Memorandum of Understanding

This Memorandum of Understanding ("MOU") is entered into by and between the United States Bureau of Indian Affairs (BIA), the Navajo Nation (Navajo Nation), and BNSF Railway Company (BNSF), a Delaware corporation, referred to herein collectively as the "Parties."

RECITALS

This Agreement is made with reference to and in consideration of the following facts and representations:

A. The United States Environmental Protection Agency (USEPA) has identified BNSF as a Potentially Responsible Party (PRP) for environmental conditions at the Haystack Mines Site, Grants Mining District, McKinley County, New Mexico (the Site). The Site is located on four parcels of land, which include two Indian Allotment Parcels, one Federal parcel administered by the BIA, and one privately owned parcel.[1] Portions of the Site are located in Navajo Indian Country.

B. In 1991, Cerrillos Land Company, under USEPA oversight, conducted clean-up actions on the Section 19 portion of the Site. In 1991, USEPA conducted clean-up actions on the Section 18 and Section 24 portions of the Site, and conducted additional clean-up actions on the Section 13 portion of the Site in 1992.

C. BNSF, under an Administrative Settlement and Administrative Order on Consent with USEPA, intends to perform additional removal work at the Site.

D. Portions of Section 13 of Township 13 North, Range 11 West are within the Site.

[1] The Haystack Mines Site is located in and around NW ¼ Section 19, Township 13N, Range 10W, SW ¼ Section 18, Township 13N, Range 10W, SE ¼ Section 13, Township 13N, Range 11W; and NE ¼ Section 24, Township 13N, Range 11W.

Those portions of Section 13 within the boundary of the Site are held by the BLM but administered by the BIA. Pursuant to Public Land Order 7091, those portions of Section 13 "remain withdrawn from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, but remain open to exchange [with the Navajo Nation] under the Act of March 3, 1921." See Exhibit 1.

E. Portions of Section 18 of Township 13 North, Range 10 West and of Section 24 of Township 13 North, Range 11 West are within the Site. Those portions of Section 18 and Section 24 within the boundary of the Site are Indian Allotments subject to 25 C.F.R. Part 162 regulations. See Exhibit 2. Under 25 C.F.R. Part 162, BIA is responsible for approving any lease on the Allotment portions of Section 18 and Section 24.

F. The Section 18 Indian Allotment was 100% owned by an individual named Ex. 6 Personal Privacy (PP) passed away in December 2016. The BIA is administering the probate from Ex. 6 Personal Privacy (PP) estate.

G. During the pendency of the probate and until heirs have been determined, BIA is authorized to approve leases on the Section 18 Allotment. See 25 C.F.R. § 162.013(c)(1). Once an heir or heirs have been determined, BIA would need to consent to approval of any lease on Section 18 before the lease could be finalized. See 25 C.F.R. § 162.012.

H. The only current residential use of the portion of Section 18 within the boundary of the Site is the occupation by Ex. 6 Personal Privacy (PP). BIA has not reviewed or approved a residential lease for Ex. 6 Personal Privacy (PP) occupation of this Property.

I. Other than the residential use identified in Recital H, there are no other residences and there is no residential use within the boundaries of the Site.

J. BIA has broad discretion and authority to issue or not issue residential leases based on a variety of factors and issues identified in BIA's residential leasing regulations. *See* 25

C.F.R. Part 162, Subpart C (§§ 162.301 – 162.374).

K. The naturally-occurring radioactive material at and around the Site results in an elevated background concentration of uranium.

L. The USEPA acknowledges and supports this MOU.

NOW, THEREFORE, in reliance on the above recitals, and in consideration of the mutual covenants, conditions, and releases set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. The above Recitals are true and correct.

2. BIA agrees that the portions of Section 13 within the Site are not currently available for residential leasing.

3. BIA agrees that residential leases are not appropriate in areas where naturally high levels of radioactive materials may be found.

4. BIA agrees to not approve any new lease, or any extension to an existing lease, within any portion of the Site.

5. The Navajo Nation agrees to use best efforts to inform any person interested in establishing a residence in or within 1,000 feet of any portion of the Site of the leasing restriction and requirements applicable to the Site.

6. Successors and Assigns. This Agreement shall be binding on the Parties' successors-in-interest, heirs, and assigns.

7. Amendment. Neither this Agreement, nor any of its provisions, may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by all the Parties, and then only to the extent set forth in such writing.

8. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the remainder of this Agreement shall remain valid and fully enforceable.

9. Entire Agreement. This Agreement, along with its attachments, contains all of the terms and conditions agreed upon by the Parties and supersedes any and all prior and contemporaneous agreements, negotiations, correspondence, understandings and communications of the Parties, whether oral or written, respecting the subject matter of this Agreement.

10. Governing Law. This Agreement shall be construed in accordance with the laws of the State of New Mexico, without regard to choice-of-law principles.

11. Interpretation. This Agreement is the product of negotiation and preparation by and among each Party hereto and its respective counsel. Accordingly, this Agreement will not be deemed prepared or drafted by one Party or another, and should be construed accordingly.

12. Cooperation. Each Party agrees to make good faith, reasonable efforts to effectuate the purposes of this Agreement.

13. No Third-Party Beneficiaries. This Agreement does not create, and will not be construed to create, any rights enforceable by any person that is not a Party to this Agreement.

14. No Admissions. This Agreement may pertain to disputed claims and is a result of compromise. As such, it does not constitute and will not be deemed as an admission of fact or law by any Party hereto.

15. Notices. All notices, requests, demands, or other communications made pursuant to this Agreement shall be in writing and shall be delivered personally, by overnight service, or by first class mail, postage prepaid, to the following persons as set forth below:

To BIA:

[name]

[address]

To Navajo Nation:

[name]
[address]

To BNSF:

Charles Thomas
Director, Environmental Remediation
BNSF Railway Company
2500 Lou Menk Blvd., AOB-3
Ft. Worth, TX 76131

and

Brooke Kuhl
Senior General Attorney
BNSF Railway Company
201 West Railroad Street, Suite 300
Missoula, MT 59802

With a copy to:

John Barg
David Metres
Barg Coffin Lewis & Trapp, LLP
600 Montgomery St., Suite 525
San Francisco, CA 94111

16. Warranty of Authorized Signatories. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign.

17. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, but such counterparts together constitute one and the same document. Signatures delivered by facsimile or e-mail shall be deemed effective as originals.

18. Effective Date. The "Effective Date" of this Agreement shall be the date on which this Agreement has been executed by all Parties.

Dated: _____, 2019

_____

Dated: _____, 2019

_____

Dated: _____, 2019

By: _____

Name:_____

This MOU was reviewed and approved as to form by United States Environmental Protection Agency

Dated: _____, 2019

By: _____