UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX and REGION VI

IN THE MATTER OF: Haystack Mines Site BNSF Railway Company, Respondent Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622	CERCLA Docket No. 09-2017-02 CERCLA Docket No. 06-02-17 **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	1
II.	PARTIES BOUND	1
III.	DEFINITIONS	2
IV.	FINDINGS OF FACT	4
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	7
VI.	SETTLEMENT AGREEMENT AND ORDER	8
VII.	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR	8
VIII.	WORK TO BE PERFORMED	9
IX.	PROPERTY REQUIREMENTS	17
X.	ACCESS TO INFORMATION	19
XI.	RECORD RETENTION	20
XII.	COMPLIANCE WITH OTHER LAWS	21
XIII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES	21
XIV.	PAYMENT OF RESPONSE COSTS	22
XV.	DISPUTE RESOLUTION	25
XVI.	FORCE MAJEURE	25
XVII.	STIPULATED PENALTIES	27
XVIII.	COVENANTS BY EPA	29
XIX.	RESERVATIONS OF RIGHTS BY EPA	29
XX.	COVENANTS BY RESPONDENT	31
XXI.	OTHER CLAIMS	32
XXII.	EFFECT OF SETTLEMENT/CONTRIBUTION	32
XXIII.	INDEMNIFICATION	33
XXIV.	INSURANCE	34
XXV.	FINANCIAL ASSURANCE	34
XXVI.	MODIFICATION	38
XXVII.	NOTICE OF COMPLETION OF WORK	38
XXVIII.	INTEGRATION/APPENDICES	38
XXIX.	EFFECTIVE DATE	39

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and BNSF Railway Company, formerly known as Burlington Northern and Santa Fe Railway Company ("Respondent"). This Settlement provides for the performance of an interim time-critical removal action by Respondent and the payment of certain response costs to be incurred by the United States at or in connection with the Haystack Mines Site (the "Site") generally located at SE ¼ Section 13, T13N, R11W; NE ¼ Section 24, T13N, R11W; SW ¼ Section 18, T13N, R10W; and Section 19, T13N, R10W, in McKinley County, New Mexico, and the Baca/Prewitt Chapter of the Navajo Nation.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-A (Determinations of Imminent and Substantial Endangerment, Nov. 1, 2001), 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). These authorities were further redelegated by the Regional Administrator of EPA Region IX to the Branch Chief, Superfund Division (now Assistant Director) by Region IX Delegation Nos. R9 1290.13, R9 1290.15, and R9 1290.20, and by the Regional Administrator of EPA Region VI to the Director, Superfund Division, by EPA Region 6 Delegations R6-14-14A, R6-14-14-C, and R6-14-14-D.

3. EPA has notified the State of New Mexico (the "State") and the Navajo Nation of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon EPA and upon Respondent and its successors, and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement.

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6. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondent or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

7. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions are needed to implement the removal action, including, but not limited to, the following properties: SE ¼ Section 13, T13N, R11W, New Mexico ("Section 13"); NE ¼ Section 24, T13N, R11W, New Mexico ("Section 24"); SW ¼ Section 18, T13N, R10W, New Mexico ("Section 18"); and Section 19, T13N, R10W, New Mexico ("Section 19").

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXIX.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Future Response Costs" shall mean all costs incurred after the Effective Date, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney

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time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 83 (Work Takeover), Paragraph 38 (Community Involvement Plan), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site, and all Interim Response Costs.

"Haystack Mines Site Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and this Settlement.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

"Interim Response Costs" shall mean all costs, including but not limited to direct and indirect costs, (a) paid by the United States in connection with the Site between March 3, 2016 and the Effective Date, or (b) incurred between March 3, 2016 and the Effective Date, but paid after the Effective Date.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Navajo Nation EPA" or "NNEPA" shall mean the Navajo Nation Environmental Protection Agency.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondent.

"Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(*l*) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondent" shall mean BNSF Railway Company.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Paragraph 112 (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the Haystack Mines Site, encompassing approximately 174 acres, located at SE ¼ Section 13, T13N, R11W, New Mexico; NE ¼ Section 24, T13N, R11W, New Mexico; SW ¼ Section 18, T13N, R10W, New Mexico; and Section 19, T13N, R10W, New Mexico, in McKinley County, New Mexico, and the Baca Prewitt Chapter of the Navajo Nation, and depicted generally on the map attached as Appendix A.

"State" shall mean the State of New Mexico.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any toxic pollutant or water contaminant as defined by Title 20, Chapter 6, Part 2 of the New Mexico Administrative Code or any constituent identified in Table 1 of the New Mexico Environment Department's *Risk Assessment Guidance for Site Investigation and Remediation.*

"Work" shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

EPA makes the following Findings of Fact:

8. The Haystack Mines Site is located atop the Haystack Butte, approximately 500 feet south of Haystack Mountain, and approximately five miles east of Prewitt, McKinley County, New Mexico.

9. EPA performed a removal site evaluation pursuant to 40 C.F.R. § 300.410 at the Site in 2014. The removal evaluation area consists of a former open pit complex including at least three adjacently-located abandoned uranium mines ("AUMs"), where elevated surface gamma activity has been detected.

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10. The AUMs that make up the Haystack Mines Site were owned and operated by various persons and entities from approximately 1952 to 1981 and produced a total of over 400,000 tons of uranium ore.

