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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, STATE)	
OF NEVADA THROUGH ITS)	
DEPARTMENT OF NATURAL)	
RESOURCES, DIVISION OF)	
ENVIRONMENTAL PROTECTION, A)	
and THE SHOSHONE-PAIUTE TRIBES)	
OF THE DUCK VALLEY)	
RESERVATION,)	Civil Action No.
)	
Plaintiffs,)	
v.)	COMPLAINT
)	
ATLANTIC RICHFIELD COMPANY,)	
THE CLEVELAND-CLIFFS IRON)	
COMPANY, E.I. DU PONT DE)	
NEMOURS AND COMPANY, TECK)	
AMERICAN INCORPORATED, and)	
MOUNTAIN CITY REMEDIATION, LLC,)	
Defendants.)	

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1 The State of Nevada acting through the Department of Conservation and
 2 Natural Resources, Division of Environmental Protection (“NDEP”) and the
 3 Department of Wildlife (“NDOW”), by and through counsel, Catherine Cortez
 4 Masto, Attorney General for the State of Nevada; the United States of America, by
 5 and through the undersigned attorneys, by the authority of the Attorney General of
 6 the United States and at the request of and on behalf of the United States
 7 Environmental Protection Agency (“EPA”), the Secretary of the Department of the
 8 Interior, acting through the Bureau of Indian Affairs, (“BIA”) and the United
 9 States Fish and Wildlife Service, (“FWS”), the Secretary of the Department of
 10 Agriculture, acting through the United States Forest Service (“USFS”); and the
 11 Shoshone-Paiute Tribes of the Duck Valley Reservation (“Tribes”), together allege
 12 the following:

13 STATEMENT OF THE CASE

14 1. This is a civil action brought pursuant to Sections 106 and 107 of the
 15 Comprehensive Environmental Response, Compensation, and Liability Act, as
 16 amended, 42 U.S.C. §§ 9606 and 9607, and Nevada Water Pollution Control Law,
 17 NRS § 445A.300 to 445A.730 and all rules, regulations and standards adopted
 18 pursuant thereto, relating to the releases and threatened releases of hazardous
 19 substances at the Rio Tinto Mine Site located in Elko County, Nevada (“Site”) that
 20 may present an imminent and substantial endangerment to health or welfare or the
 21 environment.

22 JURISDICTION AND VENUE

23 2. This Court has jurisdiction over the subject matter of this action pursuant
 24 to 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331, 1345 and 1367.

25 3. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and 28
 26 U.S.C. § 1391(b), because the claims arose and the threatened and actual releases of
 27 hazardous substances occurred in this District.
 28

DEFENDANTS

4. Atlantic Richfield Company is a Delaware corporation with its principal place of business in California. At all relevant times, it did business within the State of Nevada.

5. The Cleveland- Cliffs Iron Company is an Ohio Corporation with its principal place of business in Ohio. At all relevant times, it did business within the State of Nevada.

6. E.I. du Pont de Nemours and Company is a Delaware corporation with its principal place of business in Delaware. At all relevant times, it did business within the State of Nevada.

7. Teck American Incorporated f/k/a Teck Cominco American Inc., f/k/a Cominco American Inc. ("Cominco") is a Canadian corporation with its principal place of business in Vancouver, Canada. At all relevant times, it did business within the State of Nevada.

8. Mountain City Remediation LLC is a Delaware limited liability company doing business within the State of Nevada.

9. Each of the Defendants is a "person," as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

10. The Site is a geographical area including the Rio Tinto Mine, and any area where hazardous substances released from the Rio Tinto Mine have come to be located within the State of Nevada. The Rio Tinto Mine is an abandoned copper mine located approximately 2.5 miles south of Mountain City, in northern Elko County, Nevada.

11. The Rio Tinto Mine, located in Elko County, Nevada, produced copper from 1932 to 1977.

12. During the time the mine was operational, ownership of the mine changed hands several times. Mining operations began under Mountain City

1 Copper Company, a subsidiary of Anaconda Copper/Atlantic Richfield Company
2 (“ARCO”), which used underground mining techniques and a flotation mill to
3 mine copper.

