provision of this MOU shall be construed to require the Agencies 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.

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 BLM or NDEP from participating in similar activities with other public or private agencies, organizations, and individuals.

F. After giving sixty (60) days written notice, either agency may withdraw from this MOU for good cause, including the provisions set forth in Section III(C) above. 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 for 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 the Agencies are deemed to have drafted this MOU and this MOU shall not be interpreted against any agency as the draftsperson.

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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 and only if EPA defers the final NPL listing.

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NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

By:_____

Date:_____

Greg Lovato, Administrator
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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:_____

Date:_____

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