11. The removal evaluation area encompassed a total of approximately 174 acres. The removal evaluation area is currently used for livestock grazing, and one residence is located within the boundary of the Haystack No.1 AUM. Approximately 10 other residences and a church are located within ¼ mile of the removal assessment area.

12. The Haystack No. 1 AUM encompasses approximately 69 acres, and comprises the eastern portion of the removal assessment area. The geographic coordinates for the approximate center of the AUM are 35.345713 North latitude and 107.943650 West longitude. The AUM is situated on both Indian Allotment land (Section 18) and privately-owned land (Section 19). The former ore-mining operations occurred on all 69 acres and included numerous pits. The pits were reclaimed in 1991 and are no longer present at the AUM. The AUM was screened in 2008 by EPA for surface gamma activity, at which time elevated gamma activity was found at the AUM.

13. The Bibo Trespass AUM encompasses approximately 22 acres, and comprises the northwestern portion of the removal assessment area. The geographic coordinates for the approximate center of the Bibo Trespass AUM are 35.349522 North latitude and 107.94863 West longitude. The AUM is located on federal land administered by the Bureau of Indian Affairs ("BIA"). The former ore-mining operations included at least one pit. The pit was reclaimed in 1992, and is no longer present at the Site. The AUM was screened in 2008 by EPA for surface gamma activity, at which time elevated gamma activity was found at the AUM.

14. The Section 24 AUM encompasses approximately 27 acres, and comprises the southwestern portion of the removal assessment area. The geographic coordinates for the approximate center of the Section 24 AUM are 35.346544 North latitude and 107.947928 West longitude. The AUM is located on Indian Allotment land. The former ore-mining operations included at least three pits. The pits were reclaimed in 1991 and are no longer present at the AUM. The AUM was screened in 2008 by EPA for surface gamma activity, at which time elevated gamma activity was found at the AUM.

15. In 1952, Santa Fe Pacific Railroad Company ("SFPR") formed the Haystack Mountain Development Company ("HMDC"), which began exploration of uranium deposits in limestone at the Haystack Butte. HMDC conducted mining operations on a portion of the Haystack Mines Site during 1952-1957, 1959-1961, and 1963-1965.

16. In 1987, HMDC merged into the Atchison, Topeka and Santa Fe Railway Company. On December 31, 1996, the Atchison, Topeka and Santa Fe Railway Company merged into Burlington Northern Railroad Company and the surviving company was called Burlington Northern and Santa Fe Railway Company. In 2005, the Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

17. At the time uranium ore was mined on Section 19, Township 13N, Range 10W, SFPR owned the mineral rights to Section 19. SFPR is a subsidiary of BNSF Railway Company.

18. In 1990, EPA conducted a preliminary radiological assessment at the Bluewater Uranium Mine Sites, which included the areas known as Brown-Vandever and Nan-a-bah Vandever mines (aliases for the mines at the Haystack Mines Site). EPA issued an action memorandum in 1991 to address hazards at the four parcels that included the mines. EPA conducted response actions at the two Indian allotment parcels (Section 24 and Section 18). In addition, EPA conducted work on Section 13 pursuant to an Interagency Agreement with the Department of Energy. EPA also issued an administrative order to the Cerrillos Land Company, the Santa Fe Pacific Railroad Company, and the Atchison, Topeka & Santa Fe Railway Company to conduct hazard reclamation on Section 19. Following the work conducted in 1991 and 1992 on the four parcels, EPA concluded at that time that the areas had been reclamated to levels protective of public health.

19. Between August 10 and 20, 2014, EPA performed a surface gamma activity scan and collected surface and subsurface soil samples and co-located one-minute surface gamma activity counts at the removal assessment area. A summary of the Radium 226 ("Ra-226") analytical data for surface and subsurface soil samples and the co-located one-minute surface gamma activity counts is presented in the Removal Assessment Report. Elevated concentrations of Ra-226 in surface soil were found at certain locations throughout the Site, including in the one-acre area surrounding the residence.

20. As described above, Ra-226 has been documented in soils at the Site. Radium is formed when uranium and thorium break down in the environment. Two of the main radium isotopes found in the environment are radium-226 and radium-228. During the decay process, alpha, beta, and gamma ionizing radiation are released. Radium may be found in air and water. Radium in the soil may be absorbed by plants.

21. Analytical results indicate that concentrations of Ra-226 identified in some soils at the Site are elevated and may pose a potential threat to human health and the environment. Acute inhalation exposure to high levels of radium can cause adverse effects to the blood (anemia) and eyes (cataracts). Radium exposure also has been shown to affect the teeth, causing an increase in broken teeth and cavities. Exposure to high levels of radium can result in an increased incidence of bone, liver, and breast cancer. EPA and the National Academy of Sciences, Committee on Biological Effects of Ionizing Radiation, has stated that radium is a known human carcinogen (ATSDR 1999a). Inhalation of radium contaminated particulates is of particular concern. Radium emits alpha radiation, which, when inhaled, becomes a source of ionizing radiation in the lung and throat, possibly leading to toxic effects.

22. Some of the soils containing elevated concentrations of Ra-226 are fine-grained and therefore could potentially result in human exposure via inhalation or ingestion. The Site contamination is readily accessible to onsite full-time residents and potentially to nearby offsite residents. Persons occupying or traversing the Site may be exposed to contaminated dust by inhalation or ingestion of contamination sorbed to particulate matter. Incidences of direct contact with natural and mechanically generated dust during such activities accounts for known

contamination exposure scenarios at the Site. Ra-226 and uranium may be entrained in naturally and mechanically generated dust and/or transported on shoes and clothing of residents passing over contaminated areas. Gardening and other yard work, including gathering traditional herbs and plants, also may result in exposure to contamination.

