One Hundred One North Carson Street
Carson City, Nevada 89701
Office: (775) 684-5670
Fax No.: (775) 684-5683

555 East Washington Avenue, Suite 5100
Las Vegas, Nevada 89101
Office: (702) 486-2500
Fax No.: (702) 486-2505

Office of the Governor

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 I requested additional time for my response so that the State could continue to work with local stakeholders. That process was very productive, thanks in part to your recent visit to Lyon County.

My concurrence, albeit cautious, with your proposal to proceed with listing the Site on the NPL is based upon meetings held with community and Tribal leaders, conversations and meetings we have had, and our understanding that EPA will work with Nevada to favorably resolve the conditions listed below. 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 which are on a relatively small portion of the overall Site. It is my understanding that the Atlantic Richfield Company (ARC) denies responsibility for the Arimetco section of the Site but remains responsible for all other portions of the Site.

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 concerns about its desire for listing the Site on the NPL.

First, there has long been frustration on the part of community leaders and agricultural producers over perceived distortions -- by EPA and others -- 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 <u>the public is not being exposed</u> 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. As you know, I have been assured by the Nevada Division of Environmental Protection (NDEP)

and EPA, based on all available information, that the Anaconda Site has had no impacts to agricultural land or the products grown on land in Mason Valley. Based on that information, crops and livestock raised in the Yerington area should be considered safe for consumption. EPA needs to make this point very clear on its website and in any future announcements regarding this Site. The fluid management system on the Arimetco area is being actively managed to prevent any releases, but it requires a long-term remedy to prevent future degradation of groundwater resources. Since EPA has not yet held ARC responsible for the abandoned Arimetco heap leach pads, the issue is one of funding for long-term closure of the heaps and reclamation work.

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 cautious concurrence is based on the understanding from our conversations, as well as those you've had with the community, that EPA anticipates it will properly fund the Arimetco remedy in 2017 and is fully committed to this project. Based on our discussions, the expected timeline is the following: (1) receive Nevada's concurrence letter; (2) begin application process for listing by September 2016; (3) public comment period; (4) final listing March 2017; (5) funding panel meets and makes recommendations March 2017; and (6) project work begins by the end of calendar year 2017.

Third, there seems to be universal frustration with the previous 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. 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.

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 and is the driving force for the proposed listing.

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 close coordination on public messaging. Thank you for personally agreeing on the critical importance of developing a collaborative communications team with all the community stakeholders and the State to get out accurate, clear, consistent and timely information. There have been real impacts to agricultural producers due to exaggeration of the Site risks and misstatement of material facts. Coordination and collaboration 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 $225 million annually. Incomplete or incorrect media information has resulted in rumors and negative effects on this important industry. The communications team needs to work quickly 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. Finally, it is imperative for EPA to provide the joint communications team with timely data on the progress being achieved on clean-up, including budget and milestones. And when appropriate, we appreciate that EPA will proactively seek out opportunities to issue joint press releases with the State, local, and/or tribal governments, and community leaders.

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 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 expeditiously. 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 be willing to evaluate, select, and require implementation of remedies that are consistent with standard mine reclamation work in Nevada. 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 establish an appropriate funding arrangement with EPA over time. 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.

6. Preserve option for a State-led 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 the above represents reasonable conditions that respond to environmental and economic concerns responsibly, respects the concerns of community leaders and area residents, and reflects our communications and those you have conducted with the community as well. If you have any questions regarding this letter, please contact Leo Drozdoff, Director, Department of Conservation and Natural Resources, 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
U.S. Senator Harry Reid
U.S. Senator Dean Heller
Congressman Cresent Hardy
Congressman Mark Amodei
Laurie Thom, Chairwoman, Yerington Paiute Tribe
Bobby D. Sanchez, Chairman, Walker River Paiute Tribe
Jeffrey Page, County Manager, Lyon County
Dan Newell, City Manager, City of Yerington
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
Enrique Manzanilla, Director, US EPA Region 9 Superfund Division