65. Disbursement of Special Account Funds.

a. Timing and Request for Reimbursement. Respondents shall be responsible for funding all of their obligations under this AOC, including performance of the Work and reimbursement of Future Response Costs. Upon entry of a judicially-approved consent decree that embodies an obligation by one or more of Respondents to this AOC to implement the Remedial Action for the Lower Ley Creek OU, those Respondents that are settlors in any such consent decree (RA Settling Defendants) may submit a request for reimbursement of the RD Costs that all Respondents incurred in performance or funding of the Work under this AOC, including for Future Response Costs that have been reimbursed to EPA. That request must be jointly submitted to the extent there are multiple RA Settling Defendants. Respondents agree that any reimbursed funds shall be used exclusively for advance-funding of the Remedial Action, pursuant to the terms of any such judicially-approved consent decree. Any such request for reimbursement shall include (a) a complete and accurate written cost summary; (b) a detailed, itemized accounting of the costs incurred in performing the Work under this AOC, including Future Response Costs reimbursed to EPA; and (c) certification of the costs incurred and paid by Respondents for the Work related to the RD for which reimbursement is sought. The basis for and the amount of any reimbursement to the RA Settling Defendants will be dependent on (a) the availability of funds in the Special Account; (b) the Work's consistency with the NCP, which EPA agrees can be demonstrated by EPA's written approval of the Work; (c) EPA's acceptance of the cost documentation set forth in support of a cost summary and certification, subject to any costs excluded from the disbursement; and (d) ~~EPA's prior reimbursement of its past response costs incurred at the Lower Ley Creek OU from the Special Account, provided that EPA's failure or inability to reimburse itself for past response costs despite the availability of sufficient settlement proceeds to do so shall not be grounds to reject or delay reimbursement to the RA Settling Defendants; and (e)~~ the aforementioned pre-condition of the participation of one or more of the Respondents to this AOC in a future, judicially-approved settlement to implement the Remedial Action selected for the Lower Ley Creek OU. EPA intends to memorialize these criteria for reimbursement of one or more RA Settling Defendants in a future, judicially-approved consent decree that embodies an obligation by one or more of Respondents to this AOC to implement the Remedial Action for the Lower Ley Creek OU. ~~That future consent decree will memorialize the reimbursement criteria and obligations for the approved RD Costs to the RA Settling Defendants.~~ The Parties to this AOC acknowledge that EPA intends to reimburse itself of its past response costs incurred at the Lower Ley Creek OU from the Special Account. Respondents agree not to object to or challenge such reimbursement of EPA's past response costs whether such reimbursement occurs in advance of or subsequent to any reimbursement(s) to the RA Settling Defendants consistent with this Paragraph and pursuant to any future, judicially-approved settlement to implement the Remedial Action selected for the Lower Ley Creek OU.