23. Activities that occur in contaminated areas that may put persons at risk include walking or hiking, livestock grazing, and different modes of transportation including all- terrain vehicles, motorcycles, or horses. Persons may drive their vehicles over contaminated areas as well, which could contribute to exposure pathways via dust generation. Children may eat contaminated soils during play activities. In addition, Navajo ceremonies conducted on grazing land may also put persons at risk.

24. Contamination documented in soils at the Site may migrate off-site via wind and water transport mechanisms including mechanical dust generation. Some of the radium daughter particles, such as radon, also have a specific tendency to adhere to dust particles and migrate.

25. Rainfall events may lead to transport of the contamination from the Site. High soil erosion rates may indicate transport of contamination from the Site constituting a release of hazardous substances and resulting in secondary contamination sources. In addition, contaminants may migrate during high wind events due to the propensity for contaminants to adhere to windborne dust particles.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

26. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Haystack Mines Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent was an "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. The conditions described in Paragraphs 20-25 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance at or from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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f. The conditions described in the Findings of Fact above constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

27. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all attachments to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

28. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within fifteen days after the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least ten days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within ten days after EPA's disapproval. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements.

29. Respondent has designated, and EPA has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement:

Mike W. Makerov
BNSF Railway Company
740 E. Carnegie Drive
San Bernardino, CA 92408
(909) 386-4081

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Mike.makerov@bnsf.com

To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. Notice or communication relating to this Settlement from EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

30. EPA has designated Steve Calanog of the Emergency Response, Preparedness, & Prevention Branch, Region IX, as the On-Scene Coordinator (OSC) and Warren Zehner, of the Emergency Management Branch, Region VI, as the Alternate On-Scene Coordinator. Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to both of these On-Scene Coordinators (collectively, "the EPA On-Scene Coordinators" or "OSCs"). EPA and Respondent shall have the right, subject to Paragraph 29, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA ten days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

31. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. WORK TO BE PERFORMED

32. Respondent shall perform, at a minimum, the following:

a. Prepare a Removal Work Plan ("Work Plan"), including a Work Plan schedule;

b. Within 45 days of the Effective Date, complete and submit to EPA a cultural resources survey that evaluates whether or not cultural resources are present on the Affected Property and whether or not the Work required under this Settlement will have an effect on such resources;

c. Within 15 days of the Effective Date, request information on biological resources located on the Affected Property from U.S. Fish and Wildlife Service ("USFWS"), New Mexico Department of Game and Fish, and from Navajo Natural Heritage Program. Within 30 days of receipt of such information, if necessary, prepare a Biological Evaluation pursuant to Navajo Nation Department of Fish & Wildlife's ("NNDFW") Biological Resource Land Use Policies and Procedures (RCS-44-08). If species of concern are identified, Respondent shall work with EPA, USFWS, and NNDFW to resolve any potential impacts before on-site work begins.;

d. Participate in community involvement activities, as directed by EPA, pursuant to Paragraph 38;

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e. Provide temporary alternative housing to impacted residents as necessary during removal activities, as determined by EPA, and pay for all associated costs;

f. Construct/improve access roads to all AUM site areas as necessary to conduct the Work;

g. Secure a water supply for dust suppression activities as necessary to conduct the Work, as determined by EPA;

h. Develop and implement an effluent dust monitoring program to prevent offsite release of contaminated particulate;

i. Develop and implement a site wide traffic plan;

j. In each of the six areas of concern described below and depicted and bounded in red on Haystack AOC Figure 1, attached as Appendix B, excavate material to the maximum depth indicated below for each area, or to a depth at which a post-removal survey of the area yields a gamma count of less than 75,000 counts per minute as measured by a Ludlum 2241 with a 3x3 probe as indicated in the post-removal confirmation plan. Excavation shall be further limited to the top of bedrock or refusal, whichever is shallower. Restoration shall be implemented in all areas of concern, as appropriate, and such activities shall be included in the EPA-approved restoration plan.;

(1) North East Access Road. Work in this area shall include visual identification, based on EPA's Removal Assessment Report and associated scans, and removal of surficial soil piles located along the southern fence line of the entrance road leading from Red Mountain Road (County Road 41) to the residences to a maximum depth of one foot below ground surface ("bgs").

(2) North East Drainage. Work in this area shall include visual identification, based on EPA's Removal Assessment Report and associated scans, and removal of surficial ore-bearing waste rock along an approximately 100 foot section of drainage north of the northeast access road to its end point at County Road 41 to a maximum depth of one foot bgs.

(3) Residential Area. Work in this area shall include visual identification, based on EPA's Removal Assessment Report and associated scans, and removal of surficial ore-bearing waste rock in the area surrounding the residence located near the southwest corner of Section 18, and the one-acre area surrounding the residence, including excavation to a maximum depth of two feet bgs.

(4) Western Drainage 2/Road. Work in this area shall include visual identification, based on EPA's Removal Assessment Report and associated scans, and removal of surficial ore-bearing waste rock along approximately 100 feet of road, including excavation to a maximum depth of two feet bgs.

(5) Western Drainage 1. Work in this area shall include visual identification, based on EPA's Removal Assessment Report and associated scans, and removal of surficial ore-bearing rock, including excavation to a maximum depth of one foot bgs.

