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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 (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 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 confined to the lands that are

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included within the definition of Indian County under 18 U.S.C. § 1151. The Reservation is approximately 1,650 acres located within approximately two miles of the Anaconda mine, with the Tribe's Yerington Colony located approximately one-half mile from the mine. 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. 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. Nothing in this MOU is intended to limit or affect in any way the sovereignty of the Tribe on its Reservation and Colony.

G. Since 2000, EPA has completed a preliminary assessment of the Site and has coordinated with BLM, the Yerington Paiute Tribe, the Walker River Paiute Tribe, 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 formerly operated by a now insolvent party. NDEP also conducted a Focused Feasibility Study and Conceptual Closure Plan for OU-8. After completion of the RI/FS for OU8, 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). Recent 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 reviewed and commented on project documents such as project planning, data deliverables, technical evaluations, plans and designs and construction reports. EPA has worked with the Tribe in the past to ensure proper time is given in comment periods to ensure Tribal involvement. Consultation has included engagement on study and 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.

J. In 2005, NDEP and the Tribe provided a non-Site-specific written framework for their government-to-government relationship in the *Consultation Protocol Between the Yerington Paiute Tribe and the State of Nevada.* The non-Site-specific 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 non-Site-specific Consultation Protocol, the Yerington Paiute Tribe reserves its tribal government rights including its treaty rights, sovereign immunities, and jurisdiction. 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.

K. EPA has postponed final listing of the Site on the NPL while the federal and state agencies evaluate an option for deferral of Site cleanup to NDEP oversight. After stakeholder meetings 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. The Parties agree to explore Tribal employment opportunities for the work done relating to the Anaconda Site. NDEP, in coordination with the Nevada Department of Conservation and Natural Resources, also acknowledge the Tribe's request for the State of Nevada and Governor's Office of Economic Development to provide assistance in exploring opportunities for Tribal employment for work done relating to the Anaconda Site.

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
603 West Bridge Street
Yerington, NV 89447
Phone: 775-783-0240
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.

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 to provide comments to NDEP. The Tribe may request an additional 15 days if needed, which NDEP will consider. NDEP intends to consider comments submitted by the Tribe prior to approval of such draft documents and to respond in writing to the Tribe respecting 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 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 at least 45 days from receipt of such draft project documents to provide comments to NDEP. The Tribe may request an additional 15 days if needed, which NDEP will consider.

4. The Tribe may, with respect to major decision points and documents, invoke the procedures set out in the non-Site-specific Consultation Protocol or a future Site-specific Consultation Protocol or Agreement 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.

5. NDEP and the Tribe intend the provisions of paragraphs II(A)(2) and II(A)(4) 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 determination.

6. 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 seek such funding, consistent with funding previously received from EPA for support related to technical review of response activities associated with the Site. As part of its request for funding, the Tribe will prepare a 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.

B. Coordination

1. EPA 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 within the Reservation:

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

Yerington Paiute Tribe Environmental Director
Ginny Hatch, Environmental Director

Yerington Paiute Tribe
603 West Bridge Street
Yerington, NV 89447
Phone: 775-783-0240
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.

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 30 days from receipt of such draft project documents to provide comments to EPA. The Tribe may request an additional 30 days if needed. 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, selection of post-response action Site control requirements and 5-year reviews.

4. The Tribe may invoke 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, except for resolving issues described in section IV. 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.

6. No later than 30 days after the effective date of the Deferral Agreement, the EPA and the Tribe will develop a schedule for response activities on the Reservation. NDEP will have the opportunity to provide comment on the schedule for consideration by EPA and the Tribe.

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IV. ISSUE RESOLUTION

NDEP suggests a regular discussion forum for MOU signatories, as well as a process for elevating, for consideration by the Regional Administrator, unresolved issues, inconsistencies, or disagreements between the parties related to response activities or decisions affecting Operable Units that may become or be perceived by some parties as multi-jurisdictional (e.g. OU-7 and OU-1).

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

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By:_____
Date_____