4 13. In 1947, ARCO sold the mine to John Crosby, Elko Associates, J.Roe
5 Whitney and the Beiroth family who then sold it to George M. Wallace and
6 Company in 1966. Wallace and subsequent operators primarily leached and re-
7 worked mine tailings at the Site.

8 14. The Cleveland-Cliffs Iron Company or a related entity (“Cliffs”)
9 purchased the mine in 1972 and operated it before selling it to Cominco in 1975.

10 15. After 1975, Cominco and E.I. du Pont de Nemours and Company,
11 (“DuPont”) conducted exploratory drilling that was subsequently terminated. The
12 mine has remained inactive since 1977.

13 16. Mountain City Remediation, LLC was created and is controlled by an
14 affiliate of ARCO, and it owns or will own property within what is commonly
15 known as “Area A” of the Site.

16 17. NDEP, EPA, and other agencies have been conducting or overseeing
17 assessment, characterization, and response activities at the Site since 1980.

18 18. Beginning in 1984, NDEP reported elevated concentrations of cadmium,
19 chromium, copper, mercury and selenium in Mill Creek downstream of the mine
20 tailings and in the Owyhee River downstream of the Mill Creek confluence. Under
21 NDEP oversight, the Defendants made some improvements in conditions of the
22 mine; however, copper concentrations post-remediation continue to exceed the
23 standard set forth in NAC 445A.144.

24 19. During sampling from January 1998 to June 2002, the copper standard in
25 Mill Creek downstream of the Mine was exceeded for 29 of 33 sampling events
26 including 13 events where the standard was exceeded by more than one order of
27 magnitude. These levels were also greatly elevated above background levels of
28 contamination. At the Site, measures of exposure of potential ecological receptors

1 (i.e., metals data collected in Mill Creek and the East Fork of the Owyhee River)
2 were used to make inferences about the risk assessment endpoint. The data set was
3 compared to chronic water quality criteria established under the Clean Water Act.
4 Chronic criteria are considered appropriate due to the presence of a sensitive
5 receptor, the redband trout in the East Fork of the Owyhee River. The redband
6 trout is also considered native to Mill Creek, although passage up Mill Creek is
7 currently inhibited by several mine-related features which are designated for
8 removal under the selected remedy.

9 20. The data set collected at the Site meets the goal of providing the risk
10 information necessary to assist risk managers in making informed decisions
11 regarding substances designated as hazardous under CERCLA. *See* 40 CFR 302.4.
12 Specifically, the data set shows that in Mill Creek, between 1995 and 2009, 100%
13 of the collected water samples exceeded the chronic water quality criteria for
14 copper. In terms used in US EPA guidance for determining ecological risk (see
15 above): (1) levels of dissolved copper in Mill Creek (the stressor), have the ability
16 to cause chronic adverse health effects in aquatic life; and (2) these levels of
17 copper, being present at all times, co-occur with ecological receptors, including
18 sensitive receptors such as the redband trout.

19 21. The selected remedy will address actual or potential ecological threats in
20 the form of dissolved copper detected at levels exceeding the chronic water quality
21 criteria for copper in 100% of samples collected in Mill Creek, and due to the
22 potential for future release of contaminants from mine-related tailings currently
23 located in containment ponds at the Site commonly known as "Pond 3" and "Pond
24 4."

25 22. The Site is a "facility" within the meaning of Section 101(9) of
26 CERCLA, 42 U.S.C. §9601(9).
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23. Contaminants including copper, cadmium and zinc from the Site are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

24. Introduction of contaminants including copper, cadmium and zinc into the waters of Mill Creek and the Owyhee River constitutes a release of a hazardous substance under Section 101(2) of CERCLA, 42 U.S.C. § 9601(22).

25. On February 14, 2012, EPA and NDEP issued a Record of Decision, (“ROD”), selecting a remedy that has been deemed necessary to address an imminent and substantial endangerment to the public health or welfare at the Site pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

26. Section 106 (a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

[W]hen the President determines that there may be 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 a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threatSection 106 of CERCLA authorizes the district court to grant such relief as the public interests and the equities of the case may require to abate 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 a facility. 42 U.S.C. § 9606.

27. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section-

(1) the owner and operator of a . . . facility. . . , [and]

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

...from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan; . . .

(B) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;....

28. As delegated by the Director of the Nevada Department of Conservation and Natural Resources (“DCNR”) pursuant to NRS 445A.450 (10), NDEP has the power and duty to administer and enforce the provisions of the Nevada Water Pollution Control Law, NRS 445A.300–445A.730 inclusive; all rules, regulations, and standards promulgated by the Nevada State Environmental Commission (the “Commission”) pursuant to those sections; and all orders and permits promulgated by DCNR, under the authority of NRS 445A.445 (1).

29. NDEP is authorized by NRS 445A.675 to commence civil actions to address violations of the Nevada Water Pollution Control Law.

30. NRS 445A.465 (1) states:

1. Except as authorized by a permit issued by the Department pursuant to the provisions of NRS 445A.300 to 445A.730, inclusive, and regulations adopted by the Commission, it is unlawful for any person to:

- (a) Discharge from any point source any pollutant into any waters of the State or any treatment works.
- (b) Inject fluids through a well into any waters of the State.
- (c) Discharge from a point source a pollutant or inject fluids through a well that could be carried into the waters of the State by any means.
- (d) Allow a pollutant discharged from a point source or fluids injected through a well to remain in a place where the pollutant or fluids could be carried into the waters of the State by any means.

31. Mill Creek and Owyhee River of Elko County, Nevada are waters of the State as defined by NRS 445A.415.

1 32. Contaminants as defined by NRS 445A.325 includes, but is not limited
2 to, copper, cadmium, and zinc from the Site.

3 33. Contaminants including but not limited to copper, cadmium, and zinc,
4 from the Site are hazardous substances as defined by Nevada Administrative Code
5 (“NAC”) 445A.3454.

6 34. Surface water standards set forth in NAC 445A.121 preclude wastes from
7 municipal, industrial or other controllable sources containing pollutants including
8 copper, cadmium and zinc that are reasonably amenable to treatment or control
9 from being discharged untreated or uncontrolled into the waters of the State.

10 35. Defendants, and each of them, meet the definition of a “person” as
11 defined by NRS 445A.390.

12 36. Defendants, and each of them, meet the definition of an “owner” or
13 “operator” of the Site subject to corrective action, as those terms are defined at
14 NAC 445A.2265 and 445A.22655.

15 37. NAC 445A.22695 provides that an owner or operator shall immediately
16 take any action necessary to mitigate and abate imminent and substantial hazards
17 to public health or safety created by the release of a hazardous substance,
18 hazardous waste, or regulated substance.

19 38. NAC 445A.2275 provides that NDEP may require an owner or operator
20 to take corrective action if the release contaminates surface waters in excess of
21 action levels and remediation standards set in conformity with State water quality
22 standards.

23 39. NAC 445A.22725 provides that NDEP may require an owner or operator
24 to take corrective action if the release contaminates groundwater, and the level of
25 contamination exceeds the action levels established by NAC 445A.22735.

26 40. Pursuant to NRS 445.700, NDEP may recover actual damages to the
27 State resulting from a violation of the Nevada Water Pollution Control Law, or any
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1 regulation or standard adopted by the Commission, or permit or final order issued
2 by DCNR, including:

- 3 (a) Any expenses incurred in removing, correcting and
4 terminating any adverse effects resulting from a discharge or
5 the injection of contaminants through a well; and
6 (b) Compensation for any loss or destruction of wildlife, fish or
7 aquatic life.

8 41. NDEP may pursue injunctive relief pursuant to NRS 445A.695 to prevent
9 the continuance or occurrence of any act or practice which violates any provision
10 of the Nevada Water Pollution Control Law, or any permit, rule, regulation or
11 order issued pursuant thereto.

12 FIRST CLAIM FOR RELIEF

13 (Cost Recovery Under CERCLA)

14 42. The allegations contained in paragraphs 1-41 are realleged and
15 incorporated herein.

16 43. Each of the Defendants was either an owner or operator of the Rio Tinto
17 Mine at the time of disposal of a hazardous substance at the Site, or is currently an
18 owner or operator of a portion of the Site, or has expressly assumed liabilities for
19 the Site.