(6) East Stockpile. Work in this area (approximately 50 feet x 50 feet) shall include a pre-removal site gamma-count survey. The survey plan is subject to EPA approval as part of the required Sampling and Analysis Plan, described in Paragraph 37. If EPA determines that a time-critical removal action is needed in this area based on EPA's evaluation of the survey, Respondent shall excavate to a maximum depth of two feet bgs.

k. Design and construct a temporary consolidated waste pile(s) as appropriate and as approved in the Work Plan. The design for any consolidated waste pile(s) shall have an approved erosion plan.

l. Develop and implement a confirmation survey and sampling plan. A randomized sampling approach based on the Multi-Agency Radiation Survey and Site Investigation Manual ("MARSSIM") will be used to obtain at least 10 randomized gamma count readings in each area of concern to establish post-removal conditions. These randomized measurements will be based on a grid system developed as part of the confirmation survey plan using MARSSIM.;

m. Design and implement a restoration plan on all excavated or impacted areas based on construction activities. Application of backfill and/or cover may be used to mitigate some areas post removal pursuant to the restoration plan, upon EPA approval. Additionally, ensure that the restoration plan takes into account potential future response actions;

n. Construct a fence and post signs around any consolidated pile(s) as appropriate, reinforce existing fences, and place new signage;

o. Demobilize site; and

p. Provide a Removal Completion Report.

33. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

34. Work Plan and Implementation.

a. Within 45 days after the Effective Date, in accordance with Paragraph 35 (Submission of Deliverables), Respondent shall submit to EPA for approval a draft work plan for performing the time-critical removal action (the "Removal Work Plan") generally described in

Paragraph 32 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for the actions required by this Settlement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part, provided such revisions do not materially expand the scope of work to be performed as described in this Agreement. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within ten business days after receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Work Plan, Respondent shall commence implementation of the Work in accordance with the schedule included therein, provided that all access agreements required by Paragraph 43 have been obtained, or access has otherwise been secured by EPA, to accomplish the work described in Paragraph 32 above. Respondent shall not commence any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

35. Submission of Deliverables.

a. General Requirements for Deliverables.

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC at Steve Calanog, EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105, calanog.steve@epa.gov, (415) 972-3075, with a copy to Warren Zehner, EPA 6 Regional Laboratory, 10625 Fallstone, Houston, TX 77099, Zehner.warren@epa.gov, (214) 789-1585. Respondent shall submit all deliverables required by this Settlement to EPA in accordance with the schedule set forth in the Work Plan. At the same time that Respondent submits deliverables to EPA, Respondent shall send a copy of such deliverables to Dr. Donald Benn, Executive Director, NNEPA, P.O. Box 339, Window Rock, AZ 86515, donbenn@navajo-nsn.gov.

(2) Respondent shall submit all deliverables in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide EPA with paper copies of such exhibits.

b. Technical Specifications for Deliverables.

(1) Sampling and/or monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format. https://www.epaosc.org/sites/ScribeGIS/files/Scribe_EDD_Templates.zip - additional

information about SCRIBE can be found here: www.epaosc.org/Scribe. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult http://www.epa.gov/geospatial/policies.html for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

36. Health and Safety Plan.

a. Within 30 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at http://www.epa.gov/nscep/index.html, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning.

37. Quality Assurance, Sampling, and Data Analysis.

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures, if applicable, for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. Sampling and Analysis Plan. Within 45 days after the Effective Date, Respondent shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Removal Work Plan, the NCP and applicable guidance documents, including, but not limited to, "Guidance for Quality Assurance Project Plans (QA/G-5)" EPA/240/R-02/009 (December 2002), "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" EPA 240/B-01/003 (March 2001, reissued May 2006), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. If soil sampling is conducted, Respondent shall ensure that EPA personnel and EPA's authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA's "Field Operations Group Operational Guidelines for Field Activities" (http://www.epa.gov/region8/qa/FieldOperationsGroupOperationalGuidelinesForFieldActivities.pdf) and "EPA QA Field Activities Procedure" (http://www.epa.gov/irmpoli8/policies/2105-p-02.pdf). Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" (http://www.epa.gov/fem/pdfs/fem-lab-competency-policy.pdf) and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html)."

d. However, upon approval by EPA, Respondent may use other appropriate analytical method(s), if soil sampling is conducted, as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response

Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (http://www.epa.gov/fem/accredit.htm) as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Respondent shall provide split or duplicate samples to EPA or its authorized representatives, if soil sampling is conducted. Respondent shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondent split or duplicate samples of any samples it takes as part of EPA's oversight of Respondent's implementation of the Work.

f. Respondent shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Settlement.

g. Respondent waives any objections to any data gathered, generated, or evaluated by EPA or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

38. Community Involvement Plan. EPA will prepare a community involvement plan, in accordance with EPA guidance and the NCP. If requested by EPA, Respondent shall participate in community involvement activities pursuant to the plan, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Respondent's support of EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. community involvement activities conducted by Respondent at EPA's request are subject to EPA's oversight. At EPA's discretion, Respondent shall establish a community information repository near the Site to house one copy of the administrative record.

39. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for Post-Removal Site Control which shall include, but not be limited to: ensuring fence integrity annually, and ensuring erosion control integrity annually. Upon EPA approval, Respondent shall either conduct Post-Removal

Site Control activities, or obtain a written commitment from another party to conduct such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondent shall provide EPA with documentation of all Post-Removal Site Control commitments.

40. Progress Reports. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement weekly during field work, and monthly at all other times, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Work Plan until issuance of Notice of Completion of Work pursuant to Paragraph 111, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

41. Final Report. Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 111 (Notice of Completion), Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

42. Off-Site Shipments.

a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state or tribal environmental official in the receiving facility's state or territory and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state or tribal environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Removal Work Plan. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

IX. PROPERTY REQUIREMENTS

43. Agreements Regarding Access and Non-Interference.

a. Respondent shall, with respect to Section 19, use best efforts to secure from the owner(s) of Section 19 ("Section 19 Owner") an agreement, enforceable by Respondent and the EPA, requiring that the Section 19 Owner (i) provide the EPA, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct the Work, and any activity regarding the Settlement, including those activities listed in Paragraph 43.d , and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action.

b. Respondent shall, with respect to Section 13, use best efforts to obtain from the Department of the Interior, Bureau of Indian Affairs, written consent to provide the EPA, Respondent, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement.

c. Respondent shall, with respect to Section 18, use best efforts to obtain individual access consent forms signed by allottees for each parcel who may be impacted by any activity conducted by Respondent pursuant to this Settlement. Such allottees should, at a minimum, include persons actually residing on the Affected Property, or actively using the Affected Property for purposes such as farming and grazing. Additionally, Respondent shall obtain individual access consent forms signed by any other persons who reside and/or have a

homesite lease on the Affected Property. Respondent shall notify all allottees who have an interest in the Affected Property about the nature and scope of the work to be performed by Respondent at least twenty days before such work begins. The list of allottees with an interest in the Affected Property should be obtained from the Bureau of Indian Affairs ("BIA") Regional Land Office at Crownpoint, New Mexico.

d. Access Requirements. The following is a list of activities for which access is required regarding the Affected Property:

(1) Performing and monitoring the Work;

(2) Verifying any data or information submitted to EPA;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, implementing, or monitoring response actions;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 83 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information); and

(9) Assessing Respondent's compliance with the Settlement;

44. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, Respondent shall notify EPA, and include a description of the steps taken to comply with the requirements. EPA may assist Respondent or take independent action in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs). Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any access and/or use restriction agreement, provided that Respondent

has used best efforts to secure such access and/or use restriction agreement as described in this subparagraph.

45. Notwithstanding any provision of the Settlement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

46. Respondent shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

47. Privileged and Protected Claims.

a. Respondent may assert all or part of a Record requested by EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 47.b, and except as provided in Paragraph 47.c.

b. If Respondent asserts such a privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

48. Business Confidential Claims. Respondent may assert that all or part of a Record provided to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records

or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

49. Notwithstanding any provision of this Settlement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

50. Until ten (10) years after EPA provides Respondent with notice, pursuant to Paragraph 111 (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with regard to the Site. Respondent shall also preserve and maintain all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

51. At the conclusion of the document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 47 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA.

52. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

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XII. COMPLIANCE WITH OTHER LAWS

53. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state, tribal and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state or tribal environmental or facility siting laws. Respondent shall identify ARARs in the Removal Work Plan subject to EPA approval.

54. No local, state, tribal, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal, tribal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that Respondent has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal, tribal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

55. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC and the alternate OSC, or, in the event of their unavailability, the Regional Duty Officer at (415) 947-8120 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

56. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately notify the OSC and the Alternate OSC, or, in the event of their unavailability, the Regional Duty Officer at (415) 947-8120, and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7

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days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

XIV. PAYMENT OF RESPONSE COSTS

57. Payments for Future Response Costs. Respondent shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. Within thirty (30) days of the Effective Date, Respondent shall pay EPA $100,000 in prepayment of Future Response Costs. The total amount paid shall be deposited by EPA in the Haystack Mines Site Special Account, within the EPA Hazardous Substance Superfund. These funds will be used by EPA to conduct or finance future response actions at or in connection with the Site. Any amounts received under this subparagraph will be credited to Respondent in the final accounting pursuant to subparagraph 57.d.

b. Shortfall Payments. If at any time prior to the date EPA sends Respondent the first bill under Paragraph 57.c (Periodic Bills), or one year after the Effective Date, whichever is earlier, the balance in the Haystack Mines Site Special Account falls below $40,000, EPA will so notify Respondent. Respondent shall, within 30 days after receipt of such notice, pay $60,000 to EPA. Payment shall be made in accordance with Paragraphs 57.e and 57.f (Payment for Future Response Costs). The amounts paid shall be deposited by EPA in the Haystack Mines Site Special Account. These funds shall be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

c. On a periodic basis, EPA will send Respondent a bill requiring payment of Future Response Costs, that includes a cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondent shall make all payments within 30 days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 59 (Contesting Future Response Costs).

d. Unused Amount. After EPA issues the Notice of Completion of Work pursuant to Paragraph 111 and EPA has performed a final accounting of the Haystack Mines Site Special Account (including crediting Respondent for any amounts received under Paragraphs 57.a (Prepayment of Future Response Costs), 57.b (Shortfall Payments), or 57.c (Periodic Bills), EPA will offset the next Future Response Costs bill by the unused amount paid by Respondent pursuant to Paragraphs 57.a (Prepayment of Future Response Costs), 57.b (Shortfall Payments), or 57.c (Periodic Bills).

e. Respondent shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York

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ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A956/A6LJ and the EPA docket number for this action.

For ACH payment:

Respondent shall make payment to EPA by Automated Clearinghouse (ACH) to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number A956/A6LJ and the EPA docket number for this action.