20 44. Nevada and the United States have taken response actions at the Site
21 within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25),
22 pursuant to authority under Section 104 of CERCLA, 42 U.S.C. § 9604.

23 45. Nevada and the United States have incurred costs in connection to the
24 response actions referred to in the preceding paragraph for which they have made a
25 demand upon the Defendants.

26 46. The United States has outstanding past response costs in connection with
27 the release or threatened release of hazardous substances at the Site.
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1 47. Nevada and the United States continue to incur costs in connection with
2 the release or threatened release of hazardous substances that have not been
3 reimbursed through prior settlement.

4 48. The costs incurred by Nevada and the United States in connection with
5 the release or threatened release of hazardous substances at the Site are not
6 inconsistent with the National Contingency Plan, which was promulgated under
7 Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part
8 300 et seq.

9 49. The Defendants are jointly and severally liable for all costs incurred, or
10 to be incurred, by Nevada and the United States, not inconsistent with the National
11 Contingency Plan and for interest on those costs pursuant to Section 107 of
12 CERCLA, 42 U.S.C. §9607.

13 SECOND CLAIM FOR RELIEF

14 (Declaratory Relief for Future Costs)

15 50. The allegations contained in paragraphs 1-49 are realleged and
16 incorporated herein.

17 51. Nevada and the United States continue to incur costs in connection with
18 the release or threatened release of hazardous substances that have not been
19 reimbursed through prior settlement.

20 52. The costs incurred by Nevada and the United States in connection with
21 the release or threatened release of hazardous substances at the Site are not
22 inconsistent with the National Contingency Plan, which was promulgated under
23 Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part
24 300 et seq.

25 53. The Defendants are jointly and severally liable for all costs incurred, or
26 to be incurred, by Nevada and the United States, not inconsistent with the National
27 Contingency Plan and for interest on those costs pursuant to Section 107 of
28 CERCLA, 42 U.S.C. §9607.

THIRD CLAIM FOR RELIEF

(Response Actions Under CERCLA)

54. The allegations contained in paragraphs 1-53 are realleged and incorporated herein.

55. The President or his delegate, the Regional Administrator, has determined that the release and/or threatened release of a hazardous substance at or from the Site poses an imminent and substantial endangerment to the public health, welfare, or the environment, and that response actions are necessary to abate the danger or threat posed by the actual or threatened release of hazardous substances at or from the Site.

56. Defendants are liable to perform response actions at the Site to abate this danger or threat, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

FOURTH CLAIM FOR RELIEF

(Natural Resource Damages)

57. The allegations contained in paragraphs 1-56 are realleged and incorporated by reference herein.

58. The release or threatened release of hazardous substances from the Site into the environment caused injury to natural resources in the areas of Mill Creek, the Owyhee River downstream of the Mill Creek confluence, ranch lands irrigated with Mill Creek waters, and the Duck Valley Indian Reservation.

59. The release of hazardous substances at the Site has resulted in elevated levels of cadmium, chromium, copper, mercury and selenium in the water of Mill Creek and the Owyhee River.

60. The contamination caused by the Defendants has, and continues to, injure or have the potential to injure natural resources including fish, benthic and epibenthic species, other aquatic flora and fauna, upland, riparian, riverine and wetland fish and wildlife habitats, migratory birds, threatened or endangered

1 species, mammalian and avian species, reptiles and amphibians, vegetation, surface
2 water, groundwater, air and geological resources.

3 61. The United States, through the Department of the Interior, FWS, BIA,
4 and the United States Department of Agriculture, USFS is a natural resource
5 trustee pursuant to CERCLA Section 9607(f), 42 U.S.C. § 9607(f) with authority
6 to act on behalf of the public to address natural resource damage claims at the Site.

7 62. The State of Nevada, through NDOW and NDEP's Bureau of Water
8 Quality, is a natural resource trustee pursuant to CERCLA Section 9607(f), 42
9 U.S.C. § 9607(f) with authority to act on behalf of the public to address natural
10 resource damage claims at the Site.