For online payment:

Respondent shall make payment at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondent by EPA.

f. At the time of payment, Respondent shall send notice that payment has been made to On Scene Coordinator Steve Calanog, 75 Hawthorne St, SFD-9-2, U.S. Environmental Protection Agency, San Francisco, CA 94105, and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable@epa.gov, or by mail to

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number A956/A6LJ and the EPA docket number for this action.

g. Deposit of Future Response Costs Payments. The total amount to be paid by Respondent pursuant to Paragraphs 57.a, 57.b, and 57.c shall be deposited by EPA in the Haystack Mines Site Special Account to be retained and used to conduct or finance response

actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Haystack Mines Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

58. Interest. In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest on pre-paid Future Response Costs shall begin to accrue on the Effective Date. The interest on all subsequent Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 70 (Stipulated Penalties - Work).

59. Contesting Future Response Costs. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 57.c if Respondent determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the OSC. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 57.e. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 57.e. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 57.e. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the

exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

60. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

61. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including but not limited to disputes over billings for Future Response Costs, Respondent shall send EPA a written Notice of Dispute describing the objection(s) within 20 days after such action. EPA and Respondent shall have 20 days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

62. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Region IX Assistant Division Director level or higher or at the Region VI Division Director level or higher will issue a written decision on the dispute to the Parties. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

63. Except as provided in Paragraph 59 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 73. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

64. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that

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Respondent exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

65. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region IX, and the Director of the Superfund Division, EPA Region VI, within seven days of when Respondent first knew that the event might cause a delay. Within five days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 64 and whether Respondent has exercised its best efforts under Paragraph 64, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

66. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

67. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), Respondent shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted

under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 64 and 65. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to EPA.

68. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

XVII. STIPULATED PENALTIES

69. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 70 and 71 for failure to comply with the requirements of this Settlement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondent shall include completion of all activities and obligations, including payments, required under this Settlement, or any deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, and any deliverables approved under this Settlement and within the specified time schedules established by and approved under this Settlement.

70. Stipulated Penalty Amounts - Work (Including Payments and Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 70.b:

Penalty Per Violation Per Day	Period of Noncompliance
$1,500	1st through 14th day
$2,000	15th through 30th day
$3,500	31st day and beyond

b. Compliance Milestones.

(1) Respondent's failure to pay billed Future Response Costs as required by Paragraph 5757.c.

(2) Failure to use best efforts to secure access agreements or consent to access pursuant to Paragraph 43.

(3) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XXV (Financial Assurance).

71. Stipulated Penalty Amounts - Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement:

Penalty Per Violation Per Day	Period of Noncompliance
$750	1st through 14th day
$1,500	15th through 30th day
$2,500	31st day and beyond

72. In the event that EPA assumes performance of all or any portion(s) of the Work pursuant to Paragraph 83 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $25,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 83 (Work Takeover) and 105 (Access to Financial Assurance).

73. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 34 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Assistant Division Director level or higher, under Paragraph 62 of Section XV (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

74. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

75. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 57.e (Payments for Future Response Costs).

76. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 73 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 75 until the

date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

77. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.

78. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 83 (Work Takeover).

79. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVIII. COVENANTS BY EPA

80. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

81. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

82. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. liability for failure by Respondent to meet a requirement of this Settlement;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response actions other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

83. Work Takeover.

a. In the event EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 83.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondent in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 83.b. Funding of Work Takeover costs is addressed under Paragraph 105 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in Paragraph 62 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 83.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 83.b until the earlier of (1) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 62 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY RESPONDENT

84. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New Mexico Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

d. any direct or indirect claim for return of unused amounts from the Haystack Mines Site Special Account, except for unused amounts that EPA determines shall be returned to Respondent in accordance with Paragraph 57.d (Unused Amount).

85. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 82.a (liability for failure to meet a requirement of the Settlement), 82.d (criminal liability), or 82.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

86. Notwithstanding the foregoing, this Settlement shall not bar or have any effect on claims, causes of action or defenses that Respondent has or may have pursuant to CERCLA against the United States or any of its agencies or departments, other than EPA, based on their

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alleged status as a potentially responsible party pursuant to CERCLA, 42 U.S.C. §9607(a), relating to the Work, Future Response Costs, or this Settlement Agreement.

87. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

88. Respondent reserves, and this Settlement is without prejudice to, its rights to bring claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

XXI. OTHER CLAIMS

89. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

90. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

91. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

92. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights, defenses (e.g. divisibility and apportionment), claims, demands, and causes of action (including those under CERCLA) which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of

CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

93. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work, and Future Response Costs.

94. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

95. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

96. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by EPA).

XXIII. INDEMNIFICATION

97. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of,

claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

98. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

99. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

100. No later than 15 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Paragraph 111 (Notice of Completion of Work), commercial general liability insurance with limits of $1 million, for any one occurrence, and automobile insurance with limits of $1 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

101. In order to ensure completion of the Work, Respondent shall demonstrate and secure financial assurance, initially in the amount of $500,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed

below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at http://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondent may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdictions and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by Respondent that Respondent meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of Respondent; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Respondent; provided, however, that any company providing such a guarantee must demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

102. Respondent has selected, and EPA has found satisfactory, as an initial financial assurance, a demonstration by Respondent that Respondent meets the relevant financial test criteria of 40 C.F.R. section 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

103. If Respondent provides financial assurance by means of a demonstration or guarantee under Paragraph 101.e or 101.f, Respondent shall also comply and shall ensure that its guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f)

and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the entity's chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than 30 days, in accordance with Paragraph 104, after such entity determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). Respondent agrees that EPA may also, based on a belief that an affected entity may no longer meet the financial test requirements of Paragraph 101.e or 101.f, require reports of financial condition at any time from such entity in addition to those specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Settlement; (3) the terms "owner" and "operator" include each Respondent making a demonstration or obtaining a guarantee under Paragraph 101.e or 101.f; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

104. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify EPA of such information within seven days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify Respondent of such determination. Respondent shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Respondent shall follow the procedures of Paragraph 106 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Settlement, including, without limitation, the obligation of Respondent to complete the Work in accordance with the terms of this Settlement.

105. Access to Financial Assurance.

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 83.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 105.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 105.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 83, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under Paragraph 101.e or 101.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within 15 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 105 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Haystack Mines Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 105 must be reimbursed as Future Response Costs under Section XIV (Payments of Response Costs).

106. Modification of Amount, Form, or Terms of Financial Assurance. Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 102, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondent shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 102.

107. Release, Cancellation, or Discontinuation of Financial Assurance. Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Paragraph 111 (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

XXVI. MODIFICATION

108. The OSC may modify any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

109. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written or oral request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 108. Respondent shall follow such oral request or approval with written documentation of such request and approval.

110. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVII. NOTICE OF COMPLETION OF WORK

111. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including Post-Removal Site Controls, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Removal Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

XXVIII. INTEGRATION/APPENDICES

112. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or

understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

a. Appendix A is a map and description of the Site.

b. Appendix B is Haystack AOC Figure 1.

XXIX. EFFECTIVE DATE

113. This Settlement shall be effective five days after the Settlement is signed by both the Superfund Division Director of EPA Region IX and the Superfund Division Director of EPA Region VI, whichever is later.

ED_005011_00000619-00041

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

4/12/17
Dated

Enrique Manzanilla
Director, Superfund Division
Region IX

Dated

Carl Edlund, P.E.
Director, Superfund Division
Region VI

ED_005011_00000619-00043

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____
Dated

_____
Enrique Manzanilla
Director, Superfund Division
Region IX

May 10, 2017
Dated

_____
Carl Edlund, P.E.
Director, Superfund Division
Region VI

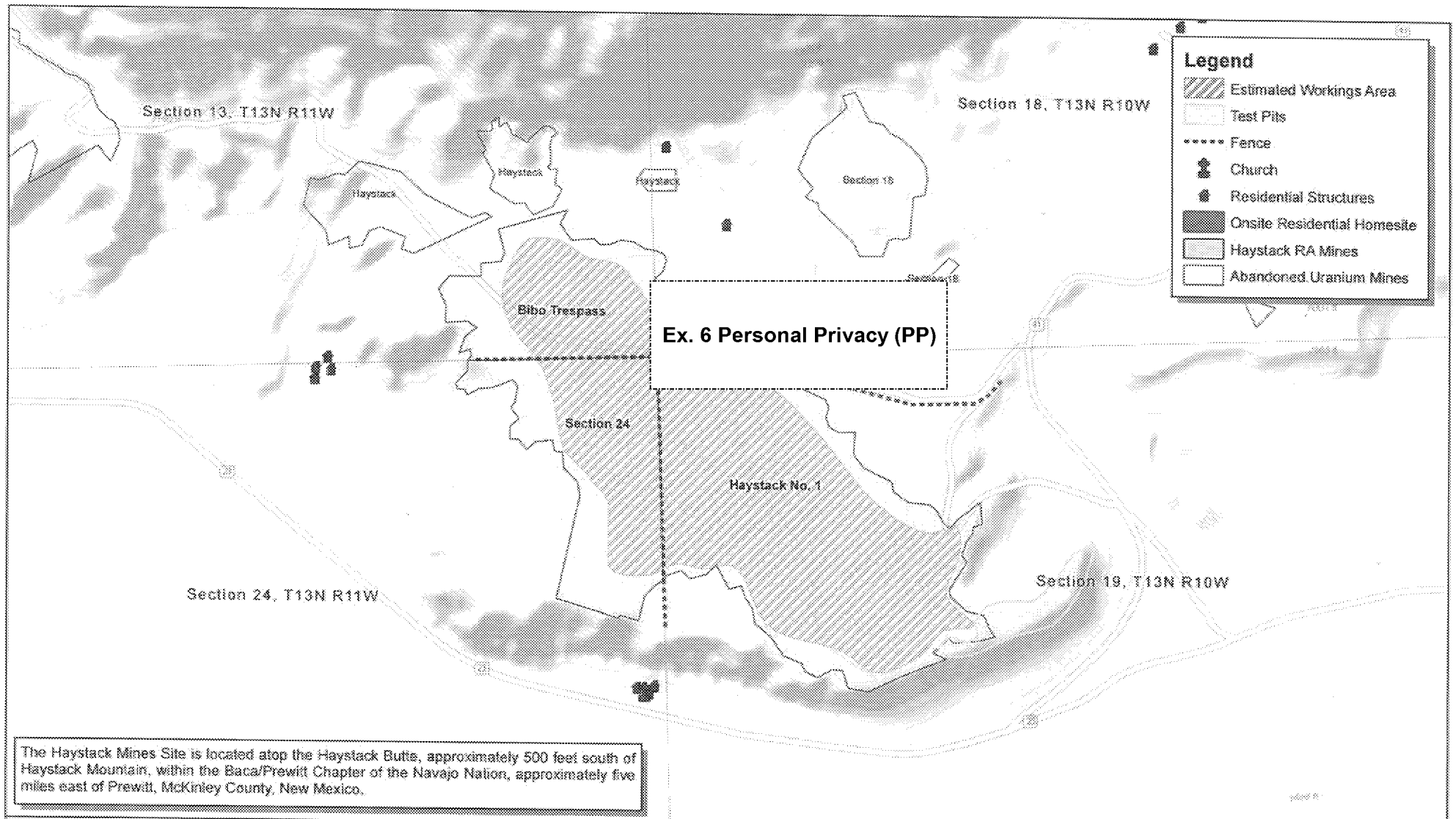
Signature Page for Settlement Regarding Haystack Mines Site