11 63. The Shoshone-Paiute Tribes of the Duck Valley Reservation are a natural
12 resource trustee pursuant to CERCLA Section 9607(f), 42 U.S.C. § 9607(f) with
13 authority to act on behalf of the public to address natural resource damage claims
14 at the Site.

15 64. State, federal and tribal natural resource trustees designated pursuant to
16 CERCLA have incurred damages to natural resources at the Site that have not been
17 reimbursed through prior settlement, including costs associated with assessing the
18 injuries to natural resources.

19 65. Pursuant to CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C),
20 Trustees are entitled to recover damages for natural resource injuries to the Site
21 and surrounding contaminated area.

22 FIFTH CLAIM FOR RELIEF

23 (Damages Under NRS 445A.700)

24 66. The allegations contained in paragraphs 1-65 are realleged and
25 incorporated herein.

26 67. Each of the Defendants was either an owner or operator of the Rio Tinto
27 Mine at the time of disposal of a hazardous substance at the Site, or owns or will
28 own a portion of the Site. By allowing pollutants, including but not limited to

1 copper, cadmium and zinc, to remain in place in the soil and groundwater,
2 Defendants, and each of them, are in violation of NRS 445A.465.

3 68. The State of Nevada has incurred and is continuing to incur costs to
4 address releases and threatened releases of hazardous substances from the Site,
5 including damages relating to the loss or destruction of wildlife, fish or aquatic life.

6 69. Although Defendants have paid past costs incurred by NDEP to address
7 releases and threatened releases of hazardous substances from the Site, Defendants
8 are liable for future costs that NDEP will continue to incur at the Site.

9 70. Defendants, and each of them, are liable for all future costs incurred by
10 the State of Nevada, as provided by NRS 445A.700.

11 SIXTH CLAIM FOR RELIEF

12 (Injunctive Relief Under NRS 445A.695)

13 71. The allegations contained in paragraphs 1-70 are realleged and
14 incorporated herein.

15 72. Pursuant to NAC 445A.2265, the Director of DCNR, or his delegate, the
16 Administrator of NDEP, has determined that the release or threatened release of a
17 hazardous substance at the Site poses an imminent and substantial hazard to public
18 health or safety, and that immediate action by Defendants, and each of them, is
19 necessary to mitigate and abate the hazard.

20 73. The release of contaminants, including copper, cadmium, and zinc, to
21 waters of the State exceed State action levels and remediation standards. Pursuant
22 to NAC 445A.2275 and NAC 445A.22725, immediate corrective action by
23 Defendants, and each of them, is necessary.

24 74. Pursuant to NRS 445A.695, NDEP is entitled to injunctive relief with no
25 requirement of establishing a lack of an adequate remedy for irreparable harm.

26 75. NDEP requests a mandatory injunction requiring Defendants, and each of
27 them, to perform the response activities set forth in the ROD for the
28 implementation and achievement of the remedy selected therein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America, the State of Nevada, and the Shoshone-Paiute Tribes of the Duck River Reservation, respectfully pray that this Court:

- i. On the First Claim for Relief, for an Order requiring the Defendants to pay all past response costs incurred by the United States in connection with the Site, including assessment and enforcement costs, plus interest;
- ii. On the Second Claim for Relief, for a declaratory judgment holding the Defendants liable for all future response costs not inconsistent with the NCP to be incurred by the United States and the State of Nevada in connection with the Site;
- iii. On the Third Claim for Relief, for an Order Requiring the Defendants to perform the response activities set forth in the ROD pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606;
- iv. On the Fourth Claim for Relief, for an Order requiring the Defendants to pay natural resource damages for all injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, at or from the Site and damages for interim losses from the degradation of habitat pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607;
- v. On the Fifth Claim for Relief, for payment of past and future costs incurred by the State of Nevada, as provided by NRS 445A.700;
- vi. On the Sixth Claim for Relief, for a mandatory injunction as provided by NRS 445A.695 requiring the Defendants to perform the response activities set forth in the ROD; and
- vii. For such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

THE STATE OF NEVADA

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THE SHONSHONE-PAIUTE TRIBES OF THE
DUCK VALLEY RESERVATION

DATE: 9/27/12

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