FOR BNSF Railway Company, Respondent:

2/14/17
Dated

John D. Lovenburg
Vice President, Environmental
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131

APPENDIX A



PREPARED BY:
Region 9, START
Weston Solutions, Inc.
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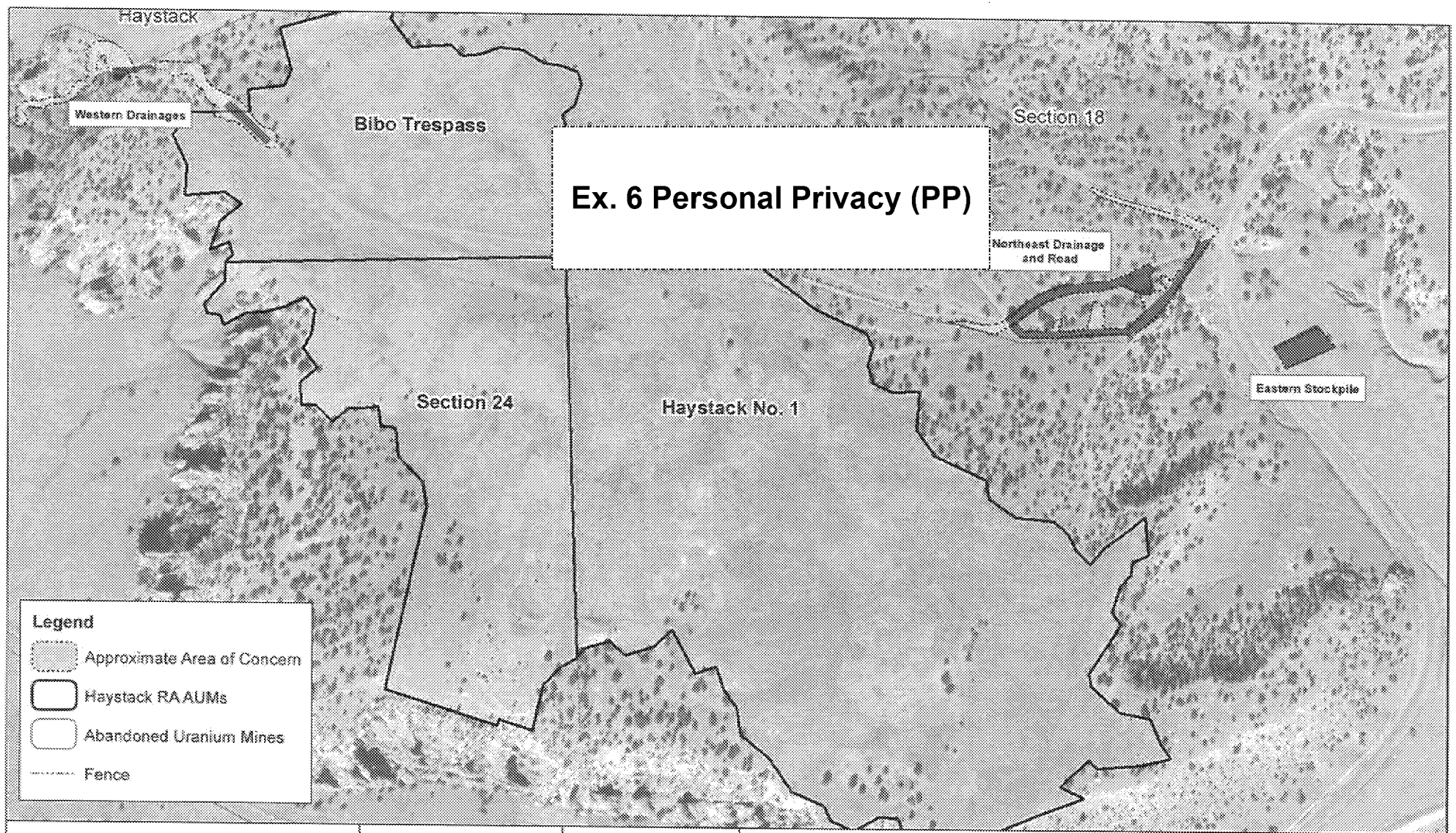
Walnut Creek, CA 94597

PREPARED FOR:
EPA Region 9
Pacific
Southwest

HAYSTACK MINES
SITE LAYOUT
Baca/Haystack Chapter
Navajo Nation, NM

APPENDIX B



N

0 Scale in Feet 1,000

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PREPARED FOR:
EPA Region 9
Pacific
Southwest

FIGURE #1
AREAS OF CONCERN
Haystack No. 1 Removal Assessment
Baca/Haystack Chapter, Navajo Nation, NM

Contract: EP-S5-13-02; TDD: 0002/1302-72-RS-14-07-0001